

ORDINANCE NO. 19

Series 2018

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE TOWN OF BRECKENRIDGE "BUSINESS AND OCCUPATIONAL LICENSES AND TAX ORDINANCE," CONCERNING ACCOMMODATION UNITS; REQUIRING A RESPONSIBLE AGENT FOR EACH ACCOMMODATION UNIT; IMPOSING AN ACCOMMODATION UNIT ADMINISTRATIVE FEE; MAKING CERTAIN REQUIRED FINDINGS WITH RESPECT TO SUCH FEE; AUTHORIZING INSPECTIONS OF ACCOMMODATION UNITS; AND MAKING OTHER AMENDMENTS TO THE BUSINESS AND OCCUPATIONAL LICENSES AND TAX ORDINANCE

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

Section 1. The definition of "Accommodation Unit" in Section 4-1-2 of the Breckenridge Town Code is amended to read as follows:

ACCOMMODATION UNIT:	A separate and distinct living unit including condominium, townhome, house, trailer, studio unit, condominium unit, or any such other similar unit which is rented to any person, who, for consideration, uses, possesses or has the right to use or possess such accommodation unit for a period of less than 30 consecutive days, regardless of the number of days during a license year such unit is rented.
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Section 2. Section 4-1-2 of the Breckenridge Town Code is amended by the addition of the following definitions:

AUTHORIZED PUBLIC INSPECTOR:	With respect to inspections to be conducted pursuant to Section 4-1-8-1A9 of this Chapter, any employee or representative of the Town's Finance Department, except the Finance Director.
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RESPONSIBLE AGENT:	A management company, rental agent, or individual who is identified by a licensee as the licensee's responsible agent pursuant to Section 4-1-8-1A6. A licensee may, at the licensee's option, identify an alternate responsible agent to act for the licensee if the responsible agent, for any reason, is not successfully contacted by the Town in response to a complaint, or the administrative regulations adopted by the Finance Director pursuant to Section 4-1-10A3.
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RENTAL AGENT:	A management company, rental agent, or other person employed or engaged by the licensee to advertise the accommodation unit for rent, or to remit any required tax to the Town.
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Section 3. The definition of "Single-Family Accommodation Unit" in Section 4-1-2 of the Breckenridge Town Code is deleted.

Section 4. The Title of Section 4-1-4 of the Breckenridge Town Code is amended to read "Annual License Tax."

Section 5. Chapter 1 of Title 4 of the Breckenridge Town Code is amended by the addition of a new Section 4-1-4-1, to be entitled "Annual Accommodation Unit Compliance Fee," which shall read as follows:

4-1-4-1: ANNUAL ACCOMMODATION UNIT ADMINISTRATIVE FEE:

- A. Commencing with licenses for accommodation units issued for the January 2019 licensing period, and continuing each licensing year thereafter, 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 administrative fee. The amount of the annual accommodation unit administrative fee shall be:

Type Of Accommodation Unit	Annual Fee
Studio unit	\$25.00
1 bedroom unit	30.00
2 bedroom unit	35.00
3 bedroom unit	100.00
4 or more bedroom unit	150.00

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

- B. Condominiums, condominium/hotels, and hotels/lodgings/inns as defined in Section 9-1-5 of this Code are exempt from the requirement to pay the annual accommodation unit administrative fee if they have: (a) a twenty four (24) hour front desk; (b) a twenty four (24) hour telephone system; and (c) twenty four (24) hour on site private security; chalet houses as defined in Section 9-1-5 of this Code are exempt from the requirement to pay the annual accommodation unit administrative fee.
- C. The accommodation unit administrative fee shall be due and payable to the Town at the same time the tax required by Section 4-1-4 is due.
- D. Beginning with the Town's 2019 fiscal year, the amount of the accommodation unit administrative 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.
- E. It is the purpose of this Section to protect the public health, safety, and welfare by establishing a comprehensive regulatory scheme for the Town that attempts to address some of the negative impacts associated with the existence of the numerous accommodation units within the Town, and to relieve Town taxpayers of the costs that would otherwise be incurred by the Town in providing those services directly and indirectly related to accommodation units within the Town as set forth in Section F, below. The identified negative impacts of the numerous accommodation units within the Town include, but are not limited to a significant change in the character of the neighborhoods within the Town in which accommodation units are located, including, but not limited to, significant impacts on parking, noise, and trash in such neighborhoods.
- F. Funds collected by the Town from the accommodation unit administrative fee established by this Section shall be used to defray the reasonable direct and indirect costs of the following Town services that are related to the identified negative impacts of accommodation units within the Town described in Section E, above:
  - 1. Administrative and personnel costs associated with developing and implementing the accommodation unit administrative fee;
  - 2. Costs of acquiring, training staff to use, updating, and replacing software and other computer programs necessary to monitor the accommodation units within the Town; and
  - 3. Costs of enforcing the requirements of this Chapter, including, but not limited to inspecting accommodation units within the Town.

