

**TOWN OF KEYSTONE
ORDINANCE NO. 2024-O-14**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE,
COLORADO, IMPLEMENTING THE VOTER-APPROVED 2% LODGING TAX,
PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND DECLARING AN
EMERGENCY**

WHEREAS, the Town of Keystone, Colorado (“Town”) is a home rule municipality, duly organized and existing under the laws of the state of Colorado; and

WHEREAS, under the Taxpayer’s Bill of Rights, Article X, Section 20(4) of the Colorado Constitution (“TABOR”), governmental entities are required to obtain voter approval in advance for any tax rate increase; and

WHEREAS, by Resolution 2024-58, the Town Council (“Council”) approved the submittal to the registered voters of the Town of Keystone a ballot question regarding the imposition of a lodging tax of two percent (2%) on short-term rental lodging within the Town of Keystone, with proceeds of such tax to be used for capital improvements and public safety; and

WHEREAS, on November 5, 2024, a majority of the qualified electors the Town of Keystone casting ballots in the election voted in favor of the 2% lodging tax on short-term; and

WHEREAS, the effective date of the lodging tax is January 1, 2025, and all stays on or after January 1, 2025, shall pay the 2% lodging tax; and

WHEREAS, in accordance with that mandate, the Town Council implements regulations for a lodging tax on short-term lodging in the Town; and

WHEREAS, the Town Council determines, based on the evidence and testimony presented at the public hearing, that the adoption of this emergency ordinance will further the health, safety, and welfare of the inhabitants of the Town and that the effective date of January 1, 2025, is for the best interests of the immediate preservation of financial security of the community and its citizens.

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Keystone, Colorado, as follows:

Section 1. Findings. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council of the Town of Keystone.

Section 2. Legislative Intent. The legislative intent of the Town Council in enacting this Ordinance is that every person who, for consideration, leases or rents any

hotel room, motel room or other accommodation located in the Town shall pay, and every person who furnishes for lease or rental any such accommodation shall collect, the tax imposed by this Ordinance.

Section 3. Definitions. For purposes of this Ordinance, the following words shall have the following meanings:

Lodging means rooms or accommodations for overnight use furnished by any person or the representative of any person to any person who for consideration uses, possesses, occupies or has the right to use, possess or occupy any such room or accommodation in a hotel, condominium hotel, apartment hotel, condominium, lodging house, motel, motor hotel, guest house, guest ranch, resort, mobile home, mobile home park, auto court, inn, trailer court, trailer park or hotel, under any concession, permit, lease, contract, license to use or other similar arrangement.

Lodging stay means the act of occupying or using lodging.

Marketplace means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where the remote sale of lodging within the town is offered.

Marketplace facilitator means

1. A person who:
 - a. Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the remote sale of lodging within the town through the person's marketplace;
 - b. Engages directly or indirectly, through one (1) or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
 - c. Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.
2. *Marketplace facilitator* does not include a person that exclusively provides internet advertising that does not otherwise meet this definition.

Marketplace seller means a person, regardless of whether or not the person is engaged in business in the town, which has an agreement with a marketplace facilitator and offers the remote sale of lodging within the town through a marketplace owned, operated, or controlled by a marketplace facilitator.

Multichannel seller means a vendor that offers for the remote sale of lodging within the town through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Purchase or Sale means the furnishing for consideration by any person of lodging within the Town.

Purchaser means any person exercising the taxable privilege of purchasing lodging.

Tax means either the tax payable by the vendor, or the aggregate amount of taxes due from the vendor, during the period for which the vendor is required to pay the occupation tax on the provision of lodging under this Ordinance.

Taxpayer means the vendor obligated to pay the tax under the terms of this Ordinance.

Vendor means a person making sales of or furnishing lodging to a purchaser in the Town, and includes, but is not limited to, a marketplace facilitator, a marketplace seller, or multichannel seller.

Section 4. Levy of tax. Effective January 1, 2025, there is hereby levied and shall be collected and paid a lodging excise tax of two percent (2%) by every person for a lodging stay. The two percent (2%) lodging tax is levied on the purchase price paid or charged for such lodging.

