

ORDINANCE NO. 30

Series 2021

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES TITLE 3 OF THE
BRECKENRIDGE TOWN CODE CONCERNING TAXATION

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

Section 1. The Town Council finds, determines, and declares as follows:

A. The Town of Breckenridge is a home rule municipal corporation organized existing under Article XX of the Colorado Constitution.

B. The electors of the Town adopted the Breckenridge Town Charter on April 1, 1980

C. Section 12.1 of the Breckenridge Town Charter provides that the Town Council of the Town may, by ordinance, levy and collect excise taxes for municipal purposes.

D. The Town Council has heretofore enacted various municipal excise taxes, each of which is currently codified in Title 3 of the Breckenridge Town Code.

E. In 1992 the electors of the state approved Article X, §20 of the Colorado Constitution, commonly known as the "TABOR Amendment."

F. The Town is a "district" as defined in TABOR.

G. Section 7(b) of TABOR establishes a formula for the calculation of a local district's (such as the Town's) allowed annual fiscal year spending.

H. Section 7(d) of TABOR provides that local electors may approve a "voter-approved revenue change" to the local district's allowed annual fiscal year spending.

I. By Ordinance No. 28, Series 1995, the Town Council of the Town of Breckenridge referred to the electors of the Town the following ballot question:

SHALL THE TOWN OF BRECKENRIDGE BE AUTHORIZED, COMMENCING IN 1994 AND CONTINUING ANNUALLY THEREAFTER, TO COLLECT AND RETAIN WHATEVER AMOUNTS ARE RAISED ANNUALLY FROM ALL SOURCES, WITHOUT LIMITATION, AND THE AUTHORITY TO EXPEND SUCH REVENUES FOR THE PURPOSES OF PROVIDING FOR THE HEALTH, SAFETY AND WELFARE OF THE PEOPLE OF THE TOWN OF BRECKENRIDGE, AS A VOTER-APPROVED REVENUE CHANGE AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY, PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION (ALSO KNOWN AS "TABOR" AND 'AMENDMENT ONE'); PROVIDED THAT NO TOWN TAX RATE OR MILL LEVY SHALL BE INCREASED AND NO NEW TAX SHALL BE CREATED WITHOUT FURTHER VOTER APPROVAL?

J. At a special municipal election held on November 7, 1995 the electors of the Town approved the ballot question set forth in Section I, above.

K. In 2009 the Colorado Supreme Court issued its opinion in the case of Mesa County Bd. of Comm'rs v State, 203 P.3d 519 (Colo. 2009). In its opinion the Supreme Court held that when a municipality subject to TABOR has approved a broadly worded measure such as the Town did in 1995, the municipality may thereafter amend its tax ordinance(s) without a new election because, in the language of the Court's opinion, "such a requirements would create unnecessary redundancy."

L. Pursuant to the Colorado Supreme Court's holding in the case mentioned in Section K, the adoption of this ordinance does not result in a "tax policy change" requiring approval of the Town's electors under TABOR.

M. The adoption of the ordinance does not create a new tax or tax rate.

Section 2. Title 3 of the Breckenridge Town Code is repealed and readopted with changes so as to read as follows:

CHAPTER 1 GENERAL PROVISIONS

SECTION:

- 3-1-1: APPLICABILITY
- 3-1-2: COMMON DEFINITIONS
- 3-1-3: STATUTE OF LIMITATIONS
- 3-1-4: INTEREST RATE ON DELINQUENT TAXES
- 3-1-5: DIRECTOR MAY WAIVE PENALTY
- 3-1-5: SUBPOENAS
- 3-1-7: JUDGE COMPELS ATTENDANCE
- 3-1-8: DEPOSITIONS
- 3-1-9: OTHER REMEDIES
- 3-1-10: STATUS OF UNPAID TAX IN BANKRUPTCY
- 3-1-11: VIOLATIONS; PENALTIES
- 3-1-12: RULES AND REGULATIONS

3-1-1: APPLICABILITY: This Chapter applies to all taxes due to the Town pursuant the tax ordinance codified in this Title, except as otherwise specifically provided. If there is a conflict between a provision in this Chapter and a specific provision in another Chapter of this Title, the specific provision shall control.

3-1-2: COMMON DEFINITIONS:

A. When used in this Title the following words shall have the following meanings unless the context requires otherwise:

“Code” means the Breckenridge Town Code, as amended from time to time.

“Finance Department” means the Finance Department of the Town.

“Finance Director or Director” means the Finance Director of the Town of Breckenridge, or such other person designated by the municipality. “Finance Director” or “Director” shall also include such person’s designee acting pursuant to Section 1-7-2 of this Code.

“Person” means any individual, firm, partnership, joint venture, corporation, limited liability company, estate, trust, receiver, trustee, assignee, lessee, any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

“Tax” means any tax due to the Town under any tax ordinance contained in this Title.

“Town” means the Town of Breckenridge, Colorado.

B. Wherever applicable, the pronouns in this Title designating the masculine, feminine, or neuter genders apply equally to all genders.

C. Wherever applicable in this Title, the singular includes the plural, and the plural includes the singular.

D. Unless otherwise indicated, all references in this Title to a “section” or to “sections” mean the referenced section or sections of this Title.

3-1-3: STATUTE OF LIMITATIONS:

A. No tax, interest, or penalties shall be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. A lien shall not continue after such period, except on taxes assessed before the expiration of the period for which a notice of a tax lien has been filed prior to the expiration of such period.

B. 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.

C. When a taxpayer fails or refuses to file a return the tax may be assessed and collected without regard to the statute of limitations.

3-1-4: INTEREST RATE ON DELINQUENT TAXES:

Unless otherwise provided, when interest is required or permitted to be charged under this Title the annual rate of interest shall be that rate of interest established by the state commissioner of banking pursuant to Section 39-21-110.5, C.R.S.

3-1-5: DIRECTOR MAY WAIVE PENALTY:

The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Title, and interest imposed in excess of one (1) percent each month or fraction thereof of the tax deficiency, from the date the tax is due until the date paid, shall be for the purposes of this section deemed a penalty.

3-1-6: SUBPOENAS:

A. 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.

B. All subpoenas issued under the terms of this Title may be served by any person of full age. The fees of witnesses for attendance and trial shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Finance Director, such fees shall be paid in the same manner as other expenses under the terms of this Title, and when a witness is subpoenaed at the instance of any party to any such proceeding, the Finance Director may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Finance Director, in the Finance Director's discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

3-1-7: JUDGE COMPELS ATTENDANCE:

Any judge of the district court of the fifth judicial district of the state, upon the application of the Finance Director, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Finance Director or any duly authorized deputies, by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before the court.

3-1-8: DEPOSITIONS:

The Finance Director or any party in an investigation or hearing before the Finance Director may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil action in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

3-1-9: OTHER REMEDIES:

No provision of this Title shall preclude the Town from utilizing any other lawful penalties or other remedies applicable to the collection of taxes.

3-1-10: STATUS OF UNPAID TAX IN BANKRUPTCY:

In the event that any taxpayer subject to this Title shall be in bankruptcy or debtorship, all taxes, penalties, and interest imposed by this Title, which accrued prior to the filing of the bankruptcy, shall remain a prior and preferred claim and lien against all goods, furniture and fixtures, tools and equipment used by the taxpayer in conducting the business. Similarly, all taxes, penalties,

and interest imposed by this Title which accrue after the filing of the bankruptcy shall remain a prior and preferred claim and lien against all goods, furniture and fixtures, tools and equipment used by the taxpayer in conducting its business, during the course of the bankruptcy, except as otherwise provided by preemptive federal law. To the extent any of the Finance Director's authority to pursue collection of taxes, penalty, or interest imposed by this Title is stayed or otherwise impacted by preemptive federal law, the Finance Director is authorized to use procedural and substantive federal remedies to facilitate collection of the tax, penalty, or interest.

3-1-11: VIOLATIONS; PENALTIES: It is unlawful and a misdemeanor offense for any person to violate any provision of this Title. Any person convicted of having violated any provision of this Title shall be punished as provided in Section 1-4-1 of this Code. This Section does not apply to violations of Chapter 2.

3-1-12: RULES AND REGULATIONS:

The Finance Director shall have the authority from time to time to adopt, amend, alter, and repeal administrative rules and regulation, including, but not limited to forms and other documents, as may be necessary for the proper administration of this Title. Such regulations shall be adopted in accordance with the procedures established by Title 1, Chapter 18 of this Code.

CHAPTER 2 SALES TAX

SECTION:

- 3-2-1: LEGISLATIVE INTENT
- 3-2-2: DEFINITIONS
- 3-2-3: TAXABLE TRANSACTIONS AND ITEMS
- 3-2-4: ITEMS EXEMPT FROM TAX
- 3-2-5: SCHEDULE OF TAX
- 3-2-6: SALES TAX, NONAPPLICABILITY
- 3-2-7: RETAILER RESPONSIBLE FOR PAYMENT OF TAX
- 3-2-7-1: MARKETPLACE FACILITATORS
- 3-2-8: ACQUISITION, INCEPTION OR CESSATION OF BUSINESS
- 3-2-9: RETAILER TO COLLECT TAX
- 3-2-10: TAX ON CREDIT SALES, ETC.
- 3-2-11: SALES TAX, CREDIT FOR SALES OR USE TAXES PREVIOUSLY PAID TO ANOTHER MUNICIPALITY
- 3-2-12: CLAIMS FOR RECOVERY
- 3-2-13: EXEMPTION; BURDEN OF PROOF
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- 3-2-16: SPECIAL ACCOUNTING BASIS FOR REMITTANCE OF TAX
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- 3-2-36: TAX LIEN; EXEMPTION FROM LIEN
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3-2-1: LEGISLATIVE INTENT:

A. It is the intent of this Chapter that every person in the Town who purchases at retail or leases any “tangible personal property” or purchases a taxable service as defined by this Chapter is exercising a taxable privilege. All sales, leases, and purchases of “tangible personal property” as defined in this Chapter are taxable unless specifically exempted in this Chapter. The sales tax imposed on tangible personal property by this Chapter applies to each transfer of ownership, possession, and control of such property and may occur more than once during the life of the property.

B. No obligation to collect the sales 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 sales tax, or when they became legally obligated to collect the Town’s sales tax under this Chapter.

3-2-2: DEFINITIONS:

A. When not clearly indicated otherwise by the context, the following words and phrases, as used in this Chapter, shall have the following meanings:

AUCTION: Any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

AUTOMOTIVE VEHICLE: Any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

BUSINESS: All activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

CARRIER ACCESS SERVICES: The services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

CHARITABLE ORGANIZATION: Any entity which:

1. Has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and
2. Is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

COIN OPERATED DEVICE: Any device operated by coins or currency or any substitute therefor.

COLLECTION COSTS: Shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

COMMERCIAL PACKAGING MATERIALS: Containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing,

compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.

COMMUNITY ORGANIZATION: A nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as:

1. No part of the net earnings of which inures to the benefit of any private shareholder or individual;
2. No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and
3. Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

CONSTRUCTION MATERIALS: Tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of completed structure or project are not construction materials.

CONSUMER: Any individual person or person engaged in business in the Town who uses, stores, distributes or otherwise consumes in the Town tangible personal property or taxable services purchased from sources inside or outside the Town.

COVER CHARGE: A charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

DATA PROCESSING EQUIPMENT: Any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information including, but not limited to, computers, software program, hardware or firmware.

DIGITAL PRODUCT: A modern version of a traditional product including, but not limited to:

1. "Digital images" which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as "photographs," "logos," "cartoons," or "drawings."
2. "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any,
3. "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of "digital audio works", "ringtones: digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and
4. "Digital books" which means works that are generally recognized in the ordinary and usual sense as "books".

ECONOMIC NEXUS: The connection between the Town and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the Town, and:

1. In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or
2. In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

ENGAGED IN BUSINESS IN THE TOWN: Performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the Town. Engaged in Business in the Town includes, but is not limited to, any one of the following activities by a person:

1. Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the Town;
2. Sends one or more employees, agents or commissioned sales persons into the Town to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;
3. Maintains one or more employees, agents or commissioned sales persons on duty at a location within the Town;
4. Owns, leases, rents or otherwise exercises control over real or personal property within the Town; or
5. Makes more than one delivery into the Town within a twelve month period if a retailer in the state of Colorado; or
6. Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in Section 3-2-2.

FINANCE DEPARTMENT: The Finance Department of the Town.

FINANCE DIRECTOR OR DIRECTOR: Has the meaning provided in Section 3-1-2.

GARAGE SALES: Sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

GROSS SALES: The total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

INTERNET ACCESS SERVICES: Services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

LICENSE: A Town of Breckenridge sales tax license.

LODGING SERVICES: The provision or facilitation of provision of any rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for consideration including barter, trade or timesharing uses, possesses or has the right to use or possess any room or other accommodation, including but not limited to a hotel, inn, bed and breakfast, apartment, single family residence, lodging house, condominium, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, any portion of a dwelling unit or other area which accommodates a guest, or similar establishment, for a period of less than thirty (30) consecutive days under any rental agreement, sharing or trade agreement, concession, permit, right of access, license to use, or other agreement.

MANUFACTURING: The operation or performance as a business of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

MANUFACTURED HOME: Any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

MARKETPLACE: 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 tangible personal property, taxable products, or taxable services are offered for sale.

MARKETPLACE FACILITATOR: 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 sale of the marketplace seller's tangible personal property, products, or services 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.

