

**ORDINANCE NO. 02-22**

**AN ORDINANCE AMENDING TITLE 5 OF THE ESTES PARK MUNICIPAL CODE REGARDING VACATION HOME BUSINESS LICENSE FEES AND ESTABLISHING A RELATED ENTERPRISE**

**WHEREAS**, the Board of Trustees of the Town of Estes Park, Colorado has determined that it is in the best interest of the Town to amend certain sections of the Municipal Code of the Town of Estes Park, Colorado.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ESTES PARK, COLORADO AS FOLLOWS:**

Section 1: Ellipses in this ordinance indicate material not reproduced as the Board intends to leave that material in effect as it now reads.

Section 2: Section 5.20.030 of the Estes Park Municipal Code is hereby amended, by adding underlined material, to read as follows:

5.20.030 - Amount of license fee.

The business license fee is set forth as follows:

...

(6) Vacation home: two hundred dollars (\$200.00) base fee per year; plus fifty dollars (\$50.00) for each bedroom as stated in the Larimer County Assessor records; plus the vacation home workforce housing regulatory linkage fee as described in section 5.20.120.

...

Section 3: The Estes Park Municipal Code is hereby amended by the addition of section 5.20.120, to read as follows:

5.20.120 –Vacation Home Workforce Housing Regulatory Linkage Fee.

(a) *Findings*. The Board of Trustees finds as follows:

- (1) The purpose of this section is to protect the public health, safety, and welfare of the people of the Town by perfecting a comprehensive regulatory program linking the operation of vacation homes with the need for and provision of workforce housing.
- (2) The Town has a program of applying Town funds to address workforce housing needs within Town limits, as set forth in Town policy.
- (3) The Vacation Home Rental (Short Term Rental) Fee Study (“Study”) prepared by Root Policy Research and presented to the Board of Trustees on March 22, 2022 demonstrates that the continued operation of vacation homes has a detrimental impact on the availability of workforce housing within the Town, and quantifies the impact, as well as the funds required to address the impact, at thirteen hundred ninety dollars (\$1390) per vacation home per year. Accordingly, the continued operation of vacation homes will cause the Town to incur costs of addressing workforce housing needs.
- (4) Vacation home rental operations rely on a sustained local workforce, which is essential not only to the vacation home rental operations directly but the

tourism-based portion of the Town's economy as a whole, on which vacation home rental operations depend.

- (5) A fee on vacation homes is therefore appropriate both as a service to vacation home licensees to sustain a local workforce to their benefit, and also as part of a comprehensive regulatory program to defray the reasonable direct costs of vacation homes on workforce housing and the Town's workforce housing program.
- (6) The Town intends to establish such a vacation home workforce housing regulatory linkage fee ("fee") and apply the fee revenues to its workforce housing program. As calculated based on the Study, the fee will bear a reasonable relationship to the cost to the Town of permitting the continued operation of the vacation homes.
- (7) The fee will be collected as part of the fee for a vacation home business license.
- (8) The fee is not designed to, and will not, defray the general expenses of Town government, but rather is a charge imposed for the purpose of defraying a portion of the costs of the particular Town services and programs. All the revenues of the fee will support only those services and programs.
- (9) Consistent with the determination of the Colorado Supreme Court in *Colorado Union of Taxpayers Foundation v. City of Aspen*, 2018 CO 36, that a charge is not a tax if the primary purpose of the charge is not to raise revenue for general governmental purposes, but is instead to defray some of the costs of regulating an activity under a comprehensive regulatory scheme, the charges imposed by the Town and its enterprise as authorized by this section are fees, not taxes, because each fee is collected from each vacation home licensee for the primary purpose of defraying the costs of mitigating the impact caused by the vacation home when engaging in an activity that is subject to the fee in an amount reasonably related to the impacts caused by the activity and the amount expended to mitigate that impact; and, additionally, because the fee is collected and expended to the benefit of the fee payer.
- (10) The consumer price index is a reasonable approximation of the change over time in nominal dollars of costs related to housing in Estes Park, and the U.S. Bureau of Labor Statistics recommends the U.S. City Average Consumer Price Index for use in escalator clauses.

