

ORDINANCE NO. 29

Series 2022

AN ORDINANCE REORGANIZING TITLE 4, CHAPTER 1 REPEALING REGULATIONS OF ACCOMMODATION UNITS AND REPLACING THOSE PROVISIONS IN A COMPANION BILL ENTITLED "AN ORDINANCE AMENDING THE ACCOMMODATION UNIT LICENSE REGULATIONS TO ESTABLISH MAPPED AREAS BASED ON THE UNDERLYING LAND USE CHARACTERISTICS OF THE TOWN AND IN CONNECTION THEREWITH SETTING LIMITS ON THE CONCENTRATION OF LICENSES BY MAPPED AREA AND ESTABLISHING ADMINISTRATIVE FINES."

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

Section 1. That chapter 1 of title 4 entitled "Business and License Regulations" is hereby amended to read as follows:

Chapter 1

BUSINESS AND OCCUPATIONAL LICENSES AND TAX

Sections:

- 4-1-1: Purpose
- 4-1-2: Definitions
- 4-1-3: License required; Exception for retailer having only an economic nexus to the town; Obligation to provide information
- 4-1-4: Annual license tax
- 4-1-5: Issuance of license
- 4-1-6: Requirements of licensee
- 4-1-7: Denial of license
- 4-1-8: Conditions of license
- 4-1-8-2: Administrative license
- 4-1-9: Exemptions
- 4-1-10: Administration and enforcement
- 4-1-10-1: Suspension or revocation of licenses; Payment of fine in lieu of suspension
- 4-1-11: Due date, delinquencies and penalties
- 4-1-12: Enforcement; Lien
- 4-1-13: Attorney fees and costs
- 4-1-14: Intended use of proceeds
- 4-1-15: Enforcement date
- 4-1-16: Severability
- 4-1-17: Repeal of conflicting ordinances

4-1-1 Purpose:

The purpose of this chapter shall be to require the licensing and regulation of business activities, occupations and enterprises conducted within the town and provide the town with necessary information relating to businesses and professions operating within the town in order

to protect the health, welfare and safety of its inhabitants, and to generate and raise additional revenues for the town for the purpose of marketing and promoting the town and its environs as a year round resort, to promote and market activities and events beneficial to the economic vitality of the community.

4-1-2 Definitions:

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein:

ACCOMMODATION UNIT: Has the same meaning as set forth in section 4-6-1 of this code.

ADMINISTRATIVE LICENSE: A license issued by the finance director pursuant to section 4-1-8-2 of this chapter.

APPLICANT: A person who has made an application for the initial issuance or renewal of an annual business and occupational license under the provisions of this chapter.

BUSINESS: The word "business" shall include all kinds of vocations, occupations, professions, enterprises, establishments, and all other kinds of activities and matters, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for profit, gain, or benefit, either directly or indirectly, on any premises in the town.

BUSINESS DAY: Has the meaning provided in Section 9-1-5 of this code.

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

EMPLOYEE: Any person receiving compensation from a business licensee subject only to the following: any person who works twenty (20) hours or more per week is considered a full time employee. Any combination of persons who together work twenty (20) hours or more per week are counted as one full time employee for each increment of twenty (20) hours, or fraction thereof, worked per week. An employee includes an owner, manager, partner, associate or proprietor who works for and receives compensation from his/her business and, further, includes commissioned agents.

FINANCE DIRECTOR: The Finance Director of the town of Breckenridge, or his or her designee acting pursuant to Section 1-7-2 of this Code.

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

IN HOME OCCUPATION:

A. Any business legally operated from a residential structure in a residential district within the town; or

B. A primary caregiver who cultivates marijuana within the town for a patient in the primary residence of either the patient or primary caregiver.

IN TOWN BUSINESS: Any business operated from a fixed location within the town. "In Town business" does not include in home occupations.

LICENSE: A license issued by the finance director pursuant to this chapter.

LICENSED PREMISES: A premises for which a license has been issued by the finance director pursuant to this chapter.

LICENSEE: A person to whom a license has been issued by the finance director pursuant to this chapter.

