

ORDINANCE NO. 34

Series 2020

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE TOWN OF BRECKENRIDGE "BUSINESS AND OCCUPATIONAL LICENSES AND TAX ORDINANCE," CONCERNING THE SUSPENSION OR REVOCATION OF LICENSES

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

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

FINANCE DIRECTOR:	The Finance Director of the Town of Breckenridge, or his or her designee acting pursuant to Section 1-7-2 of this Code.
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Section 2. Section 4-1-2 of the Breckenridge Town Code is amended by the addition of the following definition:

HEARING OFFICER:	The Town Manager of the Town of Breckenridge, or his or her designee acting pursuant to Section 1-7-2 of this Code.
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Section 3. 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. 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.

C. An applicant whose application for a license has been denied by the Finance Director may appeal such denial by filing a request for a hearing with the Hearing Officer within twenty (20) days of the date of the Finance Director's written order of denial. If a request for a hearing is timely filed, the Hearing Officer shall cause a hearing to be held using the general procedures provided for the suspension or revocation of a license in section 4-1-10-1 of this chapter.

D. An applicant whose application for a license is finally denied shall be entitled to a refund of the license fee submitted with the application.

Section 4. Section 4-1-10A 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. A violation of the administrative rules and regulations issued by the Finance Director pursuant to the authority granted by this section shall be a misdemeanor Municipal offense and may be enforced by appropriate action in the Town's Municipal Court.
4. Investigate and determine the eligibility of each applicant for an annual business license;
5. 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.

Section 5. 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 Officer after a hearing for the following reasons:

1. Fraud, misrepresentation or a false statement of material fact contained in the license application or any document submitted to the Finance Director pursuant to the Finance Director's administrative rules and regulations in connection with the application for a license;
2. The failure or refusal of an owner of an accommodation unit to permit inspection of the owner's accommodation unit by an authorized public inspector as required by section 4-1-8-1 of this chapter;
3. Any violation of the provisions of this chapter; or
4. 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.

B. Notice of a hearing to be held pursuant to this chapter shall be given by the Hearing Officer in writing to the licensee at the address shown on the license application and, if the hearing involves an accommodation unit, to any rental agent identified by the licensee pursuant to subsection 4-1-8-1A5 of this chapter, and to the responsible agent identified by the licensee pursuant to subsection 4-1-8-1A6 of this chapter. Such notice shall be mailed 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. Each day during any portion of which a licensee violates any provision of this chapter shall be considered to be a separate violation, and the licensee may be sanctioned accordingly.

D. In deciding what sanction to impose for a proven violation the Hearing Officer 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; and 6) whether the violation was willful. If the proven violation involves an accommodation unit license, the Hearing Officer shall additionally consider: 1) the length of time the license has been held by the licensee; 2) the number of violations by the licensee within the applicable twelve (12) month period; 3) the nature of all prior complaints against the licensee with respect to the operation the licensed premises, including both resolved and unresolved complaints; 4) previous sanctions, if any, imposed against the licensee; and 5) other factors making the situation with respect to the licensee or the licensed premises unique.

E. If the Hearing Officer determines that the holder of a non-accommodation unit license has violated any applicable provision of this chapter, the Hearing Officer may impose one or more of the following sanctions: (i) suspend such license for a fixed period of time not to exceed one (1) year; (ii) impose an administrative fine of not more than \$999.00; or (iii) revoke the license. The Hearing Officer may also impose other reasonable conditions as sanctions against the licensee.

F. Except as provided in subsection G, below, if the Hearing Officer determines after a hearing that cause exists for the imposition of a sanction against a licensee of an accommodation unit for a proven violation of section 4-1-8-1 of this chapter, the Hearing Officer 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 Hearing Officer may determine, not to exceed 1 year, or revocation of license. In determining what sanction to impose, for a fourth and each subsequent violation the Hearing Officer 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 Hearing Officer in lieu of the licensee serving a suspension or revocation.

G. If the Hearing Officer determines after a hearing that cause exists for the imposition of a sanction against a licensee of an accommodation unit for a proven violation of section 4-1-8-1A9 of this chapter, the Hearing Officer 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 \$999.00 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 \$1,999.00 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 \$2,650.00 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 Hearing Officer may determine, not to exceed 1 year, or revocation of license. In determining whether to suspend or revoke a license for a fourth and each subsequent violation, the Hearing Officer shall consider the factors set forth in subsection D of this section. For a fourth and each subsequent violation occurring within a 12 month period, no administrative fine may be accepted by the Hearing Officer in lieu of the licensee serving a suspension or revocation.

H. When assessing sanctions against a licensee pursuant to subsection F or subsection G of this section, the Hearing Officer is authorized to suspend all or any required sanction on the condition that there shall be no further violations of this chapter for a specific period of time, not to exceed one (1) year.

I. If an accommodation unit license is suspended by the Hearing Officer, 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. The Hearing Officer may stay the order of suspension until the time for the filing of an appeal of such order has expired without a timely appeal from such order being taken.

J. If the Hearing Officer suspends or revokes a license, the aggrieved licensee may appeal said suspension or revocation decision of the Hearing Officer to the Town Council by filing a letter of appeal with the Hearing Officer within twenty (20) days after the date of mailing of the Hearing Officer's order of suspension or revocation. The Hearing Officer's suspension or revocation of the accommodation unit 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 Hearing Officer 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 accommodation unit 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 an 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 accommodation unit license, the appeal shall be sustained, and the Hearing Officer'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 the accommodation unit license.

K. A person whose accommodation unit 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.

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

Section 6. 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 7. 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, particularly, Section 12.1 of the Breckenridge Town Charter.

Section 8. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 9. The Town Council of the Town of Breckenridge hereby finds, determines and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public property, health, welfare, peace or safety because of the immediate need to authorize the Town Manager, or his designee, to conduct hearings as authorized by this ordinance. The Town Council further determines that the adoption of this ordinance as an emergency ordinance is in the best interest of the citizens of the Town of Breckenridge.

Section 10. Pursuant to Section 5.11 of the Breckenridge Town Charter this Ordinance shall take effect and be in full force upon adoption of this ordinance by the affirmative votes of at least five (5) members of the Town Council.

Section 11. This ordinance shall be published in full within ten (10) days after adoption, or as soon thereafter as possible, as required by Section 5.11 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
PUBLISHED IN FULL this 22th day of September, 2020.

This ordinance was published in full on the Town of Breckenridge website on September 25, September 26, September 27, September 28 and September 29, 2020.

A public hearing on this ordinance was held on October 13, 2020.

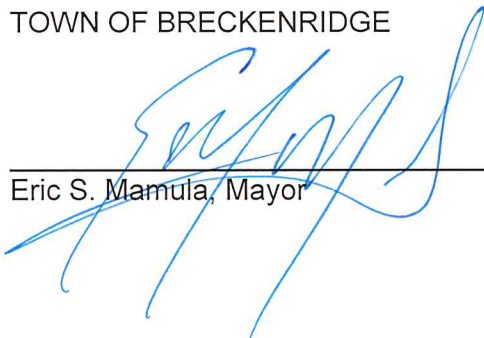
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL AS AN
EMERGENCY ORDINANCE ON THE TOWN'S WEBSITE this 13th day of October, 2020. A
copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE




Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

10/13/20
Date

This Ordinance was published as an EMERGENCY ORDINANCE on the Town of Breckenridge website on October 16, October 17, October 18, October 19 and October 20, 2020. This ordinance shall become effective on October 13, 2020.