The lodging excise tax shall be paid and collected on all lodging stays occurring on or after January 1, 2025, regardless of the date that the person reserved the lodging stay.

Section 5. Exempt Transactions. The following entities and transactions are exempt from the duty to pay tax under this Ordinance but not the duty to collect and remit the tax levied hereby:

- (1) All lodging as defined in this Ordinance furnished to any person who resides continuously for a period of thirty (30) consecutive days or more in rooms or accommodations or has the right to reside pursuant to any written concession, permit, contract, license to use or other written arrangement.
- (2) The United States Government, the State of Colorado, its departments and institutions and the political subdivisions thereof including the city, when acting in their governmental capacities and performing governmental functions and activities; and
- (3) 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.

Section 6. Collection of tax.

- (a) Every vendor making sales to a purchaser in the Town, which are taxable under the provisions of this Ordinance, at the time of making such sales is required to collect the tax imposed by section 4 from the purchaser.
- (b) The tax to be collected as provided by subsection (a) of this section shall be stated and charged separately from the sale price and shown separately from the sale price on any record thereof at the time when the sale is made or at the time when evidence of the sale is made or at the time when evidence of the sale is issued or employed by the vendor; provided, that when added such tax shall constitute a part of such purchase price or charge and shall be a debt from the purchaser to the vendor until paid and shall be recoverable at law in the same manner as other debts. The tax shall be paid by the purchaser to the vendor, as trustee for and on account of the town, and the vendor shall be liable for the collection thereof and on account of the town.
- (c) Taxes paid on the amount of gross sales which are represented by accounts which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the state may be credited upon a subsequent payment of the tax herein provided; but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amount so collected.
- (d) With respect to sales of lodging within the town made by marketplace sellers in or through a marketplace facilitator's marketplace, a marketplace facilitator has all the liabilities, obligations, and rights under this Ordinance.
- (e) The burden of proving that any transaction is exempt from the tax shall be upon the vendor.
- (f) It shall be the duty of every vendor to maintain, keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Town Manager or designee in order to determine the amount of the tax for which the vendor is liable under the Ordinance. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records and the same shall be open for examination by the Town Manager or designee.

Section 7. Vendor responsible for payment of tax.

- (a) Amount: Every vendor shall add the tax imposed by section 4 to the purchase price or charge for lodging, and the vendor shall be liable and responsible to the town

for the payment on a monthly basis of an amount equivalent to such tax on all gross taxable sales, and also liable and responsible to the town for any collection in excess of that equivalent amount. Every vendor shall on its return round each calculation, as directed on such form as the finance director may require, to the nearest whole dollar and remit the rounded amount. In rounding under this section, any amount of forty-nine cents (\$0.49) or less shall be rounded down, and any amount of fifty cents (\$0.50) or higher shall be rounded up.

(b) Returns: Every vendor shall on or before the twentieth (20) day of each month make a return to the Town Manager or designee for the preceding calendar month and remit to the finance director simultaneously therewith the total amount due the town as provided by subsection (a) of this section. Returns of the vendor, or the vendor's duly authorized agent, shall contain such information and be made in such a manner and upon such forms as the finance director may prescribe, and the finance director may, by regulation duly adopted, extend the time up to one (1) year for making returns and paying the tax due.

(c)

1. A marketplace facilitator engaged in business in the town is required to collect and remit lodging tax on all taxable sales of lodging within the town made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect lodging tax had the sale not been facilitated by the marketplace facilitator.
2. A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a vendor. Marketplace facilitators shall be liable for the lodging taxes collected from marketplace sellers or multichannel sellers. The town may recover any unpaid lodging taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.
3. The liabilities, obligations, and rights set forth under this section are in addition to any duties and responsibilities the marketplace facilitator has under this Ordinance if it also offers lodging within the town for sale through other means.
4. A marketplace seller, with respect to sale of lodging within the town made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a vendor under this section if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
 - i. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit lodging

tax on all sales of lodging within the town subject to tax under this Ordinance; or

- ii. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect lodging tax and will collect lodging tax on all sales of lodging within the town subject to tax under this Ordinance made in or through the marketplace facilitator's marketplace.
5. If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other vendor.
 6. With respect to any sale of lodging within the town, the town shall solely audit the marketplace facilitator for sales of lodging within the town made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.
- (d) All sums of money paid by the purchaser to the vendor as taxes imposed by this Ordinance shall be and remain public money, the property of the Town, in the hands of vendor, and the vendor shall hold the same in trust for the sole use and benefit of the town until paid to the Town Manager as herein provided. The vendor shall be in violation of this Ordinance for failure to pay such taxes.

