

**TOWN OF LYONS,
COLORADO**

ORDINANCE NO. 1026

AN ORDINANCE OF THE TOWN OF LYONS ADOPTING A NEW ARTICLE 10 IN CHAPTER 4 OF THE LYONS MUNICIPAL CODE IMPOSING A LODGING OCCUPATION TAX FOR THE TOWN OF LYONS EFFECTIVE JUNE 1, 2018 IF APPROVED BY THE REGISTERED ELECTORS OF THE TOWN OF LYONS AT AN ELECTION TO BE HELD ON APRIL 3, 2018

WHEREAS, the Town of Lyons ("Town") is a municipal corporation duly organized and operating pursuant to the laws of the State of Colorado; and

WHEREAS, C.R.S. 31-15-501(1)(c) authorizes the Town to levy occupation taxes within its borders; and

WHEREAS, registered electors of the Town will have the opportunity to vote on the adoption of the lodging occupation tax set forth in this Ordinance at the April 3, 2018 regular election, and this Ordinance will not take effect unless and until a majority of the registered electors approve such tax; and

WHEREAS, the provision of lodging rooms and accommodations, including camping or campsites, to the traveling public results in the increased use of Town streets and rights-of-way, increased traffic, increased demands upon municipal services such as police protection, and has substantial effect upon the health, safety, and welfare of the citizens of the Town of Lyons and upon the expenditures budgeted by the Town; and

WHEREAS, the classification of the provision of lodging as separate businesses and occupations is reasonable, proper, uniform, and nondiscriminatory; and the taxable amount hereby assessed is reasonable, proper, uniform, nondiscriminatory, and necessary; and

WHEREAS, the Board of Trustees desires and finds that is necessary to adopt a lodging occupation tax, to be spent on any lawful use, including but not limited to the general marketing and promotion of the Town of Lyons and the marketing and promotion of Lyons special events for the purpose of generating additional revenue for existing and future lodging and other businesses located in the Town of Lyons, subject to approval by the registered electors of the Town at the April 3, 2018 regular election.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, BOULDER COUNTY, COLORADO:

Section 1. Recitals Incorporated. The recitals set forth above are hereby incorporated by reference and are adopted as findings and determinations of the Board of Trustees.

Section 2. Lodging Occupation Tax Adopted. The Lyons Municipal Code is hereby amended to include a new Article 10 in Chapter 4, entitled Lodging Occupation Tax, to read in full as follows:

Article Ten

LODGING OCCUPATION TAX

Sec. 4-10-10 - Purposes.

The Board of Trustees hereby finds, determines and declares:

- (1) The Lyons Comprehensive Plan (2010) and Lyons Primary Planning Area Master Plan contain numerous guiding principles for economic sustainability of the Town, including the following: Provide enough revenue for the Town to provide the quality of services desired by residents and businesses; promote a business-friendly environment that encourages commercial and job growth; transition from a residential development-based economy to a commercial-based, localized economy; evaluate the potential to use taxing districts and other tools to finance public improvements to benefit tourism and/or business development; and make Lyons a retail and recreational destination for residents and visitors; and
- (2) The provision of lodging rooms and accommodations, including camping or campsites, to the traveling public results in the increased use of Town streets and rights-of-way, increased traffic, increased demands upon municipal services such as police protection, and has a substantial effect upon the health, safety and welfare of the citizens of the Town of Lyons and upon the expenditures budgeted by the Town, which is a matter of local concern; and
- (3) For the purposes of this Article, every person that furnishes a lodging room, or accommodation, or campsite for consideration in the Town of Lyons is exercising a taxable privilege. The purpose of this Article is to impose a tax that will be paid by every vendor providing such lodging room, accommodation, or campsite in the Town of Lyons, which tax will provide revenues to compensate the Town for the use of its services and facilities; and
- (4) The classification of the provision of lodging and campsites as separate businesses and occupations is reasonable, proper, uniform and nondiscriminatory; and the taxable amount hereby levied is reasonable, proper, uniform, nondiscriminatory, and necessary.

Sec. 4-10-20 - Definitions. When not clearly otherwise indicated by the context, the following words and phrases as used in this Article shall have the following meanings:

Campsite shall mean a specific site temporarily occupied by a person or group of persons within a campground as defined in this Code.

Lodging shall mean hotel rooms, motel rooms, lodging rooms, motor hotel rooms, guest rooms, bed and breakfast rooms, campsite, or other similar accommodations that are rented to persons for a period of less than thirty (30) consecutive days, but shall not include rentals under a written agreement for occupancy for a period of at least thirty (30) days.

