



**TOWN OF AVON, COLORADO  
ORDINANCE NO. 19-01**

**AMENDING CHAPTER 3.08 SALES TAX; CHAPTER 3.12 REAL  
PROPERTY TRANSFER TAX; ENACTING CHAPTER 3.14  
COMMUNITY HOUSING INCENTIVES; AND AMENDING CHAPTER  
13.08 PUBLIC SERVICES OF THE AVON MUNICIPAL CODE**

**WHEREAS**, the Town of Avon, Colorado (“Town”) is a home rule municipality and political subdivision of the State of Colorado (“State”) organized and existing under a home rule charter (“Charter”) pursuant to Article XX of the Constitution of the State; and

**WHEREAS**, pursuant to C.R.S. §31-15-103 and §31-15-104, and pursuant to the home rule powers of the 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**, Town Council adopted the Town of Avon Community Housing Plan on December 13, 2018, which included a policy to “formalize a fee waiver/reimbursement process” and which included an Appendix A: Avon Community Housing Plan – Work Plan that contemplated formalizing a Fee Waiver Program; and

**WHEREAS**, Town Council adopted the Town of Avon Comprehensive Plan which includes Policy E.1.3: which states in part, “Provide attainable housing through alternative means, including . . . waiver of development and building fees, . . .”; and

**WHEREAS**, the Town Council finds that amendments to the Town of Avon Municipal Code will promote the health, safety and general welfare of the Town of Avon community; and

**WHEREAS**, approval of this Ordinance on First Reading is intended only to confirm that the Town Council desires to comply with the requirements of the Town of Avon Home Rule Charter by setting a public hearing in order to provide the public an opportunity to present testimony and evidence regarding the application and that approval of this Ordinance on First Reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies this ordinance; and,

**WHEREAS**, Town Council conducted a public hearing on June 11, 2019 and continued the public hearing to June 25, 2019.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO:**

**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. Enactment of Section 3.08.036 – Tax credit for Community Housing.** A new Section 3.08.036 of the Avon Municipal Code is hereby enacted to read as follows:

**"3.08.036 – Tax credit for Community Housing.** Notwithstanding any other provision of this Chapter, there may be granted a sales tax credit to each person owing tax on the sale of building materials and fixtures used in a Community Housing project provided that such sales tax credit is approved by Council by resolution in accordance with Chapter 3.14. Neither the ability of the Town to grant this tax credit nor the repeal or termination of this tax credit shall constitute a tax rate increase, the imposition of a new tax or a tax policy change."

**Section 3. Amendment of Section 3.12.060 – Exemptions.** Section 3.12.060 of the Avon Municipal Code is hereby amended to recodify Section 3.12.060(17) as Section 3.12.060(14); to recodify and amend Section 3.12.060(14) to Section 3.12.060(15) to read as set forth in this section; to recodify Section 3.12.060(15) to Section 3.12.060(17); to recodify Section 3.12.060(16) to Section 3.12.060(18); to enact a new Section 3.12.060(16); such that Sections 3.12.060(14) through (18) shall read as follows:

**"3.12.060 (14)** The subsequent transfer of a residence involved in a "tax free" or "tax deferred" trade under the Internal Revenue Code wherein the interim owner acquires property for the sole purpose of reselling that property as part of a qualified exchange and the property is resold within twenty-four (24) months after the first transfer. In these cases, the first transfer of title is subject to the real property transfer tax and the subsequent transfer will only be exempt as long as a transfer tax has been paid in connection with the first transfer of such residence in such exchange. In the event the consideration for the subsequent transfer is greater than the consideration for the first transfer, transfer tax shall be due on such increased amount of consideration.

**(15)** Any sale or conveyance of real property or improvements for the purpose of constructing or otherwise providing Community Housing as defined in Chapter 3.14; provided, that the parties to the transaction shall apply to the Town Council for the exemption prior to the occurrence of the transaction from which exemption is sought in accordance with Chapter 3.14 Community Housing Incentives and that the property shall

be subject to a deed restriction that protects and maintains the Community Housing for the benefit of the Town.

**(16)** Transfers of Community Housing, as defined in Section 3.14.020, subject to a deed restriction to qualified purchasers provided that the deed restriction that protects and maintains such Community Housing for the benefit of the Town is in compliance with all terms and conditions of such deed restriction.

