

**TOWN OF FREDERICK, COLORADO
ORDINANCE NO. 1232**

**AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO,
PROVIDING FOR THE IMPOSITION OF A LODGING EXCISE TAX
FOR THE TOWN OF FREDERICK**

WHEREAS, this Ordinance repeals and replaces Ordinance No. 1231 adopted on June 14, 2016, thereby correcting the effective date of the ordinance.

WHEREAS, the Town of Frederick, Colorado (“Town”), is a statutory town; and

WHEREAS, C.R.S. 31-15-501(1)(c) authorizes the Town to levy excise taxes within its borders; and

WHEREAS, a majority of the registered voters voting at the November 3, 2015 election approved the adoption of a lodging excise tax; and

WHEREAS, the provision of lodging rooms and accommodations to the traveling public results in the increased use of Town streets and rights-of-way, increased traffic, increased demands upon municipal services such as police protection, and has substantial effect upon the health, safety, and welfare of the citizens of the Town of Frederick and upon the expenditures budgeted by the town; and

WHEREAS, the Board of Trustees desires and finds that is necessary to adopt a Lodging Excise Tax, to be spent on any lawful use, including but not limited to incentives for hotel and conference center development.

WHEREAS, the classification of the provision of lodging as separate businesses and occupations is reasonable, proper, uniform, and nondiscriminatory; and the taxable amount hereby assessed is reasonable, proper, uniform, nondiscriminatory, and necessary.

**BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF
FREDERICK, COLORADO, AS FOLLOWS:**

Section 1. Chapter 4 of the Frederick Municipal Code is hereby amended to and a new Article XI, to read as follows:

**“Article XI
Lodging Excise Tax**

Sec. 4-300. Purpose.

The Board of Trustees hereby finds, determines and declares:

- (a) For the purposes of this article, every person that furnishes a lodging room or accommodation for consideration in the Town is exercising a taxable privilege. The purpose of this article is to impose a tax which will be paid by every lodging provider providing such lodging room or accommodation in the Town, to be spent on any lawful use, including but not limited to incentives for hotel and conference center development.
- (b) Pursuant to authority found in the laws of the state, the following lodging excise tax is adopted for the purpose of promoting the health, safety, morals and general welfare of the town.
- (c) The provision of lodging rooms and accommodations to the traveling public results in the increased use of Town streets and rights-of-way, increased traffic, increased demands upon municipal services and has substantial effect upon the health, safety and welfare of the citizens of the Town and upon expenditures budgeted by the Town which is a matter of local concern; and
- (d) The classification of the provision of lodging as separate businesses and occupations is reasonable, proper, uniform, nondiscriminatory and necessary.

Sec. 4-301. Definitions.

For purposes of this article, the following words shall have following meanings:

- (a) "Lodging services" means the providing of hotel rooms, motel rooms, lodging rooms, motor hotel rooms, guest house rooms or other similar accommodations, that are rented to persons for a period of less than one month or thirty consecutive days, but shall not include rentals under a written agreement for occupancy for a period of at least one month or thirty days. Lodging services does not include the providing of meeting rooms.
- (b) "Lodging price" means the gross price paid, exclusive of other taxes paid, or value given by the customer for the provision of lodging services.
- (c) "Lodging provider" means any person furnishing lodging services or such provider's authorized agent.
- (d) "Lodgers tax" means an excise tax payable by the purchaser of lodging services or the aggregate amount of taxes due from a lodging provider during the period for which such person is required to report the collections of lodgers taxes as here in specified.
- (e) "Person" means any individual, firm, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, licensee or any person acting in a fiduciary or representative capacity, whether appointed by the court or otherwise, or any group or combination acting as a unit, and includes the plural as well as a singular number.
- (f) "Taxpayer" means any person obligated to account to the Town for taxes collected or to be collected under the terms of this article.

Sec. 4-302. Levy of tax.

Effective January 1, 2017, there is hereby levied and shall be paid and collected an excise tax of 4% on the lodging price paid for leasing, rental or providing of any lodging services located in the Town. This tax shall be in addition to the sales and use tax as established pursuant to Article VI of this code. It shall be a violation of this code for any lodging customer of a hotel room, motel room, or other accommodation located in the Town to fail to pay, or for any lodging provider of such accommodation to fail to collect, a tax levied pursuant to this section.

Sec. 4-303. Exemptions.

The following transactions shall be exempt from the tax imposed by this article:

- (a) Lodging or accommodations provided to representatives of the United States, the State of Colorado, any departments and institutions and the political subdivisions of any state in their governmental capacities only;
- (b) Lodging or accommodations provided to those charitable, religious and eleemosynary organizations that have received from the Internal Revenue Service status under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, while in the conduct of their regular charitable, religious or eleemosynary functions and activities; and
- (c) Lodging or accommodations provided to a person who is a permanent resident of a hotel, motel, apartment hotel, lodging house, motor hotel, guest house or other similar business pursuant to a written agreement for a period of at least one month or thirty consecutive days.

