

ORDINANCE NO. 12

Series 2022

AN ORDINANCE AMENDING AND RELOCATING RETAIL TOBACCO  
LICENSING

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

**Section 1.** That Chapter 5 entitled "TEMPORARY PERMITS" is hereby repealed in its entirety and replaced with a new Chapter 5 entitled "RETAIL TOBACCO LICENSING" to read as follows:

**CHAPTER 5**  
**RETAIL TOBACCO BUSINESS LICENSING**

**4-5-1: SHORT TITLE:**

This Chapter shall be known and may be cited as the "Town Of Breckenridge Retail Tobacco Business Licensing Ordinance."

**4-5-2: AUTHORITY:**

The Town Council finds, determines, and declares that it has the power to adopt this Chapter pursuant to:

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

**4-5-3: LEGISLATIVE INTENT:**

The intent and purpose of this Chapter is to regulate the occupation or privilege of selling tobacco products within the Town so as to protect the public health and safety.

**4-5-4: DEFINITIONS:**

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

**APPLICANT:** A person who has submitted an application for license pursuant to this Chapter.

**ADULT-ONLY FACILITY:** A physical location where each person attempting to enter the premises is required to present the person's photographic government issued identification verifying that the person is at least the Minimum Legal Sales Age For Tobacco Products prior to entry.

**APPLICATION:** An application for license submitted pursuant to this Chapter.

**CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT** A product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or

Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an electronic cigarette, cigar, cigarillo, or pipe. "Cigarette, tobacco product, or nicotine product" does not mean a product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.

DAY: A calendar day, unless otherwise indicated.

DISTRIBUTOR: A person who sells or distributes cigarettes, tobacco products, or nicotine products to licensed retailers in this state. "Distributor" includes a "distributor" or "distributing subcontractor" as those terms are defined in C.R.S. § 39-28.5-101

ELECTRONIC SMOKING DEVICE or "ESD" Any product that contains or delivers nicotine or any other substance intended for human consumption and that can be used by a person to enable the inhalation of vapor or aerosol from the product and any similar product or device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor. ESDs do not include:

1. A humidifier or similar device that emits only water vapor; or
2. An inhaler, nebulizer, or vaporizer that is approved by the federal food and drug administration for the delivery of medication.

GOOD CAUSE (for the purpose of refusing or denying a license renewal under this Chapter):

Means:

1. The licensee has violated, does not meet, or has failed to comply with: (a) any of the terms, conditions, or provisions of this Chapter; or (b) any rule and regulation promulgated by the Town Clerk pursuant to this Chapter; or
2. The licensee has failed to comply with: (a) any of the terms and conditions of its license including, but not limited to, any special terms or conditions that were placed on its license at the time the license was issued or were subsequently modified by the Town Clerk pursuant to Section 4-5-11B, or (b) any special condition that was placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings.

LICENSED PREMISES: The physical location for which a license is issued pursuant to this Chapter.

LICENSEE: The person to whom a license has been issued pursuant to this Chapter.

LOCAL LICENSING AUTHORITY: The Liquor and Marijuana Licensing Authority referred interchangeably in this Chapter as the "LMLA" or licensing authority.

MINOR: A person under twenty-one (21) years of age.

NEW RETAIL LOCATION: A retail location at which cigarettes, tobacco products, or nicotine products were not sold before July 1, 2021 and includes any retail location transferred to a new owner after the July 1, 2021 the new owner need not comply with distance requirements.

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

POLICE CHIEF: The Police Chief of the Town, or the Police Chief designee authorized to act pursuant to Section 1-7-2 of this Code.

RETAILER: The owner or operator of a business of any kind at a specific location that sells cigarettes, tobacco products, or nicotine products.

SCHOOL : A public, parochial, or nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one through twelve.

STATE LICENSE means a license issued by the Division in accordance with C.R.S. 44-7-104.5.

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

TOWN CLERK: The Town Clerk of the Town, or the Town Clerk's designee authorized to act pursuant to Section 1-7-2 of this Code.

TOWN MANAGER: The Town Manager of the Town, or the Town Manager's designee authorized to act pursuant to Section 1-7-2 of this Code.

WHOLESALER a person engaged in the wholesale distribution of cigarettes, tobacco products, or nicotine products and includes a "wholesaler" and "wholesale subcontractor" as those terms are defined in C.R.S. § 39-28-101.

#### **4-5-5: LICENSE REQUIRED.**

A. No person shall conduct or carry on a retail tobacco business within the Town without a valid license issued by the licensing authority pursuant to this Chapter.

B. A separate license is required for each retail location in the Town where any tobacco product is sold at retail.

C. No license shall be issued pursuant to this Chapter to any person under twenty one (21) years of age at the time of the submission of an application.

D. New Retail Locations applying for a license after July 1, 2021 shall not be within 500 feet of a school. The distance between the new retail location and the school is measured from the nearest property line of land used for school purposes to the nearest portion of the building where cigarettes, tobacco products, or nicotine products will be sold, using a route of direct pedestrian access.

#### **4-5-6: APPLICATION FOR LICENSE:**

A. A person seeking to obtain a license pursuant to this Chapter shall file an application with the Town Clerk. The form of the application shall be provided by the Town Clerk.

B. A license issued pursuant to this Chapter does not eliminate the need for the licensee to obtain other required Town licenses related to the operation of the licensee's business, including, without limitation:

1. A Town sales tax license; and
2. A Town Business and Occupational Tax License.

#### **4-5-7: NONREFUNDABLE APPLICATION FEE:**

An applicant shall pay to the Town Clerk a nonrefundable application fee when the application is filed. The purpose of the fee is to cover the Town's cost of administration of this Chapter, licensee education, inspections of licensed premises, regular compliance checks, documentation of violations (database management), and prosecutions of violations of licenses. The amount of the application fee and the annual license renewal fee shall be fixed by the Town Council as part of its annual budget process. Once paid, an application fee is non-refundable except as may be required by law.

#### **4-5-8: TOWN CLERK'S REVIEW OF APPLICATION:**

A. Upon receipt of a properly completed application, together with all information required in connection therewith and the payment of the application fee, the Town Clerk shall transmit copies of the application to:

1. The Police Chief; and

2. Any other person or agency that the Town Clerk determines should properly investigate and comment upon the application.

B. Within twenty (20) days of receipt of a completed application the Police Chief and those referral agencies described in subsection A of this Section shall provide the Town Clerk with comments concerning the application.

C. If the Town Clerk requests the applicant to provide additional information that the Town Clerk reasonably determines to be necessary in connection with the investigation and review of the application, the applicant shall provide such information within five (5) days of the Town Clerk's request, unless the Town Clerk agrees to a longer time period.

#### **4-5-9: DECISION BY LICENSING AUTHORITY:**

A. The licensing authority shall conditionally approve or deny an application within thirty (30) days of the receipt of a completed application unless, by written notice to the applicant.

B. The licensing authority shall issue a license under this Chapter when, from a consideration of the application, and such other relevant information as may otherwise be obtained, the licensing authority determines that:

1. The application (including any required attachments and submissions) is complete and signed by the applicant.

2. The applicant has paid the application fee;

3. The application does not contain a material falsehood or misrepresentation; and

4. The granting of the application will not endanger public health or safety.

C. The licensing authority shall deny an application for a license under this Chapter if the licensing authority determines that:

1. Information contained in the application, or supplemental information provided by the applicant, is found to be false in any material respect;

2. The applicant has had a license issued under this Chapter revoked within the two (2) years immediately preceding the filing of the application, or the applicant owned a fifty percent (50%) or greater interest in any business entity that has had a license issued under this Chapter revoked within the two (2) years immediately preceding the filing of the application;

3. The applicant is currently indebted to the Town for any lawfully assessed tax or fee; or

4. The granting of the application will endanger public health or safety.

D. If the application is denied, the licensing authority shall clearly set forth in writing the grounds for denial.

E. If the application is conditionally approved, the licensing authority shall clearly set forth in writing the conditions of approval.

