

**Town of Basalt, Colorado**  
**Ordinance No. 15**  
**Series of 2019**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT,  
COLORADO, APPROVING A VOLUNTARY REFUND OF OVERCOLLECTED  
REVENUES FROM THE TOWN'S GENERAL OPERATING MILL LEVY FOR  
FISCAL YEARS 2016 TO 2019**

RECITALS

- A. The Town of Basalt ("Town") is a home-rule municipality, which is subject to Article X, Section 20 of the Colorado Constitution, commonly referred to as the Taxpayer's Bill of Rights or "TABOR."
- B. TABOR was approved by State voters in 1992 and requires, among other things, voter approval for any "new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district." TABOR creates, in effect, a four-year statute of limitations for TABOR violations.
- C. In 1994, the Town's voters approved a ballot issue to "de-Bruce" the Town's sales tax and property tax (general operating mill levy), authorizing the Town "to collect and expend the full revenues generated during 1994 and each subsequent year," allowing the Town to retain revenues generated by the Town's sales tax and property tax in excess of TABOR and statutory limits.
- D. There have not been any voter-approved changes to the Town's general operating mill levy since TABOR was approved by voters.
- E. Since 1994, the Town's general operating mill levy has ranged from 6.151 mills for the 1994 fiscal year, to a low of 2.562 mills in the 2010 fiscal year. The general operating mill levy for the last four fiscal years has been: 5.957 mills (2019), 5.792 mills (2018), 5.781 mills (2017), and 5.480 mills (2016).
- F. Because the Town has not received voter-approval to increase the mill levy from its post-TABOR low of 2.562 mills, and rather than subject the Town to potential TABOR lawsuits, the Town Council wishes to issue a voluntary refund equal to the amount of revenue received from the Town's general operating mill levy in excess of 2.562 mills during fiscal years 2016 to 2019, in a final amount to be determined by Town Staff (the "Refund Amount").

- G. Pursuant to Section 1 of TABOR, the Town may use “any reasonable method” for a refund, including tax credits, rate reductions, and direct payment. Further, Section 1 of TABOR states that “refunds need not be proportional when prior payments are impractical to identify or return.” Colorado courts have interpreted this provision of TABOR to recognize a refund to current property owners as sufficient and a “reasonable method.” See *Bolt v. Arapahoe County School District Number Six*, 898 P.2d 525 (Colo. 1995) (holding by District Court, not addressed on appeal).
- H. The Town Council finds and determines that it would be impractical to return the Refund Amount to parties who no longer own property in the Town.
- I. Accordingly, the Town Council wishes to refund the Refund Amount by direct payment by check to current owners of property in the Town’s jurisdictional limits, as of the effective date of this Ordinance and as identified by the Eagle County Assessor and Pitkin County Assessor.
- J. TABOR allows governments to receive “gifts,” which are exempted from “fiscal year spending.” Accordingly, the Town Council wishes for the refund provided pursuant to this Ordinance to include an option for property owners receiving a refund check to gift it back to the Town.
- K. The Town, acting by and through its Town Council, has the “power, by ordinance, to approve the execution and delivery of certificates of participation, representing undivided interests in rights to receive principal and interest components of rental payments by the Town under any lease from an owner of real or personal property to the Town.” See Town Charter, § 10.7.
- L. The Town Council wishes to finance payment of the Refund Amount through the use of lease certificates of participation, as authorized by the Town Charter, and as set forth in Town of Basalt Ordinance No. 16, Series of 2019.
- M. The Town Council also wishes to create such bank accounts as are necessary to hold and withdraw funds to be used to refund the Refund Amount.
- N. The Town Council believes it is in the best interests of the Town to take the actions set forth herein.
- O. At a public meeting held on July 23, 2019, the Town Council considered

approval of the Ordinance on first reading and scheduled a public hearing and second reading for the ordinance for August 13, 2019, at a meeting beginning no earlier than 6:00 P.M. at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

- P. At a public hearing and second reading on August 13, 2019, the Town Council heard evidence and testimony as offered by the Town Staff and members of the public.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, AS FOLLOWS:**

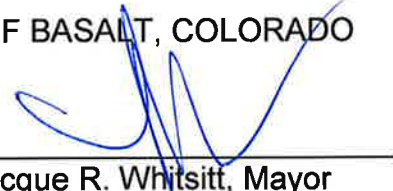
1. Recitals; Ratification and Approval of Prior Actions. The foregoing recitals are incorporated herein as findings of Town Council. All actions heretofore taken, not inconsistent with the provisions of this Ordinance, by the Council and the officers, agents, or employees of the Council or the Town relating to the subject matter of this Ordinance, are hereby ratified, approved, and confirmed.
2. Voluntary Refund. The Town Council hereby approves a voluntary refund of the Refund Amount to current property owners in the Town's jurisdictional limits, as of the effective date of this Ordinance, in accordance with TABOR by issuing direct payment by check, including an option for property owners to gift the portion of the Refund Amount received back to the Town. The Town Council authorizes and directs the Town Manager, Town Staff, Town Attorney, and the Town's consultants to take such actions as are reasonably necessary to effectuate such refund, as directed by the Town Manager, including but not limited opening bank accounts to hold and withdraw the Refund Amount.
3. Severability. If any part, section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause, or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses, or phrases be declared invalid.
4. Effective Date. This Ordinance shall be effective fourteen (14) days after final publication. This Ordinance after being fully executed, shall be recorded in the office of the Eagle County Clerk and Recorder.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON August 13, 2019, by a vote of 4 to 2 on July 23, 2019.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 0 on August 13, 2019.

TOWN OF BASALT, COLORADO

By:

  
\_\_\_\_\_  
Jacques R. Whitsitt, Mayor

Attest:

By:

  
\_\_\_\_\_  
Pamela Schilling, Town Clerk



First Publication: Thursday, August 1, 2019  
Final Publication: Thursday, August 22, 2019  
Effective Date: Thursday, September 5, 2019