Section 8. Lodging Tax Fund created. There is hereby established a Lodging Tax Fund. The revenue derived from the lodging tax shall be deposited in the Lodging Tax Fund. The revenues in the Lodging Tax Fund shall only be spent on capital infrastructure, projects, Highway 6 safety, maintenance (such as improvements to streets and trails), and public safety.

Section 9. Audit of records.

- (a) For the purpose of ascertaining the correct amount of the occupation tax on the provision of lodging due from any person engaged in such business in the Town under this Ordinance, the Town Manager, or designee, or an authorized agent may conduct an audit by examining any relevant books, accounts and records of such person.
- (b) All books, invoices, accounts and other records shall be made available within the Town limits and be open at any time during regular business hours for examination by the Town Manager, or designee, or an authorized agent. If any taxpayer refuses to furnish any of the foregoing information voluntarily when requested, the Town Manager 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.

- (c) Any exempt organization or person claiming exemption under the provisions of this Ordinance is subject to audit in the same manner as any other person engaged in the lodging business in the Town.

Section 10. Tax overpayments and deficiencies.

An application for refund of tax monies paid in error or by mistake shall be made within three (3) years after the date of payment for which the refund is claimed. If the Town Manager or designee determines that within three (3) years of the due date, a vendor overpaid the occupation 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 Town Manager or designee determines the amount paid is less than the amount due under this Ordinance, the vendor shall pay the difference together with the interest within ten (10) days after receiving written notice and demand. The Town Manager may extend that time for good cause.

Section 11. Tax information confidential.

- (a) All specific information gained under the provisions of this Ordinance that 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 representatives as confidential unless otherwise required by law. Except as directed by judicial order or as provided in this Ordinance, 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 confidential information shall be required to provide only such information as is directly involved in the action or proceeding. Any Town officer or employee who knowingly divulges any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in this Ordinance or by law, shall be guilty of a violation hereof.
- (b) The Town Manager or designee may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that said jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town.
- (c) Nothing contained in this Section shall be construed to prohibit the delivery to a 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.

Section 12. Forms and regulations.

The Town Manager or designee shall have the authority to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this Ordinance and the collection and enforcement of the tax obligations imposed hereby. The Town Manager or designee is also authorized to prescribe forms to aid in the making of returns, the ascertainment, assessment and collection of said occupation tax on the provision of lodging, and in particular and without limiting the general language of this Ordinance, to prescribe:

- (1) A form of report on the provision of lodging to be supplied to all vendors;
- (2) The records which vendors providing lodging are to keep concerning the tax imposed by this Ordinance.

Section 13. Enforcement and penalties.

- (a) It shall be unlawful for any person to intentionally, knowingly, or recklessly fail to pay the tax imposed by this Ordinance, or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Ordinance. Each day, or portion thereof, that any violation of this Ordinance continues shall constitute a separate offense.
- (b) A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the vendor and become due if the tax is not remitted as required by this Ordinance, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance. The Town Manager is hereby authorized to waive, for good cause shown, any penalty assessed.
- (c) If any part of a deficiency is due to negligence or intentional disregard of regulations, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency together with interest from the vendor required to file a return. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency together with interest and in such case, the whole amount of the unpaid tax, including the additions, shall become due and payable ten (10) days after written demand by the Town Manager.
- (d) If any vendor fails to make a return and pay the tax imposed by this Ordinance, 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 and regular mail, to the vendor at the 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 Manager ten (10) days from the date of mailing of the notice; provided, however, that within the ten-day period such delinquent taxpayer may petition the Town Manager for a revision or modification of such assessment and shall, within such ten-day period, furnish the Town Manager with a written appeal petition and include the documents, facts and figures showing the correct amount of such taxes due and owing.

