

ORDINANCE NO. 4

Series 2017

AN ORDINANCE MAKING MISCELLANEOUS AMENDMENTS TO THE  
BRECKENRIDGE TOWN CODE

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

Section 1. Chapter 7 of Title 1 of the Breckenridge Town Code is amended by the addition of a new Section 1-7-3, which shall read as follows:

1-7-3: REFERENCES TO TOWN OFFICERS AND EMPLOYEES:

Any reference in this code to the specific job title of a Town officer or employee means and includes any successor to such officer or employee and any person who performs the same essential employment functions of such officer or employee, regardless of such person's job title.

Section 2. The definition of "Town Board or Commission" in Section 1-16-7 of the Breckenridge Town Code is amended to read as follows:

TOWN BOARD OR COMMISSION:      The town's planning commission, open space advisory commission, and the liquor and marijuana licensing authority.

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

FINANCE DIRECTOR:                      The director of finance and information technology of the town or such other person designated by the municipality, or such person's designee.

Section 4. Section 3-1-7 of the Breckenridge Town Code is amended to read as follows:

3-1-7: RETAILER RESPONSIBLE FOR PAYMENT OF TAX:

A. Every retailer or vendor engaged in business and selling at retail as defined in this chapter shall be liable and responsible for the payment of an amount equivalent to two and one-half percent (21/2%) of all sales made by him of commodities or services as specified in section 3-1-3 of this chapter, and shall file a return each month with the finance director on or before the twentieth day of each month for the preceding month and remit an amount equivalent to said two and one-half percent (21/2%) of such sales to the finance director.

B. Every retailer or vendor conducting a business in which the transaction between the vendor and the consumer consists of the supply of tangible personal property and services in connection with the maintenance or servicing of same, shall be required to pay the tax levied under this chapter on the full contract price, unless application is made to the finance director for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The finance director is hereby authorized to determine the percentage based on the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale which shall be subject to the tax levied pursuant to the provisions of this chapter. This section shall not be construed to include terms upon which the tax is imposed on the full purchase price as defined herein.

Section 5. Section 3-1-8(A)(2)(b) of the Breckenridge Town Code is amended to read as follows:

b. Any amount so withheld shall be paid to the town within ten (10) days of the date of the sale of the business on forms prescribed by the finance director.

Section 6. Section 3-1-9 of the Breckenridge Town Code is amended to read as follows:

**3-1-9: RETAILER TO COLLECT TAX:**

Retailers shall add the tax imposed to the sale price or charge, showing such tax as a separate and distinct item, and when added, such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts; provided, however, that the retailer shall be entitled, as collection agent of the town, to apply and credit the amount of this collection against the two and one-half percent (2 1/2%) rate to be paid by him under the provisions of section 3-1-5 of this chapter remitting any excess collected over said two and one-half percent (2 1/2%) to the finance director in the retailer's next monthly sales tax returns.

Section 7. Section 3-1-12(B) of the Breckenridge Town Code is amended to read as follows:

B. When it is determined by the finance director of the town that sales tax owed to the town has been reported and paid to another municipality, the town shall promptly notify the vendor that taxes are being improperly collected and remitted, and that as of the date of the notice, the vendor must cease improper tax collections and remittances.

Section 8. Section 3-1-13 of the Breckenridge Town Code is amended to read as follows:

**3-1-13: EXEMPTION; BURDEN OF PROOF:**

The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting or paying the tax upon goods sold or purchased, paying the same to the finance director or from making such returns, shall be on the vendor, retailer, consumer, or purchaser under such reasonable requirements of proof as the finance director may prescribe.

Section 9. Section 3-1-14 of the Breckenridge Town Code is amended to read as follows:

**3-1-14: EXCESS COLLECTIONS:**

If any vendor shall during any reporting period collect as a tax any amount in excess of two and one-half percent (2 1/2%) of his total taxable sales, he shall remit to the finance director the full net amount of the tax herein imposed, and also such excess. The retention by the retailer or vendor of any excess tax collections or the intentional failure to remit punctually to the finance director the full amount required to be remitted by the provisions of this chapter is hereby declared to be a violation of this chapter.

Section 10. Section 3-1-16 of the Breckenridge Town Code is amended to read as follows:

**3-1-16: SPECIAL ACCOUNTING BASIS FOR REMITTANCE OF TAX:**

If the accounting methods employed by the vendor or licensed consumer in the transaction of his business, or other conditions, are such that returns made on the calendar month basis will impose unnecessary hardship, the finance director may, upon request of the vendor or licensed consumer, accept returns at such intervals as will, in his opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax. If any taxpayer who has been granted permission to file reports and pay tax on other than a monthly basis shall become delinquent, then authorization for such alternative method of reporting may be revoked by the finance director or his authorized agent, and immediately following notice of revocation, the taxpayer will be required to file reports and pay tax, interest and penalties on a monthly basis for all unreported or unpaid tax in

the same manner required by law under conditions that would prevail if he has never been granted the alternate method of reporting and paying the tax.

Section 11. Section 3-1-18 of the Breckenridge Town Code is amended to read as follows:

**3-1-18: INVESTIGATION OF BOOKS:**

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, the finance director, or his duly authorized agent, may hold investigations and hearings concerning any matters covered by this chapter and may examine any relevant books, journals, ledgers, business bank account records, work papers of the taxpayer or accountant, records or memorandum of any such person and may require the attendance and testimony of such person.

