

ORDINANCE NO. 2

Series 2021

AN ORDINANCE AMENDING CHAPTER 4 OF TITLE 3 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE ACCOMMODATION TAX ORDINANCE," CONCERNING THE REMOTE SALE OF LODGING

WHEREAS, the Town of Breckenridge, Colorado, ("Breckenridge" or the "Town"), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce accommodation taxes is clearly within the constitutional grant of power to the Town and is necessary to raise revenue with which to conduct the affairs and render the services performed by the Town; and

WHEREAS, pursuant to such authority, the Town has adopted and enacted a Public Accommodation Tax Ordinance, under which Town accommodation tax is levied on all sales and purchases of lodging located within the Town unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a vendor to collect public accommodation tax based solely on the fact that such vendor does not have a physical presence in the State ("Remote Sales"); and

WHEREAS, based upon such decision, the vendor's obligation to collect Remote Sales is no longer based on the vendor's physical presence in the jurisdiction by the Constitution or law of the United States, and the Town's Public Accommodation Tax Ordinance needs to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the remote sale or furnishing of lodging within the Town burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the failure to tax the remote sale or furnishing of lodging within the Town creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their public accommodation tax ordinances to encompass marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the Town, but that still have a taxable connection with the Town;

WHEREAS, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales or furnishing of lodging within the Town; and

WHEREAS, absent such amendment, the continued failure of vendors to voluntarily apply and remit the Town's public accommodation tax owed on remote sales or furnishing of lodging within the Town exposes the Town to unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field.

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

Section 1. Section 3-4-2 of the Breckenridge Town Code, entitled "Legislative Intent," is amended by the addition of a new subsection C, which shall read as follows:

C. No obligation to collect the public accommodation tax required by this Chapter may be applied retroactively. Responsibilities, duties and liabilities described in this Chapter with respect to a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when they became licensed to collect the Town's public accommodation tax, or when they became legally obligated to collect the Town's public accommodation tax under this Chapter.

Section 2. Section 3-4-3 of the Breckenridge Town Code is amended to read as follows:

3-4-3: DEFINITIONS:

In addition to the definitions in Chapter 1 of this Title, when used in this Chapter the following words shall have the following meanings unless the context requires otherwise:

- (1) Gross taxable sales means the total amount received in money, credits, property or other consideration valued in money from sales and purchases of lodging that is subject to the tax imposed in this Chapter.
- (2) Lodging shall mean rooms or accommodations for overnight use furnished by any person or the representative of any person to any person who for consideration uses, possesses, occupies or has the right to use, possess or occupy any such room or accommodation in a hotel, condominium hotel, apartment hotel, condominium, lodging house, motel, motor hotel, guest house, guest ranch, resort, mobile home, mobile home park, auto court, inn, trailer court, trailer park or hotel, under any concession, permit, lease, contract, license to use or other similar arrangement.
- (3) Marketplace shall mean a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where the remote sale of lodging within the Town is offered.
- (4) Marketplace Facilitator:
 - (A) Means a person who:
 - (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the remote sale of lodging within the Town through the person's marketplace;
 - (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
 - (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.
 - (B) "Marketplace Facilitator" does not include a person that exclusively provides internet advertising that does not otherwise meet this definition.
- (5) Marketplace Seller shall mean a person, regardless of whether or not the person is engaged in business in the Town, which has an agreement with a marketplace facilitator and offers the remote sale of lodging within the Town through a marketplace owned, operated, or controlled by a marketplace facilitator.
- (6) Multichannel Seller shall mean a vendor that offers for the remote sale of lodging within the Town through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.
- (7) Purchase or sale means the acquisition or furnishing for consideration by any person of lodging within the Town.
- (8) Purchaser means any person exercising the taxable privilege of purchasing lodging.

(9) Tax means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this Chapter.

(10) Vendor means a person making sales of or furnishing lodging to a purchaser in the Town, and includes, but is not limited to, a marketplace facilitator, marketplace seller, or multichannel seller.

Section 3. Section 3-4-6 of the Breckenridge Town Code, entitled "Vendor Responsible For Payment of Tax," is amended by the addition of a new subsection C, which shall read as follows:

(C)(1) A marketplace facilitator engaged in business in the Town is required to collect and remit accommodation tax on all taxable sales of lodging within the Town made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the Town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect accommodation tax had the sale not been facilitated by the marketplace facilitator.

(2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a vendor under as defined in Section 3-4-3. Marketplace facilitators shall be liable for the accommodation taxes collected from marketplace sellers or multichannel sellers. The Town may recover any unpaid accommodation taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.

(3) The liabilities, obligations, and rights set forth under this section are in addition to any duties and responsibilities of the marketplace facilitator has under this chapter if it also offers lodging within the Town for sale through other means.

(4) A marketplace seller, with respect to sale of lodging within the Town made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a vendor under this section if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit accommodation tax on all sales of lodging within the Town subject to tax under this chapter; or

b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect accommodation tax and will collect accommodation tax on all sales of lodging within the Town subject to tax under this chapter made in or through the marketplace facilitator's marketplace.

(5) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other vendor.

(6) With respect to any sale of lodging within the Town, the Town shall solely audit the marketplace facilitator for sales of lodging within the Town made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

Section 4. Section 3-4-5 of the Breckenridge Town Code, entitled "Collection of Tax," is amended by the addition of a new subsection D, which shall read as follows:

D. With respect to sales of lodging within the Town made by marketplace sellers in or through a marketplace facilitator's marketplace, a marketplace facilitator has all the liabilities, obligations, and rights under this chapter.

Section 5. 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 6. 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 8th day of December, 2020.

This ordinance was published in full on the Town of Breckenridge website on December 9, December 10, December 11, December 12 and December 13, 2020.

A public hearing on this ordinance was held on January 12, 2021.

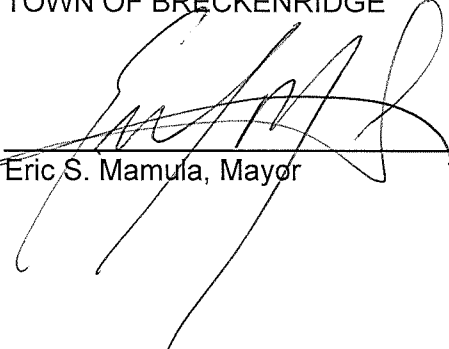
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 12th day of January, 2021. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

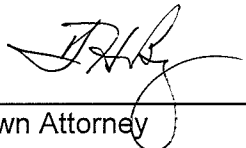


Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

1/12/21
Date

This Ordinance was published on the Town of Breckenridge website on January 13, January 14, January 15, January 16 and January 17, 2021. This ordinance shall become effective on February 17, 2021.