No portion of the accommodation unit administrative fees collected by the Town shall be used for any purpose other than those purposes enumerated in this Section F.

- G. The accommodation unit administrative 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 Section F.

- H. The Finance Director shall establish a method for separately accounting for all of the accommodation unit administrative fees collected by the Town pursuant to this Section, and the expenditure of such fees.
- I. Based on the information that has been provided to the Town Council by the Finance Director, the accommodation unit administrative fee imposed by this Section bears a reasonable relationship to the anticipated cost of providing the Town programs and services described in this Section.

Section 6. Section 4-1-5A1 of the Breckenridge Town Code is amended to read as follows:

1. The Finance Director shall issue a license for an accommodation unit under this Chapter only to the owner of such accommodation unit.

Section 7. Section 4-1-8-1 of the Breckenridge Town Code is amended to read as follows:

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

- A. Special Conditions: Except as provided in Section G of this Section, in addition to the other requirements of this Chapter, the owner of an accommodation unit licensed pursuant to this Chapter shall, as a condition of such license, be subject to the following requirements:
1. The motor vehicles of all occupants of the accommodation unit shall be parked only on the site of the accommodation unit, or in a Town designated parking area located off of the site of the accommodation unit. No motor vehicles shall be parked on the lawn or landscaped areas of an accommodation unit, or in the public street or right of way adjacent to the accommodation unit. No person shall be permitted to stay overnight in any motor vehicle which is parked at an accommodation unit. Further, all motor vehicles parked at an accommodation unit shall comply with the requirements and be subject to the limitations of Section 9-3-11 of this Code.
  2. The storage and disposal of all trash and garbage from an accommodation unit shall comply with the requirements of Title 5, Chapter 2 of this Code.
  3. While occupying an accommodation unit, no person shall: a) make, cause or control unreasonable noise upon the accommodation unit which is audible upon a private premises that such occupant has no right to occupy in violation of Subsection 6-3C-1A2 of this Code, or b) violate Title 5, Chapter 8 of this Code.
  4. No accommodation unit shall be operated in such a manner as to constitute a nuisance pursuant to Title 5, Chapter 1 of this Code.
  5. The licensee shall provide to the Finance Director the name, address and telephone number of any current rental agent for the accommodation unit. The rental agent may be changed by the licensee from time to time throughout the term of the license. To effect such change, the licensee shall notify the Finance Director of the change in writing and shall, at the same time, provide the Finance Director with the name, address and telephone number of the licensee's replacement rental agent.
  6. At the time of the issuance of the license the licensee shall also provide to the Finance Director the name, address and telephone number of a responsible agent who is authorized by the licensee to receive communications from the Town concerning the accommodation unit, and who agrees in writing to comply with the requirements of Subsection A7. The responsible agent may be the same person designated by licensee pursuant to Subsection A5. The designated responsible agent may be changed by the licensee from time to time throughout the term of the license. To effect such change, the licensee shall notify the Finance Director of the change in writing and shall, at the same time, provide the Finance Director with the name, address and telephone number of the licensee's replacement responsible agent.