Sec 4-304 Certification of Registration

- (a) Every lodging provider maintaining a place of business in the Town shall obtain a certificate of registration as a tax collector from the Town Clerk no later than thirty (30) days after commencing such business.
- (b) Application for certificate of registration shall be made to the Town Clerk upon forms furnished by the Town. Each application shall be signed and verified by the applicant or a properly accredited agent, which in the case of a corporation shall include the president, vice-president, the secretary, the treasurer or some other properly accredited agent acceptable to the Town Clerk. The application shall state:
 - 1) The name of the applicant and the address of the principal place of the business.
 - 2) The residence address of the principal officers and the manager.
 - 3) The applicant's estimated receipts from renters' use and privilege of renting, leasing, or subletting lodging services within the Town.
 - 4) Such other information as the treasurer may reasonably require.

- (c) Upon receipt of the application for a certificate of registration in proper form, and upon approval by the Town Clerk, a certificate of registration shall be issued. A certificate of registration will not be issued to any person who is in default to the Town for moneys due under this article or any other article of this code.
- (d) If the person so registered states that they operates other such places of business in the Town, the Town Clerk shall furnish him with a certificate of registration for each place of business.
- (e) The certificate of registration shall be conspicuously displayed at the place of business which the person on so registered states in the application to be the principal place of business from which they engage in the business of providing lodging services in the Town.
- (f) Information supplied on the application required by this section shall be updated within thirty (30) days of any change or alteration thereof upon revision forms supplied by the treasurer.

Sec. 4-305. Collection of tax.

- (a) Monthly reporting. The owner or owners of each lodging service within the Town shall file monthly tax returns showing tax receipts received with respect to each room during each month. The returns shall be due on or before the last day of the month for the preceding calendar month. The owner of each lodging service within the Town that has collected ten thousand dollars (\$10,000) or more of tax herein imposed and levied during its fiscal year shall provide the Finance Director with a certified statement from an independent certified public accountant within one hundred eighty (180) days following the end of the businesses fiscal year showing the amount of such tax which was due, collected and paid to the Town during the fiscal year.
- (b) Transmittal of tax. The tax shall be due on the day that the monthly return is due as provided herein. At the time of filing such return, the owner shall pay to the Finance Director all taxes, interest and penalties, if any, due for the period to which the return applies.
- (c) Failure to pay tax. If for any reason any tax is not paid when due, a penalty and interest, as set by subsection (d), on the amount of tax which remains unpaid shall be added and collected. Whenever any owner shall fail to pay any tax as herein provided, enforcement may include legal action and tax lien.
- (d) Schedule of certain rates. The following rates are hereby set for the purpose of this article:
 - 1) Penalty, seven and one half (7.5) percent added to the amount of tax unpaid and uncollected.
 - 2) Interest, one and one half (1.5) percent added per month to the amount of tax unpaid and uncollected.

Sec. 4-306. Audit of records.

- (a) For the purpose of ascertaining the correct amount of the excise tax on the provision of the lodging due from any person engaged in such business in the Town under this article, the Finance Director or an authorized agent may conduct an audit by examining any relevant books, accounts and records of such person.
- (b) The Finance Director, or any person certified by the Finance Director as his deputy or representative, may enter the common and business premises of any lodging service for inspection of the books and records in order to effectuate the proper administration of this article and to assure the enforcement of the collection of the tax imposed.
- (c) No person shall prevent, hinder or interfere with the Finance Director or his duly authorized representative in the discharge of his duties under this article. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Finance Director may issue a subpoena to require that the taxpayer or its representative attend a hearing or produce any such books, accounts and records for examination.
- (d) It shall be the duty of every owner to keep accurate and complete books and records to which the Finance Director or his representative shall at all times have full access, which records include a daily sheet showing:
 - 1) The number of rooms rented during the twenty-four hour period, including multiple rental of the same room where such shall occur.
 - 2) The actual hotel receipts collected for the date in question.
 - 3) All such records must be maintained by the owner for a period of three (3) years.
- (e) Any tax exempt organization claiming exemption under the provisions of this article is subject to audit in the same manner as any other person engaged in the lodging business in the Town.
- (f) The burden of proving that any transaction is exempt from the tax shall be upon the lodging provider.

Sec. 4-307. Tax overpayments and deficiencies.

An application for refund of tax monies paid in error or by mistake, shall be made within two years after the date of payment for which the refund is claimed. If the Finance Director determines that within three years of the due date, a lodging provider overpaid the excise tax on the provision of lodging, the Town shall process a refund or allow a credit against a future remittance from the same taxpayer. If at any time the Finance Director determines the amount paid is less than the amount due under this article, the difference together with the interest shall be paid by the lodging provider within fifteen days after receiving written notice and demand from the Finance Director.

Sec. 4-308. Tax information confidential.

- (a) All specific information gained under the provisions of this article which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall

be treated by the Town and its officers, employees or legal representative as confidential. Except as directed by judicial order or as provided in this article, no town officer, employee or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such information shall be required to provide only such information as is directly involved in the action or proceeding. Any town officer or employee who shall knowingly divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in this article or by law, shall be guilty of a violation hereof punishable by a fine but not imprisonment.