"Marketplace Facilitator" does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

MARKETPLACE SELLER: 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 for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

MOTOR FUEL: Gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.

MULTICHANNEL SELLER: A retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

NEWSPAPER: A publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

ONLINE GARAGE SALES: Sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller's household.

PERSON: Has the meaning provided in Section 3-1-2.

PHOTOVOLTAIC SYSTEM: A power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling and other electrical accessories to set up a working system.

PRESCRIPTION DRUGS FOR HUMANS: A drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, and to state at a minimum the symbol "Rx Only," and is dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner, not including drugs available over the counter, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

PRICE OR PURCHASE PRICE: The aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

1. Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or
2. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

PRICE OR PURCHASE PRICE: Includes:

1. The amount of money received or due in cash and credits.
2. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
3. Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
4. The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.
5. Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
6. Transportation and other charges to effect delivery of tangible personal property to the purchaser.
7. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
8. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

PRICE OR PURCHASE PRICE: Shall not include:

1. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
2. The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-in's are an allowable adjustment to the purchase price.
3. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

PROSTHETIC DEVICES FOR HUMANS: Any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

PURCHASE OR SALE: The acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed. These terms include capital leases, installment and credit sales, and property and services acquired by:

1. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
2. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services. The utilization of coin operated devices, except coin-operated telephones,

- which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;
3. Performance of taxable services; or
 4. Barter or exchange for other tangible personal property, other taxable products, or services.

The terms "purchase" and "sale" do not include:

1. A division of partnership assets among the partners according to their interests in the partnership;
2. The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
3. The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
4. A transfer of a partnership interest;
5. The transfer of assets to a commencing or existing partnership, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
6. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
7. The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company which transfer is solely in exchange for stock or securities of the subsidiary corporation;
8. The transfer of assets from a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company to a parent company or to another subsidiary which is owned at least eighty percent (80%) by the parent company which transfer is solely in exchange for stock or securities of the parent company or the subsidiary which received the asset;
9. The transfer of assets between parent and closely held subsidiary companies or between subsidiary companies closely held by the same parent company or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (9) shall constitute a sale. For the purposes of this paragraph (9), a closely held subsidiary company is one in which the parent company owns stock possessing or membership interest in at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

RENEWABLE ENERGY: Any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

RETAIL SALES: All sales except wholesale sales.

RETAILER: Any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The terms "retailer" shall include, but is not limited to, any:

1. Auctioneer;
2. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
3. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
4. Retailer-contractor, when acting in the capacity of a retailer;
5. Marketplace facilitator, marketplace seller, or multichannel seller.

RETAILER-CONTRACTOR: A contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for resale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

RETURN: Any form prescribed by the Town/town administration for computing and reporting a total tax liability.

SALES TAX: The tax that is or should be collected and remitted by a retailer on sales taxed under this Chapter.

SCHOOL: A public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

SOFTWARE PROGRAM: A sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones). Software program includes:

1. Custom software program, which is a software program prepared to the special order or specifications of a single customer;
2. Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned," "off-the-shelf ("COTS"), "mass produced" or "standardized;"
3. Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and
4. The generic term "software," "software application," as well as "updates," "upgrades," "patches," "user exits," and any items which add or extend functionality to existing software programs.

SOFTWARE AS A SERVICE: Software that is rented, leased or subscribed to from a provider and used at the consumer's location, including but not limited to applications, systems or programs.

SOFTWARE LICENSE FEE: A fee charged for the right to use, or maintain a copy of, software, regardless of the form of the software.

SOFTWARE MAINTENANCE AGREEMENT: An agreement, typically with a software provider, that may include:

1. Provisions to maintain the right to use the software;
2. Provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or
3. Technical support.

SOLAR THERMAL SYSTEMS: A system whose primary purpose is to use energy from the sun to produce heat or cold for:

1. Heating or cooling a residential or commercial building;
2. Heating or cooling water; or
3. Any industrial, commercial, or manufacturing process.

TANGIBLE PERSONAL PROPERTY: Personal property that can be one or more of the following: seen, weighed, measured, felt or touched, stored, transported, or exchanged, or that is in any other manner perceptible to the senses.

TAX: The use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

TAX DEFICIENCY OR DEFICIENCY: Any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Chapter.

TAXABLE SALES: Gross sales less any exemptions and deductions specified in this Chapter.

TAXABLE SERVICES: Services subject to tax pursuant to this Chapter.

TAXPAYER: Any person obligated to collect and/or pay tax under the terms of this Chapter.

TELECOMMUNICATIONS SERVICE: The transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), internet access, remote access to computers and electronic storage equipment, or any combinations of such media, including any form of mobile two-way communication.

TELEVISION AND ENTERTAINMENT SERVICES: Audio or visual content that can be transmitted electronically by any means, for which a charge is imposed.

THERAPEUTIC DEVICE: Devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.

TOTAL TAX LIABILITY: The total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

TOWN: Has the meaning provided in Section 3-1-2.

WHOLESALE SALES: A sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; the latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this Chapter. Sales by wholesalers to non-licensed retailers are not wholesale sales.

WHOLESALE: Any person doing an organized wholesale or jobbing business and selling to licensed retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

B. Wherever applicable, the pronouns in this Chapter designating the masculine or neuter apply equally to the feminine, neuter, and masculine genders.

C. Wherever applicable in this Chapter, the singular includes the plural, and the plural includes the singular.

3-2-3: TAXABLE TRANSACTIONS AND ITEMS: There is hereby levied and shall be collected and paid a tax in the amount stated in section 3-2-5 of this Chapter, as follows:

A. On the purchase price paid or charged upon all sales, purchases, rentals and leases of any duration of tangible personal property at retail, whether or not such property has been included in a previous taxable transaction.

B. All sales are consummated at the place of business of the retailer unless the property sold is delivered by the retailer, his agent, a common carrier, or by mail. In the event of such delivery, the sale is consummated at the place of delivery.

C. In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price the fair market value of the exchanged property, provided such exchanged property is to be sold thereafter in the usual course of the retailer's business.

D. Upon telecommunication services, including all international, interstate and intrastate telecommunication services originating from or received on telecommunication equipment in the Town, if the charge for the service is billed to an apparatus, telephone or account in the Town, except that for mobile telecommunication services liability shall be imposed only when the users' place of primary use is within the Town. For the purposes of this subsection, "place of primary use" means, as defined in C.R.S. 29-1-1002, as amended.

E. Upon carrier access services sold by local telephone exchange companies to providers of telecommunication services for use in providing such services, whether furnished by public or private corporations or enterprises for all interstate telecommunication services originating from or received on telecommunication equipment in the Town if the charge for the

service is billed to a person in the Town, or billed to an affiliate or division of such person in the Town on behalf of a person in the Town.

F. Upon gas and electric service, whether furnished by Municipal, public or private corporations or enterprises, and upon gas and electricity furnished and sold for domestic and commercial consumption and not for resale and upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by Municipal, public or private corporations or enterprises, if the charge is billed to a person in Town.

G. Upon the entire amount charged to any person or persons for lodging services.

H. Upon the amount paid for all meals and beverages furnished in any restaurant, eating house, hotel, drugstore, club, resort, hospital, or other such place at which meals or food are regularly sold.

I. Upon cover charges, if tangible personal property, such as food and/or beverages, is received as consideration for the amount paid.

J. Upon all sales of food.

K. Upon the sale, lease or transfer of a software program.

L. Upon television and entertainment services sold, purchased, leased, rented, furnished or used, including any equipment rentals furnished as a part of the price or separately stated, if the charge is billed to a person in the Town.

M. Upon prewritten (canned) software that is sold, licensed for use, subscribed to, leased or rented when delivered electronically or by any other method. Software is deemed to be used within the Town if one of the following is true:

1. The end user of the software is engaged in business in the Town or resides in the Town while using or accessing the software; or
2. The server or other computer equipment upon which the software, electronic files or electronic data reside or are maintained is located within the Town.

N. Upon software maintenance agreements when:

1. The agreement is mandatory to maintain the right to use the associated software; or
2. The agreement includes software upgrades and the cost for upgrading is not separately calculated and stated from other aspects; or
3. The agreement includes technical support and the cost associated with technical support is not separately stated or calculated.

O. Upon software as a service, data processing equipment, software program, and internet services subscriptions.

P. Upon all software license fees.

Q. Upon sales of tangible personal property by a retailer-contractor, when acting as a retailer, shall be subject to sales tax on the total sales price.

R. Upon the retail sale of medical marijuana and marijuana infused products pursuant to the Colorado Medical Marijuana Code, article 11 of title 44, Colorado Revised Statutes.

S. Upon the sale of retail marijuana or marijuana products pursuant to the Colorado Retail Marijuana Code, article 12 of title 44, Colorado Revised Statutes.

T. Upon the sale of all digital products

3-2-4: ITEMS EXEMPT FROM TAX:

There shall be exempt from taxation under the provisions of this Chapter the following:

A. All sales to the United States government, to the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only when billed to and paid for by the governmental entity.

B. All sales made to "charitable organizations" as defined in section 3-2-2 of this Chapter, in the conduct of their charitable functions only when billed to and paid for by the charitable organization.

C. All sales which the Town is prohibited from taxing under the Constitution or laws of the United States or the State.

D. Food for domestic home consumption, as defined in 7 USC section 2012(g) as amended, for purposes of the Federal food stamp program as defined in 7 USC section 2012(h), as amended, purchased with food stamps pursuant to the federal food stamp program; or food purchased with WIC vouchers or checks pursuant to the federal special supplemental program for women, infants and children.

E. Cover charges, if the amount paid is strictly for admission to the vendor's place of business and tangible personal property, such as food and/or beverages, is not received as consideration for the amount paid.

F. All sales of cigarettes.

G. All sales made to schools, other than schools held or conducted for private or corporate profit.

H. All sales of motor fuel upon which there has accrued or has been paid the motor fuel tax prescribed by parts one and two of article 26 of title 39, Colorado Revised Statutes.

I. When utilized for the purpose of constructing tangible personal property for resale, or for improving real property, sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance, commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping cases thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this Chapter.

J. Sales of "commercial packaging materials" as defined in section 3-2-2 of this Chapter.

K. When utilized for the purpose of constructing tangible personal property for resale, or for improving real property, sales and purchases of electricity, coal, fuel, oil, gas or coke for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses, as well as the newsprint and printer's ink for use by publishers of newspapers and commercial printers, shall be deemed to be wholesale sales and shall be exempt from taxation under this Chapter.

L. All sales and purchases of automotive vehicles which are required to be registered under the Colorado motor vehicle laws whether new or used under the following conditions:

1. The purchaser is not a resident of the Town, and
2. The vehicle or mobile home is to be registered under an address outside of the Town and will be primarily housed, located or occupied at such address or other place outside the Town.

M. Sales of tangible personal property shall be exempted from the operation of this section if both of the following conditions exist:

1. The sales are to those who are residents or doing business outside the Town, and
2. The articles purchased are to be delivered to the purchaser outside the Town by common carrier or by the conveyance of the seller or by mail.

N. Drugs, medical devices: All sales of "medical supplies," including: insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine and blood testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices for humans; therapeutic devices; wheelchairs and hospital beds; prescription drugs for humans or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses, or hearing aids. Medical marijuana is not a medical supply.

O. Fifty percent (50%) of the purchase price of: 1) manufactured homes, and of 2) other buildings or structures including conventional buildings shall be exempt from taxes under the provisions of this Chapter; except that the entire purchase price in any subsequent sale of manufactured homes or other buildings severed from real estate after such housing or severed building has once been subject to the payment of sales or use tax under the provisions of this Chapter shall be exempt from taxes under the provisions of this Chapter.

P. The transfer of tangible personal property without consideration (other than the purchase, sale or promotion of the transferor's product) to an out of state vendee for use outside of this state in selling products normally sold at wholesale by the transferor.

Q. The sale of tangible personal property for testing, modification, inspection, or similar type of activities in this state if the ultimate use of such property in manufacturing or similar type of activities occurs outside of this state and if the test, modification, or inspection period does not exceed ninety (90) days.

R. Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the foods, meals or beverages purchased, and if a tax is paid on the retail sale as required by subsection 3-2-3H of this Chapter.

S. Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, together with the food, meals or beverages purchased, and if a tax is paid on the retail sales as required in section 3-2-3 of this Chapter.

T. All transactions specified in subsection 3-2-3C of this Chapter in which the fair market value of the exchanged property is excluded from the consideration or purchase price because such exchanged property is covered by subsection 3-2-3A or C of this Chapter, and in which, because there is no additional consideration involved in the transaction, there is no purchase price within the meaning of section 3-2-2 of this Chapter.

U. All sales of construction materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

1. The United States government, the state, its departments and institutions, the political subdivisions thereof in their governmental capacities only;
2. Charitable organizations, as defined in section 3-2-2 of this Chapter, in the conduct of their regular charitable functions and activities; or
3. Schools, other than schools held or conducted for private or corporate profit.

V. All sales of newspapers as defined in section 3-2-2 of this Chapter.

W. All sales of customized software where the design or writing of a computer program is for a specific application of an individual user.

X. All sales, storage, use, or leasing of photovoltaic systems or solar thermal systems (and its components) and in the production of alternating current electricity from a renewable energy source. The exemption shall not include any components beyond the point of generator step-up transformers located at the production site, labor, energy storage devices, or remote monitoring systems.