#### **4-5-10: STANDARD CONDITIONS OF LICENSE:**

A. A retailer shall not sell or permit the sale of cigarettes, tobacco products, or nicotine products to person under 21 years of age; except that it is not a violation if the retailer establishes that the person selling the cigarette, tobacco product, or nicotine product was presented with and reasonably relied upon a valid government-issued photographic identification, that identified the person purchasing the cigarette, tobacco product, or nicotine product as being twenty one years of age or older.

B. A retailer shall not permit a person under eighteen years of age to sell or participate in the sale of cigarettes, tobacco products, or nicotine products. This subsection does not prohibit an employee of a retailer who is eighteen years of age or older but under twenty-one years of age from handling or otherwise having any contact with cigarettes, tobacco products, or nicotine products that are offered for sale at the retailer's business.

C. No retailer shall sell or offer to sell individual cigarettes, or any pack or container of cigarettes containing fewer than twenty cigarettes, or roll-your-own tobacco in any package containing less than 0.60 ounces of tobacco.

D. A retailer shall not advertise an electronic smoking device product in a manner that is visible from outside the retail location at which the product is offered for sale.

E. A retailer shall not sell or offer to sell any cigarettes, tobacco products, or nicotine products by use of a vending machine or other coin-operated machine; except that cigarettes may be sold at retail through vending machines only in an age-restricted area of a licensed gaming establishment, as defined in section 44-30-103 (18).

F. A retailer shall not engage in the delivery of tobacco products.

G. A retailer shall require an individual who seeks to purchase cigarettes, tobacco products, or nicotine products and who appears to be under fifty years of age to present to the retailer a valid government-issued photographic identification at the time of purchase.

H. Any person who sells or offers to sell cigarettes, tobacco products, or nicotine products shall display the license and the below warning sign in a prominent place in the building and on any vending or coin-operated machine at all times. Such sign must have a minimum height of three inches and a width of six inches, and must read as follows:

**WARNING**

IT IS ILLEGAL TO SELL CIGARETTES, TOBACCO PRODUCTS, OR  
NICOTINE PRODUCTS TO ANY PERSON UNDER TWENTY-ONE YEARS OF  
AGE. STATE LAW REQUIRES THAT, TO PURCHASE CIGARETTES,  
TOBACCO PRODUCTS, OR NICOTINE PRODUCTS AT THIS RETAIL  
LOCATION, A PERSON MUST PRESENT A VALID GOVERNMENT-ISSUED  
PHOTOGRAPHIC IDENTIFICATION AT THE TIME OF PURCHASE IF THE  
PERSON APPEARS TO BE UNDER FIFTY YEARS OF AGE.

I. Nothing in this section affects federal laws concerning cigarettes, tobacco products, or nicotine products, as they apply to military bases and Indian reservations within the state.

**4-5-11: AUTHORITY TO IMPOSE ADDITIONAL CONDITIONS ON LICENSE:**

A. In addition to the standards terms and conditions set forth in Section 4-5-10, the licensing authority shall have the authority to impose such additional reasonable terms and conditions on a license as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this Chapter and other applicable law.

B. For good cause shown, the licensing authority may administratively modify or eliminate or add any license condition during the term of the license.

#### **4-5-12: CONTENTS OF LICENSE:**

- A. A license shall contain the following information:
  - 1. The name of the licensee;
  - 2. The date of the issuance of the license;
  - 3. The address at which the licensee is authorized to operate the business; and
  - 4. The date of the expiration of the license.
- B. A license must be signed by both the licensee and the Town Clerk to be valid.

#### **4-5-13: LICENSE NOT TRANSFERABLE OR ASSIGNABLE:**

A license is non-transferable and non-assignable. Any attempt to transfer or assign a license shall void the license.

#### **4-5-14: DURATION OF LICENSE:**

Each license issued pursuant to this Chapter shall be valid for one (1) year from the date of issuance.