Section 12. Section 3-1-19 of the Breckenridge Town Code is amended to read as follows:

**3-1-19: COORDINATED AUDIT:**

A. Any taxpayer licensed in this town pursuant to section 3-1-22 of this chapter, and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.

B. Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the finance director of this town, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage of time based limitation upon this town's right to recover tax owed by the vendor for the audit period.

C. Except as provided in subsection G of this section, any taxpayer that submits a complete request for a coordinated audit may be audited by this town during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

D. If this town desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subsection C of this section, the finance director shall so notify the finance director of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The finance director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

E. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this town, this town's finance director shall facilitate arrangements between this town and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The finance director shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

F. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this town, this town's finance director shall, once arrangements for the coordinated audit between the town and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The finance director shall also propose a schedule for the coordinated audit.

G. The coordinated audit procedure set forth in this section shall not apply:

1. When the proposed audit is a jeopardy audit,
2. To audits for which a notice of audit was given prior to the effective date of this section, or
3. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in subsection B of this section.

Section 13. The second unnumbered paragraph of Section 3-1-20 of the Breckenridge Town Code is amended to read as follows:

In the case of a false or fraudulent return with intent to evade tax, the tax together with interest and penalties thereon may be assessed, or proceedings for the collection of such taxes may be begun at any time without regard to the statute of limitations. Prior to the expiration of the period of limitation, the taxpayer and the finance director may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

Section 14. Section 3-1-21 of the Breckenridge Town Code is amended to read as follows:

**3-1-21: SUBPOENAS:**

The finance director may issue a subpoena to compel a person to attend and give testimony or to produce books and records, work papers, photographs or such other information that may be deemed necessary for the purpose of determining the amount of tax due from any person.

Section 15. Section 3-1-23 of the Breckenridge Town Code is amended to read as follows:

**3-1-23: SALES TAX LICENSES; APPLICATION AND CONTENT:**

Breckenridge sales tax licenses shall be granted only upon application stating the name and address of the person desiring such license, the name of such business and the character thereof, the location, including the street number of such business and such other facts as may be required by the finance director. Any person doing business as a wholesaler shall obtain a retailer's license if any sales are made at retail as defined herein. In case business is transacted at two (2) or more separate places by one person, a separate license for each place of business shall be required. The license shall be posted in a conspicuous place in the place of business for which it is used. No license shall be transferable.

Section 16. Section 3-1-24 of the Breckenridge Town Code is amended to read as follows:

**3-1-24: DENIAL OF LICENSE:**

A. An application for the initial issuance or renewal of a Breckenridge sales tax license shall be denied by the finance director if:

1. The business for which the license is sought is an unlawful business;
2. The applicant is not qualified to engage in such business under applicable federal, state or local law; or
3. The applicant or, in the event of an applicant which is other than a natural person, if any principal of the applicant, owes to the town any unpaid and delinquent tax of any kind. As used in this subsection A3, 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 owed to the town within sixty (60) days of the date such obligation is due.

B. Before denying an application the finance director shall cause a hearing to be held using the general procedures provided for the revocation of a license in section 3-1-26 of this chapter. In the event an application is denied, the finance director shall deliver to the applicant a written order of denial stating the reason for denial.

Section 17. Section 3-1-26 of the Breckenridge Town Code is amended to read as follows:

**3-1-26: REVOCATION OF LICENSE:**

The finance director may, on a reasonable notice and after full hearing, revoke the license of any person found by the finance director to have violated any provisions of this chapter.

Section 18. Section 3-1-27 of the Breckenridge Town Code is amended to read as follows:

**3-1-27: APPEAL:**

Any finding and order of the finance director revoking the license of any person shall be subject to review by the district court of the district where the business of the licensee is conducted, upon application of the aggrieved party. The procedure for review shall be as nearly as possible the same as now provided for review of findings by writ of certiorari in accordance with rule 106(a)(4) of the Colorado rules of civil procedures.

Section 19. Section 3-1-30 of the Breckenridge Town Code is amended to read as follows:

**3-1-30: COLLECTION AND REFUND OF DISPUTED TAX:**

Should a dispute arise between the purchaser and seller as to whether or not any sale or commodity or service is exempt from taxation hereunder, nevertheless, the seller shall collect and the purchaser shall pay such tax, and the seller thereupon issues to the purchaser a receipt or certificate, on forms prescribed by finance director, showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of the exemption. The purchaser may thereafter apply to the finance director to determine the question of exemption, subject to review by the courts, as herein provided.

Section 20. Section 3-1-31 of the Breckenridge Town Code is amended to read as follows:

**3-1-31: REFUNDS:**

A. A refund shall be made, or credit allowed, for the sales tax so paid under dispute by any purchaser or user who claims an exemption pursuant to section 3-1-4 of this chapter. Such refund shall be made by finance director after compliance with the following conditions precedent: Applications for refund must be made within sixty (60) days after the purchase of the goods or services whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller and shall be made upon such forms as shall be prescribed therefor.

B. Upon receipt of such application, finance director shall examine the same with due speed and shall give notice to the applicant in writing of his decision thereon. Aggrieved applicants, within thirty (30) calendar days after such decision is

mailed to them, may petition the finance director for a hearing on the claim in the manner provided in section 3-1-41 of this chapter and may either appeal to the district court in the manner provided in section 3-1-42 of this chapter or to the department of revenue in the manner provided in section 3-1-43 of this chapter. The right of any person to a refund under this chapter shall not be assignable, and except as provided in subsection C of this section, such application for refund must be made by the same person who purchased the goods or services and paid the tax thereon as shown in the invoice of the sale thereof.

