

ORDINANCE NO. 2121

INTRODUCED BY: Scott

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ADOPTING A NEW ARTICLE 3-40, BRIGHTON LODGING TAX, FOR THE BRIGHTON MUNICIPAL CODE IMPOSING A 3% LODGING TAX ON SHORT TERM LODGING OF LESS THAN THIRTY DAYS TO PROVIDE REVENUE TO BE ALLOCATED BY THE CITY COUNCIL FOR ECONOMIC DEVELOPMENT, SPECIAL EVENTS, CULTURAL ARTS FACILITIES, ADVERTISING AND MARKETING, AND PROMOTING TOURISM AND OTHER ACTIVITIES WHICH UTILIZE PUBLIC ACCOMMODATIONS; PROVIDING DEFINITIONS, REGULATIONS AND ADMINISTRATION OF THE LODGING TAX; REQUIRING A LICENSE FOR ANY PERSON ENGAGED IN THE BUSINESS OF FURNISHING LODGING; AND OTHER PROVISIONS RELATED THERETO.

WHEREAS, the City Council, in response to information and the recommendation from business owners within the community, and after careful consideration of the same determined that it is in the best interests of the citizens of Brighton to refer to the registered electors of the City the question of imposing a three percent (3%) lodging tax on the price paid by or charged to the guest, renter, or user, for the lease, rental, provision, or on the transaction of furnishing rooms or accommodations within the City; and

WHEREAS, the use of the revenue generated from the lodging tax would benefit the community and citizens by contributing to and encouraging economic development, special events, cultural arts facilities, advertising and marketing, promoting tourism and other activities which utilize public accommodations within the City; and

WHEREAS, acting pursuant to Article X, Section 20 of the Colorado Constitution, which requires voter approval of any new tax, the City Council approved and authorized the submission of the proposed lodging tax to the electors at the general election on November 8, 2011; and

WHEREAS, the electors at the general election on November 8, 2011, approved the lodging tax proposal submitted to them by the City Council; and

WHEREAS, the City Council in response to the action of the electors of the City does by this ordinance adopt the lodging tax.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

SECTION 1. The Brighton Municipal Code is hereby amended by the addition of a new Article 3-40. **Brighton Lodging Tax** to read as follows:

ARTICLE 3-40. Brighton Lodging Tax

Sec. 3-40-10 Legislative Intent

- Sec. 3-40-20 Definitions**
- Sec. 3-40-30 Imposition of the tax**
- Sec. 3-40-40 Exemptions**
- Sec. 3-40-50 Use of the tax**
- Sec. 3-40-60 Collection of the tax**
- Sec. 3-40-70 Lodging Provider or Vendor responsible for payment of tax**
- Sec. 3-40-80 Applicability of other provisions**
- Sec. 3-40-90 Duty to keep books and records; audit**
- Sec. 3-40-100 Unlawful assumption of tax**
- Sec. 3-40-110 Interest on deficiency**
- Sec. 3-40-120 Disputes; refunds**
- Sec. 3-40-130 Tax information to be confidential**
- Sec. 3-40-140 Administrative hearings**
- Sec. 3-40-150 Enforcement of tax liability**
- Sec. 3-40-160 Administration of lodging tax**
- Sec. 3-40-170 Lodging Tax Advisory Committee**
- Sec. 3-40-180 Severability**
- Sec. 3-40-190 Effective Date**

Sec. 3-40-10 Legislative Intent and Purpose

It is the legislative intent of the City Council that every person who purchases short term lodging in the City is exercising a taxable privilege and every person who furnishes lodging shall collect the tax imposed by this article. The city council declares that the purpose of the levy of the tax imposed by this article is for the raising of funds to promote economic development, tourism, conventions and related activities within the City by marketing the City and sponsoring community events, in support of these purposes.

Sec. 3-40-20 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City Manager shall mean the City Manager of the City of Brighton, or his/her designee.

Finance Director shall mean the Director of the Finance Department of the City of Brighton, or his/her designee.

Gross taxable sales means the total amount received in money, credits, property, or other valuable consideration from sales and purchases of lodging that shall be subject to the tax imposed by this article.