7. A licensee's responsible agent, or such person's employee or designee, shall be available twenty four (24) hours per day, seven (7) days per week, to respond (as defined in the administrative rules and regulations) to any complaint filed with or through the Town, or a website provided by the Town for such purpose, about the operation or condition of the licensee's accommodation unit. Such responsible agent shall respond to a complaint within a sixty (60) minutes of receiving notice of such complaint. The responsible agent's failure to respond to a complaint as required by this Section is chargeable to the Owner pursuant to Subsection B of this Section.

8. Each accommodation unit shall comply with all of the following minimum health and safety standards at all times while the property is being occupied:

- a. The applicable requirements of the Town's building and technical codes adopted by reference in Title 8, Chapter 1 of this Code;
- b. The applicable requirements of any other ordinance, rule, or administrative regulation of the Town;
- c. The terms and conditions of any development permit issued to the licensee with respect to the accommodation unit;
- d. Smoke detectors and carbon monoxide detectors shall be installed in the accommodation unit and shall be operable at all times; and
- e. Wood-burning fireplaces and stoves in the accommodation unit shall be cleaned on an annual basis.

9. Because accommodation units are, by their nature, intended to be occupied by numerous guests for short periods of occupancy, it is determined that the Town's ability to inspect accommodation units is in the interest of public safety. Therefore, whenever it is necessary or desirable to make an inspection to enforce the special requirements of this Subsection A, an authorized public inspector may enter such accommodation unit at all reasonable times to inspect the same for the purpose of enforcing such special conditions; provided, however, that except as provided below with respect to an emergency involving the potential loss of property or human life, prior to entering an accommodation unit to conduct an inspection the public inspector shall first attempt to contact the owner of the accommodation unit, or the responsible agent for such owner, and arrange for a mutually agreeable date and time for the inspection. If permission to enter the accommodation unit to inspect cannot be obtained within 14 days from the date the public inspector first requests permission to enter the accommodation unit from the unit owner or the responsible agent, the authorized public inspector shall have recourse to every remedy provided by law to secure entry. When an authorized public inspector has obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner, occupant, or any other persons having charge, care, or control of any accommodation unit shall fail or refuse, after proper request is made as herein provided, to promptly permit entry therein by the authorized public inspector for the purpose of inspection of the accommodation unit. No inspection warrant or permission shall be required for an authorized public inspector to enter and inspect an accommodation unit in the case of an emergency involving the potential loss of property or human life.

10. Because accommodation units are, by their nature, intended to be occupied by numerous guests for short periods of occupancy, it is determined that the Town's ability to inspect accommodation units is in the interest of public safety. Therefore, whenever it is necessary or desirable to make an inspection to enforce the special requirements of this Subsection A, an authorized public inspector may enter such accommodation unit at all reasonable times to inspect the same for the purpose of enforcing such special conditions. Provided, that if such accommodation unit is occupied, the authorized public inspector shall first present proper credentials and request entry, and if such accommodation unit is unoccupied, shall first make a reasonable effort to locate the owner, the local responsible agent, or other person having charge or control of the accommodation unit and request entry. If such entry is refused, or if the accommodation unit is locked, the authorized public inspector shall have recourse to every remedy provided by law to secure entry. When an authorized

public inspector has obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner, occupant, or any other persons having charge, care, or control of any accommodation unit shall fail or refuse, after proper request is made as herein provided, to promptly permit entry therein by the authorized public inspector for the purpose of inspection of the accommodation unit. No inspection warrant or permission shall be required for an authorized public inspector to enter and inspect an accommodation unit in the case of an emergency involving the potential loss of property or human life.

1. The municipal court judge may issue an inspection warrant authorizing the inspection of an accommodation unit pursuant to this Section in accordance with rule 241(b) of the Colorado municipal court rules of procedure. Any inspection warrant issued pursuant to this Section shall fully comply with the applicable provisions of rule 241 of the Colorado municipal court rules of procedure. The municipal judge may impose such conditions on an inspection warrant as may be necessary in the judge's opinion to protect the private property rights of the owner of the accommodation unit to be inspected, or to otherwise make the warrant comply with applicable law.