C. A refund shall be made or a credit allowed by the finance director to any person entitled to an exemption where such person establishes that: 1) a tax was paid by another person, the purchaser, on a purchase made on behalf of the person entitled to an exemption; 2) a refund has not been granted to such purchaser; and 3) the person entitled to the exemption paid or reimbursed such purchaser for such tax. The burden of proving that sales, services, and commodities on which tax refunds are claimed are exempt from taxation under this chapter or were not at retail shall be on the person making such claim under such reasonable requirements of proof as set forth in the rules and regulations prescribed therefor. No such refund shall be made or credit allowed in an amount greater than the tax paid less the expense allowance on such purchase retained by the vendor pursuant to section 3-1-9 of this chapter.

D. Such application for refund under subsection C of this section shall be made on forms furnished by the finance department. Upon receipt of such application and proof of the matters contained therein, finance director shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants within thirty (30) calendar days after such decision is mailed to them, may petition the finance director for a hearing on the claim in the manner provided in section 3-1-41 of this chapter and may either appeal to the district court in the manner provided in section 3-1-42 of this chapter or to the department of revenue in the manner provided in section 3-1-43 of this chapter. Any applicant for a refund under the provisions of this subsection, or any other person, who makes any false statement in connection with an application for a refund of any taxes is guilty of a violation of this chapter and shall be punished in the manner provided by state law.

E. Claims for tax monies paid in error or by mistake shall be made within three (3) years after the date of purchase of the goods or services for which the refund is claimed and shall be processed for refund in accordance with the rules and regulations prescribed therefor under subsection D of this section, except that the proceeds of any such claim for a refund shall first be applied by the finance department to any tax deficiencies or liabilities existing against the claimant before allowance for such claim by the finance department, and further except that if such excess payment of tax monies in any period is discovered as a result of an audit by the finance department, and deficiencies are discovered and assessed against the taxpayer as a result of such audit, then such excess monies shall be first applied against any deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.

F. If any person is convicted under the provisions of this section, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the finance director is empowered to bring appropriate action for recovery of such refunds. A brief summary statement of the above described penalties shall be printed on each form application of a refund.

G. The right of any person to obtain a refund pursuant to this chapter shall not be assignable.

Section 21. Section 3-1-32 of the Breckenridge Town Code is amended to read as follows:

**3-1-32: RECOVERY OF TAXES, PENALTY AND INTEREST:**

A. All sums of money paid by the purchaser to the retailer as taxes imposed by this chapter shall be and remain public money, the property of the town, in the

hands of such retailer, and shall hold the same in trust for the sole use and benefit of the town until paid to the finance director, and for failure to so pay to the finance director, such retailer shall be punished as provided herein.

B. 1. If any person neglects or refuses to make a return in payment of the sales tax or to pay any sales tax as required by this chapter, then the finance director shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars (\$15.00) for such failure or ten percent (10%) thereof, whichever is greater, and interest on such delinquent taxes at the rate imposed under section 3-1-38 of this chapter, plus one-half percent (1/2%) per month from the date when due, not exceeding eighteen percent (18%) in the aggregate.

2. Promptly thereafter, the finance director shall give to the delinquent taxpayer written notice of such estimated taxes, penalty, and interest, which notice shall be sent by first class mail directed to the last address of such person on file with the finance department. Such estimate shall thereupon become a notice of deficiency. Within twenty (20) calendar days after the notice of deficiency is mailed, the taxpayer may petition the finance director for a hearing in the manner provided in section 3-1-41 of this chapter and either may appeal to the district court as provided in section 3-1-42 of this chapter or to the department of revenue as provided in section 3-1-43 of this chapter.

C. 1. If any taxes, penalty, or interest imposed by this chapter and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this section are not paid within five (5) days after the same are due, then the finance director may issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the town claims a first and prior lien therefor on the real and personal property of the taxpayer, including, without limitation, the goods, inventory (stock in trade) and business fixtures of such taxpayer.

2. Said notice shall be on forms furnished by the finance department and shall be verified by the finance director or any duly qualified agent of the finance director whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create a lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice shall have been filed or not, the finance director may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of the county, commanding him to levy upon, seize, and sell sufficient of the real and personal property of the tax debtor found within his county to satisfy the amount due together with interest, penalties, and costs, as may be provided by law. Any such sales shall be made free and clear of all liens and encumbrances.

D. Such revenue collector or the sheriff shall forthwith levy upon sufficient of the property of the taxpayer or any property used by such taxpayer in conducting his retail business, and said property so levied upon shall be sold in all respects with like effect and in the same manner as prescribed by law with respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fee in executing such warrants as are allowed by law for similar services.

E. Any lien for taxes as shown on the records of the county clerks and recorders as provided in this section, upon payment of all taxes, penalties, and interest covered thereby shall be released by the finance director in the same manner as mortgages and judgments are released.

F. The finance director may also treat any such taxes, penalties, and interest due and unpaid as a debt due to the town from the vendor. The return of the taxpayer of the assessment made by the finance director, as provided in this chapter, shall be prima facie proof of the amount due. Such debt may be collected by civil action brought against the vendor in a court of competent jurisdiction, and in such action the town shall be entitled to recover from the vendor, in addition to the tax, penalties and interest, its reasonable attorney fees incurred in the prosecution of such action.