- (e) Such appeal petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally and shall be given by the taxpayer under penalty of perjury. After review of the petition, the Town Manager may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Ordinance. Such assessment shall be considered the final order of the Town Manager, and may be reviewed under the Rule 106(a)(4) of the Colorado rules of Civil Procedure, provided that the taxpayer gives written notice to the Town Manager of such intention within ten (10) days after of the final order of assessment.

Section 14. Tax constitutes lien.

- (a) The tax imposed by this Ordinance, 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 Manager 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 the Summit 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 Manager at public auction after ten (10) 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) Whenever the business or property of a taxpayer subject to this Ordinance is 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 Ordinance, and for which the taxpayer is in any way liable under the terms of this Ordinance, 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. No sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Ordinance under process or order of any court, without first ascertaining from the Town the amount of any taxes due and payable under this Ordinance and, if there are 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.

- (c) The tax imposed by this Ordinance 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.

Section 15. Recovery of unpaid tax.

- (a) The Town may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the taxpayer.
- (b) In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Town may recover at law the amount of such taxes, penalties, costs, the reasonable value of any attorney's time or the reasonable attorney's fees charged, plus interest, in any county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due) having jurisdiction of the amount sought to be collected.
- (c) The return of the taxpayer or the assessment made by the Town shall be prima facie proof of the amount due.
- (d) Such actions may be actions in attachment, and writs of attachment may be issued to the Summit County Sheriff, and in any such proceeding no bond shall be required of the Town Manager, nor shall any sheriff's deputy require of the Town an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Town may prosecute appeals in such cases without the necessity of providing bond therefor.
- (e) 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 Summit County Treasurer for collection in the same manner as delinquent ad valorem taxes.

Section 16. Hearings, subpoenas and witness fees.

- (a) Hearings before the Town pursuant to the provisions of this Ordinance shall be held in accordance with this Ordinance and rules and regulations promulgated by the Town. Any subpoena issued pursuant to this Ordinance 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 at the instance of the Town, such fees shall be paid in the same manner as other expenses under the terms of this Ordinance, and, when a witness is subpoenaed at the instance of any party to any such proceeding, the Town may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Town, at its 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 out of a court of record.
- (b) The Municipal Judge, upon the application of the Town, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Town's 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.

Section 17. Depositions.

The Town or any party in an investigation or hearing before the Town Manager 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.

Section 18. 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 Ordinance 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 three (3) 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 three-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 Town Administrator may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

Section 19. Should any one or more sections or provisions of this Ordinance or of the Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

Section 20. Any and all Ordinances or Codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such Ordinance or Code or part thereof shall not revive any other section or part of any Ordinance or Code provision heretofore repealed or superseded.

Section 21. Codification. This ordinance may be codified and numbered for purposes of codification without the need for further approval by the Town Council.

Section 22. Emergency declaration; January 1, 2025, effective date. Pursuant to the Town of Keystone Home Rule Charter Section 6.6, the Town Council hereby finds, determines, and declares that an emergency exists, and that this Ordinance is necessary for the immediate preservation of the public health, safety and welfare and the financial well-being of the Town. The Town of Keystone voters approved the implementation of a lodging tax with a January 1, 2025, effective date. Absent passage of this Ordinance as an Emergency Ordinance, there may be confusion in the collection and implementation of the lodging tax on January 1, 2025. Upon passage by a $\frac{3}{4}$ affirmative vote of the members of the Town Council, this Ordinance shall become effective on January 1, 2025.

INTRODUCED, READ AND PASSED AS AN ORDINANCE, ON FIRST READING, AND SCHEDULED FOR PUBLIC HEARING ON NOVEMBER 26, 2024, AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, THIS

12th DAY OF NOVEMBER 2024.

Kenneth D. Riley, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

READ, PASSED AND ADOPTED WITH A ROLL CALL VOTE OF 7 IN FAVOR AND 0 OPOPOSED ON SECOND READING, AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, THIS 10TH DAY OF DECEMBER 2024.

Kenneth D. Riley, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney