

**AMENDING CHAPTER 3.12 OF THE MOUNTAIN VILLAGE MUNICIPAL CODE TO
PROVIDE FOR THE COLLECTION AND REMITTANCE OF ACCOMMODATION
TAX BY MARKETPLACE FACILITATORS**

EMERGENCY ORDINANCE NO. 2021-01

WHEREAS, pursuant to C.R.S. § 31-15-103 and § 31-15-104, and pursuant to the home rule powers of the Town of Mountain Village (“Town”), the Town Council has the power to make and publish ordinances necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of its inhabitants; and

WHEREAS, the Town has autonomous taxing authority under Article XX, section 6, of the Colorado Constitution; and

WHEREAS, the Town imposes a sales tax on lodging services pursuant to Section 3.04 of the Mountain Village Municipal Code and an accommodation tax on lodging services pursuant to Section 3.12, and

WHEREAS, the Town recently amended its Code to require marketplace facilitators to collect and remit the lodging services sales tax,; and

WHEREAS, the Town’s tax administration will be greatly improved by requiring marketplace facilitators to also collect and remit the lodging services accommodation tax; and

WHEREAS, this requirement will not create a new tax on any Mountain Village taxpayer nor affect in any way existing tax levels; and

WHEREAS, the Town Council finds that improving tax administration will promote the health, safety and general welfare of the Mountain Village community; and

WHEREAS, Section 5.8 of the Charter permits the adoption of ordinances on one reading with the concurring vote of a majority vote of the members of Council at the meeting after posting notice of a public hearing and conducting a public hearing; and,

WHEREAS, Town Council finds that amendments to the Mountain Village Municipal Code will lead to the effective collection and remittance of the accommodations tax and will thereby promote the health, safety and general welfare of the Mountain Village community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO the following:

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

Section 2. **Amendments to Section 3.12 – Accommodations Tax.** Chapter 3.12 of the Town of Mountain Village Municipal Code is hereby amended as set forth **Exhibit A** attached hereto

Section 3. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 4. Effective Date. This Emergency Ordinance shall take effect immediately upon adoption in accordance with Section 5.8(a) of the Charter.

Section 5. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Mountain Village, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 6. No Existing Violation Affected. Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

Section 7. Codification of Amendments. The codifier of the Town’s Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Emergency Ordinance within the Mountain Village Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Emergency Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 8. Publication. The Town Clerk is ordered to publish this Emergency Ordinance in accordance with Chapter 5.8(c) of the Mountain Village Municipal Code.

[SIGNATURE PAGE FOLLOWS]

INTRODUCED AND ADOPTED ON FIRST AND FINAL READING on the 14th day of
January 2021.

TOWN OF MOUNTAIN VILLAGE

**TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

By: 
Laila Benitez, Mayor

ATTEST:


Susan Johnston, Town Clerk

Approved as To Form:


Paul Wisor, Town Attorney


I, Susan Johnston, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town") do hereby certify that:

1. The attached copy of Emergency Ordinance No.2021-01 ("Ordinance") is a true, correct and complete copy thereof.
2. The Emergency Ordinance was introduced, read by title, approved on first and final reading with minor amendments by the Town Council the Town ("Council") at a special meeting held via virtual Zoom meeting, on January 14, 2021, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Martinique Davis Prohaska	X			
Peter Duprey	X			
Patrick Berry	X			
Natalie Binder	X			
Jack Gilbride	X			

3. The Emergency Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this 14th day of January, 2021.


Susan Johnston, Town Clerk

(SEAL)



EXHIBIT A

CHAPTER 3.12
ACCOMMODATIONS TAX

Sections:

- 3.12.005 Purpose
- 3.12.010 Definitions
- 3.12.020 Imposition and Rate
- 3.12.025 Exemption
- 3.12.030 Liability
- 3.12.040 Taxes Collected Held in Trust
- 3.12.050 Licensing
- 3.12.060 Reporting
- 3.12.070 Maintenance of Records
- 3.12.080 Enforcement
- 3.12.090 Administration
- 3.12.100 Amendment, Repeal and Revision
- 3.12.110 Violations
- 3.12.120 Severability
- 3.12.130 Authorization to Act