Monetary Consideration means the transfer of funds from a person to a vendor, directly or indirectly, by whatever means, including the payment of cash, issuance of a check or similar negotiable instrument, or through a credit card service or online payment service in exchange for the provision of a lodging accommodation.

Person means an individual, partnership, firm, joint enterprise, limited liability company, corporation, estate or trust, or any group or combination acting as a unit, and the Town of Lyons, Colorado, but shall not include the United States of America or the State of Colorado.

Sale means the furnishing for Monetary Consideration by any person of lodging within the Town.

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

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

Town Administrator means the Town Administrator or his or her designee.

Vendor means a person furnishing lodging for Monetary Consideration within the Town.

Sec. 4-10-30 - Levy of Tax. Effective June 1, 2018, there is hereby levied by the Town of Lyons an occupation tax on the provision of lodging upon every person or business that furnishes any hotel room, motel room, lodging room, motor hotel room, guest house room, bed and breakfast room, campsite, or other similar accommodation for Monetary Consideration for less than thirty (30) consecutive days within the Town of Lyons in the amount of three dollars (\$3.00) per day, per occupied lodging room, accommodation, or campsite.

Sec. 4-10-40 - Exemptions. The following transactions shall be exempt from the tax imposed by this Article:

- (1) Accommodations provided by the United States, the State of Colorado, its departments and institutions in their governmental capacities only;
- (2) Accommodations provided by those 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; and
- (3) Accommodations provided to a person who is a permanent resident of a hotel, motel, apartment hotel, lodging house, motor hotel, guest house, bed and breakfast, campsite, or other similar business pursuant to a written agreement for a period of at least thirty (30) consecutive days.

- (4) Accommodations provided to a person without Monetary Consideration being paid to the vendor for such accommodations.

Sec. 4-10-50 - Collection of Tax.

- (1) Every vendor providing lodging taxable under this Article shall remit such tax on or before the tenth (10th) day of each month on account of lodging provided in the preceding month. Said payment shall be accompanied by a return which shall contain such information and be in such form as the Town Administrator may prescribe.
- (2) The burden of proving that any transaction is exempt from the tax shall be upon the vendor.
- (3) If the accounting methods regularly employed by the vendor in the transaction of business, or other conditions, are such that the aforesaid returns made on a calendar month basis will impose unnecessary hardship, the Town Administrator may, upon request of the vendor, accept returns at such intervals as will, in the Town Administrator's opinion, better suit the convenience of the vendor and will not jeopardize the collection of the tax; provided, however, the Town Administrator may by rule permit a vendor whose monthly tax obligation is less than sixty dollars (\$60.00) to make returns and pay taxes at intervals not greater than three (3) months.
- (4) 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 Administrator in order to determine the amount of the tax for which the vendor is liable under the Article. 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 Administrator or his designee.

Sec. 4-10-60 - Audit of Records.

- (1) 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 Article, the Town Administrator or an authorized agent may conduct an audit by examining any relevant books, accounts and records of such person.
- (2) 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 Administrator or an authorized agent. If any taxpayer refuses to furnish any of the foregoing information voluntarily when requested, the Town Administrator 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.
- (3) Any exempt organization or person claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in the lodging business in the Town.

Sec. 4-10-70 - 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 Administrator determines that within three (3) years of the due date, a vendor overpaid the occupation tax on the provision of lodging, the Town Administrator shall process a refund or allow a credit against a future remittance from the same taxpayer. If at any time the Town Administrator determines the amount paid is less than the amount due under this Article, the vendor shall pay the difference together with the interest within ten (10) days after receiving written notice and demand from the Town Administrator. The Town Administrator may extend that time for good cause.

Sec. 4-10-80 - Tax Information Confidential.

- (1) All specific information gained under the provisions of this Article 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 Article, 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 Article or by law, shall be guilty of a violation hereof.
- (2) The Town Administrator 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.
- (3) 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.

Sec. 4-10-90 - Forms and Regulations. The Town Administrator shall have the authority to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this Article and the collection and enforcement of the tax obligations imposed hereby. The Town Administrator 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 Article, 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 Article.

Sec. 4-10-100 - Enforcement and Penalties.

