

PEOPLE'S ORDINANCE NO. 44

SERIES 1986

AN ORDINANCE OF THE TOWN OF BRECKENRIDGE AMENDING SECTION 6-3-5 OF THE TOWN CODE; REPEALING CHAPTERS 7-3 AND 7-4 THEREOF; AND ADOPTING A NEW CHAPTER 7-3 "TOWING, IMPOUNDMENT AND DISPOSITION OF MOTOR VEHICLES", PROVIDING PROCEDURES FOR THE REMOVAL, STORAGE AND DISPOSAL OF ABANDONED AND ILLEGALLY PARKED MOTOR VEHICLES

WHEREAS, the Town Council finds that the storage or presence of abandoned vehicles on public and private property may constitute a threat to the health, safety and welfare of the residents of the Town of Breckenridge; and

WHEREAS, the Town Council finds that vehicles that are obstructing traffic or highway maintenance may have to be moved and towed to preserve the health, safety and welfare of the residents of the Town of Breckenridge; and

WHEREAS, the Colorado Governor, R. D. Lamm, signed House Bill 1063 into law the 8th day of April, 1986; and

WHEREAS, the bill revises the law governing abandoned vehicles under C.R.S. Section 42-4-1601, et. al. and provides for constitutional uniform procedures for the towing and moving of motor vehicles; and

WHEREAS, the Town of Breckenridge must comply with the laws of the State of Colorado, and desires to provide the same procedures for constitutional and uniform towing;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, that:

Section 1. Chapters 7-3 and 7-4 of the Breckenridge Town Code are hereby repealed in their entirety.

Section 2. Section 6-3-5 of the Breckenridge Town Code is hereby amended as follows:

- A. The definition of "JUNK VEHICLE" is repealed.
- B. The following definition is enacted:

INOPERATIVE VEHICLE: Any vehicle actually or apparently not capable of highway travel under its own power due to being wrecked, dismantled or having essential parts missing, but not including antique vehicles.

Section 3. A new Chapter 7-3, "Towing, Impoundment and Disposition of Motor Vehicles" to the Breckenridge Town Code is hereby adopted to read as follows:

CHAPTER 3
TOWING, IMPOUNDMENT, AND DISPOSITION
OF MOTOR VEHICLES

7-3-1: DEFINITIONS:

ABANDONED MOTOR VEHICLE:

- A. Any motor vehicle left unattended on private property for a period of 72 hours or longer without the consent of the owner or lessee of such property or his legally authorized agent; or

- B. Any motor vehicle left unattended on public property, including any portion of a street or highway right-of-way, within the limits of the Town of Breckenridge for a period of 24 hours or longer; or
- C. Any motor vehicle stored in an impound lot at the request of its owner or the owner's agent or the Breckenridge Police Department and not removed from the impound lot according to the agreement with the owner or agent or within 72 hours of the time the Breckenridge Police Department notifies the owner or agent that the vehicle is available for release upon payment of any applicable charges or fees. If the Breckenridge Police Department requested the storage, the provisions governing public tows of this Chapter 3 apply as of the time of abandonment, and the Breckenridge Police Department shall be deemed the responsible law enforcement agency. Otherwise, the private tow provisions of this Chapter 3 apply as of the time of abandonment.

ANTIQUE VEHICLE:

Any vehicle registered with the Department of Revenue as a collector's item pursuant to C.R.S. 42-15-101, 102, 103.

APPRAISAL:

A bona fide estimate of reasonable market value made by any motor vehicle dealer licensed in this state or by any employee of the Colorado State Patrol, Summit County Sheriff's Department or Breckenridge Police Department whose appointment for such purpose has been reported by the head of the appointing agency to the executive director of the department.

DEPARTMENT:

The Colorado Department of Revenue acting directly or through its duly authorized officers and agents.

IMPOUND LOT:

A parcel of real property which is owned or leased by the Town of Breckenridge or an operator at which motor vehicles are stored under appropriate protection.

OPERATOR:

A person or firm licensed by the public utilities commission as a towing carrier.

PRIVATE PROPERTY:

Any real property which is not public property.

PRIVATE TOW:

Any tow of a motor vehicle not requested by the Breckenridge Police Department.

PUBLIC PROPERTY:

Any real property having its title, ownership, use or possession held by the federal government, State of Colorado or any county, municipality or other governmental entity of this state, including any portion of a street, highway or right-of-way open to the general use of the public.