**(17)** The first one hundred sixty thousand dollars (\$160,000.00) of the consideration for any sale or conveyance of real property and completed improvements for occupancy as a primary residence, provided the following conditions are met:

**a.** The same applicant has not previously received an exemption pursuant to this subsection;

**b.** An application for exemption is filed with the Town Manager or his or her designee, which application is accompanied by:

**1.** An affidavit that the real property is being purchased for use as a primary residence and not for investment or resale (provided that a co-signor shall not disqualify the exemption for the applicant where the co-signor is signing for the sole purpose of facilitating the financing qualifications of the applicant/primary resident and signs an affidavit that the co-signor is not a co-purchaser for investment or resale purposes); and

**2.** A promissory note in the amount of the tax otherwise owing, together with interest accruing at the rate hereinafter provided, providing that the tax and the promissory note including accrued interest shall be due and payable in full in the event the applicant shall fail to occupy and use the property as a primary residence within the timeframe established under the definition of primary residence found in Section 3.12.020 or shall cease to use the property as his or her primary residence within one (1) year after closing and granting to the Town a lien securing such indebtedness, which lien shall be subordinate to any first mortgage or deed of trust of record.

**c.** The exemption applies only to the portion of the transfer tax actually paid by the buyer and will not reduce any portion of the transfer tax that the seller agrees to pay in the transaction.

**(18)** The first one hundred sixty thousand dollars (\$160,000.00) of the consideration for any sale or conveyance of real property and completed

improvements for occupancy as a primary residence, provided that the following conditions are met:

- a. The applicant previously received a primary residence exemption pursuant to Section 3.12.060(17) and the applicant has satisfied the conditions of subsection (17)b.1. and 2. of Section 3.12.060; and
- b. An application for exemption is filed with the Town Manager or his or her designee, which application is accompanied by:
  - 1. An affidavit that the applicant's current primary residence used to satisfy the requirements of Section 3.12.060(17) is within the Town; that the applicant meets the definition of an Eagle County employee; that the real property is being purchased for use as a new primary residence and not for investment or resale (provided that a co-signor shall not disqualify the exemption for the applicant where the co-signor is signing for the sole purpose of facilitating the financing qualifications of the applicant/primary resident and signs an affidavit that the co-signor is not a co-purchaser for investment or resale purposes); and
  - 2. A promissory note in the amount of the tax otherwise owing, together with interest accruing at the rate hereinafter provided, providing that the tax and the promissory note including accrued interest shall be due and payable in full in the event that the applicant shall fail to occupy and use the property as a primary residence within the timeframe established under the definition of primary residence found in Section 3.12.020 or shall cease to use the property as his or her primary residence or shall cease to meet the definition of an Eagle County employee within one (1) year after closing and granting to the Town a lien securing such indebtedness, which lien shall be subordinate to any first mortgage or deed of trust of record; and
- c. The exemption applies only to the portion of the transfer tax actually paid by the buyer and will not reduce any portion of the transfer tax that the seller agrees to pay in the transaction.

**Section 4. Enactment of Section 3.14 – Community Housing Incentives.** Section 3.14 of the Avon Municipal Code is hereby enacted to read as follows:

**“3.14 Community Housing Incentives.**

**3.14.010. Purpose.** Council may elect to promote Community Housing through the use of Community Housing Incentives, including the credit, exemption or waiver of taxes and/or fees which are otherwise applicable

to residential development. The approval of Community Housing Incentives shall be in Council's sole discretion. The value of any Community Housing Incentive approved by Council shall be less than or reasonably commensurate with the value of the proposed Community Housing, which shall be determined in Council's sole discretion. The Community Housing Incentive shall not apply and shall not be granted to any Community Housing that is provided to satisfy employee housing mitigation required pursuant to Title 7 - Development Code.

### **3.14.020. Definitions**

***Community Housing*** means residential housing which is subject to a deed restriction that limits use to long-term residential use as a primary residence by qualified persons and which deed restriction may impose other restrictions and limitations and may include terms deemed appropriate in the Council's sole discretion, including but not limited to controls on the resale price of such residential property, and which deed restriction is enforceable by the Town.

***Community Housing Incentive*** means a tax and/or fee credit, exemption, waiver or refund approved by resolution in accordance with this Chapter 3.14.