Y. All occasional sales by a charitable organization under the following conditions:

1. The sale of tangible personal property or concessions by the charitable organization takes place no more than ninety (90) days, whether consecutive or not, during any one calendar year; and
2. The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service.

Z. All sales of tangible personal property by a school, other than schools held or

conducted for private or corporate profit, under the condition that the funds raised by the school are retained by the organization to be used in the course of the school's service.

AA. All sales of tangible personal property, except automotive vehicles, at online garage sales (no limit on days), garage sales; provided that such sales are conducted no more than three (3) times a year, each sale is limited to a maximum of three (3) days in duration, that the sale occurs at the residence of the seller and that the property to be sold was originally purchased for use by members of the household where such sale is being conducted.

BB. All transactions specified in section 29-4-227(1), Colorado Revised Statutes when utilized for the purpose of a project providing housing within the means of persons of low income.

CC. "Telecommunications service" under the following conditions:

1. Separately stated software that constitutes computer processing applications used to act on the information to be transmitted;
2. Carrier access service, interstate or international WATTS/800 service and interstate or international private communication services shall be exempt from taxation; or
3. Telecommunication services sold for resale to other persons for the purpose of providing telecommunication services to the final end user.

3-2-5: SCHEDULE OF TAX:

There is hereby imposed a tax upon all sales of commodities and services specified in section 3-2-3 of this Chapter and not exempt therefrom as specified in section 3-2-4 of this Chapter at the rate of two and one-half percent (2 1/2%) on the amount of the sale which shall be rounded off to the nearest penny; provided, however, that sales under the amount of twenty five cents (\$0.25) shall not be taxable.

3-2-6: SALES TAX, NONAPPLICABILITY:

For transactions consummated on or after January 1, 1986, the Breckenridge sales tax shall not apply to the sale of construction and building materials, as the term is used in section 29-2-109, Colorado Revised Statutes, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town evidencing that a local use tax has been paid or is required to be paid.

3-2-7: 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 (2 1/2%) of all sales made by him of commodities or services as specified in section 3-2-3 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 (2 1/2%) 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.

C. Commencing with the sales tax return for the January 2017 tax period, there shall be added to each paper return filed with the finance director, and there shall be assessed and paid by the taxpayer filing such return, a paper filing fee in the amount of five dollars (\$5.00) per return. A "paper return" is a town sales tax return that is not filed through the Town's designated online tax filing system. The paper return filing fee shall be due and payable to the Town at the time the paper return is filed with the finance director. Beginning with the Town's 2018 fiscal year, the amount of the paper return filing fee described in this section shall be fixed by the

Town council as part of its annual budget process. If, for any reason, the amount of such fee is not fixed by the Town council as part of its annual budget process, the fee for the preceding year shall continue in full force and effect until changed by the Town council. There shall be no paper return filing fee charged if the taxpayer elects to file the subject return with the finance director through the Town's designated online tax filing system. The finance director may waive the paper return filing fee for good cause.

3-2-7-1: MARKETPLACE FACILITATORS:

A. A marketplace facilitator engaged in business in the Town is required to collect and remit sales tax on all taxable sales 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 sales tax had the sale not been facilitated by the marketplace facilitator.

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

C. 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 for sale tangible personal property, products, or services through other means.

D. A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this Chapter if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

1. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this Chapter; or
2. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this Chapter made in or through the marketplace facilitator's marketplace.

E. 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 retailer.

F. With respect to any sale, the Town shall solely audit the marketplace facilitator for sales 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.

3-2-8: ACQUISITION, INCEPTION OR CESSATION OF BUSINESS:

A. Acquisition Of An Existing Business:

1. Seller's Responsibilities: Any person engaged in business in the Town who sells such business shall file a final return. The reporting period for such return shall end on the date of the transfer of ownership of the business.
2. Purchaser's Responsibilities:
 - (a) Any person who purchases an existing business shall be responsible for determining the total tax liability of that business and shall withhold from the initial purchase payment an amount sufficient to cover any such tax liability.
 - (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.
 - (c) Any purchaser who fails to withhold such tax due or fails to pay to the Town the amount so withheld within the ten (10) day period allowed, shall, as well as the seller, be held liable for any unpaid tax due.

B. Inception Of Business; Initial Tax: Any person who purchases or establishes a business inside the Town shall file an initial tax return.

1. Existing businesses: Sales tax shall be due on tangible personal property, except inventory held for lease, rental or resale, which is acquired with the purchase, transfer of ownership, or any other form of acquisition of a business. The tax shall be based on the price of such property as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided the valuation is as great or greater than the fair market value of such property. If the fair market value of the property is greater than the price recorded in the bill of sale or agreement, then the fair market value of the property shall be the basis for calculating the amount of tax due. Such tax shall be reported on a sale of assets tax return.
2. New businesses: Sales tax shall be paid on the price of all tangible personal property, except inventory held for lease, rental or resale, which is purchased inside the Town. Such tax shall be reported on the seller's sales tax return.
3. Exceptions: In the case of businesses where the tangible personal property purchased is or shall be affixed to a building or premises and intended to be utilized in that fashion (i.e., automated or self-serve car wash equipment, laundromat washers and dryers, bowling lanes, and such properties), the business owner shall deduct this equipment on the sale of assets tax return and collect and remit sales tax on each transaction where the equipment is utilized by the customer or patron.

C. Cessation Of Business: Every person engaged in business in the Town who quits doing business in the Town shall file a final return. The reporting period for such return shall end on the last day of business in the Town.

3-2-9: 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 3-2-5 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.

3-2-10: TAX ON CREDIT SALES, ETC.:

Whenever tangible personal property is sold which is taxable hereunder, under a conditional sales contract whereby the seller retains title as security for all or part of the purchase price, or whenever the seller takes a chattel mortgage on such tangible personal property to secure all or part of the purchase price, the total tax based on the total selling price shall become immediately due and payable. The tax shall be charged, or collected and remitted by the vendor. No refund or credit shall be allowed to either party of the transaction in case of repossession.

3-2-11: SALES TAX, CREDIT FOR SALES OR USE TAXES PREVIOUSLY PAID TO ANOTHER MUNICIPALITY:

For transactions consummated on or after June 1, 1997, the Town's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of two and one-half percent (2 1/2%). A credit shall be granted against the Town's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed two and one-half percent (2 1/2%).

3-2-12: CLAIMS FOR RECOVERY:

The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect, and remit sales and use taxes to the Town.

A. As used herein, "claim for recovery" or "claim" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction. (Ord. 31, Series 2013)

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. (Ord. 4, Series 2017)

C. The Town may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the Town, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the Town submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the Town shall not be unreasonably withheld.

D. Within ninety (90) days after receipt of a claim for recovery, the Town shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the Town shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.

E. The Town may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.

F. The period subject to a claim for recovery shall be limited to the thirty six (36) month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery.

3-2-13: 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.

3-2-14: 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.

3-2-15: UNLAWFUL TO ASSUME OR ABSORB TAX:

A. It shall be unlawful, except as provided below, for any retailer to advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this Chapter shall be assumed or absorbed by the retailer, or that it will not be added to the selling price of the property sold, or if added, that it or any part thereof shall be refunded. Any person violating any provision of this section shall be subject to the penalties herein provided in this Chapter.

B. Nothing herein contained shall be deemed to prohibit any retailer selling malt, vinous or spirituous liquors by the drink from including in his sales price any tax levied under this Chapter.

C. Sales tax may be included in the price of tangible personal property sold through vending machines or the price of utilizing such automatic sale devices as a rental of equipment.

D. No retailer selling malt, vinous or spirituous liquors by the drink or sales through a vending machine shall advertise or hold out to the public in any manner, directly or indirectly, that the tax levied by this Chapter is not considered as an element in the sales price to the consumer.

3-2-16: 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.

3-2-17: DUTY TO KEEP BOOKS AND RECORDS:

A. Every person engaged in business in the Town shall keep and preserve for a period of at least three (3) years adequate records of all sales and purchases made by him, and such other books and records as may be necessary to determine the amount of tax he is liable to collect or pay. These records must include the normal books of account maintained by the ordinarily prudent business person engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of accounts together with all schedules or working papers used in connection with the preparation of tax returns.

B. Every person who uses construction equipment inside the Town shall keep and preserve for at least three (3) years after the final certificate of occupancy or certificate of completion for such project is issued, records of the time each piece of construction equipment was located inside the Town and any sales tax paid on such construction equipment and related materials.

3-2-18: 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.

3-2-19: COORDINATED AUDIT:

A. Any taxpayer licensed in this town pursuant to section 3-2-22 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, 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.

3-2-20: STATUTE OF LIMITATIONS:

A. No sales tax, interest or penalties shall be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. A lien shall not continue after such period, except on taxes assessed before the expiration of the period for which a notice of a tax lien has been filed prior to the expiration of such period.

B. 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.

C. When a taxpayer fails or refuses to file a return the sales tax may be assessed and collected without regard to the statute of limitations.

D. The period of limitation provided herein shall not run against the Town for an audit period if written notice is given to the taxpayer prior to the expiration of the statute of limitations that the latter's records will be audited pursuant to this Chapter. "Audit period" is the thirty six (36) month reporting period preceding the date of the notice of audit.

3-2-21: 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.

3-2-22: LICENSES FOR RETAIL SELLERS; EXEMPTION:

A. It shall be unlawful for any person to engage in the business of selling at retail on or after July 1, 1984, without having first obtained a Breckenridge sales tax license.

B. Any retailer having only an economic nexus with the Town and that has not established a physical presence in the Town shall be exempt from the provisions Section A of this Section; provided, however, such retailer shall furnish in writing to the finance director any change to the name and address or contact information of the retailer or any other material change to the information submitted on an application for a license with 30 calendar days of such change.

3-2-23: 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.

3-2-24: 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 3-2-26 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.

3-2-25: SALE AT RETAIL WITHOUT LICENSE:

Any person engaging in the business of selling at retail in the Town, without having secured a license therefor, except as specifically provided herein, shall be guilty of a violation of this Chapter.

3-2-26: 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.

3-2-27: 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.

3-2-28: WHEN LICENSE NOT REQUIRED:

No license shall be required of any person engaged exclusively in the business of selling commodities which are exempt from taxation under this Chapter.

3-2-29: MAP OR LOCATION GUIDE OF TOWN BOUNDARIES:

The finance department shall make available to any requesting vendor a map or location guide showing the boundaries of the Town. The requesting vendor may rely on such map or location guide and any update thereof available to such vendor in determining whether to collect a sales tax. No penalty shall be imposed or action or deficiency maintained against a vendor who in good faith complies with the most recent map or location guide available to such vendor.

3-2-30: 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 the 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.

3-2-31: 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 3-2-4 of this Chapter. Such refund shall be made by the 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, the 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 3-2-41 of this Chapter and may either appeal to the district court in the manner provided in section 3-2-42 of this Chapter or to the department of revenue in the manner provided in section 3-2-43 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 3-2-9 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, the 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 3-2-41 of this Chapter and may either appeal to the district court in the manner provided in section 3-2-42 of this Chapter or to the department of revenue in the manner provided in section 3-2-43 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.

3-2-32: 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 3-2-38 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 thirty (30) 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 3-2-41 of this Chapter and either may appeal to the district court as provided in section 3-2-42 of this Chapter or to the department of revenue as provided in section 3-2-43 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 collection 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.

3-2-33: FAILURE TO COLLECT AND PAY OVER TAX, ATTEMPTING TO EVADE OR DEFEAT TAX:

A. It shall be unlawful for any person required to collect, truthfully account for, and pay over to the Town any tax imposed by this Chapter to intentionally or knowingly fail to collect such tax, or to intentionally or knowingly fail to truthfully account for and pay over such tax to the Town, or to intentionally or knowingly attempt to evade or defeat any such tax or the payment thereof.

B. If a corporation has failed to collect or pay over collected sales tax to the Town as required by this Chapter, a rebuttable presumption shall arise that the president, vice president, secretary and treasurer of the corporation are the persons required to collect, truthfully account for and pay over the tax on behalf of the corporation. Such presumption may be rebutted by evidence demonstrating that another person or persons were responsible for the collection and payment of the tax on behalf of the corporation.

C. If a partnership has failed to collect or pay over collected sales tax to the Town as required by this Chapter, a rebuttable presumption shall arise that all partners of a general partnership, or the general partner(s) of a limited partnership, are the persons required to collect, truthfully account for and pay over the tax on behalf of the partnership. Such presumption may be rebutted by evidence demonstrating that another person or persons were responsible for the collection and payment of the tax on behalf of the partnership.

D. If a limited liability company has failed to collect or pay over collected sales tax to the Town as required by this Chapter, a rebuttable presumption shall arise that all managers of the limited liability or, if none, all members of the limited liability company, are the persons required to collect, truthfully account for and pay over the tax on behalf of the limited liability company. Such presumption may be rebutted by evidence demonstrating that another person or persons were responsible for the collection and payment of the tax on behalf of the limited liability company.

3-2-34: IMPOSITION OF CIVIL PENALTY ON RESPONSIBLE PARTIES:

A. Any party responsible for the collection and payment of the tax imposed by this Chapter on behalf of a corporation or partnership who willfully fails to collect such tax, or truthfully account for and pay over such tax to the Town, or who willfully attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to the other penalties provided by law, be liable for the payment of a civil penalty equal to the total amount of tax evaded, or not collected, or not accounted for and paid over. Such civil penalty shall include all

penalties and interest due to the Town under this Chapter, together with the Town's reasonable attorney fees incurred in collecting such civil penalty. The civil penalty provided for in this subsection shall apply only to the collection, accounting for, and payment over of taxes imposed on a person other than the vendor who is required to collect, account for and pay over such taxes pursuant to this Chapter. An action to collect the civil penalty provided for in this subsection may be brought in the district court and shall be governed by the Colorado rules of civil procedure.

