

ORDINANCE NO. 26

Series 2019

AN ORDINANCE AMENDING TITLE 4 OF THE BRECKENRIDGE TOWN CODE
BY ADDING A NEW CHAPTER 18 ENTITLED
"RETAIL TOBACCO BUSINESS LICENSING"

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

Section 1. Title 4 of the Breckenridge Town Code is amended by the addition of a new Chapter 18, to be entitled "Retail Tobacco Business Licensing", which shall read in its entirety as follows:

CHAPTER 18

RETAIL TOBACCO BUSINESS LICENSING

SECTION:

- 4-18-1: Short Title
- 4-18-2: Authority
- 4-18-3: Legislative Intent
- 4-18-4: Definitions
- 4-18-5: License Required; Age Restriction
- 4-18-6: Application For License
- 4-18-7: Application Fee
- 4-18-8: Town Clerk's Review of Application
- 4-18-9: Decision By Town Clerk
- 4-18-10: Standard Terms and Conditions of License
- 4-18-11: Authority To Impose Additional Conditions on License
- 4-18-12: Contents of License
- 4-18-13: Display of License
- 4-18-14: Minimum Legal Age Must Be Posted
- 4-18-15: License Not Transferable or Assignable
- 4-18-16: Duration of License
- 4-18-17: Renewal of License
- 4-18-18: Licensee's Specific Duties and Obligations
- 4-18-19: Administration and Enforcement of Licenses
- 4-18-20: Disciplinary Action

- 4-18-21: Suspension or Revocation of License
- 4-18-22: Decision Is Final
- 4-18-23: Injunctive Relief; Abatement As Nuisance; Other Remedies
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- 4-18-25: No Town Liability
- 4-18-26: Designated Use of License Fees
- 4-18-27: Rules and Regulations

4-18-1: SHORT TITLE: This Chapter shall be known and may be cited as the "Town Of Breckenridge Retail Tobacco Business Licensing Ordinance."

4-18-2: AUTHORITY: The Town Council finds, determines, and declares that it has the power to adopt this Chapter pursuant to:

- A. Section 31-17-501, C.R.S. (concerning municipal regulation of businesses);
- B. Section 31-15-401(1)(c), C.R.S. (concerning the power to declare and abate nuisances);
- C. The authority granted to home rule municipalities by Article XX of the Colorado Constitution; and
- D. The powers contained in the Breckenridge Town Charter.

RETAIL TOBACCO BUSINESS LICENSING ORDINANCE

4-18-3: LEGISLATIVE INTENT: The intent and purpose of this Chapter is to regulate the occupation or privilege of selling tobacco products within the Town so as to protect the public health and safety.

4-18-4: DEFINITIONS: As used in this Chapter the following words have the following meanings:

APPLICANT:	A person who has submitted an application for license pursuant to this Chapter.
ADULT-ONLY FACILITY:	A physical location where each person attempting to enter the premises is required to present the person's photographic government issued identification verifying that the person is at least the Minimum Legal Sales Age For Tobacco Products prior to entry.
APPLICATION:	An application for license submitted pursuant to this Chapter.
DAY:	A calendar day, unless otherwise indicated.
GOOD CAUSE (for the purpose of refusing or denying a license renewal under this Chapter):	Means: 1. The licensee has violated, does not meet, or has failed to comply with: (a) any of the terms, conditions, or provisions of this Chapter; or (b) any rule and regulation promulgated by the Town Clerk pursuant to this Chapter; or 2. The licensee has failed to comply with: (a) any of the terms and conditions of its license including, but not limited to, any special terms or conditions that were placed on its license at the time the license was issued or were subsequently modified by the Town Clerk pursuant to Section 4-18-11B, or (b) any special condition that was placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings.
LICENSED PREMISES:	The physical location for which a license is issued pursuant to this Chapter.
LICENSEE:	The person to whom a license has been issued pursuant to this Chapter.
MINIMUM LEGAL SALES AGE FOR TOBACCO PRODUCTS:	Twenty-one (21) years of age.
PERSON:	Has the meaning provided in Section 1-3-2 of this Code.
POLICE CHIEF:	The Police Chief of the Town, or the Police Chief designee authorized to act pursuant to Section 1-7-2 of this Code.
RETAIL TOBACCO BUSINESS:	A business that sells any tobacco product at retail.