10. All property taxes that are lawfully assessed against an accommodation unit shall be paid to the appropriate taxing authority.

- B. Owner Liable: Compliance with the special conditions set forth in Subsection A of this Section shall be the nondelegable responsibility of the owner of an accommodation unit; and each owner of an accommodation unit shall be strictly liable for complying with the conditions set forth in Subsection A of this Section.
- C. Licensee To Receive Special Conditions: At the time of the issuance of a license, the Finance Director shall provide the licensee with a copy of the special conditions set forth in Subsection A of this Section.
- D. Licensee To Post License And Special Conditions: The licensee shall post a copy of the license and the special conditions set forth in Subsection A of this Section within five (5) feet of the main entrance of the accommodation unit. The license and the special conditions shall remain continuously posted in the accommodation unit throughout the term of the license.
- E. Licensee To Provide Rental Agent and Responsible Agent With Special Conditions: The licensee shall provide any rental agent and the licensee's responsible agent with a copy of the special conditions set forth in Subsection A of this Section.
- F. Revocation Or Suspension Of License: The failure of the licensee of an accommodation unit to comply with the special conditions set forth in Subsection A of this Section shall constitute grounds for the suspension or revocation of the license. Any action to suspend or revoke the license shall be conducted by the Finance Director in accordance with Section 4-1-10-1 of this Chapter.

Before an action is commenced to suspend or revoke a license for an accommodation unit, the Finance Director shall first provide the licensee with a written warning that an apparent violation of the special conditions of Subsection A of this Section has occurred, and the licensee shall be given a reasonable opportunity to cure such apparent violation. A copy of such warning notice shall also be sent to any rental agent who has been properly identified by the licensee pursuant to Subsection A5 of this Section and to the responsible agent identified by the licensee pursuant to Subsection A6 of this Section. Not more than one written warning shall be required to be sent during the term of each license.

- G. Condominiums, condominium/ hotels, and hotels/lodgings/inns as defined in Section 9-1-5 of this Code are exempt from the provisions of this section if they have: (a) a twenty four (24) hour front desk; (b) a twenty four (24) hour telephone system; and (c) twenty four (24) hour on site private security; chalet houses as defined in Section 9-1-5 of this Code are exempt from the provisions of this section.

Section 8. Section 4-1-10A3 of the Breckenridge Town Code is amended to read as follows:

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.

Section 9. Section 4-1-10-1A of the Breckenridge Town Code is amended to read as follows:

A. A license issued pursuant to this chapter may be revoked by the Finance Director after 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;
2. The failure or refusal of an owner of an accommodation unit to permit inspection of the owner's accommodation unit by an authorized public inspector as required by Section 4-1-8-1;
3. Any violation of the provisions of this chapter; or
4. 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.

In connection with the suspension of a license, the Finance Director may impose reasonable conditions.

Section 10. The introductory portion of Section 4-1-10-1D of the Breckenridge Town Code is amended to read as follows:

D. If the Finance Director determines after a hearing that cause exists for the imposition of a sanction against a licensee of an accommodation unit pursuant to Section 4-1-8-1 of this Chapter, the Finance Director shall impose the following sanction against the licensee:

Section 11. Section 4-1-10-1B of the Breckenridge Town Code is amended to read as follows:

B. Notice of a hearing to be held pursuant to this chapter shall be given by the Finance Director in writing to the licensee at the address shown on the license application, any rental agent identified by the licensee pursuant to subsection 4-1-8-1A5 of this chapter, and to the responsible agent identified by the licensee pursuant to subsection 4-1-8-1A6 of this chapter. 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.

Section 12. Section 4-1-10-1F of the Breckenridge Town Code is amended to read as follows:

F. If the Finance Director suspends or revokes a business and occupational tax license, the aggrieved licensee may appeal said suspension or revocation to the Town Council by filing a letter of appeal with the Town Manager within twenty (20) days after the date of mailing of the Finance Director's order of suspension or revocation. The Finance Director's suspension or revocation of the 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 Finance Director 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 license exist as specified in this Chapter, the Town Council may