B. If a corporation has failed to collect, account for or pay over collected sales tax to the Town as required by this Chapter, a rebuttable presumption shall arise that the president, vice president, secretary and treasurer of the corporation are the persons responsible for the collection and payment of the tax on behalf of the corporation. Such presumption may be rebutted by evidence demonstrating that another person or persons were responsible for the collection and payment of the tax on behalf of the corporation.

C. If a partnership has failed to collect, account for or pay over collected sales tax to the Town as required by this Chapter, a rebuttable presumption shall arise that all partners of a general partnership, or the general partner(s) of a limited partnership, are the persons responsible for the collection and payment of the tax on behalf of the partnership. Such presumption may be rebutted by evidence demonstrating that another person or persons were responsible for the collection and payment of the tax on behalf of the partnership.

D. If a limited liability company has failed to collect, account for or pay over collected sales tax to the Town as required by this Chapter, a rebuttable presumption shall arise that all managers of the limited liability company or, if none, all members of the limited liability company, are the persons responsible for the collection and payment of the tax on behalf of the limited liability company. Such presumption may be rebutted by evidence demonstrating that another person or persons were responsible for the collection and payment of the tax on behalf of the limited liability company.

3-2-35: AUTHORITY OF FINANCE DIRECTOR TO REQUIRE IMMEDIATE PAYMENT OF TAX:

Notwithstanding the provisions of section 3-2-7 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 3-2-26 of this Chapter.

3-2-36: TAX LIEN; EXEMPTION FROM LIEN:

A. 1. Except as provided in subsection A2 of this section, the sales tax imposed pursuant to section 3-2-5 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".

3-2-37: 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 3-2-38 of this Chapter, in addition to the interest provided by section 3-2-39 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.

3-2-38: INTEREST RATE ON DELINQUENT TAXES:

When interest is required or permitted to be charged under subsection 3-2-32B, section 3-2-37 or subsection 3-2-39A of this Chapter, the annual rate of interest shall be that rate of interest established by the state commissioner of banking pursuant to section 39-21-110.5, Colorado Revised Statutes.

3-2-39: 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 3-2-38 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.

B. Interest prescribed under this section and subsection 3-2-32B and section 3-2-37 of this Chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as the tax to which such interest is applicable.

C. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit has not been made, interest would have been allowed with respect to such overpayment.

D. Interest prescribed under this section and subsection 3-2-32B and section 3-2-37 of this Chapter on any sales tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

3-2-40: OTHER REMEDIES:

No provision of this Chapter shall preclude the Town from utilizing any other lawful penalties or other remedies applicable to the collection of sales taxes.

3-2-41: 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 thirty (30) 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 3-2-42 or 3-2-43 of this Chapter.

3-2-42: REVIEW BY DISTRICT COURT:

A. If any person contests the Finance Director's 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 procedure.

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 3-2-38 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.

3-2-43: ALTERNATIVE REVIEW BY DEPARTMENT OF REVENUE:

In lieu of the procedure provided for in section 3-2-42 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 3-2-42 of this Chapter.

3-2-44: AMENDMENTS:

The Town council may amend, alter or change any provision of this Chapter, except as to the two and one-half percent (2 1/2%) rate of tax herein imposed, by ordinance duly adopted in accordance with the Town charter. Such amendment, alteration or change need not be submitted to the electors of the Town for their approval unless required by article X, section 20 of the Colorado constitution.

3-2-45: 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.

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.

3-2-46: UNLAWFUL ACTS:

It is unlawful and a misdemeanor offense for a retailer or vendor:

A. To fail to collect and remit tax to the Town in accordance with the schedule set forth in this Chapter, or in any manner to evade the collection and payment of the tax imposed by this Chapter;

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

C. To retain any excess tax collections made under this Chapter;

D. To fail to have in full force and effect at the time of a sale a valid Breckenridge sales tax license issued pursuant to this Chapter; and

E. To violate any other provision of this Chapter that is applicable to retailers or vendors.

**CHAPTER 3
REAL ESTATE TRANSFER TAX**

SECTION:

- 3-3-1: TITLE
- 3-3-2: IMPOSITION OF TAX
- 3-3-3: PERSONS LIABLE FOR TAX
- 3-3-4: DEFINITIONS
- 3-3-5: AMOUNT OF TAX
- 3-3-6: EXEMPTIONS
- 3-3-7: TRANSFER BETWEEN CO-OWNERS
- 3-3-8: APPLICATION FOR EXEMPTION
- 3-3-9: LANDS AFFECTED
- 3-3-10: ENFORCEMENT
- 3-3-11: DUE DATES, DELINQUENCIES, PENALTIES, INTEREST, EVASION
- 3-3-12: LIEN
- 3-3-13: REVIEW
- 3-3-14: DEFERRAL OF PAYMENT OF TAX

3-3-1: TITLE: This Chapter shall be known and may be cited as the BRECKENRIDGE REAL ESTATE TRANSFER TAX ORDINANCE.

3-3-2: IMPOSITION OF TAX:

There is hereby imposed a tax on all transfers, whether by deeds, instruments, writings, leases, or any other documents or otherwise, by which lands, tenements or other interests in real property located in the Town are sold, granted, let, assigned, transferred, exchanged or otherwise conveyed to or vested in a purchaser, or purchasers thereof, or any other person or persons, except as may be specifically exempted by Section 3-3-6 of this Chapter. Said tax shall be due and payable at the time of transfer and contemporaneously therewith as hereinafter specified.

3-3-3: PERSONS LIABLE FOR TAX:

Each purchaser and any other person or persons to whom a transfer is made, which transfer is subject to the tax imposed under Section 3-3-2 of this Chapter, shall be jointly and severally liable for payment of the tax. The purchaser or person to whom a transfer is made shall remit the tax to the Town.

3-3-4: 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:

CONSIDERATION: The gross consideration paid for the real property affected by the "transfer" and shall include actual cash paid, the money equivalent of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be paid or delivered or conveyed, in return for the transfer of ownership or interests in real property, and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of transfer. The term does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the state of Colorado, or of a municipal or quasi-government corporation or district for taxes, special benefits or improvements. In the event the transaction or transfer is by lease agreement not specifically exempted in Section 3-3-6 of this Chapter, the consideration shall be deemed to be the capitalized value of the average annual rental unit of the lease, computed as follows: the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid shall be computed and the average annual rental shall be ten percent (10%) of the capitalized value. The payment of ad valorem real property taxes, insurance and the assumption of maintenance obligations shall not be included in the annual rent capitalization computation; however, capital improvements required to be made shall be part of the actual consideration. When the average annual rental cannot be determined, or at the election of the Town manager, the tax shall be based upon the appraised total value of the property covered by the lease as determined by an independent appraisal obtained by the Town manager and paid for by the purchaser, or the capitalized value of the consideration in terms of the present worth of the stream of consideration under the lease and any other economic considerations to reflect the capitalized value of the transferred or leased property.

DEED IN LIEU OF FORECLOSURE: A conveyance by a property owner to a secured party of property which is the subject of a mortgage, deed of trust or other security instrument in consideration of the cancellation of all or part of the indebtedness secured by such security instrument.

PERSON: Any individual, corporation, business trust, estate, trust, partnership, association or any other legal entity.

REAL ESTATE TRANSFER TAX: The tax imposed by this Chapter on the transfer of real property.

REAL PROPERTY: Real property, as defined by and under the laws of the state of Colorado.

TAXABLE LEASE: Any lease of real property within a term or initial term and all renewal terms which aggregate in length of twenty nine (29) years or more; provided lessee has possession or the right to possession on payment of rents. "Taxable lease" also means any lease of real property for less than twenty nine (29) years of term or initial term and all renewal terms aggregated if lessee has a clause which would permit lessee at its discretion to extend the lease beyond twenty nine (29) years or if lessee has an option to purchase some or all of the real property leased. If lessee has a lease with such an option to purchase which option may be exercised only within three (3) years after the date the lease and option is entered into, then the land transfer tax shall not be due and payable unless and until the exercise and consummation of such option. If any other lease with such an option to purchase is entered into, the real estate transfer tax shall be due and payable at the time of such transfer as transfer is defined herein.

TRANSFER: Includes, whether or not the same is in writing or is recorded: a) any sale, grant, assignment, transfer, exchange or conveyance of any ownership or Title to real property situated in the Town; b) the sale, leasing, letting, conveyance, assignment or transfer of a possessory interest in real property, subject to the exemptions provided in this Chapter. (

3-3-5: AMOUNT OF TAX:

A. Where there is a taxable transfer between co-owners, the real estate transfer tax shall be determined in accordance with Section 3-3-7 of this Chapter.

B. As to all other taxable transfers, the real estate transfer tax payable shall be one percent (1%) of the consideration.

C. The proceeds of the real estate transfer tax collected pursuant to this Chapter shall be deposited in the general fund or any special fund or funds of the Town as the Town council shall determine from time to time.

3-3-6: EXEMPTIONS:

The real estate transfer tax imposed by this Chapter shall not apply to:

A. Any transfer where there is no consideration or when the consideration is five hundred dollars (\$500.00) or less.

B. Any transfer wherein the United States or any agency or instrumentality thereof, the state, any county, city and county, municipality, district or other political subdivision of this state is the grantee.

C. A gift of real property, where there is no consideration other than love and affection or charitable donation.

D. Any transfer between the same parties creating or terminating a joint tenancy in real property; however, if additional consideration or value is paid in connection with such creation or termination, the tax shall apply and be based upon such additional consideration.

E. The transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution, or otherwise.

F. Transfers made pursuant to reorganization, merger or consolidation of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock, or transfers made to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization if that association or organization is owned by the persons by whom such transfer was made, if such owners have the same relative interests in said association or organization as they had in the real property immediately prior to said transfer and there is no consideration other than their respective interests in the new association or organization.

G. Transfer to make effective any plan confirmed or ordered by a court of competent jurisdiction under the bankruptcy code or in an equity receivership proceeding.

H. Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments; removing clouds of Titles; or granting rights of way, easements or licenses.

I. Any decree or order of a court of record quieting, determining or vesting Title, including a final order awarding Title pursuant to a condemnation proceeding.

J. Any transfer between spouses or former spouses made pursuant to a separation agreement, decree of legal separation or dissolution of marriage.

K. Any transfer of cemetery lots.

L. Any lease of real property (or assignment or transfer of any interest in any such lease) provided the terms and conditions of such lease do not constitute a taxable lease of the property.

M. Any mineral transfer or royalty transfer.

N. Transfer to secure a debt or other obligation, or releases of real property which is security for a debt or other obligation.

O. Any transfer by deed in lieu of foreclosure; provided, that:

1. Such transfer shall be exempt only if the grantee in such deed is the person holding the obligation or instrument which is being canceled, in whole or in part, in exchange for the transfer; and
2. Such transfer shall be exempt only to the extent of the amount of the obligation which is being canceled, in whole or in part, in exchange for the transfer.

P. Any transfer by sheriff's deed, trustee's deed or other conveyance of real property in connection with an execution sale; foreclosure sale by the public trustee under a power of sale; court decree foreclosing a mortgage, deed of trust or other security instrument; or court decree of lien foreclosure; provided, that:

1. Such transfer shall be exempt only if the grantee is the person holding the obligation or instrument upon which the proceeding is based; and
2. Such transfer shall be exempt only to the extent of the obligation to be satisfied at the execution or foreclosure sale and any obligations to prior lienholders paid from the sale.

Q. Any executory contract for the sale of real property of less than three (3) years' duration under which the vendee is entitled to or does take possession thereof without acquiring Title thereto or any assignment or cancellation of any such contract, provided that the tax imposed by this Chapter shall be paid when the vendee acquires Title to the property.

R. Any transfer that is made pursuant to a valid and legally enforceable contract for the sale entered into between the seller and purchaser prior to the date of adoption of this Chapter, pursuant to which transaction the deed or instrument of conveyance is executed and recorded on or before January 1, 1981.

S. Any transfer that is made pursuant to a valid and legally enforceable presale contract:

1. Entered into between a seller and purchaser prior to the date of adoption of this Chapter;
2. Pursuant to which transaction the deed or instrument of conveyance is executed and recorded on or before January 1, 1981. A "presale contract" is defined as a valid and legally enforceable contract for the sale of real property which has been signed prior to the commencement of construction of improvements thereon, to be closed following completion of the improvements and pursuant to which contract seller is obliged to construct the improvements to the property after the contract is signed and prior to the closing date of the contract.

T. Any sale or conveyance of real property or improvements for the purpose of constructing, or providing low or moderate priced housing units for sale or lease to low or moderate income persons; provided, that the parties to the transaction shall apply to the Town manager for the exemption prior to its being allowed, and the parties shall agree to appropriately restrict the future use of the property to low and moderate priced housing units by recorded agreement, deed, restrictions, covenants, declaration or similar instrument as may be required by the Town council.