Lodging accommodation shall mean the leasing, rental or furnishing of any room or other accommodation in any hotel, apartment-hotel, motel, guesthouse, trailer court, guest ranch, mobile home, automobile camp or any such similar place that furnishes rooms or accommodations under any concession, permit, right of access, license to use, or agreement to any person who, for a consideration, uses, possesses or has the right to use or possess such room or other accommodation for a total continuous duration of less than thirty (30) days.

Lodging customer shall mean any person who, through a taxable lodging transaction, acquires lodging accommodation from a lodging provider.

Lodging price shall mean the gross taxable sales price paid, exclusive of other taxes paid or value given by the customer for the provision of lodging accommodation.

Lodging provider shall mean any person furnishing lodging accommodation or such provider's authorized agent.

Lodging tax shall mean an excise tax payable by the purchaser of lodging accommodation 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 lodging tax as herein specified.

Lodging transaction shall mean the furnishing of a lodging accommodation to any person who, for consideration, uses, possesses or has the right to use or possess any room or rooms in any hotel, apartment-hotel, guesthouse, guest ranch, mobile home, automobile camp, trailer court or park under any concession permit, right of access, license to use or other agreement, or otherwise.

Person means an individual, partnership, society, club, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any other group or combination of individuals acting as a unit, including the United States of America, the state and any political subdivision thereof.

Purchase or sale means the acquisition for a price by any person of the taxable services of lodging within the city.

Purchaser means any person to whom the taxable service of lodging has been rendered.

Tax means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this article.

Taxpayer means any person obligated to account to the finance director for taxes collected or to be collected under the provisions of this article.

Vendor means a person making sales to a purchaser in the city of the taxable service of lodging.

Sec. 3-40-30 Imposition of the tax

On and after 12:00 a.m. January 1, 2012, there is levied and shall be paid and collected an excise tax of three (3%) percent on the lodging price paid for any lodging accommodation or transaction provided in the City. This tax shall be in addition to the sales and use tax as established pursuant to Articles 3.28 and 3.32 of this Chapter 3. It shall be a violation of this Code for any lodging customer provided lodging accommodations in the City to fail to pay, or for any lodging provider of such lodging accommodations to fail to collect, the tax levied pursuant to this article.

Sec. 3-40-40 Exemptions

The following lodging transactions are exempt from taxation under this Article 3-40:

- a. All lodging services provided to the United States Government; to the state, its departments or institutions and political subdivisions in their governmental capacities only, including the City and any department thereof;
- b. All lodging services provided to religious and charitable non-profit corporations and associations, provided the corporation or association holds a tax exempt status under Internal Revenue Code Section 501(c), but only in the conduct of their religious and charitable functions and activities;
- c. All lodging services provided to persons which the City is prohibited from taxing under the United States Constitution or laws of the United States or under state law; and
- d. All sales and purchases by any purchaser or vendor where the purchaser is a permanent resident who has entered into a written agreement with a lodging provider for the occupancy or use for lodging for a period of at least 30 consecutive days during the calendar year.

Sec. 3-40-50 Use of the tax

- a. The lodging tax shall be used by the City in accordance with the allocation limitations set forth in subsection b. hereof for the purpose of supporting economic development endeavors, special events, cultural arts facilities, advertising and marketing, and promoting tourism and other activities that utilize and require public accommodations with the City.
- b. The revenue, interest and investment income from the Lodging Tax, less applicable administrative expenses incurred by the City for the administration thereof, shall be placed and maintained in a "Lodging Tax Fund" and allocations there from shall be used for the purposes set forth in subsection A hereof, and the allocations from the "Lodging Tax Fund" shall be made by the City Council solely for those purposes.

Sec. 3-40-60 Collection of tax

- a. Every lodging provider and vendor making sales to a lodging customer or purchaser in the City that are taxable under the provisions of this article is required to collect the tax imposed by Section 3-40-30 from the lodging customer or purchaser at the time of making such sales.
- b. The tax to be collected as provided in subsection (a) of this section shall be stated and charged 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 issued or employed by the lodging provider or vendor; provided, however, that when added, such tax shall constitute a part of such sale price or charge and shall be a debt from the purchaser to the lodging provider or vendor until paid and shall be recoverable at law in the same manner as other debts. The tax shall be paid by the lodging customer or purchaser to the lodging provider or vendor, who shall act as trustee for and on account of the City, and the vendor shall be liable for the collection therefore and on account of the City.
- c. Taxes paid on the amount of gross taxable sales that are represented by accounts that 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 as herein provided. Should, however, any such amounts be thereafter collected by the vendor, the tax shall be paid to the city upon the amount so collected.