**3.14.030. Approval by Resolution.** Any credit, exemption or waiver of taxes or fees shall be approved by Council by resolution, which approval shall be in Council's sole discretion. The resolution shall include the following minimum elements:

- (1) The Community Housing project shall be defined by location, type of residential units, and quantity of residential units;
- (2) The taxes and/or fees that are subject to a credit, exemption and/or waiver shall be defined, and may be apportioned for a development project with mixed Community Housing and commercial uses and/or free market residential uses;
- (3) The form of the deed restriction that shall protect and maintain such Community Housing for the benefit of the Town shall be included with the resolution and the resolution shall accept or authorize the acceptance and execution of the deed restriction;

- (4) The resolution shall include a finding that the tax and/or fee credits, exemptions and/or waivers are necessary to promote Community Housing that meets a current or projected housing need for the Avon community; and,
- (5) The resolution shall include a finding of public benefit for providing such tax and/or fee credit, exemption and/or waiver.

**3.14.040. Sales Tax.** Council may provide a tax credit for the amount of sales tax imposed upon building materials and fixtures delivered, installed and/or consumed in Community Housing projects. Council may determine to provide a partial tax credit as determined appropriate by Council for buildings with mixed Community Housing and commercial uses and/or free market residential units. Neither the ability of the Town to grant this tax credit nor the termination of this tax credit shall constitute a tax rate increase, the imposition of a new tax or a tax policy change.

**3.14.050. Real Property Transfer Tax.** Council may provide an exemption for the real property transfer tax on property that is conveyed to construct or otherwise provide a Community Housing project. Council may determine to provide a partial tax credit as determined appropriate by Council for buildings with mixed Community Housing and commercial uses and/or free market residential units. Neither the ability of the Town to grant this tax credit nor the termination of this tax credit shall constitute a tax rate increase, the imposition of a new tax or a tax policy change.

**3.14.060. Development Code Fees.** Council may provide a waiver, refund or reimbursement of Development Application review fees that are required pursuant to Title 7 – Development Code. The cost for third party consultants and professionals, studies and reports are not included in the Development Application review fees that can be waived, refunded or reimbursed under this Chapter 3.14. Council may determine to provide a partial fee waiver, refund or reimbursement as determined appropriate by Council for buildings with mixed Community Housing and commercial uses and/or free market residential units.

**3.14.070. Avon Tap Fees.** Council may allow the tap fees to be credited towards the cost of required water line upgrades or extensions, may allow deferment of tap fee payment, or may allow a combination of credit and/or deferment of tap fees that are required pursuant to Chapter 13.08 – Rates and Charges of Title 13 – Public Services. Council may determine

to provide a partial fee credit or fee deferment as determined appropriate by Council for buildings with mixed Community Housing and commercial uses and/or free market residential units.

**3.14.080. Building Permit fees.** Council may provide a waiver of Plan Review and Building Permit fees that are required pursuant to Title 15 – Building Code. Council may determine to provide a partial fee waiver, refund or reimbursement as determined appropriate by Council for buildings with mixed Community Housing and commercial uses and/or free market residential units.

**Section 5. Amendment of Section 13.08.030 – Classification of customers.** Section 13.08.030 of the Avon Municipal Code is hereby amended to enact a new sub-section (4) to read as follows:

“(4) Community Housing. Residential use which meets the definition of Community Housing set forth in Section 3.14.020.”

**Section 6. Enactment of Section 13.08.045 – Tap fee waiver for Community Housing.** A new Section 13.08.045 of the Avon Municipal Code is hereby enacted to read as follows:

“**13.08.045 – Tap fee deferral for community housing.** Town Council may defer tap fees for residential units in a Community Housing project pursuant to the procedures set forth in Chapter 3.14.”

**Section 7. Codification Amendments.** The codifier of the Town’s Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon 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 Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 8. Interpretation.** This Ordinance shall be interpreted and applied to comply in all respects with Article X, Section 20, of the Colorado Constitution, in its application to any person or circumstance and no part of this Ordinance shall be interpreted or applied to constitute a tax policy change that would require voter approval.

**Section 9. Non-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 or held to be in conflict with Article X, Section 20, of the Colorado Constitution, such invalidity or conflict shall invalidate this Ordinance in its entirety. 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 10. Effective Date.** This Ordinance shall take effect thirty (30) days after the date of final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

**Section 11. Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, 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 12. 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 13. Publication.** The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

**INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING** on May 28, 2019 and setting such public hearing for June 11, 2019 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado, and continuing the public hearing to June 25, 2019.

BY:

ATTEST:

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Sarah Smith Hymes, Mayor

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Brenda Torres, Deputy Town Clerk

**ADOPTED ON SECOND AND FINAL READING** on June 25, 2019.

BY:

ATTEST:



Sarah Smith Hymes, Mayor

Brenda Torres, Town Clerk

APPROVED AS TO FORM:

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Paul Wisor, Town Attorney