- (b) Nothing contained in this section shall be construed to prohibit the delivery to the taxpayer or their duly authorized representative, a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee or legal representative of the Town.

Sec. 4-309. Forms and regulations.

The Finance Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the excise tax on the provision of lodging.

Sec. 4-310. Enforcement and penalties.

- (a) It shall be unlawful for any person to intentionally, knowingly or recklessly fail to pay the tax imposed by this article, or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this article. Any person convicted of a violation of this article shall be deemed guilty of a municipal criminal offense and shall be punished by a fine of not more than one thousand dollars or by imprisonment for a period of one year, or by both such fine and imprisonment. Each day, or portion thereof, that any violation of this article continues shall constitute a separate offense.
- (b) If any lodging provider fails to make a return and pay the tax imposed by this article, the town may make an estimate, based upon available information, of the amount of tax due and add the penalty and interest provided above. The town shall mail notice of such estimate, by certified mail, to the lodging provider at his or her address as indicated in the town records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Town ten days from the date of service of the notice or the date of mailing by certified mail; provided, however, that within the fifteen-day period such delinquent taxpayer may petition the Town for a revision or modification of such assessment and shall, within such fifteen-day period, furnish the Finance Director the documents, facts and figures showing the correct amount of such taxes due and owing.
- (c) Such petition shall be in writing, and the facts and figures submitted shall be submitted in writing and shall be given by the taxpayer under penalty of perjury. Thereupon, the Town may

modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this article. Such assessment shall be considered the final order of the Town, and may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Town of such intention within ten days after receipt of the final order of assessment.

Sec. 4-311. Tax lien.

- (a) The tax imposed by this article, 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 on all the tangible personal property of a taxpayer within the town and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the town clerk whenever the taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by any town police officer, the Weld County Sheriff or any duly authorized employee of the town. The property so seized may be sold by the agency seizing the same or by the town clerk, by public auction after ten days have passed following an advertised notice in a newspaper published in the town, in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply.
- (b) The tax imposed by this article shall be and remain a first and prior lien superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred.

Sec. 4-312. Recovery of unpaid tax.

- (a) The Finance Director may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the taxpayer.
- (b) The Town may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred to the county treasurer for collection in the same manner as delinquent ad valorem taxes.

Sec. 4-313. Status of unpaid tax in bankruptcy and receivership.

Whenever the business or property of a taxpayer subject to this article shall be placed in receivership, bankruptcy or assignment for the benefit of creditors or seized under distraint for taxes, all taxes, penalties and interest imposed by this article and for which the taxpayer is in any way liable under the terms of this article shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this article under process or order of any court, without first ascertaining from the town clerk the amount of any taxes due and payable under this article, and if there be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other

claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided.

Sec. 4-314. Hearings, subpoenas and witness fees.

- (a) Hearings before the Finance Director pursuant to provisions in this article shall be held pursuant to the ordinance codified herein and rules and regulations promulgated by the Finance Director. Any subpoena issued pursuant to this article may be enforced by the municipal judge pursuant to Section 13-10-112(2), C.R.S. The fees of witnesses for attendance at hearings 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 by the Finance Director, such fees shall be paid in the same manner as other expenses under the terms of this article. When a witness is subpoenaed by any party to 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 insistence the witness is summoned. In such case, the Finance Director, at his or her 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 by a court of record.
- (b) The municipal judge, 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 duly authorized hearing officers, by an action for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court.

Sec. 4-314. 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 actions in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

Sec. 2-315. Statute of limitations.

- (a) Except as otherwise provided in this section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this article shall not be assessed, nor shall notice of lien be filed or distraint warrant be issued or suit for collection be instituted, or any other action to collect the same be commenced, more than two years after the date on which the tax was or is payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such two-year period, notice of lien with respect to which has been filed prior to the expiration of such period.
- (b) In case of a false or fraudulent return with intent to evade taxation, the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be commenced at any time.

(c) Before the expiration of such 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.

Section 2. Effective Date. This ordinance shall be published and shall not take effect until January 1, 2017, having been approved by a majority of the registered voters voting at the November 3, 2015 regular general election.

Section 3. Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Town Board hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases are declared invalid.

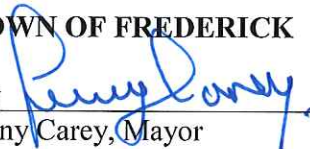
Section 4. Repealer. All ordinances or resolutions and motions of the Board of Trustees of the Town of Frederick or parts thereof, in conflict with this ordinance are to the extent of such conflict hereby superseded and repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance, resolution or motion, nor revive any ordinance, resolution or motion thereby.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS 28th DAY OF June, 2016.

ATTEST:

By 
Meghan C. Martinez, CMC, Town Clerk

TOWN OF FREDERICK

By 
Tony Carey, Mayor