3.12.005 Purpose

- A. The purpose of this Chapter is to increase the Sales Tax from 2% to 4% on the price paid for the short term leasing or rental of any hotel unit, hotel efficiency unit, lodge unit, efficiency lodge unit, condominium, single family home or other accommodation located in the Town.
- B. The additional revenues generated from the increased levy are to be used exclusively to fund the Airline Guarantee Program. All funds collected and expended shall be for the purpose of funding the Telluride/Montrose Regional Air Organization (“TMRAO”) or its successors or assigns.
- C. Such funding will be subject to a guaranteed seat on the TMRAO Board and receiving satisfactory quarterly reports that shall include but not be limited to financial statements, airline load factors and status updates of current and proposed airline guarantee programs.
- D. Notwithstanding any other provision of this Chapter, not more than two percent (2%) of the tax revenues collected may be retained by the Town to offset tax collection costs and as an administration/management fee. (Ord. 03-04 § 1)

3.12.010 Definitions

When not clearly otherwise indicated by the context, the following terms, words and phrases as used in this Chapter have the following meanings:.

- A. Business. All activities in which a person engages or in which such person causes another to be engaged with the object of gain, benefit, or advantage, whether direct or indirect.
- B. Hotel room, Hotel Efficiency Unit, Lodge Unit, Efficiency Lodge Unit, Condominium, Single Family Home, or Other Accommodation Unit. Any room or other accommodation in any hotel, Lodge, Condominium, Single Family Home or any such similar place provided to any person who, for a consideration, uses, possesses, or has the right to use or possess such room or other accommodation for a period of less than thirty (30) consecutive days.
- C. Price paid is the total amount promised or paid in cash or other consideration in exchange for the use of any hotel room, hotel efficiency unit, lodge unit, efficiency lodge unit, condominium, single family home, or other accommodation unit, including but not limited to vendor mark-up, cleaning fees, service fees, or any other charge, excluding taxes, which must be paid by the purchaser in exchange for the for the use of any hotel room, hotel efficiency unit, lodge unit, efficiency lodge unit, condominium, single family home, or other accommodation unit.
- ~~E.D.~~ Telluride/Montrose Regional Air Organization (TMRAO). Telluride/ Montrose Regional Air Organization is a 501(c)(6) not for profit organization made up of an 11 member voluntary board of directors, whose purpose is to effectively secure commercial air service into the region in a fiscally responsible manner that best meets the needs of the Telluride, Mountain Village, and Montrose communities.

A.E. The Airline Guarantee Program. The Airline Guarantee Program is a set of activities which include but are not limited to revenue guaranties and is administered by TMRAO, with the objective is to expand air service into the Telluride and Montrose Regional Airports through revenue guaranties in order to adequately meet the demand for service into the region. A revenue guarantee is a contract executed between the AGP and an airline in which the AGP will pay the difference between the flight cost and associated revenue generated by the flight. (Ord. 98-08 § 1, 03-04 § 2)

F. Vendor means a person, including marketplace facilitators as defined in Section 3.04.020, providing for the use of a hotel room, hotel efficiency unit, lodge unit, efficiency lodge unit, condominium, single family Home, or other accommodation unit..

3.12.020 Imposition and Rate

- A. On and after December 9, 2003, there is levied and shall be paid and collected an excise tax of four percent (4%) on the price paid for the short term leasing or rental of any hotel unit, hotel efficiency unit, lodge unit, efficiency lodge unit, condominium room, single family home or other accommodation located in the Town.
1. All vendors subject to this Chapter shall timely collect and be liable for an amount equivalent to four percent (4%) of the price ~~or cost~~ paid for short term lodging rentals specified in this Chapter, and shall, before the twentieth (20th) day of each month, make a return to the Town for the preceding calendar month and remit said collected tax amount(s) to the Town; except that in the event the tax collected in a month is less than three hundred dollars (\$300.00), then the return and remittance may be performed at the end of the calendar quarter.
 2. All returns and remittances shall be made in such a manner and upon such forms as the Finance Director may prescribe, inclusive of the standard reporting form(s) devised by the Executive Director of the Colorado Department of Revenue. The Finance Director may extend the time for making a return and paying the taxes due under such reasonable rules, regulations or conditions as he/she may determine necessary from time to time.
 3. A vendor doing business in two (2) or more places or locations within the Town may file one return covering all such business locations.
 4. If any vendor during a reporting period collects a total tax amount in excess of four percent (4%) of the total taxable charges or sales, the vendor shall remit to the Town the full net amount of the tax imposed along with any collected excess. The retention by a vendor of any excess collected tax, or the intentional failure to remit punctually to the Town the full amount required to be remitted by the provisions of this Ordinance, is unlawful.
 5. A vendor may retain three and one-third percent (3.33%) of the sum of the excise tax remitted to the Town to cover the vendor's expense in the collection and remittance of the tax; except that in the event a vendor is delinquent or deficient in remitting said tax to the Town, other than for unusual circumstances demonstrated