TOBACCO PRODUCT:	<p>1. Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;</p> <p>2. Any electronic smoking device as defined in Section 5-9-2 of this Code, and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or</p> <p>3. Any component, part, or accessory of subsection (1) or (2), whether or not these items contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.</p> <p>Notwithstanding any provision of this Chapter to the contrary, "tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.</p>
TOWN:	Has the meaning provided in Section 1-3-2 of this Code.
TOWN CLERK:	The Town Clerk of the Town, or the Town Clerk's designee authorized to act pursuant to Section 1-7-2 of this Code.
TOWN MANAGER:	The Town Manager of the Town, or the Town Manager's designee authorized to act pursuant to Section 1-7-2 of this Code.

4-18-5: LICENSE REQUIRED; AGE RESTRICTION:

- A. No person shall conduct or carry on a retail tobacco business within the Town without a valid license issued by the Town Clerk pursuant to this Chapter. A separate license is required for each retail location in the Town where any tobacco product is sold at retail.
- B. No license shall be issued pursuant to this Chapter to any person under twenty one (21) years of age at the time of the submission of an application.

4-18-6: APPLICATION FOR LICENSE:

- A. A person seeking to obtain a license pursuant to this Chapter shall file an application with the Town Clerk. The form of the application shall be provided by the Town Clerk.
- B. A license issued pursuant to this Chapter does not eliminate the need for the licensee to obtain other required Town licenses related to the operation of the licensee's business, including, without limitation:
 - 1. a Town sales tax license; and
 - 2. a Town Business and Occupational Tax License.

4-18-7: APPLICATION FEE: An applicant shall pay to the Town Clerk an application fee when the application is filed. The purpose of the fee is to cover the Town's cost of administration of

this Chapter, licensee education, inspections of licensed premises, regular compliance checks, documentation of violations (database management), and prosecutions of violations of licenses. For applications filed in 2019 the application fee is \$600.00. Thereafter, the amount of the application fee and the annual license renewal fee shall be fixed by the Town Council as part of its annual budget process. Once paid, an application fee is non-refundable except as may be required by law.

4-18-8: TOWN CLERK'S REVIEW OF APPLICATION:

- A. Upon receipt of a properly completed application, together with all information required in connection therewith and the payment of the application fee as required by Section 4-18-7 the Town Clerk shall transmit copies of the application to:
 - 1. the Police Chief; and
 - 2. any other person or agency that the Town Clerk determines should properly investigate and comment upon the application.
- B. Within twenty (20) days of receipt of a completed application the Police Chief and those referral agencies described in subsection A of this Section shall provide the Town Clerk with comments concerning the application.
- C. If the Town Clerk requests the applicant to provide additional information that the Town Clerk reasonably determines to be necessary in connection with the investigation and review of the application, the applicant shall provide such information within five (5) days of the Town Clerk's request, unless the Town Clerk agrees to a longer time period.

4-18-9: DECISION BY TOWN CLERK:

- A. The Town Clerk shall conditionally approve or deny an application within thirty (30) days of the receipt of a completed application unless, by written notice to the applicant, the decision period is extended for an additional ten (10) days if necessary for the Town Clerk to complete the Town Clerk's review of the application.
- B. The Town Clerk shall issue a license under this Chapter when, from a consideration of the application, and such other relevant information as may otherwise be obtained, the Town Clerk determines that:
 - 1. The application (including any required attachments and submissions) is complete and signed by the applicant, and the applicant has provided any additional information concerning the application requested by the Town Clerk pursuant to Section 4-18-8C;
 - 2. The applicant has paid the application fee required by Section 4-18-7;
 - 3. The application does not contain a material falsehood or misrepresentation; and
 - 4. The granting of the application will not endanger public health or safety.
- C. The Town Clerk shall deny an application for a license under this Chapter if the Town Clerk determines that:
 - 1. Information contained in the application, or supplemental information provided by the applicant, is found to be false in any material respect;
 - 2. The applicant has had a license issued under this Chapter revoked within the two (2) years immediately preceding the filing of the application, or the applicant owned a fifty percent or greater interest in any business entity that has had a license issued under this Chapter revoked within the two (2) years immediately preceding the filing of the application;