PUBLIC TOW:

Any tow of a motor vehicle requested by the Breckenridge Police Department.

7-3-2: ABANDONMENT OF MOTOR VEHICLES - PUBLIC TOW - EMERGENCY REMOVAL AND TOWING OF VEHICLES:

- A. No person shall abandon any motor vehicle upon public property in the Town of Breckenridge. Any Breckenridge Police Officer who finds a motor vehicle which he has reasonable grounds to believe

has been abandoned shall require such motor vehicle to be removed or cause the same to be removed and placed in storage in any impound lot designated or maintained by the Town of Breckenridge.

- B. Whenever any Breckenridge Police Officer finds a motor vehicle, attended or unattended, standing upon any portion of a street, highway or right-of-way generally open to the use of the public in such a manner as to constitute a hazard or an obstruction to traffic, proper highway maintenance, snow removal, construction, or repair, or which is standing in an area of the public right-of-way signed as a tow away zone, such officer is authorized to cause the motor vehicle to be moved to eliminate any such hazard, obstruction or violation; or to be removed and placed in storage in any impound lot designated or maintained by the Town of Breckenridge; and neither the officer nor anyone acting under his direction shall be liable for any damage to such motor vehicle occasioned by such removal or towing and impoundment.

7-3-3 REPORT - OPPORTUNITY TO REQUEST HEARING - PUBLIC TOW:

- A. 1. Upon having a motor vehicle towed pursuant to Section 7-3-2, the Breckenridge Police Department shall ascertain, if possible, whether or not the motor vehicle has been reported stolen, and, if so reported, the police department shall recover and secure the motor vehicle and notify its rightful owner and terminate the proceedings under this Chapter 3. The Breckenridge Police Department shall have the right to recover from the owner its reasonable costs to recover and secure the motor vehicle.
2. As soon as possible, but in no event later than three (3) working days after having a motor vehicle towed, the Breckenridge Police Department shall report the same to the Department by first class or certified mail or personal delivery, which report shall be on a form prescribed and supplied by the Department.
3. The Breckenridge Police Department, upon receiving the Department's report required by C.R.S. 42-4-1604(2), shall determine, from all available information and after reasonable inquiry, whether or not the motor vehicle has been reported stolen, and, if so reported, shall recover and secure the motor vehicle and notify its rightful owner and terminate the proceedings under this chapter. The Breckenridge Police Department shall have the right to recover from the owner its reasonable costs to recover and secure the motor vehicle.
4. The Breckenridge Police Department, within five (5) working days of the receipt of the report from the Department required by C.R.S. 42-4-1604(2), shall notify by certified mail the owner of record, if ascertained, and any lienholder, if ascertained, of the fact of such report and the claim, if any, of a lien under C.R.S. 42-4-1607, and shall send a copy of such notice to the operator. The notice shall contain information that the identified motor vehicle has been towed or reported abandoned to the department, the location of the motor vehicle, and the location from which it was towed, and that, unless claimed within thirty (30) calendar days from the date the notice was sent as determined from the postmark on the notice, the motor vehicle is subject to sale. Such notice shall also inform the owner of records of his opportunity to request a hearing concerning the legality of the towing of his motor vehicle, and the fact that said owner must contact the Breckenridge Police Department to request a hearing. Such request shall be made in writing to the Breckenridge Police Department within ten (10) days of the postmarked date of sending such notice.

- B. 1. Nothing in this chapter shall prevent the owner of a motor vehicle that has been towed by the Breckenridge Police Department or said owner's agent, from appearing at the Breckenridge Police Department to reclaim his motor vehicle. If the owner or his agent can show proof of ownership, or if the Breckenridge Police Department confirms the ownership of the vehicle, and the owner does not contest the legality of the tow, the vehicle may be reclaimed by payment of the towing fee, any accrued storage fees and a reasonable administrative fee assessed by the Town.
2. If the owner or his agent can show proof of ownership, or if the Breckenridge Police Department confirms the ownership of the vehicle and the owner wishes to contest the legality of the tow, the owner may request a hearing, in writing, on forms to be supplied by the Breckenridge Police Department. Prior to a scheduled hearing, the owner of the towed vehicle may obtain said vehicle by posting a cash bond in the amount of the towing fee, the accrued storage fees to date, plus storage fees for each day up to and including the date of the hearing, and a reasonable administrative fee assessed by the Town. If the person requesting the hearing fails to appear at said hearing, or if the hearing officer, pursuant to Section 7-3-4, finds that there was probable cause to tow the vehicle, the amount of the bond will be forfeited.