G. In any action affecting the title to real estate or the ownership or rights to possession of personal property, the town may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. In any such action, the service of summons upon the finance director or any person in charge of the office of the finance director shall be sufficient service and shall be binding upon the town.

H. The finance director is authorized to waive, for good cause shown, any penalty assessed as provided in this chapter, and any interest imposed in excess of the rate determined pursuant to subsection B of this section shall be deemed a penalty.

Section 22. Section 3-1-35 of the Breckenridge Town Code is amended to read as follows:

**3-1-35: AUTHORITY OF FINANCE DIRECTOR TO REQUIRE IMMEDIATE PAYMENT OF TAX:**

Notwithstanding the provisions of section 3-1-7 of this chapter with respect to the time for the payment of sales tax due to the town, whenever it appears from the records of the finance department or otherwise that sales tax due to the town has not been paid, or has not been paid in a timely fashion, the finance director, after notice and hearing, shall have the authority to require the payment to the town of the tax due under this chapter on a daily or weekly basis, as the finance director shall determine to be required to adequately assure that the tax due under this chapter will be paid to the town. The finance director shall give the vendor at least ten (10) days' notice of the time and place of such hearing. Notice shall be mailed to the vendor at the address shown on the town sales tax license. The finance director shall further have the authority to require payment of such tax on a daily or weekly basis into a separate account maintained by the vendor solely for payment of sales tax and accessible only to parties approved by the finance director. Failure to comply with any order of the finance director lawfully entered pursuant to this section shall be sufficient grounds for the revocation of the vendor's sales tax license as provided in section 3-1-26 of this chapter.

Section 23. Section 3-1-36 of the Breckenridge Town Code is amended to read as follows:

**3-1-36: TAX LIEN; EXEMPTION FROM LIEN:**

A. 1. Except as provided in subsection A2 of this section, the sales tax imposed pursuant to section 3-1-5 of this chapter shall be a first and prior lien upon the real and personal property of or used by the taxpayer, including, without limitation, the goods, inventory (stock in trade) and business fixtures of such taxpayer, and shall take precedence over the other liens, encumbrances, security interest and claims of whatsoever kind or nature.

2. Any retailer or person in possession shall provide a copy of any lease pertaining to the assets and property described in subsection A1 of this section to the finance director within ten (10) days after seizure by the town of such assets and property. The finance director shall verify that such lease is bona fide and notify the owner that such lease has been received by the finance director. The finance director shall use his or her best efforts to notify the owner of the real or personal property which might be subject to the lien created in subsection A1 of this section. The real or personal property of an owner who has made a bona fide lease to a retailer shall be exempt from the lien created in subsection A1 of this section: a) if such property can reasonably be identified from the lease description, or b) if the lessee is given the option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall become effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the clerk and recorder of Summit County. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in subsection A1 of this section; except that such lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee.



Where the lessor and lessee are blood relatives or relatives by law or have twenty five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for the purpose of this subsection A2.

3. Any retailer who sells out his business or stock of goods, or quits business, shall be required to make out the return as provided in this chapter within ten (10) days after the date he sold his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient purchase money to cover the amount of said taxes due and unpaid until such time as the former owner produces a receipt from the finance director showing that the taxes have been paid or a certificate that no taxes are due.

4. If the purchaser of a business or stock of goods fails to withhold the purchase money as provided in subsection A3 of this section, and the taxes are due and unpaid after the ten (10) day period allowed, he, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any retailer under lease, title retaining contract, or other contract arrangement, by purchase, foreclosure sale, or otherwise, takes the same subject to the lien for any delinquent sales taxes owned by such retailer and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of property so taken or acquired.

B. Whenever the business or property of any taxpayer subject to this chapter shall be placed in receivership, bankruptcy, or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties, and interest imposed by this chapter and for which said retailer is in any way liable under the terms of this chapter shall be a prior and preferred claim against all the property of said taxpayer. No sheriff, receiver, assignee, or other officer shall sell the property of any person subject to this chapter under process or order of any court without first ascertaining from the finance director the amount of any taxes due and payable under this chapter, and if there are any such taxes due, owing, or unpaid, it is the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any monies to any judgment creditor or other claims of whatsoever kind or nature. For the purposes of this subsection B, "taxpayer" includes "retailer".

Section 24. Section 3-1-37 of the Breckenridge Town Code is amended to read as follows:

**3-1-37: NEGLIGENT OR INTENTIONAL TAX DEFICIENCY:**

If any part of the deficiency in payment of the sales tax is due to negligence or intentional disregard of authorized rules and regulations of the town with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under section 3-1-38 of this chapter, in addition to the interest provided by section 3-1-39 of this chapter on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten (10) days after written notice and demand to such person by the finance director. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency, and in such case, the whole amount of the tax unpaid, including the additions shall become due and payable ten (10) days after written notice and demand by the finance director, and an additional three percent (3%) per month on said amount shall be added from the date that the return was due until paid.

Section 25. Section 3-1-39 of the Breckenridge Town Code is amended to read as follows:

**3-1-39: INTEREST ON UNDERPAYMENT, OVERPAYMENT, NONPAYMENT OR EXTENSIONS OF TIME FOR PAYMENT OF TAX:**

A. If any amount of sales tax is not paid on or before the last date prescribed for payment, then interest on such amount at the rate imposed under section 3-1-38 of this chapter shall be paid for the period from such last date to the date paid.

The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without any regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment shall be deemed to be the date that the liability for the tax arises, and in no event shall such date be later than the date that notice and demand for the tax is made by the finance director.

