

TOWN OF MT. CRESTED BUTTE
ORDINANCE NO. 12
SERIES 2022

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MT. CRESTED BUTTE, COLORADO, REPEALING ARTICLE III BUSINESS AND OCCUPATIONAL LICENSE, CHAPTER 11 LICENSES AND BUSINESS REGULATIONS OF THE TOWN OF MT. CRESTED BUTTE TOWN CODE, AS WELL AS ANY REFERENCES TO OR REQUIREMENTS FOR A BUSINESS AND OCCUPATIONAL LICENSE WITHIN ANY ORDINANCE OF THE TOWN, AND ENACTING ARTICLE III OCCUPATIONAL FEE

WHEREAS, the Town of Mt. Crested Butte, Colorado is a home-rule municipality organized under Article XX of the Colorado Constitution; and

WHEREAS, in 2022, the Colorado General Assembly adopted SB22-032 in connection with efforts to streamline the imposition, collection and administration of sales and use taxes imposed by local taxing jurisdictions on retail sales made by retailers that have a state standard retail license and either do not have physical presence within the local taxing jurisdiction or have only incidental physical presence within a location, by eliminating fees or licenses in such jurisdictions; and

WHEREAS, the provisions of SB22-032 prohibit a local taxing jurisdiction from charging a fee for a local general business license to a retailer that has a state standard retail license, makes retail sales within the local taxing jurisdiction, and either does not have physical presence or has only incidental physical presence within the local taxing jurisdiction, effective July 1, 2022, and prohibits the local taxing jurisdiction from requiring such a retailer to apply separately to the local taxing jurisdiction for a general business license; and

WHEREAS, Town staff has reviewed the number of business licenses issued by the Town on an annual basis, and has determined that requiring a business license within the Town for a retailer with a physical presence is potentially discriminatory and also does not generate sufficient revenue to continue the licensing program; and

WHEREAS, the Town has determined that it remains necessary to continue to charge a fee on accommodation units to support marketing and promotion of the town and its environs as a year-round resort, to promote and market activities and events beneficial to the business community purposes, as well as to track properties required to remit sales tax; and

WHEREAS, the occupational fee has historically been known as a “pillow” tax or fee.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MT. CRESTED BUTTE, COLORADO, AS FOLLOWS:

Section 1. Article III Business and Occupational License contained in Chapter 11. Licenses and Business Regulations, is hereby repealed in its entirety as well as any reference to or requirements for a business and occupational license within any ordinance of the Town.

Section 3. Article III. Occupancy Fee, is hereby enacted to read as follows:

ARTICLE III. Occupancy Fee

Sec. 11-40 Purpose.

The purpose of this article shall be to require the payment of an occupancy fee for accommodation units within the town to provide funds for marketing and promoting the town and its environs as a year-round resort, to promote and market activities and events beneficial to the business community and to provide the town with necessary information regarding the operation of accommodation units

Sec. 11-41 Persons subject to fee.

A fee is required to be paid for each accommodation unit according to the number of people (or pillows) served by each accommodation unit. It shall be unlawful for any person to operate an accommodation unit within the town without having first paid the occupancy fee under this article.

Sec. 11-42 Application.

(a) Applications for all occupancy fees required by this article shall be provided in writing to the town. An application shall be made, and a fee shall be paid, for each separate location within the town at which the applicant operates an accommodation unit.

(b) Each application shall state the full name of the applicant, the number of persons allowed to reside within the accommodation unit, the state sales tax license number for such applicant, and the address of the accommodation unit. Further, each application shall contain such additional information as may be needed for the proper guidance of the town officials in the determining the amount of the fee.

Sec. 11-43 Application forms.

Application forms shall be prepared and kept on file by the town. All applications shall be made upon such forms as are prescribed by the town.

Sec. 11-44 Investigations prior to determination of fee.

Upon receipt of an application, the town may require an investigation or inspection before establishing the occupancy fee and, if so required, the town shall refer such application to the proper officer or person for making such investigation within forty-eight (48) hours of the time of such receipt. The town building official shall make or cause to be made any appropriate inspection

relative to the construction of buildings or other structures. If the operation of such accommodation unit requires a license from the state or any other governmental entity, an investigation will be made with such entity to assure the town that the applicant has the appropriate licenses.

Sec. 11-45 Fees—Levied; amount.

An occupancy fee is hereby levied upon every accommodation unit within the town in the amount of ten dollars (\$10.00) per annum for each pillow within accommodation unit. Each unit applicant shall advise the town, by affidavit, under oath, at the time of application under this article, of the number of accommodation units applicant had for the prior year and the number of such accommodation units applicant intends to have for the present year. The fees payable under this subsection shall be based upon the number of accommodations set forth for the current year in such affidavit.

Sec. 11-46 Fees—Payment.

In the absence of provisions to the contrary, all fees be paid in advance at the time application therefor is made to the town. Fees paid are non-refundable and non-transferable.

Sec. 11-47 Delinquent charges.

Pursuant to C.R.S. section 31-20-101, et seq., the town may cause any delinquent charges or fees made or levied under this article to be certified to the county treasurer, to be collected and paid over by the treasurer in the same manner as real or personal property taxes, including the provisions for the creation of a lien upon the subject property.

Sec. 11-48 Recovery of costs of enforcement.

(a) If it is necessary for the town to take action for the enforcement of this article, there shall be added to any fees due under this article all reasonable costs and fees incurred by the town, including reasonable attorneys' fees.

(b) If any action is brought in a court of law by or against the town relating to the enforcement, interpretation or construction of this article, or of any document provided for in this article, or of any proceeding under this article, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

Sec. 11-49 Use of proceeds.

It is hereby declared that the proceeds from the fee imposed pursuant to this article shall be used for the payment of reasonable costs incurred in connection with the administration of this article, 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 community.

Sec. 11-50 Annual obligation; notice.

(a) An occupancy fee must be paid on an annual basis.

(b) The town shall mail to the owner of the accommodation unit a statement of the time for payment of the occupancy fee no later than three (3) weeks prior to the date it is due. Provided, that a failure to send out such notice or the failure of an owner to receive it shall not excuse the owner from a failure to apply for or pay the fee, nor shall it be a defense in an action for operation without payment of the occupancy fee.

Section 3. Severability. Should any section, clause, phrase, or provision of this ordinance be ruled invalid or unenforceable by any court of competent jurisdiction, it is hereby declared the intent of the Town Council of the Town of Mt. Crested Butte, Colorado, that the remaining provisions of this ordinance be given full force and effect if it is possible to do so.

INTRODUCED, READ, APPROVED, AND ORDERED PUBLISHED on first reading at a regular meeting of the Town Council of the Town of Mt. Crested Butte, Colorado, this 6th day of December, 2022.

PASSED, ADOPTED, AND APPROVED ON SECOND READING at a regular meeting of the Town Council of the Town of Mt. Crested Butte, Colorado, held the 3rd day of January, 2022.

TOWN OF MT. CRESTED BUTTE, COLORADO


By: _____
Nicholas Kempin, Mayor

ATTEST:



Tiffany O'Connell, Town Clerk