Sec. 3-40-70 Lodging Provider or Vendor responsible for payment of tax

- a. Every lodging provider or vendor shall be entitled as collecting agent of the City to withhold a vendor's fee, in the amount provided in Section 3-28-70, Brighton Municipal Code, as the same may be amended from time to time, to cover the lodging provider or vendor's expense in the collection and remittance of the tax.
- b. Every lodging provider or vendor shall, before February 20, 2012, and before the 20th day of each month thereafter, make a return to the Finance Director for the preceding calendar month commencing with the month of January, 2012, and remit to the Finance Director, the total amount due to the City. The monthly returns of the lodging provider or vendor as required hereunder shall be made in such manner and upon such forms as the Finance Director may prescribe.
- c. If the accounting methods regularly employed by the lodging provider vendor in the transaction of business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose an unnecessary hardship, the Finance Director may, upon request of the lodging provider or vendor, accept returns at such intervals as will, in the opinion of the Finance Director, better suit the convenience of the lodging provider or vendor and will not jeopardize collection of the tax; provided, however, the Finance Director may permit a lodging provider or vendor whose monthly tax collected is less than \$60.00 to make returns and pay taxes at intervals not greater than three months.

Sec. 3-40-80 Applicability of other provisions

The procedures established in Articles 3-28, *Sales Taxes* and 3-32, *Use Taxes*, Brighton Municipal Code, as the same may be amended from time to time, relating to the collection of sales and use tax, including any provisions for penalty, shall be applicable to the lodging tax unless such provisions conflict with the provisions of this article.

Sec. 3-40-90 Duty to keep books and records; audit

- a. It shall be the duty of every person subject to the provisions of this article to keep and preserve suitable records of all sums of money paid for lodging in order to determine the amount of lodging tax that is due and owing to the City by any person subject to the provisions of this article.
- b. The Finance Director, may make, permit, or cause to be made the examination, inspection, or audit of books, invoices, accounts, and other records so kept or maintained by any person subject to the provisions of this article.

Sec. 3-40-100 Unlawful assumption of tax

It shall be unlawful for any person subject to the provisions of this article to advertise or hold out or state to the public or any person, directly or indirectly, that the lodging tax or any part thereof imposed by this article, will be assumed or absorbed by such person, or that it will not be added to the price charged for lodging, or, if added, that it or any part thereof will be refunded.

Sec. 3-40-110 Interest on deficiency

Any interest on deficiency, including computation, penalty, or jeopardy enforcement, shall be enforced in the amount prescribed in sections 3-28-95 through and including 3-28-130, Brighton Municipal Code, as the same may be amended from time to time.

Sec. 3-40-120 Disputes; refunds

Any dispute or claim for refund arising under any provision of this article shall be resolved in a manner prescribed in Sec. 3-28-105, Brighton Municipal Code, as the same may be amended from time to time.

Sec. 3-40-130 Tax information to be confidential

Subject to any limitation of a judicial order, the Finance Director or any other officer or employee of the City shall not divulge any information regarding any lodging tax report or return filed with the City as required by any provision of this article.

Sec. 3-40-140 Administrative hearings

Any person subject to the provisions of this article may request a hearing on the imposition of the lodging tax after receiving a notice of final determination, assessment, demand for payment, or denial of claim for refund as set forth in Sec. 3-28-110, Brighton Municipal Code, as the same may be amended from time to time.

Sec. 3-40-150 Enforcement of tax liability

The lodging tax imposed pursuant to this article, together with all interest and penalties pertaining thereto, shall be a first and prior lien on tangible personal property in which the person responsible to collect and remit the lodging tax has an ownership interest, subject only to a perfected security interest. The finance director may also treat lodging taxes and penalties or interest due thereon and then paid as a debt due to the city from any person subject to the provisions of this article, which shall be recoverable by the city in an action at law.