Section 26. Section 3-1-41 of the Breckenridge Town Code is amended to read as follows:

**3-1-41: HEARINGS BY FINANCE DIRECTOR:**

A. If any person contests the finance director's deficiency notice or denial of a claim for refund, then he may apply to the finance director by petition in writing within twenty (20) calendar days after such deficiency notice is mailed to him for a hearing and a correction of the amount of the tax so assessed, in which petition he shall set forth the reasons why such hearing should be granted and the amount by which such tax should be reduced. The finance director shall notify the petitioner in writing of the time and place fixed by him for such hearing. After such hearing, the finance director shall make such order in the matter as is just and lawful and shall furnish a copy of such order to the petitioner.

B. Every decision of the finance director shall be in writing, and notice thereof shall be mailed to the petitioner within ten (10) days, and all such decisions shall become final upon the expiration of thirty (30) days after notice of such decision shall have been mailed to the petitioner, unless proceedings are begun within such time for review thereof as provided in section 3-1-42 or 3-1-43 of this chapter.

Section 27. Section 3-1-42 of the Breckenridge Town Code is amended to read as follows:

**3-1-42: REVIEW BY DISTRICT COURT:**

A. If any person contests the finance director final decision on a deficiency notice or claim for refund, he may proceed to have same reviewed by the district court. The procedure of review shall be in accordance with rule 106(a)(4) of the Colorado rules of civil procedures.

B. Within fifteen (15) days after filing a notice of appeal as provided in this section, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest, and other charges stated in the final decision by the finance director that are contested on appeal. The taxpayer may, at his option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of section 11-35-101(1), Colorado Revised Statutes, equal to twice the amount of the taxes, interest and other charges stated in the final decision by the finance director. The taxpayer may, at his option, deposit the disputed amount with the finance director in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the supreme court or the court of appeals of the state or after the time for such appeal has expired, the funds deposited shall be, at the direction of the district court, either retained by the finance director and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to section 3-1-38 of this chapter. No claim for refund of amounts deposited with the finance director need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the district court.

Section 28. Section 3-1-43 of the Breckenridge Town Code is amended to read as follows:

**3-1-43: ALTERNATIVE REVIEW BY DEPARTMENT OF REVENUE:**

In lieu of the procedure provided for in section 3-1-42 of this chapter, the taxpayer may elect a hearing on the finance director's final decision on a deficiency notice or claim for refund pursuant to procedure set forth in this section.

A. As used in this section, "state hearing" means a hearing before the executive director of the department of revenue or a delegate thereof as provided in section 29-2-106.1(3), Colorado Revised Statutes.

B. When the finance director asserts that sales taxes are due in an amount greater than the amount paid by a taxpayer, then the finance director shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional sales taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to section 29-2-106.1(3), Colorado Revised Statutes. The taxpayer shall also have the right to elect a state hearing on the finance director's denial of such taxpayer's claim for a refund of sales tax paid.

C. The taxpayer shall request the state hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies, or if he fails to request such hearing within the time period provided for in this subsection C. For purposes of this subsection C, "exhaustion of local remedies" means:

1. The taxpayer has timely requested in writing a hearing before the finance director, and the finance director has held such hearing and issued a final decision thereon. Such hearing shall be informal, and no transcript, rules of evidence or filing of briefs shall be required, but the taxpayer may elect to submit a brief, in which case the finance director may submit a brief. The finance director shall hold such hearing and issue the final decision thereon within ninety (90) days after the finance director's receipt of the taxpayer's written request therefor, except that the town may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the finance director shall hold such hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing therefor; or

2. The taxpayer has timely requested in writing a hearing before the finance director, and the finance director has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in subsection C1 of this section.

D. If a taxpayer has exhausted his local remedies as provided in subsection C of this section, then the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made, and such hearing shall be conducted in the same manner as set forth in section 29-2-106.1(3) through (7), inclusive, Colorado Revised Statutes.

E. If the deficiency notice or claim for refund involves only the finance director, then in lieu of requesting a state hearing, the taxpayer may appeal such deficiency or denial of a claim for refund to the district court as provided in section 29-2-106.1(8), Colorado Revised Statutes, if the taxpayer complies with the procedures set forth in subsection C of this section.

F. No provision of this section shall prohibit the taxpayer from pursuing judicial review of a final decision of the finance director as otherwise provided in section 3-1-42 of this chapter.

Section 29. Section 3-1-45 of the Breckenridge Town Code is amended to read as follows:

**3-1-45: NOTICE OF SALES AND USE TAX ORDINANCE AMENDMENT:**

A. In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the finance director shall file with the Colorado municipal league prior to the effective date of this section a

copy of the town sales tax ordinance reflecting all provisions in effect on the effective date of this section.

B. In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the finance director shall file with the Colorado municipal league prior to the effective date of any amendment a copy of each sales tax ordinance amendment enacted by the town.

C. Failure of the town to file such ordinance or ordinance amendment pursuant to this section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto.

Section 30. Section 3-1-46B of the Breckenridge Town Code is amended to read as follows:

B. To knowingly and wilfully swear to or verify any false tax return or other statement filed with the finance director as required by this chapter;

Section 31. Section 3-7-4 of the Breckenridge Town Code is amended to read as follows:

3-7-4: EXCEPTION; TOWN ATTORNEY, TOWN EMPLOYEES AND ENFORCEMENT PERSONNEL”

A. Nothing in section 3-7-1 of this chapter shall be construed to prohibit the inspection of tax returns and related information by the town attorney, other legal representatives, the finance director, other employees of the town with a need to know such information in connection with the performance of their duties, or law enforcement personnel of the town.