LODGE: Any premises consisting of multiple rental rooms or units all held in common ownership, which shall include hotels, motels, and boarding houses. A lodge is not a property that was designed for the purposes of generally housing members of a single household, such as a single-family residence, duplex, townhome, apartment buildings and condominium unit.

LONG TERM RENTALS: Lease of premises to a person for a term in excess of thirty (30) consecutive days.

PERSON: Includes individuals, firms, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, or corporations, or any officers, agents, employees, factors, or any types of personal representatives of any other person, under either personal appointment or pursuant to law.

PREMISES: Includes all lands, structures, places, and also the equipment and appurtenances connected or used therewith, in any business, and also any personal property which is either affixed to, or is otherwise used in connection with any business on such premises.

PRIMARY RESIDENCE: 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.

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

VENDOR: Any person conducting business within the town without a permanent operating location.

A. Seasonal Vendor: A vendor doing business within the town for between fourteen (14) days and four (4) months during each calendar year.

B. Regular Vendor: A vendor doing business within the town in excess of four (4) months each calendar year.

4-1-3 License required; Exception for retailer having only an economic nexus to the town; Obligation to provide information:

A. It shall be unlawful for any person to maintain, operate, or conduct any retail business or engage in any business activity in the town, including the delivery of goods (excluding wholesale) within the town which are purchased or contracted for outside the corporate limits of the town, without having first obtained a business and occupational license pursuant to this chapter. Advertisement of an accommodation unit that is located within the town is considered engaging in a business activity within the town. If business is transacted at two (2) or more separate locations by one person, a separate license for each place of business shall be required.

B. Any retailer having only an economic nexus with the town that has not established a physical presence in the town shall be exempt from the licensing license tax requirements of this chapter; provided, however, that: (i) within thirty (30) days of notice from the finance director such retailer shall furnish to the finance director the name, address, email address, and telephone number of the retailer; and (ii) the retailer shall notify the finance director in writing within thirty (30) days of any change to the name, address, email address, or telephone number of the retailer previously provided to the finance director.

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

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:

An annual tax of two hundred dollars (\$200.00) per annum, plus ten dollars (\$10.00) per employee per annum.

Applicant shall advise the town, by affidavit, under oath, at the time of application hereunder, of the highest number of employees applicant had for the subject business for any one month in the prior year, or for any new businesses the highest number of employees applicant intends to employ for any one month for the current year. The taxes payable under this subsection shall be based upon the number of employees set forth in such affidavit.

4-1-5 Issuance of license:

A. The Finance Director shall issue a license under this chapter upon presentation of a completed license application.

B. Except as otherwise provided in this code, a license issued under this chapter shall be valid for one year commencing with the date of issuance and shall be renewed annually.

4-1-6 Requirements of licensee:

Every licensee under this chapter shall do the following:

A. Ascertain and at all times comply with all laws and regulations applicable to a licensed business;

B. Avoid any illegal, dangerous or harmful practices or conditions which are detrimental to the public property, health, welfare, peace or safety;

C. Refrain from engaging in business on the licensed premises during the period his license is revoked or suspended.

4-1-7 Denial of license:

A. An application for the initial issuance or renewal of an annual business license shall be denied by the finance director:

1. If the business for which the license is sought is an unlawful business;
2. If the applicant is not qualified to engage in such business under applicable Federal, State or local law; or
3. If the applicant or, in the event of an applicant which is other than a natural person, if any principal of the applicants, owes to the town any unpaid and delinquent tax of any kind. As used in this subsection, the term "principal" means: a) as to a corporation, any officer, director, or shareholder owning fifty percent (50%) or more of the issued and outstanding capital stock of the corporation, b) as to any general partnership, any partner, c) as to any limited partnership, any general partner, and d) as to any limited liability company, any manager or member owning more than fifty percent (50%) interest in the entity. The term "delinquent" means the nonpayment of any tax obligation owed to the town within sixty (60) days of the date such obligation is due.

B. In the event an application is denied, the finance director shall deliver to the applicant a written order of denial stating the reason for denial.

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

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

4-1-8 Conditions of license:

A. Public Streets And Rights-Of-Way: It shall be unlawful to conduct any business on the public streets or public rights-of-way in the town without a permit issued pursuant to chapter 15 of this title, or as otherwise authorized by applicable law.

