

ORDINANCE NO. 1505
Series of 2020

AN EMERGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO IMPLEMENTING A DEFERRAL OF COLLECTION OF SALES TAX (BUT NOT USE TAX) UNDER TELLURIDE MUNICIPAL CODE CHAPTER 4, ARTICLE 2, EXCISE TAX UNDER TELLURIDE MUNICIPAL CODE CHAPTER 4, ARTICLE 4 AND THE AFFORDABLE HOUSING SHORT-TERM RENTAL TAX UNDER TELLURIDE MUNICIPAL CODE CHAPTER 4, ARTICLE 9 AND IMPOSING SPECIFIC PENALTIES FOR VIOLATIONS OF LAWFULLY ENACTED PUBLIC HEALTH ORDERS WITHIN SAN MIGUEL COUNTY THAT CURRENTLY PROHIBIT THE SHORT TERM RENTAL OF PROPERTY AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Telluride, Colorado (the “Town”) is a duly organized and existing home rule municipality of the State of Colorado (the “State”), created and operating pursuant to Article XX of the Constitution of the State and the home rule charter of the Town (the “Charter”); and,

WHEREAS, the Town self-collects for the following duly enacted and voter approved taxes, the 4.5% collection of Sales Tax under Telluride Municipal Code (“TMC”) Chapter 4, Article 2 (“Sales Tax”), the 2% collection of Excise Tax on lodging and food and drink sales under TMC Chapter 4, Article 4 (“Excise Tax”), and the 2.5% collection of the Town’s Affordable Housing Short-Term Rental Tax on short-term rentals unless such unit is classified as commercial property by San Miguel County under TMC Chapter 4, Article 9 (“STR Tax”); and,

WHEREAS, Corona Virus Disease 2019 (“COVID-19”) is a highly contagious virus that has spread worldwide and is causing serious illness or death in certain cases, particularly in, but not limited to, the elderly or persons with underlying health conditions with a resultant impact of the spread of COVID-19 being significant impacts on the worldwide economy, including substantial economic impacts felt within the State of Colorado, San Miguel County and the Town of Telluride, Colorado; and,

WHEREAS, on March 10, 2020 Jared Polis, the Honorable Governor of the State of Colorado, declared a State of Emergency for the entire State of Colorado in response to COVID-19 as the number of cases in Colorado and in the United States of America increased, and Governor Polis also announced numerous emergency measures to protect public health, safety and welfare; and,

WHEREAS, on March 11, 2020 the World Health Organization (“WHO”) declared the worldwide outbreak of COVID-19 a “global pandemic”, surpassing the stage of “global health emergency” declared by the WHO on January 30, 2020 due to the worldwide spread of COVID-19; and,

WHEREAS, on March 13, 2020, the President of the United States, Donald J. Trump, declared a national state of emergency due to COVID-19; and,

WHEREAS, on the evening of March 14, 2020 Governor Polis issued an executive order closing all ski resorts in Colorado, which included the Telluride Ski Resort, which closure has had a profound impact on the economy of the Telluride region and has resulted in the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property from COVID-19 requiring emergency action to avert danger or damage to and to otherwise protect public health, safety and welfare; and,

WHEREAS, on March 16, 2020 the Board of County Commissioners of San Miguel County, Colorado declared a Local Disaster Emergency due to COVID-19; and,

WHEREAS, on March 20, 2020 the Telluride Town Manager issued a Declaration of Local Disaster Emergency (the “Declaration”), on file with the Town Clerk and with the County Clerk and Recorder, which Declaration was extended by formal passage of a Resolution by the Telluride Town Council on March 27, 2020; and,

WHEREAS, the Town is authorized to assist its citizens and businesses impacted by complying with Federal, State or local public health orders, which measures such as social distancing, quarantine and Shelter in Place related to COVID-19 are having direct as well as indirect impacts on business and economic conditions in the Town of Telluride; and,

WHEREAS, the Town would like to assist its citizens and businesses by deferring the payment of Sales Tax (but not the Use Tax), Excise Tax, and the STR Tax for the months of March, 2020 (due April 20, 2020) and April, 2020 (due May 20, 2020) and granting relief as to late payment penalties and accrual of interest charges on either late or insufficient tax filings for all of the above-referenced Town collected taxes for the month of March, 2020 and April, 2020; and,

WHEREAS, the Town Council of the Town has determined and now hereby decrees that this Emergency Ordinance on the deferral of the collection of Sales Tax (but not Use Tax), Excise Tax and the STR Tax for the months of March, 2020 and April, 2020 (singularly the “Deferred Tax” or plural the “Deferred Taxes”) is in the best interests of the Town, and its citizens and businesses; and,

WHEREAS, the Town Council is also concerned with the possible rental of Short Term Accommodations within the Town of Telluride in violation of applicable local Public Health Orders and desires to address the same with the imposition of penalties and sanctions under this Emergency Ordinance because the introduction of visitors and renters of Short Term Accommodations could introduce new cases and infections of COVID-19 into the community and could otherwise strain and tax the Town and County medical system, which is already under enormous strain and pressure.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO as follows:

Section 1. Findings and Declaration of Emergency Ordinance.

As a result of the unprecedented economic impacts from COVID-19, some of which are currently apparent and some of which remain either unknown or the extent of the impact remains unknown, the Town Council finds and determines that tax relief is urgent, necessary, proper and is consistent with and will advance and preserve the public health, peace, safety and welfare of the Town.

In addition, the Town Council believes swift and strong action is immediately needed to address the possible rental of Short Term Accommodations within the Town of Telluride in violation of applicable local Public Health Orders. The Town Council desires to address the same with the imposition of immediate penalties and sanctions under this Emergency Ordinance because the introduction of visitors and renters of Short Term Accommodations could introduce new cases and infections of COVID-19 into the community and could otherwise strain and tax the Town and County medical system, which is already under enormous strain and pressure.

It is therefore hereby declared that an emergency exists, and this Ordinance is necessary for the urgent preservation of public health, peace, safety and welfare of the Town. This Ordinance is hereby declared exempt from all reserved powers of referendum.

Section 2. Waiver of Late Payment Penalties and Interest.

Although the Finance Director and Town Manager independently have authority in certain situations to waive or abate late payment penalties and interest for the Deferred Taxes, the Town Council desires to make a formal finding and determination that for the months listed in Section 3 of this Emergency Ordinance that there shall be no assessment of late payment penalties nor of interest charges on delinquent remitted taxes, provided the taxpayer/vendor submits the required timely returns as detailed in Section 3 of this Emergency Ordinance.

Section 3. Deferral of Sales Tax, Excise Tax and STR Tax Remittance.

The Town hereby authorizes a deferral of payments or remittances due to the Town under the Sales Tax (but not Use Tax), the Excise Tax and the STR Tax for the following months:

- 1) March, 2020 (due April 20, 2020);
- 2) April, 2020 (due May 20, 2020).

While the Town is deferring the payment of the Deferred Tax amounts owed to the Town, the Town is still requiring that taxpayers/vendors subject to each applicable Deferred Tax must still report on the applicable Town forms and/or online the required return for each applicable Deferred Tax for each month of deferral. **To be explicit, the Town's deferral of the taxes herein as well as the waiver of penalty for late payment and waiver of interest is expressly conditioned on each and every taxpayer/vendor submitting full, accurate and truthful returns of each of the Deferred Taxes for each month of deferral. Failure to timely submit the required Deferred Tax returns shall mean that a taxpayer/vendor is ineligible for these deferral provisions, the waiver of penalty for late payment and the waiver of interest provisions of this Emergency Ordinance, unless specifically exempted in writing by the Town Manager and Finance Director.**

The Deferred Taxes approved by this Emergency Ordinance shall become due and payable to the Town on or before September 30, 2020 (the "Deferred Tax Deadline").

The Town Manager and/or Finance Director may accept any partial payment made by a taxpayer/vendor and will apply any such partial payment towards the Deferred Tax due. Acceptance of a partial payment shall not in any way limit the Town's power to collect any total tax liability.

It is also strongly encouraged for all taxpayers/vendors that the deferral provisions of this Emergency Ordinance are a special Town concession during difficult times. If a taxpayer/vendor is not experiencing adverse economic conditions and is otherwise able to pay the required Deferred Taxes, which have already been collected from the consumer, the Town strongly encourages remittance of the required taxes.