3-3-7: TRANSFER BETWEEN CO-OWNERS:

A. A nonexempt transfer from one or more co-owners to another co-owner or co-owners is taxable in accordance with this Section. The real estate transfer tax payable with respect to such transfer shall be one percent (1%) of the gross consideration for the transfer paid to the grantor by the grantee. Notwithstanding the definition of "consideration" contained in Section 3-3-4 of this Chapter, for the purpose of this Section "gross consideration" shall mean and include:

1. Actual cash paid, the money equivalent of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be paid or delivered or conveyed in return for the transfer; plus
2. The amount of any lien, mortgage, contract, indebtedness or other encumbrance or debt given to secure the purchase price, or any part thereof; plus
3. The grantor's proportionate share of the unpaid balance of any debt which is owed against the property at the time of the transfer and not satisfied in connection with such transfer. For purposes of this subsection the "grantor's proportionate share of any unpaid debt which is owed against the property at the time of the transfer" shall

be determined by multiplying the grantor's fractional or percentage ownership interest in the property prior to the transfer, times the unpaid balance of such debt existing as of the time of the transfer.

B. The term "gross consideration" does not include as an addition thereto the amount of any outstanding lien or encumbrance in favor of the United States, the state, or of a municipal or quasi-government corporation or district for taxes, special benefits or improvements.

C. The real estate transfer tax on any transfer between co-owners by lease agreement shall be determined in accordance with the definition of "consideration" contained in Section 3-3-4 of this Chapter.

3-3-8: APPLICATION FOR EXEMPTION:

A. In the event of any transfer claimed to be exempt from the real estate transfer tax herein imposed, the grantor or purchaser shall apply for and obtain from the Town manager a certificate of exemption, which may be affixed to the deed or instrument of transfer. The burden of proving any exemptions shall in all cases be upon the one claiming it. Provided further, that the exemption provided in Section 3-3-6 of this Chapter shall be allowed only with a certificate of exemption issued by the Town manager prior to the date that the transfer tax is payable to the Town. The certificate of exemption shall be in substantially the following form:

APPLICATION FOR EXEMPTION FROM REAL ESTATE TRANSFER TAX

The undersigned, as purchaser pursuant to a deed or other instrument of transfer from to dated _____, hereby applies for exemption from the payment of the real estate transfer tax, imposed by Title 3, Chapter 3 of the Town Code. The basis for such exemption is as follows:

(State briefly grounds for exemption, including applicable Section and subsection of Title 3, Chapter 3 of the Town Code)

I hereby certify this _____ day of _____, 20____ under penalty of perjury that the foregoing statements are true and correct.

Purchaser

Certificate of Exemption

I hereby certify this _____ day of _____, 20____ that the above described transfer of real property is exempt from the payment of real estate transfer tax under Title 3, Chapter 3 of the Town Code.

Town Manager

B. Any person whose claim of exemption duly applied for under the provisions of this Section is denied by the Town manager may immediately appeal to the Town council for a determination of such exemption and such appeal shall be considered by the Town council within thirty (30) days of receipt of the same. In the event of a determination by the Town council favorable to the appellant, any amount previously deposited, or so much thereof as may be allowed by the Town manager, shall be promptly refunded to the person paying or depositing the same. If a decision is not made by the Town council within thirty (30) days of the receipt of the appeal, the decision will be deemed favorable to the appellant, unless appellant has obtained a continuance of the matter, in which case the Town council shall make its decision within six (6) months after receipt of the appeal.

C. In case of an application for an exemption which is not granted before the transfer takes place, the tax shall be paid as required by this Chapter. Thereafter, if the exemption shall be allowed, upon application to the Town manager, the person who has paid said tax shall be entitled to a refund thereof, or so much of said tax as shall qualify for refunding pursuant to the exemption granted.

3-3-9: LANDS AFFECTED:

When a transfer subject to this Chapter includes real property located within the Town and real property located elsewhere, the tax imposed under authority of this Chapter shall be computed only with respect to real property located within the Town, and the tax shall be assessed based on that part of the consideration fairly attributable to such real property located within the Town.

3-3-10: ENFORCEMENT:

A. The Town manager is charged with the enforcement of the provisions of this Chapter and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations pertaining thereto.

B. At the time of any transfer upon which a tax is imposed or which is claimed to be exempt under this Chapter, there shall be made a report to the Town manager on forms prescribed by him, setting forth the true, complete and actual consideration for the transfer, the name of the parties thereto, the location of the real property transferred, the basis of the claimed exemption, and such other information as he may require.

C. For the purpose of collection of the taxes imposed by this Chapter, all banks, Title companies, escrow companies, building and loan institutions, attorneys, real estate agencies, or other closing agents or agencies, permitted as such to do business under the laws of the state of Colorado may collect the real estate transfer tax (holding said funds in trust for the Town) and remit the same to the Town for and on behalf of the purchaser, forthwith. Said funds shall not be commingled with other funds of the collector.

D. The Town manager is hereby authorized to negotiate and enter into an intergovernmental contract with appropriate officers of Summit County for the collection of this tax, including the payment of a fee to the county officers for said collection.

3-3-11: DUE DATES, DELINQUENCIES, PENALTIES, INTEREST, EVASION:

A. The tax imposed under this Chapter is due and payable at the time of the transfer, and is delinquent if it remains unpaid for thirty (30) days thereafter. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of tax due shall accrue.

In the event a portion of the tax is paid prior to becoming delinquent, the penalty shall only accrue as to the portion which is delinquent. Interest shall accrue at the rate of one and one-half percent (1.5%) per month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become part of the tax.

B. Any person liable for a real estate transfer tax upon a transfer who shall cause the deed, instrument of conveyance or document evidencing said transfer to be filed of record in the office of the Summit County clerk and recorder or attempt to so record the document until and unless the real estate transfer tax and all penalties and interest thereon have been paid in full, shall be in violation of this Chapter.

C. Notwithstanding the provisions of Section 3-3-6 of this Chapter, if an artifice or device is employed in connection with the transfer of real property, which term "artifice or device" means a transaction or transactions a substantial purpose of which was to evade the provisions of this Chapter and the imposition of the tax hereunder, then such transfer will nevertheless be subject to the real estate transfer tax. "Artifice or device" includes, but is not limited to: 1) a transfer to a corporation, partnership, limited partnership, joint venture, business trust, or other association or organization followed within three (3) years by an assignment of the controlling interest in such association or organization, or 2) such a transfer plus the intent to ultimately assign the controlling interest in such association or organization.

3-3-12: LIEN:

A. The tax imposed by this Chapter, and any penalty and interest due thereon, if not paid when due, and all costs of collection of said tax, penalty and interest, shall constitute a perpetual lien on the real property transferred in the amount applicable to each lot or parcel of real property transferred and shall have priority over all other liens except general tax liens and special improvement district assessment liens. Except as aforesaid, the lien for said tax shall be and until paid shall remain a first and prior lien superior to all other liens upon said property and

shall take precedence on such property over other liens or claims of whatsoever kind or nature. Said lien shall continue until the amount thereof is paid or until its discharge of record by foreclosure or otherwise.

B. The recording of this Chapter in the office of the clerk and recorder of the county of Summit, state of Colorado, shall constitute notice to all persons interested in the transfer of real property of the existence of and the lien imposed by the real estate transfer tax.

C. If the tax is unpaid and delinquent, the Town manager shall give written notification to the purchaser or person to whom the transfer is made at the address shown on any deed of instrument evidencing the transfer, or his last known address, of said delinquency. Said notification shall be mailed certified or registered mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty and interest are not paid within thirty (30) days of the effective date of the notification, the Town manager shall commence foreclosure of the lien for said tax in the same manner as the foreclosure of a mortgage in accordance with Colorado law.

D. The amount of the tax, penalty and interest imposed under the provisions of this Chapter shall be deemed a debt to the Town. Any person owing money to the Town under the provisions of this Chapter shall be liable to an action brought in the name of the Town for the recovery of such amount.

E. Every person convicted of a violation of any provision of this Chapter shall be punished as provided in Section 1-4-1 of this Code.

F. Any lien filed by the Town pursuant to this Chapter shall, upon the payment of all taxes, penalties and interest covered thereby, be released by the Director in the same manner as mortgages or judgments are released.

G. Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

3-3-13: REVIEW:

The Town manager shall prepare a report of the receipts from the real estate transfer tax, expenditures made in the preceding fiscal year, funds into which the proceeds have been deposited, the disposition of those funds, and the projected revenue and expenditures for the next fiscal year.

3-3-14: DEFERRAL OF PAYMENT OF TAX:

A. The Town council may defer payment of the tax imposed by this Chapter if:

1. A written request for the deferral of the tax is submitted to the Town council and approved by it prior to the recording of the deed(s) or other instrument(s) giving rise to the tax;
2. The amount of the tax due is two hundred fifty thousand dollars (\$250,000.00) or more; and
3. The Town council determines that the Town will receive a substantial tangible benefit, other than the tax itself, from the transaction giving rise to the tax.

B. Upon determining that all of the conditions set forth in subsection A of this Section have been satisfied, the Town council may defer payment of the tax imposed by this Chapter for a period not to exceed five (5) years upon such terms and conditions as it may determine to be in the best interest of the Town; provided, however, that interest on the deferred tax shall be paid at a rate as determined by the Town council.

C. Notwithstanding the deferral of the tax imposed by this Chapter, the lien created by Section 3-3-11 of this Chapter shall continue as a first and prior lien upon the property (except for the lien of the general property taxes and special assessment liens) until the tax is fully paid.

CHAPTER 4 UTILITIES TAXES

SECTION:

3-4-1: TELEPHONE UTILITY COMPANIES TAX

3-4-1: TELEPHONE UTILITY COMPANIES TAX:

A. The tax herein provided is upon occupations and businesses on the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Section be construed to mean that any telephone utility company is issued a franchise by the Town.

B. There is hereby levied on and against each telephone utility company operating within the Town a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the Town and of supplying local exchange telephone service to the inhabitants of the Town. The amount of the tax levied hereby shall be:

1. For the time period from June 1976 through December 1978, the sum of twelve thousand eight hundred thirty eight dollars eleven cents (\$12,838.11); and
2. For the calendar year 1979, the sum of six thousand five hundred dollars (\$6,500.00); and
3. For each subsequent calendar year, commencing January 1980, six dollars seventy five cents (\$6.75) per telephone account for which local exchange telephone service is provided within the corporate limits of the Town, and on the anniversary of the date on which the tax begins to accrue as provided in subsection C of this Section.

C. The taxes levied by this Section shall be due and payable as follows:

1. Those taxes levied by subsection B1 of this Section for the period from June 1976 through December 1978 shall be paid from sums heretofore paid to the Town under protest by the telephone utility company.
2. Those taxes levied by subsection B2 of this Section, from the calendar year 1979 shall be due and payable in four (4) equal quarterly installments to be paid on the last business days of the months of March, June, September and December.
3. Those taxes levied by subsection B3 of this Section, for all subsequent calendar years commencing January 1980, shall be due and payable in four (4) equal quarterly installments to be paid on the last business days of the months of March, June, September and December.

D. Within thirty (30) days after the date on which the tax begins to accrue, as provided in subsection C of this Section, each telephone utility company subject to this Section shall file with the Town clerk, in such form as the clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the Town on said date. Such statement shall be filed within thirty (30) days after each anniversary of the date on which the tax begins to accrue, showing such accounts on the anniversary date.

E. If any telephone utility company subject to the provisions of this Section shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten percent (10%) of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town attorney, upon direction of the Town council, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt.

F. The Town, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Section and to make copies of the entries or contents thereof.

G. The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the Town on any telephone utility company subject to the provisions of this Section, and in addition shall be in lieu of any free service furnished the Town by any said telephone utility.

H. All offenses committed and all liabilities incurred prior to the effective date of this Section shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities.

I. If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Section shall fail, neglect, refuse to make or file the annual statement of accounts provided in subsection D of this Section, the said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided, that each day after said statement shall become delinquent during which the said officer, agent, manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense.

CHAPTER 5
PUBLIC ACCOMMODATION TAX

SECTION:

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3-5-1: TITLE:

This Chapter shall be known as and referred to as the REVISED BRECKENRIDGE PUBLIC ACCOMMODATION TAX.

3-5-2: LEGISLATIVE INTENT:

A. It is hereby declared to be the legislative intent of the Town Council that, for the purposes of this Chapter, every person who purchases in the Town any lodging is exercising a taxable privilege.

B. It is hereby declared to be the legislative intent of the Town Council that, for the purposes of this Chapter, every vendor who shall make a sale of lodging to a purchaser in the Town shall collect the tax imposed by this Chapter to the total purchase price charged for such lodging furnished at any one (1) time by or to every customer or buyer, in the manner set forth in this Chapter. It is the legislative intent of the Town Council that the term "vendor" as used in this Chapter shall include, without limitation, online travel companies to the maximum extent permitted by law.

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.

3-5-3: 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:

“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.

“Lodging” means 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.

“Marketplace” means 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.

“Marketplace Facilitator” means:

(A) 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.

“Marketplace Seller” means 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.

“Multichannel Seller” means 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.

“Purchase or sale” means the acquisition or furnishing for consideration by any person of lodging within the Town.

“Purchaser” means any person exercising the taxable privilege of purchasing lodging.

“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.

“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, a marketplace seller, or a multichannel seller.

3-5-3: IMPOSITION OF TAX:

There is hereby levied and shall be collected and paid a tax by every person exercising the taxable privilege of purchasing lodging as in this Chapter defined an excise tax of three and four-tenths percent (3.4%) on the purchase price paid or charged for such lodging.