B. Notwithstanding the provisions of this section, the finance director may furnish to the taxing officials of the state of Colorado, its political subdivisions, any other state, or political subdivision, or the United States, any information contained in tax returns and related documents filed pursuant to this title or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees with the manager to grant similar privileges to the town and if such information is to be used by the jurisdiction only for tax purposes.

Section 32. Section 3-9-5 of the Breckenridge Town Code is amended to read as follows:

3-9-5: RULES AND REGULATIONS:

The finance director shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as may be necessary for the proper administration of this chapter. Such regulations shall be adopted in accordance with the procedures established by title 1, chapter 18 of this code.

Section 33. The definition of “” in Section 3-10-2 of the Breckenridge Town Code is amended to read as follows:

FINANCE DIRECTOR:

The director of finance and information technology of the town, or such person’s designee.

Section 34. Section 3-10-8 of the Breckenridge Town Code is amended to read as follows:

3-10-8: REMITTANCE OF COLLECTED TAX:

A. Each ski area operator shall file a return each month with the finance director on or before the twentieth day of each month for the preceding month and remit to the finance director all tax collected by such ski area operator during the preceding month.

B. The finance director may, upon request of the ski area operator or other taxpayer, accept returns at such intervals as will, in the opinion of the finance director, better suit the convenience of the ski area operator or other taxpayer and will not jeopardize the collection of the tax, including an annual tax return. If any ski area operator or other taxpayer who has been granted permission to file reports and pay tax on other than a monthly basis shall become delinquent, then authorization for such alternative method of reporting may be revoked by the finance director or his or her authorized agent, and immediately following notice of revocation, the ski area operator or other taxpayer will be required to file reports and pay tax, interest, and penalties on a monthly basis for all unreported or unpaid tax in the same manner required by law under conditions that would prevail as if the ski area operator or other taxpayer had never been granted the alternate method of reporting and paying the tax.

C. The tax return and tax remitted to the finance director shall be made in such manner and upon such forms as the finance director may prescribe.

Section 35. Section 3-10-9A of the Breckenridge Town Code is amended to read as follows:

A. Returns filed pursuant to this chapter shall be preserved for a period of three (3) years from the date of filing with the finance director, after which time the finance director may order them destroyed.

Section 36. Section 3-10-10 of the Breckenridge Town Code is amended to read as follows:

3-10-10: RECORDS AND ACCOUNTS TO BE KEPT:

Each ski area operator shall keep and preserve suitable records of all sales of taxable lift tickets sold, and such other books or accounts as may be necessary to determine the amount of tax for the collection or remittance of which the ski area operator is liable and responsible hereunder. It is the duty of each ski area operator to keep and preserve all such books, invoices, and other records for a period of three (3) years following the date the taxes were due to the town. Such items shall be open for investigation by the finance director. When a ski area operator fails or refuses to file a return the tax may be assessed by the finance director and collected without regard to the statute of limitations.

Section 37. Section 3-10-13 of the Breckenridge Town Code is amended to read as follows:

3-10-13: ADMINISTRATION BY FINANCE DIRECTOR; RULES AND REGULATIONS:

The administration of all provisions of this chapter is vested in and shall be exercised by the finance director, who shall prescribe forms and formulate and promulgate reasonable rules and regulations in conformity with this chapter for the making of returns, the ascertainment, assessment, and collection of taxes imposed, and the proper administration and enforcement thereof.

Section 38. The following definitions in Section 4-1-2 of the Breckenridge Town Code are amended to read as follows:

ADMINISTRATIVE LICENSE:	A license issued by the finance director pursuant to section 4-1-8-2 of this chapter.
FINANCE DIRECTOR:	The director of finance and information technology of the town, or such person's designee.
LICENSE:	A license issued by the finance director pursuant to this chapter.
LICENSED PREMISES:	A premises for which a license has

been issued by the finance director pursuant to this chapter.

LICENSEE:

A person to whom a license has been issued by the finance director pursuant to this chapter.

Section 39. Section 4-1-5A of the Breckenridge Town Code is amended to read as follows:

4-1-5: ISSUANCE OF LICENSE:

A. The finance director 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 finance director shall issue a license for a single-family accommodation unit under this chapter only to the owner of such single-family accommodation unit.

Section 40. 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 finance director:

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 owed to the town within sixty (60) days of the date such obligation is due.

B. Before denying an application the finance director 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 finance director 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 41. 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 finance director 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 finance director always has the correct and current information.

7. At the time of the issuance of the license the licensee shall provide to the finance director 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 finance director of the change in writing and shall, at the same time, provide the finance director 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 finance director 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 finance director 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 finance director 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 42. Section 4-1-8-2 of the Breckenridge Town Code is amended to read as follows:

**4-1-8-2: ADMINISTRATIVE LICENSE:**

The finance director 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: a) the town is the applicants only customer within the town limits; or b) 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 finance director determines otherwise; provided, however, there shall be no license fee required in connection with such license. The finance director may issue administrative regulations governing administrative business and occupational licenses issued pursuant to this section.

Section 43. 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 finance director 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 title 1, chapter 18 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 finance director determines are necessary to verify license requirements provided the contents of such records shall remain confidential and not a part of the public records.