Section 4. Abeyance of all Enforcement Actions and Tolling of any Applicable Statute of Limitations or Required Notice and Process.

It is the express intent of the Town under this Emergency Ordinance that the Town is only intending to hold in abeyance any and all enforcement actions available to the Town for the Deferred Taxes, including any required legal notice or legal action under applicable provisions of the Telluride Municipal Code. As such, any required legal process or legal notice or calculation of time required under the Town's rights of

enforcement and/or collection of any of the Deferred Taxes is hereby tolled until after the Deferred Tax Deadline provided in Section 3 of this Emergency Ordinance.

Section 5. Limited Waiver and Deferral.

To the extent not expressly amended by the terms of this Emergency Ordinance, all terms of the Telluride Municipal Code, including, but not limited to, terms and provisions related to the imposition or collection of any of the Deferred Taxes, shall continue in effect. It is further the intent of the Town in enacting this Emergency Ordinance that all taxes of the Town shall continue to be levied and shall continue to be collected from Consumers. It is only the deferral of remittance, waiver of late payment penalties and interest for the Deferred Taxes that is addressed by the terms of this Emergency Ordinance.

Section 6. Limited Duration and Automatic Repeal.

On or before June 1, 2020 the Town Council shall consider in a Town Council meeting the effectiveness of this ordinance and the tax deferral provisions of the same (Sections 2-5). Unless modified by subsequent Town Council action by ordinance, Sections 2-5 of this ordinance shall only extend to March, 2020 and April, 2020 Deferred Taxes, and those Sections of this Ordinance shall automatically be repealed on June 1, 2020 as to the Deferred Taxes, but not as to the Town's collection and enforcement rights of the Deferred Taxes, which shall survive the automatic repeal of Sections 2-5 of this Ordinance on June 1, 2020. The provisions of Section 7 of this Emergency Ordinance are not subject to the automatic repeal provisions applicable to the Deferred Taxes.

Section 7. Imposition of Specific Penalties for Violations of this Emergency Ordinance and/or Lawfully Enacted Public Health Orders Within San Miguel County that Currently Prohibit the Short Term Rental of Property.

- A. Pursuant to applicable statutory provisions under Colorado law, on April 4, 2020 San Miguel County issued Public Health Order #2020-4 (the "2020 County Public Health Order" as the same may be amended) that currently provides, among other things, an order to cease operations and a prohibition, applicable within the Town of Telluride, as to short term lodging, including but not limited to hotels, motels, short term rentals, bed and breakfast establishments, lodges, fractional share residences and retreats, unless exempted by the County Public Health Director ("Short Term Accommodations").
- B. The Town of Telluride requires a business license and other applicable Town tax licenses for the above-referenced Short Term Accommodations. For purposes of the provisions of this Emergency Ordinance and for the penalties imposed herein, which terms are explicitly different from the 2020 County Public Health Order, under this Emergency Ordinance any Short Term Accommodation is defined as a rental of property to a Visitor as defined in the 2020 County Public Health Order for a period of time less than ninety (90) days, which Visitor definition includes a person traveling for vacation, staying in a short-term rental, hotel or fractional share accommodation or someone who cannot claim San Miguel County as their primary residence
- C. If any person is found guilty of a violation of the 2020 County Public Health Order, as the same durational component is amended by this Emergency Ordinance to address rental of any Short Term Accommodation to a Visitor for less than ninety (90) days, the Town Council, after reasonable notice and a hearing, may permanently revoke any Town license or permission previously granted to the owner and the real property in question based upon a violation of the provisions of this Emergency Ordinance.