3. The applicant is currently indebted to the Town for any lawfully assessed tax or fee; or
 4. The granting of the application will endanger public health or safety.
- D. If the application is denied, the Town Clerk shall clearly set forth in writing the grounds for denial.
 - E. If the application is conditionally approved, the Town Clerk shall clearly set forth in writing the conditions of approval.
 - F. If an application is denied the application fee shall not be refunded.

4-18-10: STANDARD TERMS AND CONDITIONS OF LICENSE: The following shall be standard terms and conditions for any license issued under this Chapter:

- A. No self-service display of cigarettes or other tobacco products are permitted except in adult-only facilities.
- B. No sales of tobacco products in vending machines are permitted except in adult-only facilities.
- C. No employee of the licensee who is under the age of twenty one (21) years shall be permitted to handle, stock, or retrieve tobacco products unless the employee is between eighteen (18) and twenty one (21) years of age and is supervised by another person on the licensed premises who is at least twenty one (21) years of age.
- D. Prior to completing the sale of any tobacco product to a purchaser who appears to be thirty (30) years of age or younger the licensee's retail sales clerk shall examine the purchaser's government issued identification to verify that the purchaser is of legal age to purchase the product.

4-18-11: AUTHORITY TO IMPOSE ADDITIONAL CONDITIONS ON LICENSE:

- A. In addition to the standards terms and conditions set forth in Section 4-18-10, the Town Clerk shall have the authority to impose such additional reasonable terms and conditions on a license as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this Chapter and other applicable law.
- B. For good cause shown, the Town Clerk may administratively modify or eliminate or add any license condition during the term of the license.

4-18-12: CONTENTS OF LICENSE: A license shall contain the following information:

- A. The name of the licensee;
- B. The date of the issuance of the license;
- C. The address at which the licensee is authorized to operate the business; and
- D. The date of the expiration of the license.

A license must be signed by both the licensee and the Town Clerk to be valid.

4-18-13: DISPLAY OF LICENSE: A license shall be prominently displayed in a publicly visible location at the licensed premises at all time.

4-8-14: MINIMUM LEGAL AGE MUST BE POSTED: The minimum legal age to purchase tobacco products in the Town as provided in Sections 6-3F-12 of this Code shall be posted in a clearly visible location on the licensed premises.

4-18-15: LICENSE NOT TRANSFERABLE OR ASSIGNABLE: A license is non-transferable and non-assignable. Any attempt to transfer or assign a license shall void the license.

4-18-16: DURATION OF LICENSE: Each license issued pursuant to this Chapter shall be valid for one (1) year from the date of issuance.

4-18-17: RENEWAL OF LICENSE:

- A. A licensee does not have a vested right or a property right in the renewal of a license issued pursuant to this Chapter.
- B. Each license issued pursuant to this Chapter may be renewed as provided in this Section.
- C. An application for the renewal of an existing license shall be made to the Town Clerk not less than forty-five (45) days prior to the date of expiration. No application for renewal shall be accepted by the Town Clerk after the date of expiration. The Town Clerk may waive the forty-five (45) days' time requirement set forth in this subsection if the applicant demonstrates an adequate reason.
- D. At the time of the filing of an application for the renewal of an existing license the applicant shall pay to the Town a renewal fee in an amount fixed by the Town Council as part of its annual budget process.
- E. The timely filing of a renewal application shall extend the current license until a final decision is made on the renewal application by the Town Clerk.
- F. A license may be renewed by the Town Clerk. At the time of the renewal of a license the Town Clerk may impose any condition on a renewed license that the Town Clerk could lawfully impose on an original license pursuant to this Chapter.
- G. The Town Clerk may refuse to renew a license for good cause.