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, finance director 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 finance director, 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 finance director upon request information sufficient to permit the finance director 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 44. 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 finance director 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 3-1-26 of this code.

In connection with the suspension of a license, the finance director may impose reasonable conditions.

B. Notice of a hearing to be held pursuant to this chapter shall be given by the finance director 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 finance director 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 wilful; 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 finance director 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 finance director 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 finance director may determine, not to exceed 1 year, or revocation of license. In determining what sanction to impose, the finance director 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 finance director in lieu of the licensee serving a suspension or revocation.

E. If a license is suspended by the finance director, 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 finance director 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 finance director's order of suspension or revocation. The finance director'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 finance director 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 finance director'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 45. Section 4-3-1(A) of the Breckenridge Town Code is amended to read as follows:

A. A completed application for an optional premises license or optional premises for a hotel and restaurant license on forms to be provided by the town clerk together with an application fee in the amount required by law shall be submitted

to the town clerk no later than thirty (30) days prior to the date for consideration by the liquor and marijuana licensing authority.

Section 46. The definition of "Liquor Licensing Authority" in Section 4-4-1 of the Breckenridge Town Code is amended to read as follows:

LIQUOR AND MARIJUANA  
LICENSING AUTHORITY:

The town of Breckenridge liquor and marijuana licensing authority created pursuant to title 2, chapter 5 of this code.

Section 47. Section 4-4-2 of the Breckenridge Town Code is amended to read as follows:

4-4-2: SUSPENSION OR REVOCATION; FINE:

A. Whenever a decision of the liquor and marijuana licensing authority, suspending a license or permit becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition the liquor and marijuana licensing authority for permission to pay a fine in lieu of the license or permit suspension for all or part of the suspension period. Upon the receipt of the petition, the liquor and marijuana licensing authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made that it deems desirable and may, in its sole discretion, grant the petition if it is satisfied that:

1. Public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

2. The books and records of the licensee are kept in such a manner that the loss of sales of alcoholic beverages which the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy.

B. The fine accepted shall be equivalent to twenty percent (20%) of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension; except that the fine shall be not less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00).

C. Payment of any fine pursuant to the provisions of this section shall be in the form of cash, certified check or cashier's check made payable to the town clerk and shall be deposited in the general fund of the town.

D. Upon payment of the fine pursuant to this section, the liquor and marijuana licensing authority shall enter its further order permanently staying the imposition of the suspension.

E. In connection with any petition pursuant to this section, the authority of the liquor and marijuana licensing authority is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

F. If the liquor and marijuana licensing authority does not make the findings required in subsection A of this section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the liquor and marijuana licensing authority.

Section 48. The definition of "Liquor Licensing Authority" in Section 4-5-2 of the Breckenridge Town Code is amended to read as follows:

LIQUOR AND MARIJUANA  
LICENSING AUTHORITY:

The town of Breckenridge liquor and marijuana licensing authority created pursuant to title 2, chapter 5 of this

code.

Section 49. Section 4-5-8 of the Breckenridge Town Code is amended to read as follows:

4-5-8: DURATION OF TEMPORARY PERMIT:

A temporary permit issued pursuant to this chapter shall be valid only until such time as the application for the license to the applicant is granted or denied for one hundred twenty (120) days, whichever shall first occur; except that if the application to transfer the license has not been granted or denied within the one hundred twenty (120) day period and the applicant demonstrates good cause, the liquor and marijuana licensing authority may, in its discretion, extend the validity of said permit for an additional period not to exceed sixty (60) days.

Section 50. Section 4-5-10 of the Breckenridge Town Code is amended to read as follows:

4-5-10: CANCELLATION, REVOCATION, OR SUMMARY SUSPENSION OF TEMPORARY PERMIT:

A temporary permit may be canceled, revoked or summarily suspended by the liquor and marijuana licensing authority if it determines that there is probable cause to believe that the applicant has violated any provision of the Colorado beer code<sup>1</sup> or the Colorado liquor code<sup>2</sup>, whichever statutes govern the license of the licensed premises, or any rule or regulation adopted by the department of revenue pursuant thereto, or any town ordinance governing the operation of licensed premises, or if the applicant has failed to truthfully disclose those matters required pursuant to the application forms required by the department of revenue or the town.

<sup>1</sup>Article 46 of title 12, C.R.S.

<sup>2</sup>Article 47 of title 12, C.R.S.

Section 51. The definition of "Liquor Licensing Authority" in Section 4-10-2 of the Breckenridge Town Code is amended to read as follows:

LIQUOR AND MARIJUANA  
LICENSING AUTHORITY:

The town of Breckenridge liquor and marijuana licensing authority created pursuant to title 2, chapter 5 of this code.

Section 52. Section 4-10-4 of the Breckenridge Town Code is amended to read as follows:

4-10-4: APPLICATION:

A retail liquor store or liquor licensed drugstore licensee who wishes to conduct tastings shall submit an application to the liquor and marijuana licensing authority on forms supplied by the liquor and marijuana licensing authority. Such application shall be accompanied by a nonrefundable annual fee of twenty five dollars (\$25.00).

Section 53. Section 4-13-11(A) of the Breckenridge Town Code is amended to read as follows:

A. A permit issued under this chapter is not a special events liquor license. If alcoholic beverages are to be served at the special event, the permittee must obtain the required permit or approval from the town clerk or the town of Breckenridge liquor and marijuana licensing authority.