Sec. 3-40-160 Administration of the lodging tax

The Finance Department shall administer the provisions of this article. The City Manager may promulgate rules or regulations to aid in the enforcement and administration of this article pursuant to the provisions of Sec. 3-28-90, Brighton Municipal Code, as the same may be amended from time to time.

Sec. 3-40-170. Lodging Tax Advisory Committee.

a. **Committee Established.** There has hereby been established a Lodging Tax Advisory Committee.

b. **Purpose.**

The Committee created under this Section shall study, investigate and advise the City Council as to the development and promulgation of policies for the implementation, support, and use of revenues from the lodging tax for economic development, special events, cultural arts facilities, advertising and marketing, promotion of tourism and other activities related thereto. In particular, the Committee will advise the City Council on allocation, budgeting and appropriation of funds from the Lodging Tax Fund consistent with the provisions of Sec. 3-40-50, **Use of the tax**, as the same may be amended from time to time.

c. **Powers and duties.**

The Committee shall adopt rules and regulations for the conduct of its meetings.

d. **Membership.**

The Lodging Tax Advisory Committee shall be composed of seven (7) voting members, who shall be appointed as follows:

1. All members and alternates shall be recommended by the City Council, and appointed by the Mayor with approval of the City Council;
2. Two (2) member(s) shall be representative(s) of lodging providers located within the corporate limits of the City;
3. Two (2) member(s) from the Board of Directors of the Brighton Economic Development Corporation;
4. One (1) member from the Brighton City Council;
5. Two (2) at-large member(s) who are residents of the City of Brighton; and
6. The City Manager, non-voting ex-officio.
7. Two (2) alternates who are residents of the City of Brighton.

The recommendation and appointment of members and alternates of the Committee shall be in accordance with Section 2-8-25, **Policy for Appointment of Members to City Boards, Commissions and Authorities**, and Section 2-8-30(b), **Duties of boards and commissions**, Brighton Municipal Code and the adopted policies of the City Council related thereto, as the same may be amended from time to time.

e. Terms of office.

1. The terms of office for members of the Committee shall expire on December 31 and begin on January 1.
2. The terms of office of the members of the Committee shall be as follows:
 - (a) The term of office for the member appointed from the City Council both voting and alternate members, shall be the same as his or her tenure in office.
 - (b) The terms of office for all other voting members shall be three (3) years. The members of the Committee first appointed shall serve for terms of one (1), two (2) and three (3) years, respectively, determined by lot from the date of their appointment; and thereafter the term of office of each member shall be for three (3) years. A member shall hold office until his or her successor has been appointed and has qualified.
 - (c) The terms of office for alternate members shall be two (2) years. The alternate members of the Committee first appointed shall serve for terms of one (1) and two (2) years, respectively, determined by lots from the date of their appointment; and thereafter the term of office of each alternate members shall be for two (2) years. An alternate member shall hold office until his or her successor has been appointed and qualified.
3. The first appointment of voting members to the Committee shall be made upon the effective date of the ordinance codified in this Article.
4. The terms of office of appointed members of the Lodging Tax Advisory Committee shall be limited to two terms. Except as may be otherwise determined by the City Council, no person may be appointed to serve a succeeding term on the Committee beyond the term limits herein stated. The term limits shall not apply to the appointment to an unexpired term of no more than one-half of the full term of office.

f. Organization and rules.

At the first meeting of the Committee in 2012, the Committee shall elect a chairperson, vice chairperson and secretary from among its members, each of whose term shall be for one (1) year, with eligibility for reelection. The Committee shall meet as necessary. It shall adopt such bylaws, rules and regulations governing its procedures as it may consider necessary or advisable, and shall keep a record of its

proceedings, which record shall be a public record. A quorum shall consist of a majority of the voting members.

g. Code of Ethics.

Each member of the Committee shall be and is subject to the provisions set forth in Article 2-10 Code of Ethics of the Brighton Municipal Code, as the same may be amended from time to time.

h. Absences/alternates.