3-5-4: EXEMPTIONS:

There shall be exempt from this Chapter the following:

A. All lodging as defined in this Chapter furnished to any person who resides continuously for a period of thirty (30) consecutive days or more in rooms or accommodations or has the right to so reside pursuant to any written concession, permit, contract, license to use or other written arrangement;

B. All sales to the United States government; to the State of Colorado, its departments or institutions, and the political subdivisions thereof, in their governmental capacities only; and all sales to the Town and any department thereof;

C. All sales to charitable organizations that are:

1. Billed directly to the charitable organization;
2. Paid directly from funds of the charitable organization; and
3. Used exclusively for the charitable organization's organizational or operational purposes.

3-5-5: COLLECTION OF TAX:

A. Every vendor making sales to a purchaser in the Town, which are taxable under the provisions of this Chapter, at the time of making such sales is required to collect the tax imposed by Section 3-5-3 from the purchaser.

B. The tax to be collected as provided by Section A of this Section shall be stated and charged separately from the sale price and shown separately from the sale price on any record thereof at the time when the sale is made or at the time when evidence of the sale is made or at the time when evidence of the sale is issued or employed by the vendor; provided, that when added such tax shall constitute a part of such purchase price or charge and shall be a debt from the purchaser to the vendor until paid and shall be recoverable at law in the same manner as other debts. The tax shall be paid by the purchaser to the vendor, as trustee for and on account of the Town, and the vendor shall be liable for the collection thereof and on account of the Town.

C. Taxes paid on the amount of gross sales which are represented by accounts which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the state may be credited upon a subsequent payment of the tax herein provided; but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amount so collected.

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.

3-5-6: VENDOR RESPONSIBLE FOR PAYMENT OF TAX:

A. Amount. Every vendor shall add the tax imposed by Section 3-5-3 to the purchase price or charge for lodging, and the vendor shall be liable and responsible to the Town for the payment on a monthly basis of an amount equivalent to such tax on all gross taxable sales, and also liable and responsible to the Town for any collection in excess of that equivalent amount. Every vendor shall on its return round each calculation, as directed on such form as the Finance Director may require, to the nearest whole dollar and remit the rounded amount. In rounding under this section, any amount of forty-nine cents (\$0.49) or less shall be rounded down, and any amount of fifty cents (\$0.50) or higher shall be rounded up.

B. Returns. Every vendor shall on or before the twentieth day of each month make a return to the Finance Director for the preceding calendar month and remit to the Finance Director simultaneously therewith the total amount due the Town as provided by subsection (a). Returns of the vendor, or the Vendor's duly authorized agent, shall contain such information and be made in such a manner and upon such forms as the Finance Director may prescribe, and the Finance Director may, by regulation duly adopted, extend the time up to one (1) year for making returns and paying the tax due.

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.

3-5-7: DUTY TO KEEP BOOKS AND RECORDS

It shall be the duty of every vendor hereunder to keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be necessary to determine the amount of the tax for the collection or payment of which such vendor is liable under this Chapter. It shall be the duty of every vendor to keep and preserve for a period of three (3) years following the due date of the return or the payment of the tax all such books, invoices and other records necessary to determine the tax and the same shall be open for examination by the Finance Director. Upon demand by the Finance Director the vendor shall make the books, invoices, accounts or other records it maintains available at the office of the Finance Director or some other place designated by the Finance Director for examination, inspection and audit by the Finance Director. The Finance Director, in the Finance Director's discretion, may make, permit or cause to be made the examination, inspection or audit of books, invoices, accounts and other records so kept or maintained by the vendor. When the vendor shall have entered into a binding agreement with the Town to reimburse it for all costs and expenses incurred by the Town in order to have such examination, inspection or audit at a place other than the place designated by the Finance Director, then such examination, inspection or audit shall be made where such records are kept or maintained by the vendor or as otherwise designated in the agreement.

3-5-8: CONSOLIDATION OF RETURNS:

A vendor doing business in two (2) or more places or locations, whether in or without the Town, and collecting taxes under this Chapter may file one (1) return covering all such places or locations, when accompanied by a supplemental report showing the gross and net taxable sales and taxes collected thereon for each such place or location.

3-5-10: TRUST STATUS OF TAX IN POSSESSION OF VENDOR:

All sums of money paid by the purchaser to the vendor as taxes imposed by this Chapter shall be and remain public money, the property of the Town, in the hands of such vendor, and the vendor shall hold the same in trust for the sole use and benefit of the Town until paid to the Finance Director as herein provided, and for failure so to pay to the Finance Director, such vendor shall be punished for a violation hereof.

3-5-11: COLLECTION AND REFUND OF DISPUTED TAX:

Should a dispute arise between the purchaser and vendor as to whether or not the sale of lodging is exempt from taxation under this Chapter, nevertheless, the vendor shall collect and the purchaser shall pay such tax, and the vendor shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the Finance Director, showing the names of the purchaser and vendor, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the Finance Director for a refund of such taxes, and it shall be the duty of the Finance Director to determine the question of exemption, subject to review by the courts.

3-5-12: REFUND PROCEDURE:

A. Generally. A refund shall be made or credit allowed for the tax paid under dispute by any purchaser who has an exemption as provided in this Chapter. Interest shall be paid on refunds, but not credits, for overpayments. Interest shall accrue from the time the overpayment is made. The rate of interest shall be fixed, and shall be the average monthly rate earned by the Town on the general fund for the calendar year immediately preceding the year in which the refund is made. Such refund shall be made by the Finance Director after compliance with the conditions of this Chapter.

B. Application. Applications for a refund must be made within sixty (60) days after the purchase of the lodging on which the exemption is claimed and must be supported by the affidavit of the vendor accompanied by the original paid invoice or sales receipt and a certificate issued by the vendor, and be made upon such forms as shall be prescribed and furnished by the Finance Director, which forms shall contain such information as the Finance Director shall prescribe.

C. Decisions. Upon receipt of such application, the Finance Director shall examine the same with all due speed and shall give notice to the applicant by an order in writing of the decision thereon.

D. Refunds not assignable. The right of any person to a refund under this Chapter shall not be assignable, and application for refund must be made by the same person who purchased the lodging and paid the tax thereon as shown in the invoice of the sale thereof.

E. Penalty for violating refund provisions. Any applicant for refund under the provisions hereinabove, or any other person, who shall make any false statement in connection with an application for a refund of any tax shall be deemed guilty of a violation of this Chapter.

F. Violations of refund provisions to be used as evidence of fraudulent intent. If any person be convicted under the provisions of subsection (f), 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 hereby empowered and directed to bring appropriate action for recovery of such refund. A brief summary of the above mentioned penalties shall be printed on each form application for refund.

G. Burden of proof. The burden of proof that sales of lodging on which tax refunds are claimed are exempt from taxation under this Chapter shall be on the one making such claim and such proof shall be by a preponderance of evidence.

3-5-13: EXAMINATION OF RETURNS; REFUNDS; CREDITS; AND DEFICIENCIES.

As soon as practicable after the return is filed, the Finance Director shall examine it and:

A. If it then appears that the correct amount of tax to be remitted is greater or less than that shown in the return, the tax shall be recomputed;

B. If the amount paid exceeds that which is due, the excess shall be refunded with interest pursuant to [insert interest section number], or credited, against any subsequent

remittance from the same person, provided, however, that a claim for refund or credit is made within three (3) years of the date the return is filed or, if the three-year period for assessment of tax has been extended as provide in this Title, then a claim for refund or credit may be made within such extended period;

C. If the amount paid is less than the amount due, the difference, together with interest thereon at the rate of one (1) percent per month from the time the return was due, shall be paid by the taxpayer within thirty (30) days after written notice and demand to the taxpayer from the Finance Director.

3-5-14: INTEREST ON LATE PAYMENTS; PENALTY.

A. In any case in which a taxpayer fails to file a return or pay over the tax within the time required by this Chapter, but without the intent to defraud, there shall be added as a penalty fifteen (15) percent of the total amount of the deficiency, but not less than twenty-five dollars (\$25.00), and interest in such cases shall be collected at the rate of one (1) percent each month, or fraction thereof, on the amount due on the deficiency from the time the return was due to the date the tax is paid, which interest and addition shall become due and payable within thirty (30) days after the written notice and demand by the Finance Director, and such interest shall be assessed, collected and paid in the same manner as the tax itself.

B. Payments of part but less than all of a deficiency, including interest, or interest and penalty, shall be first applied to penalty, if any, secondly to accrued interest and, lastly, to the tax itself.

3-5-15: PENALTIES FOR DEFICIENCY CAUSED BY FRAUD:

If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty (50) percent 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 thirty (30) days after written notice and demand by the Finance Director, and an additional one (1) percent per month on such amounts shall be added from the date the return was due until paid.

3-5-16: INVESTIGATION OF VENDOR'S 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 may hold investigations and hearings concerning any matters covered by this Chapter and may examine any relevant books, papers, records or memoranda of any such person and may require the attendance of such person, or any officer or employee of such person, or of any person having knowledge of such sales, and may take testimony and require proof for their information. The Finance Director shall have power to administer oaths to such persons.

3-5-17: AUDIT; ESTIMATE OF TAXES, PENALTY, AND INTEREST; NOTICE; ASSESSMENT.

A. The Finance Director is authorized to examine, inspect and audit the books, invoices, accounts and other records kept or maintained by the taxpayer for the collection of the taxes imposed by this Chapter. If the Finance Director determines that any taxpayer neglects or refuses to make a timely return in payment of the taxes or to pay or to correctly account for any taxes as required by this Chapter, the Finance Director shall make an estimate, based upon such information as may be available, with or without employing investigative powers vested in the Finance Director by this Chapter, of the amount of the taxes due for the period or periods for which the taxpayer is delinquent; and upon the basis of such estimated amount, compute and assess in addition thereto a penalty equal to fifteen (15) percent thereof, together with the interest on such delinquent taxes at the rate of one (1) percent each month, or a fraction thereof, from the date when due until the date paid.

B. Promptly thereafter the Finance Director shall notify the delinquent taxpayer in writing and demand payment thereof of such estimated taxes, penalty and interest.

C. Such estimated amounts shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Town thirty (30) days from the date of the notice and demand; provided, however, that within said thirty-day period the delinquent taxpayer may petition the Finance Director in writing for review of the assessment as provided in the applicable provisions of this Title. The filing of a petition shall not toll the accrual of interest on the amount of taxes due.

3-5-18: REVIEW BY FINANCE DIRECTOR:

A. Petitions. Petitions submitted to the Finance Director shall be in writing and shall contain a statement of facts and reasons for and the amount of the requested changes in the assessment or decision to deny or reduce a refund claim, and shall otherwise comply with the applicable rules promulgated by the Finance Director relating to petitions and hearings.

B. Time limit for filing petitions. Petitions shall be submitted to the Finance Director within thirty (30) days from the date of the assessment or decision to deny or reduce a refund claim. If a petition is not submitted within this time, the assessment or decision is final and no further review is available.

C. Notice of hearing. The Finance Director shall notify the taxpayer in writing of the time and place within the Town fixed for hearing.

D. Hearings. A hearing, if any, shall be conducted in accordance with applicable rules promulgated by the Finance Director relating to petitions and hearings.

E. Finance Director may appoint designee. A hearing, if any, shall be before the Finance Director or its designee, who is authorized to administer oaths, to take testimony, to hear arguments, and to issue all necessary and appropriate orders and decisions.

F. Burden of proof. The burden of proof that sales of lodging upon which refunds of taxes are claimed, or for which modifications or cancellations of assessments are sought, are exempt from or not subject to taxation under this Chapter shall be on the taxpayer and such proof shall be by a preponderance of evidence.

G. Final order or decision. The final order or decision of the Finance Director or its designee shall be in writing and notice thereof shall be mailed to the taxpayer forthwith.

3-5-19: REVIEW OF FINANCE DIRECTOR'S FINAL ORDER OR DECISION.

A. Should the taxpayer be aggrieved by a final order or decision of the Finance Director, the taxpayer may proceed to have same reviewed under Colorado Rules of Civil Procedure 106(a)(4) by the district court for the fifth judicial district of the state. The petition or complaint for review must be filed within thirty (30) days from the date of the final order or decision. Any party, including the Town, may appeal the final order or decision of the Finance Director and, also, the decision of the district court (or such other tribunal having jurisdiction), using all judicial, appellate, and extraordinary proceedings available.

B. Before filing a petition or complaint for review under Colorado Rules of Civil Procedure 106(a)(4), the taxpayer shall file with the Finance Director a bond in twice the amount of the taxes, interest and other charges audited and stated in the final order or decision of the Finance Director, with surety as is provided in other cases of appeal, or may deposit lawful money of the United States in the same manner as herein provided.

3-5-20: TAX LIEN.

A. The tax imposed by this Chapter, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens upon the goods, merchandise, furniture and fixtures, tools and equipment of any taxpayer, or used by any taxpayer in conducting his business under lease, title retaining contract or other contract arrangement, within the Town and shall take precedence on all such property over other liens or claims of whatsoever kind or nature and may be foreclosed by seizing under distraint warrant and selling so much of said goods, merchandise, furniture and fixtures, tools and equipment as may be necessary to discharge said lien.

B. The real or personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this section (1) if such property can reasonably be identified from the lease description and (2) if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease until its termination if the lease is filed or recorded, within ten (10) days after the execution of the lease, with either the executive director of the state department of revenue or the clerk and recorder of the Town. Where the lessor and lessee are blood relatives, relatives by law, or have twenty-five (25) percent or more common ownership, a lease between them shall

not be considered bona fide for the purpose of this section.