Section 54. Section 4-14-16D of the Breckenridge Town Code is amended to read as follows:

D. The finance director; and

Section 55. The definition of “” in Section 5-12-6 of the Breckenridge Town Code is amended to read as follows:

FINANCE DIRECTOR:	The director of finance and information technology of the town, or such person’s designee.
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Section 56. Section 5-12-9E and 5-12-9F of the Breckenridge Town Code are amended to read as follows:

- E. Every retail store providing disposable bags subject to the disposable bag fee shall be liable and responsible for the payment of the amount outlined in subsection D of this section to the town, and shall file a report each month on forms prescribed by the finance director before the twentieth day of each month for the preceding month.
  - 1. All sums of money collected by retail stores for the disposable bag fee imposed by this chapter minus the “retained percent” are intended exclusively for use as outlined in subsection G of this section. Each retail store required to collect and remit the disposable bag fee shall hold such monies in trust until paying them to the town.
- F. The disposable bag fee shall be administered by the finance director. The finance director is authorized to adopt administrative rules pursuant to title 1, chapter 18 of this code to implement this chapter, prescribe forms and provide methods of payment and collection, and otherwise implement requirements of this chapter.

Section 57. Section 5-12-12 of the Breckenridge Town Code is amended to read as follows:

5-12-12: AUDITS AND COLLECTION OF THE DISPOSABLE BAG FEE:

- A. Each retail store shall maintain accurate and complete records of the disposable bag fees collected, the number of disposable bags provided to customers, the form and recipients of any notice required pursuant to this chapter, and any underlying records, including any books, accounts, invoices, or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each retail store to keep and preserve all such documents and records, including any electronic information, for a period of three (3) years from the end of the calendar year of such records.
- B. If requested, each retail store shall make its records available for audit by the finance director during regular business hours for the town to verify compliance with the provisions of this chapter. All such information shall be treated as confidential commercial documents.
- C. If any person fails, neglects, or refuses to collect or pay the disposable bag fee, or underpays the disposable bag fee, finance director shall make an estimate of the fees due, based on available information, and shall add thereto penalties, interest, and any additions to the fees. finance director shall serve upon the delinquent retail store personally, by electronic mail or by first class mail directed to the last address of the retail store on file with the town, written notice of such estimated fees, penalties, and interest, constituting a notice of final determination, assessment, and demand for payment (also referred to as “notice of final determination”) due and payable within thirty (30) calendar days after the date of the notice. The retail store may request a hearing on the assessment as provided in section 5-12-13 of this chapter.
- D. If payment of any amount of the disposable bag fee due to the town is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due in the amount of:
  - 1. A penalty of ten percent (10%) of total due;
  - 2. Interest charge of one percent (1%) of total penalty per month.

Section 58. Section 5-12-13 of the Breckenridge Town Code is amended to read as follows:

5-12-13: HEARINGS:

A. A retail store may request a hearing on any proposed fee imposed under this chapter after receiving a notice of final determination, by filing a written request for hearing within thirty (30) calendar days of the date of mailing of the notice of final determination. The request for hearing shall set forth the reasons for and amount of changes in the notice of final determination that the retail store seeks and such other information as the finance director may prescribe.

B. The finance director shall conduct the hearing under the procedures prescribed by title 1, chapter 19 of this code, except that the finance director shall notify the retail store in writing of the time and place of the hearing at least ten (10) days before it is scheduled, unless the retail store agrees to a shorter time. The hearing shall be held within sixty (60) days of the date of receipt of the request for a hearing, unless the retail store agrees to a later date.

Section 59. Except as specifically amended by this ordinance, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 60. Any additional references to the "Town of Breckenridge Authority" contained in the Breckenridge Town Code after the adoption of this ordinance shall be administratively changed by the Town Clerk to read the "Town of Breckenridge Liquor and Marijuana Licensing Authority" pursuant to her editorial powers described in Section 1-1-4 of the Breckenridge Town Code.

Section 61. Any additional references to the "" contained in the Breckenridge Town Code after the adoption of this ordinance shall be administratively changed by the Town Clerk to read the "Finance director" pursuant to her editorial powers described in Section 1-1-4 of the Breckenridge Town Code.

Section 62. 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 63. 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 10th day of January, 2017.

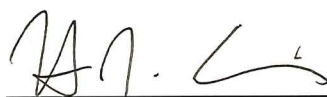
This ordinance was published in full on the Town of Breckenridge website on January 13, January 14, January 15, January 16 and January 17, 2017.

A public hearing on this ordinance was held on January 24, 2017.

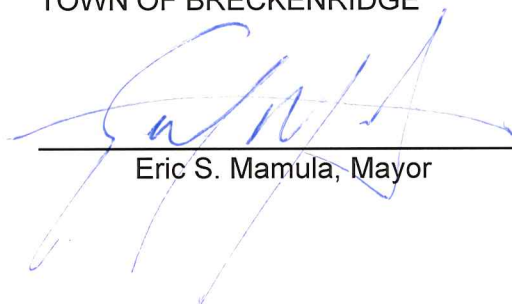
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE  
TOWN'S WEBSITE this 24th day of January, 2017. A copy of this Ordinance is available for  
inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

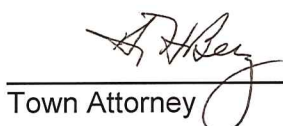


Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

1/24/17  
Date

This Ordinance was published on the Town of Breckenridge website on January 27, January 28, January 29, January 30 and January 31, 2017. This ordinance shall become effective on March 2, 2017.