4-18-18: LICENSEE'S SPECIFIC DUTIES AND OBLIGATIONS: In addition to the other requirements of this Chapter, it is the duty and obligation of each licensee to comply with the following:

- A. All of the terms and conditions of the license, including, without limitation, the standard license conditions described in Section 4-18-10 and any special condition imposed by the Town Clerk pursuant to Section 4-18-11;
- B. All of the requirements of this Chapter; and
- C. All laws, including federal, state and local Town ordinances pertaining to tobacco products that are applicable to the licensee's business.

4-18-19: ADMINISTRATION AND ENFORCEMENT OF LICENSES: Except as provided in Section 4-18-20 with respect to the imposition of discipline against a licensee, the Town Clerk shall administer and enforce all provisions of this Chapter.

4-18-20: DISCIPLINARY ACTION:

- A. The Town Manager shall be responsible for the imposition of all disciplinary action against licensees pursuant to this Chapter.
- B. Any disciplinary hearing held pursuant to this Section shall be processed in accordance with Chapter 19 of Title 1 of this Code.
- C. The penalties for violations of the terms and conditions of a licensee shall be as follows:
 - 1. First violation within thirty-six months: A civil penalty of \$ 500.00 and/or suspension of the license for up to three (3) days as determined by the Town Manager.
 - 2. Second violation within thirty-six months: A civil penalty of \$1,000.00 and/or suspension of the license for up to seven (7) days, as determined by the Town Manager.

3. Third violation within thirty-six months: A civil penalty of \$2,000.00 and/or suspension of the license for up to twenty (20) days, as determined by the Town Manager.
 4. Fourth violation within thirty-six months: Revocation of the license.
- D. For the purpose of disciplinary action imposed pursuant to this Chapter, a licensee is responsible and accountable for the conduct of the licensee's employees, officers, and agents occurring in connection with the operation of the retail tobacco business for which the license has been issued.

4-18-21: SUSPENSION OR REVOCATION OF LICENSE:

- A. A license issued pursuant to this Chapter may be suspended or revoked by the Town Manager after a hearing for any of the following reasons:
1. Fraud, misrepresentation, or a false statement of material fact contained in the license application.
 2. A violation of any Town, state, or federal law or regulation pertaining to the operation of the licensee's retail tobacco business for which the license was issued.
 3. As provided in Section 4-18-20C.
 4. A violation of any of the terms and conditions of the license, including, without limitation, any special condition imposed upon the license by the Town Clerk pursuant to Section 4-18-11.
 5. Licensee's operations at its licensed location have ceased for more than six (6) months for any reason.
 6. Ownership of the licensee business has been transferred without the new owner obtaining a license pursuant to this Chapter.
- B. In deciding whether a license should be suspended or revoked, the duration of any period of suspension, and what conditions, if any, to impose in the event of a suspension the Town Manager shall consider all of the following:
1. The nature and seriousness of the violation.
 2. Corrective action, if any, taken by the licensee.
 3. Prior violation(s), if any, by the licensee.
 4. The likelihood of recurrence.
 5. All circumstances surrounding the violation.
 6. Whether the violation was willful.
 7. The number of previous violations by the licensee.
 8. Previous sanctions, if any, imposed against the licensee.
- C. No fee previously paid by a licensee in connection with the application shall be refunded if such license is suspended or revoked.
- D. In connection with the suspension of a license, the Town Manager may impose reasonable conditions.
- E. The removal of all tobacco products from public view is required during any period in which the licensee's license is suspended or revoked.
- F. When a license has been revoked no new license shall be issued to the same licensee for the same licensed premises for a period of one (1) year after revocation.