to the satisfaction of the Finance Director, the vendor shall not be allowed to retain any amounts to cover such expenses in collecting and remitting the tax.

~~46~~ Interest shall accrue on all delinquent or deficient payments of the excise tax from the date of delinquency or underpayment to the date of full payment at the rate of one percent (1%) per month. Interest shall be calculated for each month, or portion of a month, that a tax delinquency or deficiency remains unpaid. A penalty equal to ten percent (10%) of the delinquent or deficient tax amount shall also be paid, unless the delinquency or deficiency is due to fraud or an intent to evade the tax, in which case the penalty shall be one hundred percent (100%) of the total amount of such delinquency or deficiency, and the same shall be due and paid, along with the unpaid tax, within twenty (20) days after written notice and demand for payment is made by the Town. No interest shall be allowed or paid on any overpayment of the excise tax.

~~67~~ The timely submission of a collection report and/or payment of the excise tax required under this Chapter shall be evidenced by the U.S. Mail postmark date if mailed, or by the Town's stamped receipt validation date if submitted by other method of delivery. Any due date, payment date, or deadline for submitting a report and/or remitting payment of the excise tax, or for providing information or taking other action, which falls on a weekend or legal holiday recognized by the Town or federal or state government, shall be automatically extended to the first business day following such weekend or holiday.

~~78~~ It shall be unlawful for any person to submit false information in connection with a collection report and/or tax return. (Ord. 03-04 § 4)

3.12.025 Exemption

- A. There shall be exempt from the excise tax imposed under this or the following:
1. Lodging rentals to the United States government and all departments and institutions thereof, the state of Colorado and the departments, institutions and political subdivision thereof, and the Town; but only in the exercise of their governmental functions and only when rentals and purchases are supported by official government purchase orders or other official documentation, and paid for by draft or warrant drawn on the government's account directly to the vendor.
 2. Lodging rentals to charitable organizations duly established and recognized under state or federal law, but only to the extent any such rental or sale is transacted in the conduct of the organization's regular charitable functions and activities and is paid for directly by the organization without reimbursement therefore.
 3. All rentals, which the Town is prohibited from taxing under the constitution or laws of the United States or the state of Colorado.
 4. The burden of proving that any rental, sale or other transaction is exempt from the excise tax imposed under this Ordinance shall be on the person, business or other entity asserting such exemption under such reasonable requirements of proof as the Finance Director may prescribe. (Ord. 03-04 § 6)

3.12.030 Liability

It is unlawful for any lessee or renter of a hotel room, motel room or other accommodation located in the Town, to fail to pay, or for any ~~lessor or renter of such accommodation to fail~~ vendor to collect, the tax levied by this Chapter. A marketplace seller as defined in Section 3.04.020 is not liable for this collection of tax; rather, any marketplace facilitator facilitating the sale of lodging services is so liable.

The burden of proving that any transaction is not subject to the tax imposed by this Chapter shall be upon the person upon whom the duty to collect the tax is imposed. (Ord. 98-08 § 3)

3.12.040 Taxes Collected Held in Trust

All sums of money paid by a person who leases or rents any hotel room, motel room or other accommodation as the lodging tax imposed by this Chapter are public monies that are the property of the Town. The person required to collect and remit the lodging tax shall hold such monies in trust for the sole use and benefit of the Town until paying them to the Town. (Ord. 98-08 § 4)

3.12.050 Licensing

Every person with a duty to collect the tax imposed by this Chapter shall obtain a Business and Service License in accordance with Chapters 3.04.070 and 5.01 of the Town Code, and shall report such tax collections in accordance with Chapter 3.12.060 hereof. (Ord. 98-08 § 5)