7-3-4: CONDUCT OF HEARING:

- A. Any requested hearing shall be conducted before a hearing officer appointed by the Town Manager within 72 hours (excluding Saturdays, Sundays and Town holidays) of receipt of a written demand for such hearing, unless the person requesting the hearing waives the right to a speedy hearing. The sole issue before the hearing officer shall be whether there was probable cause to impound the vehicle in question. "Probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was a sufficient breach of municipal, state or federal law to grant legal authority for the removal of the vehicle.
- B. The hearing shall be conducted in an informal manner and shall not be governed by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The Breckenridge Police Department shall carry the burden of establishing that there was probable cause to impound the vehicle in question. The hearing officer shall only determine that, as to the vehicle in question, either (a) there was probable cause to impound the vehicle, or (b) there was not such probable cause to impound the vehicle. The decision of the hearing officer is final.
- C. Upon a finding of no probable cause, towing and storage fees shall be paid by the Town in accordance with arrangements made between the Town and the operator; if a bond was posted pursuant to Section 7-3-3(B)(2), said bond shall be returned. If the owner of the vehicle or his agent fails to claim the vehicle from the operator within six (6) hours of a finding of no probable cause, excluding such days when the operator is not open for business, the possessor shall assume liability for all subsequent storage charges. It shall be the responsibility of the Breckenridge Police Department to notify the operator in writing of a finding of no probable cause immediately after such finding is made.
- D. If probable cause is found, the owner of the vehicle may have the vehicle returned to him upon payment of the towing fees, accrued storage fees, and a reasonable administrative fee assessed by the Town.

- E. Failure of the owner of the vehicle in question to request a hearing or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

7-3-5: ABANDONMENT OF MOTOR VEHICLES - PRIVATE TOW:

- A. No person shall abandon any motor vehicle upon private property other than his own. Any owner or lessee, or his agent authorized in writing, may have an abandoned motor vehicle removed from his property by having it towed and impounded by an operator.
- B. Any operator having in his possession any abandoned motor vehicle from a private tow shall immediately notify the Breckenridge Police Department as to the name of the operator and the location of the impound lot where the vehicle is located and a description of the abandoned motor vehicle, including the make, model, color and year, the number, issuing state and expiration date of the license plate, and the vehicle identification number. Upon such notification, the Breckenridge Police Department shall ascertain, if possible, whether or not the vehicle has been reported stolen and, if so reported shall recover and secure the motor vehicle and notify its rightful owner and terminate the abandonment proceedings under this Chapter 3. The Breckenridge Police Department shall have the right to recover from the owner its reasonable costs to recover and secure the vehicle.

7-3-6: APPRAISAL - SALE:

- A. Public tow motor vehicles or motor vehicles abandoned in an impound lot subsequent to a public tow shall be appraised and sold by the Breckenridge Police Department or its designated representative at a public or private sale held not less than thirty (30) nor more than sixty (60) days after the date the notice required by Section 7-3-3(C) was mailed. Prior to any sale, public notice shall be made in local newspapers advertising such sale listing vehicles to be sold, date, time and location of sale.
- B. If the appraised value of an abandoned motor vehicle sold pursuant to this section is \$200.00 or less, the sale shall be made only for the purpose of junking, scrapping or dismantling such motor vehicle, and the purchaser thereof shall not, under any circumstances, be entitled to a Colorado certificate of title. The Breckenridge Police Department shall cause to be executed and delivered a bill of sale, together with a copy of the report described in C.R.S. 42-4-1604, to the person purchasing such motor vehicle. The bill of sale shall state that the purchaser acquires no right to a certificate of title for such vehicle. The Breckenridge Police Department shall promptly submit a report of sale, with a copy of the bill of sale to the Department and shall deliver a copy of such report of sale to the purchaser of the motor vehicle.
- C. If the appraised value of a motor vehicle sold pursuant to this section is more than \$200.00, the sale may be made for any intended use by the purchaser thereof. The Breckenridge Police Department shall cause to be executed and delivered a bill of sale, together with a copy of the report described in C.R.S. 42-4-1604 and an application for a Colorado certificate of title signed by the Breckenridge Police Department.