- (1) It shall be unlawful for any person to intentionally, knowingly, or recklessly fail to pay the tax imposed by this Article, or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Article. Each day, or portion thereof, that any violation of this Article continues shall constitute a separate offense.
- (2) 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 by the tenth (10th) day of the month as required by this Article, or such other date as prescribed by the Town Administrator, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance. The Town Administrator is hereby authorized to waive, for good cause shown, any penalty assessed.
- (3) 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, and 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 Administrator.
- (4) If any vendor fails to make a return and pay the tax imposed by this Article, 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, to the vendor at his 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 Administrator ten (10) days from the date of service of the notice or the date of mailing by certified mail; provided, however, that within the ten (10) day period such delinquent taxpayer may petition the Town Administrator for a revision or modification of such assessment and shall, within such ten (10) day period, furnish the Town Administrator the documents, facts and figures showing the correct amount of such taxes due and owing.
- (5) Such 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. Thereupon, the Town Administrator may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Article. Such assessment shall be considered the final order of the Town Administrator, 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 Administrator of such intention within ten (10) days after of the final order of assessment.

Sec. 4-10-110 - Tax Lien.

- (1) The tax imposed by this Article, 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 Administrator 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 Boulder 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 Administrator 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.
- (2) The tax imposed by this Article 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.

Sec. 4-10-120 - Recovery of Unpaid Tax.

- (1) The Town Administrator may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the taxpayer.
- (2) In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Town Administrator 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.
- (3) The return of the taxpayer or the assessment made by the Town Administrator shall be *prima facie* proof of the amount due.
- (4) Such actions may be actions in attachment, and writs of attachment may be issued to the Boulder County Sheriff, and in any such proceeding no bond shall be required of the Town Administrator, nor shall any sheriff's deputy require of the Town Administrator an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Town Administrator may prosecute appeals in such cases without the necessity of providing bond therefor.
- (5) It shall be the duty of the Town Attorney, when requested by the Town Administrator, to commence action for the recovery of taxes due under this Article and this remedy shall be in addition to all other existing remedies, or remedies provided in this Article.

- (6) 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 Boulder County Treasurer for collection in the same manner as delinquent *ad valorem* taxes.

Sec. 4-10-130 - Status of Unpaid Tax in Bankruptcy and Receivership. Whenever the business or property of a taxpayer subject to this Article shall be 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 Article and for which the taxpayer is in any way liable under the terms of this Article 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, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Article under process or order of any court, without first ascertaining from the Town Administrator the amount of any taxes due and payable under this Article, and if there be 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.

Sec. 4-10-140 - Hearings, Subpoenas and Witness Fees.

- (1) Hearings before the Town Administrator pursuant to provisions in this Article shall be held pursuant to procedures for such hearings adopted by the Town Administrator. Any subpoena issued pursuant to this Article may be enforced by the Lyons 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 Administrator, such fees shall be paid in the same manner as other expenses under the terms of this Article, and when a witness is subpoenaed at the instance of any party to any such proceeding, the Town Administrator 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 Administrator, at his 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.
- (2) The Lyons Municipal Judge, upon the application of the Town Administrator, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Town Administrator or any 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.

Sec. 4-10-150 - Depositions. The Town Administrator or any party in an investigation or hearing before the Town Administrator 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.

Sec. 4-10-160 - Statute of Limitation.

- (1) Except as otherwise provided in this Section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Article 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 (3) year period, notice of lien with respect to which has been filed prior to the expiration of such period.
- (2) 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.
- (3) 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.

Sec. 4-10-170 - Exemption From Revenue Limitation. The occupation tax on the provision of lodging imposed by this Article was approved by the electors of the Town of Lyons on April 3, 2018. As a part of said approval, the revenues are to be collected and spent as a voter approved revenue change, notwithstanding any revenue or expenditure limitations contained in Article X, Section 20, of the Colorado Constitution.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 4. Repeal. All other ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this Ordinance are hereby repealed, provided that such repeal shall not repeal any repealer clauses in such ordinances nor revive any ordinance thereby.

Section 5. Codification Amendments. The codifier of the Town's Municipal Code, Municipal Code Corporation, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of Section 2 of this Ordinance within the Lyons Municipal Code.

Section 6. Effective Date. The Lodging Occupation Tax imposed by this Ordinance shall not take effect unless and until a majority of the registered voters voting in the regular election on April 3, 2018 vote "yes" in response to a ballot question referred to the voters by a resolution of the Town of Lyons Board of Trustees no later than February 5, 2018.

Section 7. Safety Clause. The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Lyons, 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 Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

INTRODUCED AND PASSED ON FIRST READING THIS 2ND DAY OF JANUARY, 2018.

INTRODUCED, PASSED, ADOPTED AND ORDERED PUBLISHED THIS 16TH DAY OF JANUARY, 2018.

TOWN OF LYONS, COLORADO

Connie Sullivan, Mayor

ATTEST:

Debra K. Anthony, Town Clerk