3.12.060 Reporting

- A. Every person or vendor with a duty to collect the tax imposed by this Chapter shall report such taxes collected on forms prescribed by the Town and shall remit said taxes to the Town on or before the 20th day of the month for the preceding month or months under report.
- B. The tax, if not paid on the 20th day of the month for the preceding month or months under report as provided herein, shall become delinquent until paid or collected at the rate of one percent (1%) per month.
- C. Interest shall accrue on all delinquent taxes from the day of delinquency until paid or collected at the rate of one percent (1%) per month. (Ord. 98-08 § 6)

3.12.070 Maintenance of Records

- A. The Town may require any person to make such return, render such statement or keep and furnish such records as the Town may deem sufficient and reasonable to demonstrate whether or not the person is liable under this Chapter for payment or collection of the tax imposed herein.

- B. Any person required to make a return or file a report under this Chapter shall preserve duplicates of those returns or reports for three (3) years.
- C. The Town shall maintain all reports and returns of taxes required under this Chapter for three (3) years. (Ord. 98-08 § 7)

3.12.080 Enforcement

- A. The tax imposed by this Chapter is a first and prior lien on real property and tangible personal property in which the person responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of notice of the tax lien.
- B. The Town shall have the right to recover all sums due pursuant to the terms of this Chapter by judgment and execution thereon in a civil action in any court of competent jurisdiction.
- C. The Town may seek an injunction to restrain a person, business, or entity from engaging in business within the Town who does not comply with the requirements and payment of taxes as required by this Chapter.
- D. Pursuant to Section 31-20-101 et seq., C.R.S., the Town may cause any delinquent charges, fees or taxes made or levied hereunder to be certified to the San Miguel County Treasurer, to be collected and paid over by said Treasurer in the same manner as real or personal property taxes, including the provision for the creation of the lien upon the subject property.
- E. In the event it is necessary for the Town to take action enforcing this Chapter, the Town shall add to any fees charges and taxes due hereunder all reasonable costs and fees incurred by the Town including, reasonable attorney's fees and costs of collection. If any action is brought in a court of law by or against the Town relating to the enforcement, interpretation or construction of this Chapter or of any document provided for herein or of any proceeding hereunder, the prevailing party in such action shall be entitled to reasonable attorney's fees and costs.
- F. All remedies set forth herein shall be cumulative and shall be available to the Town in addition to any other remedies available by law. (Ord. 98-08 § 8)

3.12.090 Administration

The Town Manager is authorized to administer the provisions of this Chapter. (Ord. 98-08 § 10)

3.12.100 Amendment, Repeal and Revision

The Town Council is authorized to reduce the tax imposed by this Chapter and to otherwise amend or repeal any other part of this Chapter including but not limited to additional provisions for enforcement and collection of the tax. Such reduction of tax, amendment or repeal need not be submitted to the electors of the Town for their approval. (Ord. 98-08 § 10)

3.12.110 Violations

- A. No taxpayer shall fail or refuse to make any return or report required to be made; make any false or fraudulent return or report any false statements in return or report; fail or refuse to pay the Town Manager any taxes collected or taxes, penalties, or interest due to the Town; evade collection and payment of the tax in any manner; fail to keep or disclose records required by this Chapter; aid or abet another in any attempt to evade payment of the tax imposed by this Chapter; or violate any of the requirements of this Chapter.
- B. Each and every twenty-four (24) hours during which any violation of this Chapter continues, constitutes a distinct and separate violation thereof.
- C. Every person who unlawfully violates any part of this Chapter shall, upon conviction, shall be punished by fine not exceeding One Thousand Dollars (\$1,000) or by imprisonment for a period not to exceed one year or by both such fine and imprisonment. (Ord. 98-08 § 11)

3.12.120 Severability

Should any part of the provisions of this Chapter be adjudged unenforceable or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Chapter, it being the intention that the various provisions hereof are severable. (Ord. 98-08 § 14)

3.12.130 Authorization to Act

The Officers of the Town are hereby authorized and directed to take all action necessary or appropriate action to effectuate the provisions of this Chapter. (Ord. 03-04 § 9)