4-18-22: DECISION IS FINAL:

- A. Any decision by the Town Clerk with respect to the processing of an application for the issuance of a license pursuant to this Chapter shall be a final decision of the Town and may be appealed to the district court pursuant to Rule 106(a)(4) of

the Colorado Rules of Civil Procedure. The applicant's or licensee's (as applicable) failure to timely appeal the decision is a waiver the applicant's or licensee's right to contest the denial or conditional approval of the application.

- B. Any decision made by the Town Manager with respect to the imposition of discipline against a licensee pursuant to this Chapter shall be a final decision of the Town and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's or licensee's (as applicable) failure to timely appeal the decision is a waiver the applicant's or licensee's right to contest the denial or conditional approval of the application.

4-18-23: INJUNCTIVE RELIEF; ABATEMENT AS NUISANCE; OTHER REMEDIES:

- A. If a person is required to have a valid license issued pursuant to this Chapter the operation of such person's business without such license may be enjoined by the Town in an action brought in the municipal court pursuant to Section 1-8-10 of this Code, or in any other court of competent jurisdiction.
- B. The operation of a retail tobacco rental business within the Town without a valid license issued pursuant to this Chapter is declared to be a public nuisance, and is subject to abatement as provided by law.
- C. The remedies provided in this Section are in addition to any other remedy provided by applicable law.
- D. In any case in which the Town prevails in a civil action initiated pursuant to this Section, the Town may recover its reasonable attorney fees plus costs of the proceeding.

4-18-24: COMPLIANCE CHECKS:

- A. Compliance with this Chapter shall be enforced by the Police Department. The Police Chief may designate additional individuals, departments or groups to assist with the enforcement of this Chapter as deemed appropriate.
- B. A minimum of two (2) annual compliance checks of all licensees shall be conducted with persons over the age of fifteen (15) but less than twenty (20) (herein after under-aged operative) to enter the licensed premises to attempt to purchase tobacco products. All compliance checks shall comply with other applicable law.
- C. All licensed locations with compliance or inspection violations must be re-checked by the Police Department for compliance within forty five (45) days of a violation.
- D. The Police Department shall report compliance check results (passed checks and violations) to the Town Clerk.
- E. A database of compliance check results and hearing outcomes shall be maintained by Police Department.

4-18-25: NO TOWN LIABILITY: The adoption of this Chapter and the issuance of licenses pursuant to this Chapter shall not create any duty to any person. No person shall have any civil liability remedy against the Town, or its officers, employees or agents, for any damage or loss of any kind arising out of or in any way connected with the issuance of any license pursuant to this Chapter. Nothing in this Chapter shall be construed to create any liability or to waive any of the immunities, limitations on liability, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or to waive any immunities or limitations on liability otherwise available to the Town, or its officers, employees or agents.

4-18-26: DESIGNATED USE OF LICENSE FEES: Immediately upon receipt or collection thereof, all license fees collected by the Town pursuant to this Chapter shall be deposited into a separate fund. Licensee fees shall be used only for the purposes described in Section 4-18-7. Monies credited to such fund shall not be available to be pledged or expended, by interfund transfer or otherwise, for any general purposes of the Town.

4-18-27: RULES AND REGULATIONS: The Town Clerk 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. A violation of such regulations may be enforced in the Town's Municipal Court.

Section 2. The definition of "Electronic Smoking Device" in Section 5-9-2 of the Breckenridge Town Code is amended to read as follows:

ELECTRONIC SMOKING DEVICE: Any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

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

Section 4. The Town Council hereby finds, determines, and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort, and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 5. This ordinance shall be published as required by the Breckenridge Town Charter and become effective on November 1, 2019.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 13th day of August, 2019.

This ordinance was published in full on the Town of Breckenridge website on August 16, August 17, August 18, August 19 and August 20, 2019.

A public hearing on this ordinance was held on August 27, 2019.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 27th day of August, 2019. 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

8/27/19

Date

This Ordinance was published on the Town of Breckenridge website on August 29, August 30, August 31, September 1 and September 2, 2019. This ordinance shall become effective on November 1, 2019.