(b) *Vacation home workforce housing regulatory linkage fee.*

- (1) As part of the annual fee to secure an annual business license for a vacation home as described in section 5.20.030, there shall be charged a vacation home workforce housing regulatory linkage fee beginning with the 2023 license year. The initial amount of the fee upon passage of this section shall be thirteen hundred ninety dollars (\$1390) annually per vacation home license for the 2023 license year.
- (2) The amount of the fee shall be adjusted annually for inflation as calculated by the Town Clerk, based on the All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average ("Index"), as published by the United States Bureau of Labor Statistics or successor federal agency. The Town Clerk shall use the Index for June 2022 as a baseline and update the fee annually based on the index for each successive June. The Town Clerk shall post notice of the new amount of the vacation home workforce housing regulatory linkage fee each year on the Town's website prior to accepting payment of the license fee for vacation homes for the

following license year, and in no case later than January 1 of the year for which the license will apply.

- (c) *Exemption for certain vacation homes in the outlying commercial (CO) zoning district.* If an applicant for license or renewal of a vacation home business license in the outlying commercial (CO) zoning district demonstrates to the satisfaction of the Town Clerk, in the form and manner and by the reasonable time established by the Town Clerk, and in the Town Clerk's reasonable judgment, (1) that the property became or would become a vacation home at a time when the Development Code permitted vacation homes in the CO zoning district but prohibited household living there, (2) that the property was not used for purposes of household living before becoming a vacation home, and (3) that the property has not been used for purposes of household living since becoming a vacation home, then the Town Clerk shall certify that the vacation home business license is exempt from the vacation home workforce housing regulatory linkage fee for the upcoming license year, and shall not charge this fee as part of that year's business license fee. Once the fee has been paid for a vacation home, however, the Town Clerk shall not issue any refund of the fee on the basis of this exemption.
- (d) The vacation home licensee may pass the expected per-rental-night costs of the fee to its customers on a nightly basis by inclusion of a surcharge on each customer's bill.
- (e) All revenues from the fee shall be deposited in the workforce housing enterprise fund as described in section 5.21.060. As described therein, the revenues from the fee shall be expended only to defray the reasonable direct and indirect costs of the following:
- (1) the Town's workforce housing programs and policies, which may include but are not limited to acquisition of housing units, construction of new units, purchase of deed restrictions on existing units, mortgage buydowns, and rent assistance programs; and
  - (2) to defray the costs to the Town of the foregoing, including but not limited to, costs of staff and personnel required for the administration and enforcement of the regulatory program described in this section.

Section 4: The Estes Park Municipal Code is hereby amended by the addition of chapter 5.21, to read as follows:

#### Chapter 5.21 - Workforce Housing Enterprise

##### 5.21.010 - Establishment of the Enterprise.

The Town hereby establishes the Workforce Housing Enterprise ("Enterprise") as an enterprise of the Town within the meaning of article X, section 20 of the Colorado Constitution. It shall be the purpose of the Enterprise to pursue activities to address the need for workforce housing in the Town, as defined and further described in Town policy. The Enterprise is and operates as a government-owned business of the Town to execute its business purpose of addressing the need for workforce housing within the Town, and may receive revenues and incur expenses accordingly. It undertakes the business of providing a service to fee payers of generating housing opportunities to sustain a local workforce, to the direct and indirect benefit of the fee payers. It provides remediation services and benefits to fee payers when it remediates the impacts they cause, as described in this chapter and section 5.20.120. It also undertakes the business as part of the Town's comprehensive regulatory program for vacation homes of ensuring the vacation homes meet all Town requirements for the health, safety, and welfare of the occupants and the people of the Town, which allows licensure of the vacation homes to operate within the Town, to the benefit of the fee payers.

#### 5.21.020 - Governing Body.

The members of the Board of Trustees shall serve as the governing body of the Enterprise and shall be known collectively as the board of directors of the Enterprise (the "Enterprise Board"). Acting as the Enterprise Board, the Board of Trustees may exercise the Town's legal authority relating to workforce housing. The Board of Trustees acts on behalf of the Enterprise Board when it establishes the fee described in section 5.20.120. The Enterprise Board hereby is directed to take all actions necessary to cause the Enterprise to comply with all applicable laws. The Board of Trustees shall conduct all official business of the Enterprise Board at regularly scheduled or special meetings. The Board need not adjourn a Board of Trustees meeting or specially convene an Enterprise Board meeting to conduct business as the Enterprise Board. The Town Clerk shall record the proceedings of the Enterprise Board in the minutes of the Board, and need not record them separately. No additional oath of office, qualification or procedure shall apply to such service as a member of the Enterprise Board. All otherwise applicable requirements, privileges, immunities, protections, limitations, and other provisions of law shall apply to and govern all business and actions of the Enterprise Board.