B. Posting: The licensee shall post his current business license in a conspicuous place on the licensed premises at all times.

C. Nontransferable:

1. No license issued pursuant to this chapter shall be transferable.
2. Upon the transfer of a business or premises licensed by the town pursuant to this chapter the existing license shall terminate. The transferee of such business or premises may apply for a new annual business license. The transferee shall receive a pro rata credit on the license fees for the portion of the year remaining of the existing business license.

4-1-8-2 Administrative license:

The Finance Director may issue an administrative business and occupational license to an applicant if doing so would be in the best interest of the town because either: a) the town is the applicant's only customer within the town limits; or b) the only location within the town limits at which the applicant does business is a Town owned facility. All provisions of this chapter shall apply to an administrative business and occupational license issued pursuant to this chapter unless the finance director determines otherwise; provided, however, there shall be no license fee required in connection with such license. The Finance Director may issue administrative regulations governing administrative business and occupational licenses issued pursuant to this section.

4-1-9 Exemptions:

Persons exempt from the provisions of this chapter are as follows:

Accommodation units held for long-term rental only.

Charitable corporations.

Churches or established religious organizations.

Governments.

Hospitals.

Persons exempt under Federal or Colorado law (nonprofit organizations).

Schools.

4-1-10 Administration and enforcement:

A. Administration: The administration of the annual business licenses required by this chapter shall be vested in the finance director who is authorized to do the following:

1. Collect license fees;
2. Adopt all forms and prescribe the information to be given therein;
3. Promulgate and enforce all reasonable rules and regulations necessary to the operations and enforcement of this chapter. Such administrative rules and regulations shall be adopted in accordance with the procedures established by title 1, chapter 18 of this Code. A violation of the administrative rules and regulations issued by the finance director pursuant to the authority granted by this section shall be a misdemeanor Municipal offense and may be enforced by appropriate action in the town's Municipal Court.
4. Investigate and determine the eligibility of each applicant for an annual business license;
5. Examine at any time those records of each licensee which the finance director determines are necessary to verify license requirements provided the contents of such records shall remain confidential and not a part of the public records.

B. Enforcement: The town may seek an injunction pursuant to section 1-8-10 of this Code, or other applicable law, to restrain a person from engaging in business on premises within the town who has not obtained an annual business license under this chapter or whose license is revoked or suspended, and this remedy shall be in addition to all other remedies prescribed in this chapter by law.

C. Presumption Of Continued Use: With respect to a license issued under this chapter the finance director shall be entitled to presume that such license will continue in the next license year, thereby obligating such person to obtain a license under this chapter.

D. Obligation To Provide Information: It shall be unlawful for any owner of real property within the town to fail or refuse to provide to the finance director upon request information sufficient to permit the finance director to determine if such person is required to obtain a license pursuant to

this chapter. Any person convicted of violating the provisions of this subsection shall be punished as provided in subsection 4-1-11B of this chapter.

4-1-10-1 Suspension or revocation of licenses; Payment of fine in lieu of suspension:

A. A license issued pursuant to this chapter may be revoked by the Town after a hearing for the following reasons:

1. Fraud, misrepresentation or a false statement of material fact contained in the license application or any document submitted to the finance director pursuant to the finance director's administrative rules and regulations in connection with the application for a license;
2. Any violation of the provisions of this chapter; or
3. As to any person required to have a Town Sales Tax license pursuant to title 3, chapter 1 of this Code, proof that such license has been revoked by the finance director in accordance with section 3-1-26 of this Code.

B. Notice of a hearing to be held pursuant to this chapter shall be given by the Hearing Officer in writing to the licensee at the address shown on the license application. Such notice shall be mailed postage prepaid, at least twenty (20) days prior to the date set for the hearing. At the hearing the licensee may appear with or without counsel and present such evidence as may be relevant.

C. Each day during any portion of which a licensee violates any provision of this chapter shall be considered to be a separate violation, and the licensee may be sanctioned accordingly.