7-3-7: PROCEEDS OF SALE:

- A. If the sale of any motor vehicle and its attached accessories or equipment under the provisions of this chapter produces an amount less than or equal to the sum of all charges of the operator who has perfected a lien pursuant to C.R.S. 4-4-1607, then the operator shall have a valid claim against the owner of record for the full amount of such charges, less the amount received upon the

sale of such motor vehicle. Such charges shall be assessed in the manner provided for in paragraph 1. of subsection B. of this section.

B. If the sale of any motor vehicle and its attached accessories or equipment under the provision of this chapter produces an amount greater than the sum of all charges of the operator who has perfected his lien pursuant to C.R.S. 42-2-1607:

1. The proceeds shall first satisfy the operator's charges as follows: the cost of towing the motor vehicle with a maximum charge of \$50.00; the mileage for tows of greater than twenty-five (25) miles one way, to be computed at the rate of \$1.00 per mile for each mile in excess of 25 miles one way; and the storage of the motor vehicle to be charged at the rate of \$4.00 per day for a maximum of 60 days.

In the case of a motor vehicle weighing in excess of 10,000 pounds, the provisions of this paragraph 1. shall not apply and the operator's charges shall be determined by negotiated agreement between the operator and the Breckenridge Police Department.

2. Any balance then remaining shall be paid to the Breckenridge Police Department to satisfy the cost of mailing notices, having an appraisal made, advertising and selling the motor vehicle and any other costs, taxes, fines and penalties due.

3. Any balance then remaining shall be forwarded to the Department for disbursement pursuant to C.R.S. 42-4-1610(2)(c) and (d).

C. The provisions of paragraphs 1. and 2. of subsection B. of this section shall not apply if the Town has entered a towing contract which provides for different charges by the operator.

7-3-8: PENALTY:

Any person found to be in violation of any provision of this chapter is subject to a fine not to exceed \$300.00 and/or 90 days imprisonment.

7-3-9: EXEMPTION:

Nothing in this chapter shall be construed to include or apply to authorized emergency vehicles while such vehicles are actually and directly engaged in, coming from, or going to an emergency.

Section 4. Severability. If any part or parts of this Ordinance are for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining sections of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and all parts thereof, irrespective of the fact that any one section be declared invalid or unconstitutional.

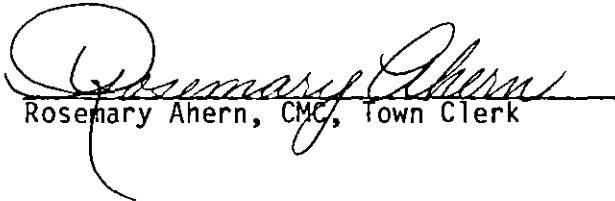
Section 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Breckenridge and the inhabitants thereof.

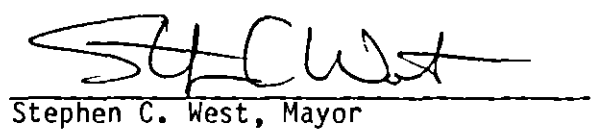
INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED
IN FULL ONLY this 11th day of November, 1986. A Public Hearing on the
Ordinance shall be held at the regular meeting of the Town Council of the
Town of Breckenridge, Colorado, on the 25th day of November, 1986, at 7:30

p.m. or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE


Rosemary Ahern, CMC, Town Clerk

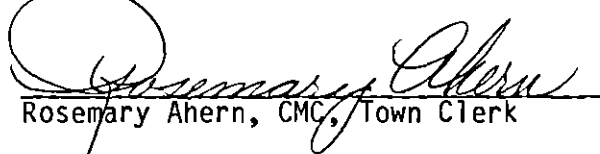

Stephen C. West, Mayor

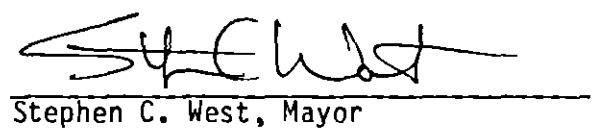
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE
ONLY this 25th day of November, 1986.

A copy of this Ordinance is available for inspection in the
office of the Town Clerk.

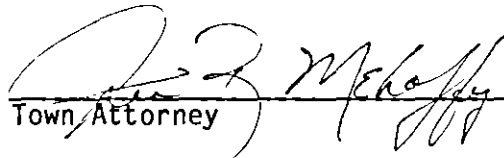
ATTEST:

TOWN OF BRECKENRIDGE


Rosemary Ahern, CMC, Town Clerk


Stephen C. West, Mayor

APPROVED IN FORM


Town Attorney

11-25-86
Date