#### 5.21.030 - Powers of the Enterprise.

The Enterprise shall have the power to contract with any person or entity, and the power to issue and reissue revenue bonds, notes, or other obligations through its governing body in accordance with law. The powers provided in this section shall not modify, limit or affect the powers conferred by any other law, including ordinances, directly or indirectly. However, in no event shall the Enterprise have authority to levy or collect taxes, whether sales taxes, use taxes, excise taxes, or ad valorem taxes, nor to direct the Town or the Board of Trustees to exercise the Town's taxing power for the Enterprise.

#### 5.21.040 – Relationship to Town.

In consideration of the Enterprise's commitment to provide workforce housing services for the benefit of the Town and, to that end, to collect and spend revenues from fees and charges imposed by the Town or the Enterprise, or the Town acting by and through the Enterprise, the Town hereby agrees to continue to provide administrative services for the Enterprise and its activities, to allow the Enterprise to receive the revenues of the fee described in section 5.20.120, and to continue to hold title to and own all of the assets currently owned by the Town and necessary to the operation of the Enterprise. Assets operated and maintained by the Enterprise shall remain in the ownership of the Town. The Board of Trustees hereby assigns the use and management of all such assets, real and personal, to the Enterprise.

#### 5.21.050 – Transactions in the Name of the Town.

Any and all transactions of the Enterprise may be done in the name of the Town acting by and through the Enterprise and neither this chapter nor any transaction entered into pursuant to it shall alter or abrogate the relationship of the Town and the Enterprise as established in section 5.21.040 and as may be further clarified by ordinance from time to time.

#### 5.21.060 – Enterprise Fund.

The Board hereby establishes a separate enterprise fund to account for revenues and expenditures of the Enterprise. The Enterprise shall receive less than ten percent of its annual revenue in grants from all Colorado state and local governments combined. The Town Administrator or designee shall prepare, for the Enterprise, an annual budget, which may be part of the entire budget for the Town. All budgets, reports, audits and financial operations of the Enterprise shall conform to generally accepted accounting principles applicable to governmental

units and other requirements of law. The Finance Director shall maintain the enterprise fund to exclude its revenue and its spending and other activities from provisions of section 20 of article X of the Colorado Constitution as permitted by law. The Finance Director shall track and account for revenues and expenditures of the enterprise fund separately from all other revenues and expenditures of the Town. Revenues from the fee described in section 5.20.120 shall be deposited directly into the enterprise fund without passing through any other Town fund. The moneys in the enterprise fund shall not be used for general municipal or governmental purposes or spending, nor shall the fund ever be transferred to or become part of the Town's general fund. The moneys in the enterprise fund shall be used only to defray the reasonable direct and indirect costs of the following:

- (a) the Town's workforce housing programs and policies, which may include but are not limited to acquisition of housing units, construction of new units, purchase of deed restrictions on existing units, mortgage buydowns, and rent assistance programs; and
- (b) to defray the costs to the Town of the foregoing, including but not limited to, costs of staff and personnel required for the administration and enforcement of the regulatory program described in section 5.20.120.

Section 5: Section 1.04.120 of the Estes Park Municipal Code regarding severability shall apply to this ordinance and its various sections, provisions, and parts.

Section 6: This Ordinance shall take effect and be enforced thirty (30) days after its adoption and publication.

**PASSED AND ADOPTED** by the Board of Trustees of the Town of Estes Park, Colorado this 22<sup>nd</sup> day of March, 2022.

TOWN OF ESTES PARK, COLORADO

By:   
Mayor

ATTEST:

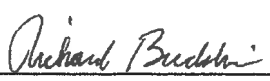
  
Town Clerk

I hereby certify that the above Ordinance was introduced at a regular meeting of the Board of Trustees on the 22<sup>nd</sup> day of March, 2022 and published in a newspaper of general circulation in the Town of Estes Park, Colorado, on the 25<sup>th</sup> day of March, 2022, all as required by the Statutes of the State of Colorado.

  
Town Clerk

APPROVED AS TO FORM:

  
Daniel E. Kramer  
Town Attorney

  
Richard L. Buddin  
Special Counsel