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

4-1-11 Due date, delinquencies and penalties:

A. Payment Of Tax: The tax imposed under this chapter is due and payable at the time of application and annually prior to the time the license expires, 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 charge of ten percent (10%) of the amount of tax due shall be assessed in addition to the License Tax.

B. Violations; Penalties: It is an "infraction", as defined in section 1-3-2 of this Code, for any person to violate any of the provisions of this chapter. Every person found liable for a violation of any provision of this chapter shall be punished as provided in section 1-4-1-1 of this Code.

4-1-12 Enforcement; Lien:

A. Enforcement: Pursuant to section 31-20-101 et seq., Colorado Revised Statutes, the town may cause any delinquent charges for fees made or levied hereunder to be certified to the Summit County Treasurer, to be collected and paid over by said Treasurer in the same manner as real or personal Property Taxes.

B. Lien: As to any license due with respect to an accommodation unit, the licensing fees imposed by that chapter, and any penalty and attorney fees due with respect thereto, if not paid when due, shall constitute a perpetual lien upon the accommodation unit and shall have priority over all other liens except general tax liens, special improvement district assessment liens and those bona fide mortgages or trust deeds which were of record prior to the recording of this town's lien statement as hereafter provided. The town's lien shall continue until the amount due to the town is paid in full, or until the lien is discharged in the manner provided for by law. To perfect its lien hereunder, the town shall record with the Clerk and Recorder of Summit County a statement of lien describing the affected accommodation unit and setting forth the amount then due to the town. The lien granted to the town hereunder shall be effective from and after the date of the recording of such lien statement.

C. Action: In addition to other remedies available to the town, the town may commence an action pursuant to section 1-8-10 of this Code to enjoin the alleged violation of any provision of this chapter.

4-1-13 Attorney fees and costs:

In the event it is necessary for the town to take action for the enforcement of this chapter, there shall be added to any fees due hereunder all reasonable costs and fees incurred by the town, including reasonable attorney fees. If any action is brought in a court of law by or against the town relating to the enforcement, interpretation or construction of this chapter, or of any document provided for herein, or of any proceeding hereunder, the prevailing party in such action shall be entitled to reasonable attorney fees as well as all costs incurred in the prosecution or defense of such action.

4-1-14 Intended use of proceeds:

It is intended that the proceeds from the levy of the tax imposed pursuant to this chapter will be used for the payment of reasonable costs incurred in connection with the administration of this chapter, and for marketing and promotion of the town's principal industry, being tourism, and for payment of expenses related to such marketing and promotion and to promote and market activities and events beneficial to the economic vitality of the community.

4-1-15 Enforcement date:

This chapter shall be in full force and effect for collection of the applicable business and occupational license fees on December 1, 1986.

4-1-16 Severability:

If any section, sentence, clause, phrase, word or other provision of this chapter is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this chapter, or the validity of this chapter in its entirety, it being the legislative intent that this chapter shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 2. 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 3. 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 4. 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 August, 2022.

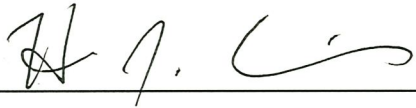
This ordinance was published in full on the Town of Breckenridge website on August 12, August 13, August 14, August 15 and August 16, 2022.

A public hearing on this ordinance was held on August 23, 2022.

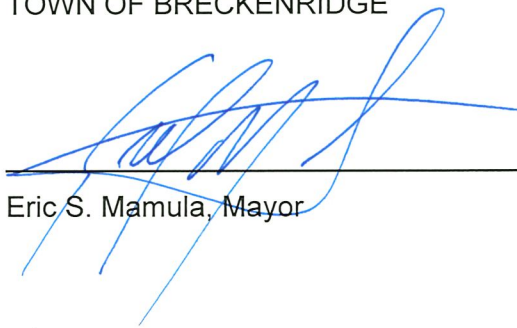
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE
TOWN'S WEBSITE this 23rd day of August, 2022. A copy of this Ordinance is available for
inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE




Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

8.31.22

Date

This Ordinance was published on the Town of Breckenridge website on August 24, August 25, August 26, August 27 and August 28, 2022. This ordinance shall become effective on September 27, 2022.