

ORDINANCE NO. 35

Series 2021

AN ORDINANCE AMENDING CHAPTER 1, TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE ANNUAL ACCOMMODATION UNIT REGULATORY FEE

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

Section 1. 4-1-2: DEFINITIONS

PRIMARY RESIDENCE: Primary residence means the place in which a person's habitation is fixed for the term of the license and is the person's usual place of return. A person can have only one (1) primary residence.

That section 4-1-4-1 of the Breckenridge Town Code shall be amended to read as follows:

Section 2. 4-1-4-1: ANNUAL ACCOMMODATION UNIT REGULATORY FEE:

A. Legislative intent and findings.

1. It is the purpose of this section to protect the public health, safety, and welfare by establishing a comprehensive accommodation unit regulatory scheme that will strike an equitable balance between the short term rental industry and the local community.

2. The regulatory fee will benefit accommodation unit licensees by supporting housing policies and programs for the local workforce that supports industries that create the World Class resort experience.

3. The regulatory fee will help address the secondary impacts caused by the short term rental industry by protecting the character of the local community and Town neighborhoods where accommodation units are located.

4. To ensure that the amount of the fee bears a reasonable relationship to the direct and indirect costs of implementing the Town's comprehensive regulatory program established by this Chapter, the administration retained an expert consulting firm to conduct a fee study and establish the reasonable amount of the fee.

5. The fee established by this section is not designed to raise revenues to defray the general expenses of Town government, but rather is a charge imposed for the purpose of defraying some of the costs of the particular Town services and programs described in subsection D of this section.

6. Consistent with *Colorado Union of Taxpayers Foundation v. City of Aspen*, 418 P.3d 506 (2018), that a charge is not a tax if the primary purpose of the charge is not to raise revenue for general governmental purposes but is instead to defray some of the costs of regulating an activity under a comprehensive regulatory scheme, the fee imposed by the Town under this section is collected from the short-term rental licensees for the primary purpose of defraying the costs of housing policies and programs for the local workforce essential to the Tourism economy that benefits the short term rental licensees.

B. Establishment of accommodation unit regulatory fee.

1. Commencing with licenses for accommodation units issued on or after January 1, 2022 licensing period there shall be added to each accommodation unit license issued by the Finance Director pursuant to this chapter, and there shall be paid by the licensee of such license, an annual accommodation unit fee. The amount of the annual accommodation unit fee for 2022 shall be \$400.00 per studio and/or per bedroom in any accommodation unit; provided, however, the regulatory fee established in this section shall not be imposed where the accommodation unit is the applicant's primary residence and is rented out for a period of time not to exceed 21 days out of the year.

2. Beginning with the Town's 2023 fiscal year, the amount of the accommodation unit fee described in this section shall be fixed by the Town Council as part of its annual budget process in an amount not to exceed \$756.00. Annually at the time of the budget process, the Director shall submit for review by Council a report confirming that the fee amount from the prior year is adequately and reasonably covering the direct and indirect costs of the regulatory program. 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.

3. No accommodation unit license shall be issued until the applicable accommodation unit fee has been received by the Finance Director.

C. Due date of fee. The accommodation unit fee shall be due and payable to the Town at the same time the tax required by this section 4-1-4 is due per 4-1-11 and is delinquent if it remains unpaid for thirty (30) days thereafter. Failure to pay the fee in accordance with this section will result in the non-issuance or non-renewal of a license.

D. Regulatory fee fund.

1. Administration of the fund.

a. All sums of money collected by the Town per this section are intended exclusively for use as outlined in section D.1.2 below.

b. The fee shall be administered by the Finance Director. The Finance Director is authorized to adopt administrative rules pursuant to Chapter 18 of Title 1 of this Code to implement this Chapter, prescribe forms and provide methods of payment and collection, and otherwise implement requirements of this Chapter.

c. The fees collected in accordance with this section shall be accounted for by the Finance Director in such a manner that the Finance Director can separately track the collection and expenditure of such fees.

d. The fees collected in accordance with this section shall not be used for general municipal or governmental purposes or spending. Nor shall the fund ever be transferred to or become part of the Town's general fund.

e. The Finance Director shall establish a method for separately accounting for all of the accommodation unit regulatory fees collected by the Town pursuant to this section, and the expenditure of such fees.

2. Purpose and use of the regulatory fees. Funds collected by the Town from the accommodation unit fee established by this section shall be used to defray the reasonable direct and indirect costs of the following:

a. the Town's housing policies and programs, including buy downs, lease to locals, acquisition of deed restricted units, and/or construction of new units.

b. to address the secondary impacts caused by the short term rental industry by protecting the character of the local community and Town neighborhoods where accommodation units are located including but not limited to lack of parking, loud noise, and increased trash associated with the higher density use; and,

c. to defray the costs to the Town, including but not limited to, for staff and personnel required for the administration and enforcement of the regulatory program.

Section 3. That section 4-1-8-1(A)(9)(a) of the Breckenridge Town Code shall be amended to read as follows:

4-1-8-1: SPECIAL CONDITIONS OF LICENSE - ALL ACCOMMODATION UNITS:

(A)(9)(a) The occupancy limit for all accommodation units except studios shall be two (2) persons per bedroom plus four (4) additional persons. The occupancy limit for studio accommodation units shall be a total of four (4) persons. Condominiums, condominium/hotels, and hotels/lodgings/inns as defined in section 9-1-5 are exempt from the occupancy limits of this section.