#### **4-5-15: RENEWAL OF LICENSE:**

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

#### **4-5-16: LICENSEE'S SPECIFIC DUTIES AND OBLIGATIONS:**

In addition to the other requirements of this Chapter, it is the duty and obligation of each licensee to comply with the following:

- A. All of the terms and conditions of the license, including, without limitation, the standard license conditions described in Section 4-5-10 and any special condition imposed by the licensing authority under Section 4-5-11;
- B. All of the requirements of this Chapter; and
- C. All laws, including federal, state and local Town ordinances pertaining to tobacco products that are applicable to the licensee's business.

#### **4-5-17: LICENSE DENIALS AND HEARINGS:**

A. Applicant bears the burden of proving it meets the requirements of state and local laws for licensure.

B. An application may be denied where the applicant made misstatements, omissions, misrepresentations, or untruths in the application. Providing misstatements, misrepresentations, omissions, or untruths may be the basis for administrative action.

C. The licensing authority may deny an application, including an initial or renewal application, only for good cause. Good cause shall include the following:

1. During any period in which an applicant is ineligible to apply, or prohibited from applying, for a license pursuant to a penalty imposed under this Code or C.R.S. § 44-7-106, C.R.S., and any rules or regulations.

2. When an applicant failed to provide all required information or documents, provided inaccurate, incomplete, or untruthful information or documents, or failed to cooperate with requests for additional information.

3. The applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this Code, article 7 of title 44 or any rules promulgated thereunder.

D. If the licensing authority denies an application, the licensing authority shall inform the applicant in writing of the reasons for the denial in a notice of denial, personally delivered to the retailer at the actual retail location or mailed to the retailer at the last-known address as shown by the records.

E. A denied applicant that timely requests a hearing following issuance of a notice of denial shall be served with a notice of grounds for denial, and shall be entitled to a hearing regarding the matters addressed therein.

F. The licensing authority's decision shall constitute a final agency. Any appeal of the licensing authority's decision shall be filed with a district court of competent jurisdiction and venue for purposes of an appeal of a decision is proper in the District Court for Summit County.

#### **4-5-18: FINES, SUSPENSION OR REVOCATION OF LICENSE:**

A. After investigation and a public hearing before the licensing authority at which a retailer must be afforded an opportunity to be heard, the licensing authority may impose fines, or impose suspension or revocation for reasons set forth below.

B. A license issued by the licensing authority may be suspended or revoked by the licensing authority for of any of the following reasons:

1. Violation of the Colorado Retail Tobacco Code;

2. Violation of any applicable administrative regulation;

3. Violation of this Chapter;

4. Violation of the terms and conditions of a license;

5. Misrepresentation or omission of any material fact, or false or misleading information, on the license application or any amendment thereto, or any other information provided by the licensee to the licensing authority related to the licensee's business;

6. Violation of any law which, if it occurred prior to the submittal of the license application could have been cause for denial of the license application;

7. Failure to maintain or to provide to licensing authority upon request any books, recordings, reports, or other records as required by applicable law;

8. Temporary or permanent closure or other sanction of the licensee by the Local Licensing Authority, the Colorado Department of Public Health and Environment, or other governmental entity with jurisdiction, for failure of the licensee to comply with applicable provisions of the Colorado Retail Tobacco Code;

9. Revocation or suspension of the state license; or

10. The failure of a licensee to timely correct any violation of state or local laws, any applicable administrative regulation, this Chapter, or the terms and conditions of the license's license within the time stated in a notice or order issued by licensing authority.

B. The procedure to suspend or revoke a local license shall be as set forth in this Chapter.

C. In connection with the suspension of a license, the licensing Authority may impose reasonable conditions.

D. In deciding whether a license should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the licensing authority shall consider mitigating and aggravating factors when considering the imposition of a penalty. These factors may include, but are not limited to:

1. Any prior violations that the Licensee has admitted to or was found to have engaged in.

2. Action taken by the Licensee to prevent the violation (e.g., training provided to employees).

3. Licensee's past history of success or failure with compliance checks.

4. Corrective action(s) taken by the Licensee related to the current violation or prior violations.

5. Willfulness and deliberateness of the violation.

6. Likelihood of reoccurrence of the violation.

7. The Owner or a manager is the violator or has directed an employee or other individual to violate the law.

E. A license issued by the Local Licensing Authority may be revoked if the Local Licensing Authority determines that the licensed premises have been inactive, without good cause, for at least one (1) year.