Any member of the Committee who is unable to attend a meeting shall notify the chairperson, vice chairperson or City staff in advance of the meeting, stating the reason for his or her absence. Two (2) unexcused absences constitute the resignation of that member. Any member not present at the start of the meeting shall be considered absent and an alternate will be seated. In the case of absences of regular members, the alternates shall be seated in the following order: the alternate with seniority shall be seated first. If both alternates have served for the same amount of time, seating shall be by alphabetical order of the last names. All members and alternates in attendance may participate in the discussion. Only seated members may vote.

i. Removal.

Members, other than City Council members and the ex officio City Manager, may be removed by the Mayor for inefficiency, neglect of duty or malfeasance in office, or the City Council may remove the member representing it for the same reasons. The Mayor or City Council, as the case may be, shall file a written statement of reasons for such removal.

j. Compensation and reimbursement for expenditure.

Members of the Committee shall serve without compensation; provided, however, that each member may be reimbursed for any actual expenditure incurred by him or her in connection with his or her duties as a member of the Committee.

k. Vacancies.

Any vacancy occurring on the Committee shall be filled by appointment of a successor by the Mayor, with the advice and consent of the City Council, for the balance of the unexpired term of office. The person appointed must meet those qualifications required of the office to which he or she is appointed as set forth herein.

Sec. 3-40-180 Severability

If a court of competent jurisdiction adjudges any provision of this article or application thereof to any person or circumstance invalid, such invalidity shall not affect the remaining provisions of this article that can be effective without the invalid provision, and to this end this article is declared to be severable.

Sec. 3-40-190 Effective Date

The provisions of this Article 3-40. **Brighton Lodging Tax** shall be effective on January 1, 2012.

LICENSE

Sec. 3-40-210 License required; exemption

Sec. 3-40-220 Application

Sec. 3-40-230 Fee

Sec. 3-40-240 Term

Sec. 3-40-250 Revocation

Sec. 3-40-210 License required; exemption

- a. It shall be unlawful for any person to engage in the business of furnishing lodging without having first obtained a license therefor, which license shall be issued as part of the sales tax license, and in accordance with all applicable provisions of Article 3-28 of the Brighton Municipal Code, as the same may be amended from time to time.
- b. No license shall be required of any person engaged exclusively in the business of furnishing lodging, rooms, or accommodations that are exempt from taxation under this article.

Sec. 3-40-220 Application

Each license issued pursuant to this article shall be issued only upon application for a sales tax license pursuant to Article 3-28 of the Brighton Municipal Code, as the same may be amended from time to time, which shall include the name and address of the person desiring such license and the street number of the business and such other facts as may be reasonably required by the city clerk.

Sec. 3-40-230 Fee

No separate fee for each license issued under this article shall be required, as the same shall be included in the fee for a sales tax license as required in Sec. 3-28-18 of the Brighton Municipal Code, as the same may be amended from time to time.

Sec. 3-40-240 Term

Each license issued shall be in force until revoked or until the licensee is no longer engaged in the business of furnishing lodging or liable to account for the tax herein, consistent with the provisions of Article 3-28 of the Brighton Municipal Code, as the same may be amended from time to time.

Sec. 3-40-250 Revocation, notice, hearing

The Finance Director may revoke the license of any person found by the Finance Director to have violated any provisions of this article; provided, however, that any such revocation shall be subject to an administrative hearing as provided in Sec. 3-28-110, Brighton Municipal Code, as the same may be amended from time to time.


SECTION 2. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Article 3-40 are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Article 3-40 are hereby repealed.

SECTION 3. Validity. If any part or parts of this Article 3-40 are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the provisions of this Article 3-40. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.


SECTION 4. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 6th DAY OF December, 2011.

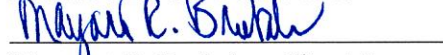
CITY OF BRIGHTON, COLORADO

By: 
Richard N. McLean, Mayor

ATTEST:


Natalie Hoel, City Clerk

APPROVED AS TO FORM:


Margaret R. Brubaker, City Attorney

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PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY THIS 20th DAY OF December, 2011.

CITY OF BRIGHTON, COLORADO

By: 
Richard N. McLean, Mayor

ATTEST:


Natalie Hoel, City Clerk

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