Section 4. That section 4-1-8-3(A)(3)(b) of the Breckenridge Town Code shall be amended to read as follows:

4-1-8-3 SPECIAL CONDITIONS OF LICENSE – ADVERTISEMENT OF AN ACCOMMODATION UNIT:

3. An advertisement offering to rent an accommodation unit must prominently display:
 - a. The Town's business and occupational license number in the advertisement as, "Breckenridge Business License No. [insert number]"; and
 - b. The occupancy limit for the accommodation unit as, "Maximum overnight occupancy [insert number]."

The failure to prominently display the required information in any advertisement of accommodation shall be a violation of this section. Condominiums, condominium/hotels, and hotels/lodgings/inns as defined in section 9-1-5 are exempt from the requirements of this section.

Section 5. That section 4-1-10-1 of the Breckenridge Town Code shall be amended to read as follows:

4-1-10-1: SUSPENSION OR REVOCATION OF LICENSES; PAYMENT OF FINE IN LIEU OF SUSPENSION:

J. If the Hearing Officer determines after a hearing that cause exists for a licensee's failure to pay the regulatory fee based on improperly declaring an exemption under section 4-1-4-1 B. 1., the Hearing Officer shall impose a sanction of an automatic revocation of the license.

K. If the Hearing Officer suspends or revokes a license, the aggrieved licensee may appeal said suspension or revocation decision of the Hearing Officer to the Town Council by filing a letter of appeal with the Hearing Officer within twenty (20) days after the date of mailing of the Hearing Officer's order of suspension or revocation. The Hearing Officer's suspension or revocation of the accommodation unit license shall be stayed until the appeal has been determined by the Town Council. The Town Council shall conduct a de novo hearing on the appeal at a regular or special Town Council meeting held within thirty (30) days of date of the

filing of the letter of appeal, unless the licensee agrees to a longer time. Notice of the de novo hearing shall be given to the licensee by the Hearing Officer at least twenty (20) days before the hearing. The burden of proof in the appeal shall be on the Town. At the appeal, the licensee may appear with or without counsel and present such evidence as may be relevant. The strict rules of evidence shall not apply to the de novo hearing. If the Town Council finds by a preponderance of the evidence that grounds for suspension or revocation of the accommodation unit license exist as specified in this chapter, the Town Council may order the license suspended or revoked; provided, however, that if the license is for an accommodation unit the Town Council shall adhere to the provisions of subsection D of this section. If the Town Council finds by a preponderance of the evidence that no grounds exist for the suspension or revocation of the accommodation unit license, the appeal shall be sustained, and the Hearing Officer's order of suspension or revocation shall be set aside. The Town Council's decision shall be final, subject to the right of the licensee to contest the matter in an appropriate court action commenced under rule 106(a)(4) of the Colorado Rules of Civil Procedure. For purposes of determining the time limit for the commencement of an action under rule 106(a)(4) of the Colorado Rules of Civil Procedure, the Town Council's decision shall be deemed to be final upon the Council's issuance of a written order of suspension or revocation of the accommodation unit license.

L. A person whose accommodation unit license has been revoked under this section may not apply for a new license for the same premises a period of one year from the date the revocation took effect.

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

Section 6. That section 4-1-4 of the Breckenridge Town Code shall be amended to read as follows:

4-1-4: ANNUAL LICENSE TAX:

An annual Business and Occupational License Tax is hereby levied upon every person doing business within the Town according to the following schedule:

A. Accommodation Units: The person owning such accommodation unit shall pay annual tax of:

Type Of Unit	Tax
Studio unit	\$ 75.00
1 bedroom unit	100.00
2 bedroom unit	125.00
3 bedroom unit	150.00
4 or more bedroom unit	175.00

Each applicant shall advise the Town, by affidavit, under oath, at the time of application hereunder, of the number of accommodation units applicant had for the prior year and the number of such units applicant intends to have for the present year. The tax payable under this subsection shall be based upon the number of accommodation units set forth for the current year in such affidavit.

B. In Home Business Occupation: The owner of each "in home occupation" as defined in this chapter shall pay an annual tax of fifty dollars (\$50.00) per annum; provided, however, that no annual tax shall be required to be paid by a primary caregiver.

C. Lodge: In addition to the tax required by subsection E of this section, each owner of a "lodge" as defined herein shall pay one hundred dollars (\$100.00) per rental unit or fifty dollars (\$50.00) per bedroom per annum, whichever is less.

D. Vendors: Each regular vendor shall pay one hundred dollars (\$100.00) per annum. Each seasonal vendor shall pay fifty dollars (\$50.00) per annum.

E. In Town Business: All in Town businesses shall pay an annual Business and Occupational License Tax levy as follows:

Section 7. 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 8. The Town Council finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 9. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 9th day of November, 2021.

This ordinance was published in full on the Town of Breckenridge website on November 14, November 15, November 16, November 17 and November 18, 2021.

A public hearing on this ordinance was held on November 23, 2021.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 23rd day of November, 2021. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:




Helen Cospolich, CMC, Town Clerk

TOWN OF BRECKENRIDGE



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

12.10.21

Date

This Ordinance was published on the Town of Breckenridge website on November 24, November 25, November 26, November 27 and November 28, 2021. This ordinance shall become effective on December 28, 2021.