C. Any taxpayer who is in possession of property under the terms of a lease, which property is exempt from lien as provided in this section, may be required by the manager to make return of and pay over taxes collected at more frequent intervals than monthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

3-5-21: SALE UPON DISTRAINT:

A. Causes. The Finance Director may issue a warrant directed to the Summit County Sheriff, sometimes in this section referred to collectively as "agent," commanding the agent to distrain, seize and sell the goods, merchandise, furniture and fixtures, tools and equipment of, or used by, the taxpayer, except such personal property as is exempted from execution and sale by any statute of the United States, for the payment of the tax due together with penalties and interest accrued thereon and cost of execution, including thirty dollars (\$30.00) for every warrant issued under this section, upon the happening of any one (1) of the following:

1. When any deficiency in tax is not paid within thirty (30) days from the Finance Director's final decision thereon and no petition for review from such determination has been filed with the district court for the fifth judicial district within the period of time allowed by law for such review;
2. When any amount of tax, penalty or interest is not paid within thirty (30) days from the mailing or personal service of demand for payment thereof and no protest thereof has been filed with the Finance Director within said period; or
3. Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in this section.

B. Notices. The agent charged with the collection shall make or cause to be made an account of the property distrained, a copy of which, signed by the agent making such distraint, shall be served, by leaving it with the owner or possessor of the property or with some member of such person's family over the age of eighteen (18) years, or at the person's usual place of abode or, if the person is a business entity within the Town, with any officer, manager, accountant, bookkeeper, general agent, registered agent, or agent for process, together with a copy of said warrant stating the sum demanded. In lieu of the foregoing provisions of this subsection for serving said account and warrant, if the owner or possessor cannot be readily located, or has no dwelling or place of business within the Town, the account and warrant may be served by mailing by certified mail to the last known address of the owner or possessor. Said agent shall cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper of general circulation within the Town and the agent shall cause such notice to be publicly posted at the location of the property and place of sale, at the Denver courthouse, and in at least two (2) other places within the Town. The taxpayer and those having possession of, or of public record a security interest in, the property shall be notified of the time and place of sale either in person or by certified mail, or, if that is impractical, by first class mail. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of such notification, and notification by mail shall be presumed upon mailing.

C. Management of sale. Said sale may be adjourned from time to time by said agent if he deems it advisable but not for a time to exceed in all ninety (90) days from the date first fixed for the sale. When any property is advertised for sale under distraint as aforesaid, the agent making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure, storing the property and of advertising the sale, and if the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent conducting the sale may declare the same to be purchased by him for the Town. The property so purchased may be sold by the agent under such terms as the Finance Director may approve or declared to be surplus property subject to disposition by the Finance Director of general services. In any case of distraint for the payment of taxes, the property so distrained shall be restored to the owner or possessor if, prior to the sale, the amount due is paid together with the fees and other charges, or the property may be so redeemed before sale by any person having a legal or equitable interest in the property.

D. Certificate of title; return of surplus. In all cases of sale, the agent making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent to make such sale and conclusive evidence of the regularity of the proceedings in making the sale and shall transfer to the purchaser all right, title and interest

in and to the property sold. Any surplus remaining above the taxes, interest, penalties, costs and expenses of making the seizure and of advertising the sale shall be returned upon demand made within one (1) year from the sale to the owner. Surplus remaining at the end of one (1) year from the sale shall be deposited to the general fund.

E. Filing of notice of lien. Any agent to whom warrant has been issued may serve a notice of lien in such form as the Finance Director may prescribe with the person in possession of any personal property or rights to property, without regard to its use in the business of the taxpayer, belonging to the taxpayer or file said notice with the secretary of state and the clerk and recorder, and the service or filing of such notice shall operate to perfect a lien upon such personal property or rights to property from the date of such service or filing. The Finance Director may release said lien as to any part or all of the property or rights to property covered by any such lien upon such terms as he may deem proper.

F. Recurring distraint. If any taxpayer liable for the payment of any tax pursuant to this Chapter repeatedly fails, neglects, or refuses to pay said tax within the time required by this Chapter and the Finance Director has been required to issue distraint warrants to enforce the collection of the tax due from such taxpayer, the Finance Director is authorized to assess and collect the amount of the taxes due, together with all interest and penalties thereon provided by law, and also an additional penalty of one hundred dollars (\$100.00) each for the second and following distraint warrant regarding the taxpayer that is issued by the Finance Director pursuant to this Chapter.

G. When collection in jeopardy. If the Finance Director finds that collection of the tax will be jeopardized by delay, in his discretion, he may declare the taxable period immediately terminated, determine the tax, and issue notice and demand for payment thereof; and having done so, the tax shall be due and payable forthwith, and the Finance Director may proceed immediately to collect such tax by distraint, levy and sale or as otherwise provided in this section. Collection by seizure and sale may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the Finance Director. The taxpayer or other person entitled to notice under this Title may request a hearing in writing before the Finance Director regarding the jeopardy determination and the amount of the assessment. A request for hearing must be made within seven (7) days after the notice and demand for payment or distraint warrant is issued. The hearing shall be held within fifteen (15) days of the request. The hearing shall be informal and need not comply with the requirements of the applicable provisions of this Title, nor with the applicable rules and regulations promulgated by the Finance Director relating to hearings. The burden of proof shall be on the taxpayer or other person requesting the hearing, and such proof shall be by a preponderance of evidence. The Finance Director shall enter his decision within thirty (30) days after the hearing and shall furnish a copy to the taxpayer or other person requesting the hearing. If the taxpayer is aggrieved by the decision of the Finance Director, the taxpayer may seek review pursuant to the applicable provisions of this Title. A request for hearing under this section shall not stay collection proceedings unless such request is accompanied by a bond or other security as shall be satisfactory to the Finance Director.

3-5-22: RELEASE OF LIEN:

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

3-5-23: MANAGER MAY WAIVE PENALTY:

The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed as in this Chapter provided, and interest imposed in excess of one (1) percent each month or fraction thereof of the tax deficiency, from the date the tax is due until the date paid.

3-5-24: LICENSE AND TAX IN ADDITION TO ALL OTHER TAXES:

The tax imposed by this Chapter shall be in addition to all other taxes imposed by law, except as otherwise provided in this Chapter.

3-5-25: VIOLATIONS; EVASION OF COLLECTION OR PAYMENT OF TAX:

It shall be a violation of this Chapter for any vendor to refuse to make any return provided to be made in this Chapter, or to make any false or fraudulent return, or any false statement in any

return, or to fail or refuse to make payment to the Finance Director of any taxes collected or due the Town, or in any manner to evade the collection and payment of the tax, or any part thereof, imposed by this Chapter, or for any person or purchaser to fail or refuse to pay such tax or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax imposed by this Chapter. Any corporation making a false return or a return containing a false statement shall be guilty of a violation of this Chapter. Any person convicted of a violation of any provision of this Chapter shall be punished as provided in Section 1-4-1 of this Code.

CHAPTER 6 OPEN SPACE FUND

- 3-6-1: DEFINITIONS
- 3-6-2: OPEN SPACE FUND ESTABLISHED
- 3-6-3: OPEN SPACE PLAN

3-6-1: DEFINITIONS:

As used in this Chapter, the following words shall have the following meanings:

“Designated Revenues” means a sum equal to one-half (1/2) of one percent (1%) of the revenues received by the Town from the collection of the Town’s sales tax.

“Fund” means the Town of Breckenridge open space fund established by Section 3-6-2 of this Chapter.

“Open Space Plan” means a plan adopted from time to time by the Town council providing for the acquisition, improvement and maintenance of public open space for the use and benefit of the citizens of and visitors to the Town of Breckenridge.

3-6-2: OPEN SPACE FUND ESTABLISHED:

There is hereby established a special fund of the Town to be known as the Town of Breckenridge open space fund. Immediately upon receipt or collection thereof, the designated revenues shall be credited to said fund and used solely for the purpose of funding the Town’s “open space plan” as described in Section 3-6-3 of this Chapter. 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.

3-6-3: OPEN SPACE PLAN:

The Town council shall adopt by ordinance an open space plan. Such plan may be amended or revised from time to time by the council.

CHAPTER 7 PUBLIC BENEFITS FUND

- 3-7-1: DEFINITIONS
- 3-7-2: ESTABLISHED

3-7-1: DEFINITIONS:

As used in this Chapter, the following words shall have the following meanings:

“Fund” means the Town of Breckenridge public benefits fund established by Section 3-7-2 of this Chapter.

“Public Benefits Revenues” means monies which are specifically designated in an annexation agreement, development agreement or other document as “public benefit revenues” (or by some other similar designation). Public benefit revenues, when required by the Town, are for the purpose of providing special public benefits to the residents of the Town in connection with such annexation, or development agreement or other document. Public benefit revenues do not include annexation surcharges as described in an annexation agreement.

3-7-2: ESTABLISHED:

There is hereby established a special fund of the Town to be known as the Town of Breckenridge public benefits fund. Immediately upon receipt or collection of public benefits revenues, such revenues shall be credited to the fund. The monies in the fund may be used for any lawful purpose as determined from time to time by the Town council.

CHAPTER 8 MARKETING FUND

- 3-8-1: DEFINITIONS
- 3-8-2: FUNDING AND EXPENDITURES

3-8-1: DEFINITIONS:

As used in this Chapter the following words shall have the following meanings:

“Designated Revenues means

A. All revenues collected by the Town as a result of the elimination of the Town’s sales tax vendor’s fee as provided for in ordinance 26, series 1992;

B. All revenues collected by the Town as a result of the implementation and collection of the additional four-tenths of a percent (0.4%) accommodation tax as provided for in ordinance 27, series 1992;

C. All revenues collected by the Town as a result of the Town of Breckenridge “business and occupational license and tax ordinance”; and

D. All revenues collected by the Town from the one percent (1%) increase in the tax rate of the Town’s accommodation tax approved by the electors on November 2, 2010,

together with such additional funds, if any, that may be designated from time to time by the Town council for inclusion in the marketing fund.

“Marketing Fund” means the Town of Breckenridge marketing fund described in Section 3-8-2 of this Chapter.

“Marketing Plan” means a plan adopted from time to time by the Town council for the marketing, advertising and promotion of the Town and its environs as a year round resort, as well as for the marketing, advertising and promotion of activities and events which are beneficial to the economic vitality of the community. The marketing plan may include public relations activities, promotional activities, direct advertising, and financial support for certain events and activities recommended by the plan.

3-8-2: FUNDING AND EXPENDITURES:

On and after January 1, 2011, immediately upon receipt or collection thereof by the Town the designated funds shall be credited to the marketing fund that was previously established by the Town. The monies in the marketing fund shall be expended by the Town council only to implement the marketing plan. The amounts expended from the marketing fund

CHAPTER 9 MARIJUANA EXCISE TAX

SECTION:

- 3-9-1: DEFINITIONS
- 3-9-2: TAX IMPOSED
- 3-9-3: COLLECTION AND ENFORCEMENT PROCEDURES
- 3-9-4: USE OF COLLECTED TAX REVENUES
- 3-9-5: RULES AND REGULATIONS

3-9-1: DEFINITIONS:

A. The definitions contained in the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, the State administrative regulations adopted pursuant to such statutes, and the Town’s medical marijuana and retail marijuana licensing ordinances, each as amended

from time to time, are incorporated into this Chapter by reference.

B. As used in this Chapter the following words shall have the following meanings:

“Colorado Medical Marijuana Code” means Article 11 of Title 44, C.R.S., as amended from time to time.

“Colorado Retail Marijuana Code” means Article 12 of Title 44, C.R.S., as amended from time to time.

“Designated Revenues” means all of the revenues received by the Town from the collection of the Town’s Marijuana Excise Tax imposed by Section 3-9-2 of this Chapter.

“Lawful Sale Of Marijuana” includes all sales within the Town of: 1) medical marijuana and medical marijuana infused products by persons licensed pursuant to the Colorado Medical Marijuana Code and applicable Town ordinances; 2) retail marijuana and retail marijuana products by persons licensed pursuant to the Colorado Retail Marijuana Code and applicable Town ordinances; and 3) medical marijuana, medical marijuana infused products, retail marijuana, and retail marijuana products by persons concurrently licensed pursuant to the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, and applicable Town ordinances.

“Medical Marijuana” has the meaning provided in Section 44-11-104, C.R.S., which is part of the Colorado Medical Marijuana Code.

“Medical Marijuana Infused Product” has the meaning provided in Section 44-11-104, C.R.S., which is part of the Colorado Medical Marijuana Code.

“Retail Marijuana” has the meaning provided in Section 44-12-103, C.R.S., which is part of the Colorado Retail Marijuana Code.

“Retail Marijuana Product” has the meaning provided in Section 44-12-103, C.R.S., which is part of the Colorado Retail Marijuana Code.

3-9-2: TAX IMPOSED:

A tax is levied and shall be collected upon the lawful sale of marijuana within the Town at the rate of five percent (5.0%) of the price paid by the purchaser thereof rounded off to the nearest penny. The tax shall be collected by the licensed person and paid to the Town. The tax imposed by this Section is in addition to, and not in lieu of, the Sales Tax owed to the Town in connection with the sale of medical marijuana and retail marijuana.

3-9-3: COLLECTION AND ENFORCEMENT PROCEDURES:

Except for those provisions that by their terms cannot apply, the procedures for the collection and enforcement of the Town’s sales tax as provided in Chapter 2 of this Title shall apply to the collection and enforcement of the marijuana excise tax imposed by this Chapter.

3-9-4: USE OF COLLECTED TAX REVENUES:

The designated revenues shall be used to pay or reimburse the Town for direct and indirect costs incurred for: a) adequate training, enforcement, and administration of the Town’s medical and retail marijuana regulations not otherwise covered by the fees collected by the Town under the Colorado medical marijuana code, the Colorado retail marijuana code, and the Town’s ordinances, b) monies expended by the Town in connection with drug or drug and alcohol prevention programs and facilities (including, but not limited to, expenditures for the local detoxification center), and for c) other general purposes of the Town

**CHAPTER 10
LIFT TICKET TAX**

- 3-10-1: PURPOSE; AGREEMENTS AUTHORIZED
- 3-10-2: DEFINITIONS
- 3-10-3: IMPOSITION OF TAX
- 3-10-4: TAX REVENUES TO BE DEPOSITED INTO PARKING AND TRANSPORTATION FUND

- 3-10-5: EXEMPTIONS; BURDEN OF PROOF
- 3-10-6: PAYMENT OF TAX TO SKI AREA OPERATOR
- 3-10-7: COLLECTION OF TAX BY SKI AREA OPERATOR
- 3-10-8: REMITTANCE OF COLLECTED TAX
- 3-10-9: PRESERVATION OF RETURNS AND OTHER RECORDS; CONFIDENTIALITY
- 3-10-10: RECORDS AND ACCOUNTS TO BE KEPT
- 3-10-11: AUDIT, INVESTIGATION, COLLECTION, AND ENFORCEMENT PROCEDURES
- 3-10-12: TAX IN ADDITION TO ALL OTHER TAXES
- 3-10-13: ADMINISTRATION BY FINANCE DIRECTOR; RULES AND REGULATIONS
- 3-10-14: AMENDMENTS

3-10-1: PURPOSE; AGREEMENTS AUTHORIZED:

A. The purpose of this Chapter is to impose an excise tax of four and one-half percent (4.5%) on the price paid for each single and multiday ski lift ticket purchased either within the Town or elsewhere only for use at a ski area which has one or more ski lifts located in whole or in part within the Town during the annual period between November 1 and April 30. Admission to such a ski area pursuant to such a single or multiday ski lift ticket is a taxable privilege. It is the further purpose of this Chapter to require a ski area operator to collect such lift ticket tax for the Town, all as provided in this Chapter.

B. The Town is authorized to enter into one or more agreements with any ski area operator related to the ski area operator's collection of such lift ticket tax for the Town.

3-10-2: DEFINITIONS:

A. The following words and phrases, when used in this Chapter, shall have the following meanings:

DESIGNATED REVENUES means all revenues collected by the Town pursuant to this Chapter.

FINANCE DIRECTOR: The director of finance and information technology of the Town, or such person's designee.

LIFT TICKET: A right to use a ski lift at a ski area.

LOCAL SKI AREA: A ski area which has one or more ski lifts located in whole or in part within the Town.

PARKING AND TRANSPORTATION FUND: The Town of Breckenridge parking and transportation fund described in Section 3-11-2 of this Title.

RECORDS: Any books, accounts, papers, memoranda, or other records of a ski area operator for a local ski area, regardless of their form or format, that is or may be relevant to determining the amount of the tax due from such ski area operator.

SEASON PASS: All lift ticket products that provide access to a local ski area for the majority of the ski season.

SKI AREA: The area accessed by ski lifts designated and under the control of a single ski area operator.

SKI AREA OPERATOR: Any business entity having operational responsibility from time to time for a local ski area.

TAX: The tax payable to the Town pursuant to this Chapter.

TAXABLE LIFT TICKET: A lift ticket purchased for use only at a local ski area and only during the annual period between November 1 and the following April 30.

B. Terms not defined in this Chapter shall be given their common meaning.

3-10-3: IMPOSITION OF TAX:

A. On and after one minute after twelve o'clock (12:01) A.M., July 1, 2016, there is

levied and there shall be paid by each purchaser of a taxable lift ticket an excise tax as described in this Chapter. Such tax is due and shall be paid for the exercise of a taxable privilege.

B. The amount of the tax hereby levied is four and one-half percent (4.5%) of the actual purchase price of each taxable lift ticket, whether purchased within the Town or elsewhere; provided that a tax derived from calculations resulting in a fraction of a cent being a part of the tax shall be increased or rounded to the next whole cent.

3-10-4: TAX REVENUES TO BE DEPOSITED INTO PARKING AND TRANSPORTATION FUND:

Immediately upon receipt or collection, the designated revenues shall be credited to the parking and transportation fund and used as provided in Section 3-11-3 of this Title.

3-10-5: EXEMPTIONS; BURDEN OF PROOF:

A. The tax imposed by this Chapter does not apply to:

1. Season passes;
2. Any lift ticket not specifically sold to provide the right of entry solely to a local ski area (including, by way of example, any lift ticket which provides the right of entry to one or more ski areas located outside of the Town as well as a local ski area);
3. Any passes or lift tickets sold for summer activities; or
4. Any other items or activities besides those lift tickets intended for ski lift use solely at a local ski area between November 1 and April 30.

B. The burden of proving that any transaction is not subject to the tax implemented by this Chapter shall be upon the person making such assertion.

3-10-6: PAYMENT OF TAX TO SKI AREA OPERATOR:

The tax imposed by this Chapter shall be paid by the purchaser of the taxable lift ticket to the ski area operator that sold the taxable lift ticket.

3-10-7: COLLECTION OF TAX BY SKI AREA OPERATOR:

A. The tax imposed by this Chapter shall be collected from the purchaser of the taxable lift ticket by the ski area operator that sold the taxable lift ticket. In collecting the tax the ski area operator acts as a collection agent for the Town. Each ski area operator shall be liable and responsible for the collection of the tax as provided in this Chapter.

B. The tax imposed by this Chapter shall be added to the purchase price, charge, or other consideration paid for the taxable privilege of admission to a local ski area arising from the purchase of a taxable lift ticket.

C. A credit shall be allowed against the amount due to the Town under this Chapter for any tax that would be due for an unused single day taxable lift ticket, or any unused portion of a multiday taxable lift ticket, the purchase price of which has been refunded by the ski area operator to the purchaser of the taxable lift ticket.

D. Nothing in this Chapter shall be read as limiting in any way or at any time a ski area operator's sole and absolute discretion to alter the terms, conditions, or price of any lift ticket, to create a new type of lift ticket, or to add or remove access to one or more ski areas located outside of the Town without regard to any resulting change to the applicability of the tax to such a lift ticket; provided, however, that any such ski area operator shall remain responsible for the collection and remittance of the tax on any and all taxable lift tickets.

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.

3-10-9: PRESERVATION OF RETURNS AND OTHER RECORDS; CONFIDENTIALITY:

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.

B. Chapter 7 of this Title, concerning confidentiality of tax returns and information, applies to tax returns and information provided to the Town pursuant to this Chapter; provided, however, that the designated revenues credited to the parking and transportation fund described in Section 3-11-2 of this Title shall not be confidential information and may be disclosed to the public.

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.

3-10-11: AUDIT, INVESTIGATION, COLLECTION, AND ENFORCEMENT PROCEDURES:

Except for those provisions that by their terms cannot apply, the procedures for audit, investigation, and enforcement of the Town's sales tax as provided in Chapter 1 of this Title shall apply to the audit, investigation, and enforcement of the tax imposed by this Chapter.

3-10-12: TAX IN ADDITION TO ALL OTHER TAXES:

The tax imposed by this Chapter shall be in addition to all other taxes imposed by law.

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.

3-10-14: AMENDMENTS:

This Chapter may be altered, amended, or repealed from time to time in the manner provided by law.

**CHAPTER 11
PARKING AND TRANSPORTATION FUND**

- 3-11-1: DEFINITIONS
- 3-11-2: FUND ESTABLISHED
- 3-11-3: USE OF DESIGNATED REVENUES
- 3-11-4: AMENDMENTS

3-11-1: DEFINITIONS:

As used in this Chapter the following words shall have the following meanings:

DESIGNATED REVENUES: All revenues collected by the Town from the lift ticket tax adopted by Chapter 10 of this Title.

3-11-2: FUND ESTABLISHED:

There is hereby established a special fund of the Town to be known as the Town of Breckenridge parking and transportation fund. Immediately upon receipt or collection, the designated revenues shall be credited to the parking and transportation fund. The monies in the parking and transportation fund shall be expended by the Town council only for those purposes authorized in Section 3-11-3 of this Chapter. The amounts expended from the parking and transportation fund shall be determined from time to time by the Town council.

3-11-3: USE OF DESIGNATED REVENUES:

The designated revenues shall be used only by the Town to pay or reimburse the Town for:

A. The direct and indirect costs of operating the Town's transit system, including, without limitation, labor, rolling stock, and other costs associated therewith;

B. The direct and indirect costs of providing public parking within the Town, including, without limitation, land acquisition costs, construction, and maintenance; and

C. Other direct and indirect costs incurred by the Town in enhancing the movement of persons and vehicles within the Town, including, without limitation, the cost of constructing and maintaining crosswalks and roundabouts.

3-11-4: AMENDMENTS:

This Chapter may be altered, amended, or repealed from time to time in the manner provided by law.

**CHAPTER 12
CONFIDENTIALITY OF TAX RETURNS**

- 3-12-1: CONFIDENTIALITY REQUIRED
- 3-12-2: EXCEPTION; TAXPAYER
- 3-12-3: EXCEPTION; STATISTICS
- 3-12-4: EXCEPTION; TOWN ATTORNEY, TOWN EMPLOYEES AND ENFORCEMENT PERSONNEL
- 3-12-5: WAIVER OF CONFIDENTIALITY

3-12-1: CONFIDENTIALITY REQUIRED:

Except in accordance with judicial order or as otherwise provided by law, no Town officer, employee, or agent of the Town shall divulge or make known in any way any information obtained from any investigation conducted by the Town or its agents or disclosed in any document, report, or return filed in connection with any of the taxes covered by this Title. The Town officers or employees charged with the custody of such documents, reports, investigations, and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Town in an action or proceeding under the provisions of any such taxing ordinances to which the Town is a party or on behalf of any party to any action or proceeding under the provisions of such taxing ordinances when the report of facts shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding and no more.

3-12-2: EXCEPTION; TAXPAYER:

Nothing in Section 3-12-1 of this Chapter shall be construed to prohibit the delivery to a person or such person's duly authorized representative of a copy of any return or report filed in connection with such person's tax. Such copies may be certified by the Town clerk, and when so certified shall be evidence equally with and in like manner as the originals and may be received by any court as evidence of the contents of the originals.

3-12-3: EXCEPTION; STATISTICS:

Nothing in Section 3-12-1 of this Chapter shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or tax returns and the items thereof.

3-12-4: EXCEPTION; TOWN ATTORNEY, TOWN EMPLOYEES AND ENFORCEMENT PERSONNEL:

A. Nothing in Section 3-12-1 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 Director to grant similar privileges to the Town and if such information is to be used by the jurisdiction only for tax purposes.

3-12-5: WAIVER OF CONFIDENTIALITY:

The person who filed a tax report or return with the Town may waive the confidentiality provided by Section 3-12-1 of this Chapter and authorize the disclosure or use of such tax report or return for any purpose. Such waiver shall be in writing and shall be signed by the person who filed the tax report or return.

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. If any one or more of the provisions of this ordinance, or any application

hereof, shall be finally declared by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, then such provision shall be stricken from this ordinance; the portion of this ordinance that was stricken shall be replaced with the version of the ordinance in effect immediately prior to the adoption of this ordinance; and the validity, legality, and enforceability of the remaining provisions of this ordinance shall not in any way be affected or impaired thereby. If the entirety of this ordinance, or any application hereof, shall be finally declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, then Title 3 of the Breckenridge Town Code as it existed immediately prior to the adoption of this ordinance shall automatically be restored in full.

Section 5. 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 6. This ordinance shall be published as provided by Section 5.9 of the Breckenridge Town Charter and shall become effective on November 16, 2021.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 28th day of September, 2021.

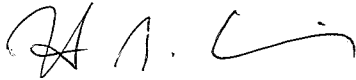
This ordinance was published in full on the Town of Breckenridge website on September 29, September 30, October 1, October 2 and October 3, 2021.

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

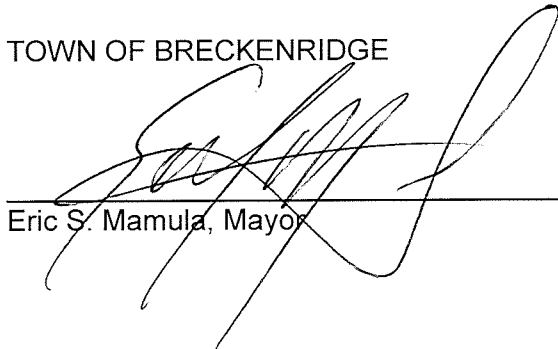
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 12th day of October, 2021. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

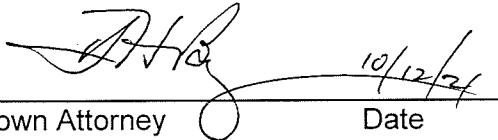


Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

10/12/21
Date

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