F. If the licensing authority suspends or revokes a license the licensee may appeal the suspension or revocation to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The licensee's failure to timely appeal the decision is a waiver of the licensee's right to contest the denial or conditional approval of the application.

G. No fee previously paid by a licensee in connection with the application shall be refunded if the licensee's license is suspended or revoked.

#### **4-5-19: INJUNCTIVE RELIEF; ABATEMENT AS NUISANCE; OTHER REMEDIES:**

A. If a person is required to have a valid license issued pursuant to this Chapter the operation of such person's business without such license may be enjoined by the Town in an action brought in the municipal court pursuant to Section 1-8-10 of this Code, or in any other court of competent jurisdiction.

B. The operation of a retail tobacco rental business within the Town without a valid license issued pursuant to this Chapter is declared to be a public nuisance, and is subject to abatement as provided by law.



C. The remedies provided in this Section are in addition to any other remedy provided by applicable law.

D. In any case in which the Town prevails in a civil action initiated pursuant to this Section, the Town may recover its reasonable attorney fees plus costs of the proceeding.

#### **4-5-20: COORDINATION WITH STATE; COMPLIANCE CHECKS:**

A. Compliance with this Chapter shall be enforced by the Police Department. The Police Chief may designate additional individuals, departments or groups to assist with the enforcement of this Chapter as deemed appropriate.

B. To the degree it is achievable within the amount of fees collected, the Town will conduct two compliance checks per retail location, per year.

C. When a compliance check is completed by the Police Department, the Police Department will notify the Division of any outcome, or action taken on the licensee as a result of the compliance check.

D. A database of compliance check results and hearing outcomes shall be maintained by Police Department.

#### **4-5-21: NO TOWN LIABILITY:**

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

#### **4-5-22: DESIGNATED USE OF LICENSE FEES:**

Immediately upon receipt or collection thereof, all license fees collected by the Town pursuant to this Chapter shall be deposited into a separate fund. Licensee fees shall be used only for the purposes described in Section 4-5-7. Monies credited to such fund shall not be available to be pledged or expended, by interfund transfer or otherwise, for any general purposes of the Town.

#### **4-5-23: RULES AND REGULATIONS:**

The Town Clerk shall have the authority from time to time to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this Chapter. Such regulations shall be adopted in accordance with the procedures established by Title 1, Chapter 18 of this Code. A violation of such regulations may be enforced in the Town's Municipal Court.

**Section 2.** That Chapter 18 entitled "RETAIL TOBACCO BUSINESS LICENSING" is hereby repealed in its entirety."

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

**Section 4.** The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity,

and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

**Section 5.** This ordinance shall be published 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 26th day of April, 2022.

This ordinance was published in full on the Town of Breckenridge website on April 29, April 30, May 1, May 2 and May 3, 2022.

A public hearing on this ordinance was held on May 10, 2022.

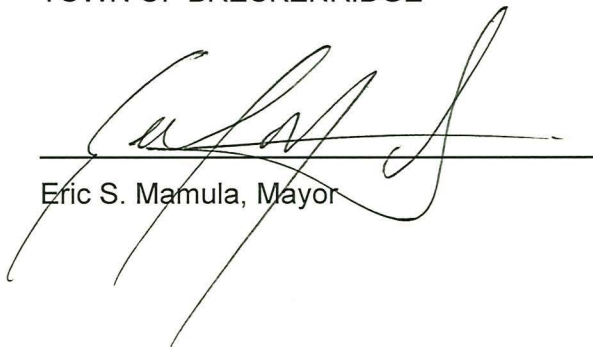
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE  
TOWN'S WEBSITE this 10th day of May, 2022. A copy of this Ordinance is available for  
inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE




Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM

  
Town Attorney  
Date

This Ordinance was published on the Town of Breckenridge website on May 13, May 14, May 15, May 16 and May 17, 2022. This ordinance shall become effective on June 16, 2022.