1. It is the further the intent of this Section of this Emergency Ordinance that any such revocation shall extend to any other Short Term Accommodation property owned in whole or in part by a person found guilty of a violation of this Emergency Ordinance. For the purposes of this Emergency Ordinance “Person” also includes any associated or related corporate entities where the person found guilty of a violation of this Ordinance also has a legal interest in another Short Term Accommodation property held in a different but related corporate entity.
 2. The provisions of this Emergency Ordinance, including the license revocation provisions, shall be applied to any Property Management and/or Short Term Accommodations service or business involved in the rental of the offending Short Term Accommodation should they be found to have assisted or aided in the rental of Short Term Accommodations in violation of this Emergency Ordinance.
- D. Violations of Section 7 of this Emergency Ordinance, in addition to the possible license revocation penalties, are also subject to the penalty provisions found in the TMC Section 1-4-10(a)(2) along with any possible penalty provisions that might be imposed by San Miguel County for violation of the 2020 County Public Health Order.
- E. Town Council may take action at any time, following any lawfully required process, public notice and meeting standards, to rescind the provisions of this Section 7 of this Emergency Ordinance. In addition, the provisions of this Section 7 of this Emergency Ordinance shall be automatically repealed when both the State of Colorado and the local San Miguel County Public Health Orders limiting or prohibiting Short Term Accommodations are either rescinded or expire by operation of law.

Section 8. Effect on Litigation.

This Ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.

Section 9. Severability.

The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

Section 10. Effective Date.

This Ordinance shall take effect immediately upon final passage and shall be published as soon thereafter as possible, and no later than ten (10) days after passage.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE BY AN EXTRAORDINARY MAJORITY OF THE TOWN COUNCIL OF TELLURIDE , COLORADO on the 14th day of April, 2020.

TOWN OF TELLURIDE

ATTEST

By: DeLanie Young
DeLanie Young, Mayor

Tiffany Kavanaugh
Tiffany Kavanaugh, Town Clerk

THIS ORDINANCE IS ON FILE IN THE TOWN CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO FORM:

Kevin J. Geiger
Kevin J. Geiger
Town Attorney

STATE OF COLORADO)
)
 COUNTY OF SAN MIGUEL) SS.
)
 TOWN OF TELLURIDE)

I, Tiffany Kavanaugh, the duly qualified and acting Town Clerk of the Town of Telluride, Colorado (the “Town”) do hereby certify that:

1. The foregoing pages are a true, correct, and complete copy of an ordinance (the “Ordinance”) passed and adopted by the Town Council (the “Town Council”) of the Town at a Special Meeting of the Town Council held at Rebekah Hall, 113 West Columbia, Telluride, Colorado, on April 14, 2020.

2. The passage of the Ordinance as an emergency ordinance was duly moved and seconded and the Ordinance was approved by the affirmative vote of at least five (5) Councilpersons (an extraordinary majority) as follows:

Name	“Yes”	“No”	Absent	Abstain
DeLanie Young, Mayor	X			
Todd Brown, Mayor Pro-Tem	X			
Adrienne Christy	X			
Tom Watkinson		X		
Geneva Shaunette	X			
Lars Carlson	X			
Jessie Rae Arguelles	X			

3. The members of the Town Council were present at such meeting and voted on the approval of the Ordinance as set forth above.

4. The 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.

5. The Ordinance was published in full after final passage in the Telluride Daily Planet, a newspaper of general circulation within the Town on April ____, 2020. The affidavit of publication is attached hereto as Exhibit A.

6. Public notice of the proposed consideration of the Ordinance was published in the Telluride Daily Planet in its issue of April 12, 2020, as evidenced by the affidavit of publication attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this 14th day of April, 2020.



Town Clerk

Exhibit A

Legal Notices

Public Hearing Notice

Notice Is Hereby Given That The Telluride Town Council, At A Special Meeting On April 14, 2020 At Approximately 10:15am, Via A Virtual Meeting, Will Consider Approval Of An Emergency Ordinance Of The Town Council Of The Town Of Telluride, Colorado Implementing A Deferral Of Collection Of Sales Tax, But Not Use Tax, Under Telluride Municipal Code Chapter 4, Article 2, Excise

Tax Under Telluride Municipal Code Chapter 4, Article 4 And The Affordable Housing Short-Term Rental Tax Under Telluride Municipal Code Chapter 4, Article 9 And Imposing Specific Penalties For Violations Of Lawfully Enacted Public Health Orders Within San Miguel County That Currently Prohibit The Short Term Rental Of Property And Declaring An Emergency. Tiffany Kavanaugh, Town Clerk