

ORDINANCE NO. 10

SERIES 1991

AN ORDINANCE REPEALING AND READOPTING WITH AMENDMENTS ARTICLE F OF CHAPTER 3 OF TITLE 6 OF THE BRECKENRIDGE TOWN CODE CONCERNING MUNICIPAL OFFENSES RELATED TO ALCOHOL AND AMUSEMENT ESTABLISHMENTS

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Article F of Chapter 3 of Title 6 of the Breckenridge Town Code is hereby repealed and readopted with amendments so as to read in its entirety as follows:

CHAPTER 3  
General Offenses

ARTICLE F -- OFFENSES RELATING TO ALCOHOL, CIGARETTES AND AMUSEMENT ESTABLISHMENTS

Sections:

- 6-3F-1 Definitions.
- 6-3F-2 Illegal Possession Or Consumption Of Alcohol By Underage Person.
- 6-3F-3 Unlawful Purchasing Of Alcoholic Beverage By Underage Person.
- 6-3F-4 Unlawful Solicitation Of Alcoholic Beverage By Underage Person.
- 6-3F-5 Permitting Use Of False Identification By Underage Person.
- 6-3F-6 Unlawful Purchasing Of Alcoholic Beverage For Underage Person.
- 6-3F-7 Unlawful Sale Of Alcoholic Beverage To Underage Person.
- 6-3F-8 Unlawful Sale Of Alcoholic Beverage By Unlicensed Person.
- 6-3F-9 Illegal Removal Of Alcoholic Beverages From Licensed Premises.
- 6-3F-10 Duty Of Licensee To Report.
- 6-3F-11 Parental Liability.
- 6-3F-12 Unlawful Purchasing Of Cigarettes By Underage Person.
- 6-3F-13 Unlawful Sale Of Cigarettes To Underage Person.
- 6-3F-14 Unlawful Use Of False Identification To Gain Admission.

6-3F-1 DEFINITIONS: As used in this Chapter, unless the context otherwise requires:

"Alcoholic beverages" means a fermented malt beverage as defined by the "Colorado Beer Code" (Article 46 of Title 12, C.R.S.) and malt, vinous or spirituous liquor as defined by the "Colorado Liquor Code" (Article 47 of Title 12, C.R.S.)

"Colorado Beer Code" means the provisions of Article 46 of Title 12, C.R.S., and the rules and regulations of the Colorado Department of Revenue promulgated thereunder.

"Colorado Liquor Code" means the provisions of Article 47 of Title 12, C.R.S., and the rules and regulations of the Colorado Department of Revenue promulgated thereunder.

"Employee" means an employee of a licensee.

"Establishment" means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group, or residence, and any real property, including buildings and improvements, connected therewith, and shall also include any members, employees, and occupants associated therewith.

"Ethyl alcohol" means any substance which is or contains ethyl alcohol, and includes fermented malt beverages (as defined in the "Colorado Beer Code", and malt, vinous and spirituous liquors (as defined in the "Colorado Liquor Code").

"License" means a grant to a licensee to sell fermented malt beverages as provided by the "Colorado Beer Code"; a grant to a licensee to sell, malt, vinous, or spirituous liquors as provided by the "Colorado Liquor Code"; or a Special Events Permit.

"Licensee" means the holder of a license under the "Colorado Beer Code"; the "Colorado Liquor Code"; or the holder of a Special Events Permit.

"Licensed premises" means the premises specified in an application for a license under the "Colorado Beer Code"; the "Colorado Liquor Code"; or for a special events permit, which are owned or in possession of the licensee and within which such licensee is authorized to sell, dispense or serve alcoholic beverages.

"Manager" means the registered manager of a Licensee.

"Person" means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee of any of them.

"Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his person, or that a person owns or has custody of ethyl alcohol, or has ethyl alcohol within his immediate presence and control.

"Private Property" means any dwelling and its curtilate which is being used by a natural person or natural persons for habitation and which is not open to the public and privately owned real property which is not open to the public. "Private property" shall not include:

(1) Any establishment which has or is required to have a license pursuant to the Colorado Beer Code, Colorado Liquor Code, or the provisions of Article 48 of Title 12, C.R.S., pertaining to special events licenses; or

(2) Any establishment which leases, rents, or provides accommodations to members of the public generally.

"Sell" or "sale" means any of the following: To exchange, barter, or traffic in; to solicit or receive an order for except through a licensee; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or to possess with intent to sell; to possess in contravention of this Chapter; and to traffic in for any consideration promised or obtained, directly or indirectly.

"Special events permit" means a special permit to sell fermented malt beverages or malt, vinous or spirituous liquors issued pursuant to the provisions of Article 48 of Title 12, C.R.S., and the rules and regulations of the Colorado Department of Revenue promulgated thereunder.

"Underage person" means a person under the age of twenty-one (21) years.

6-3F-2 ILLEGAL POSSESSION OR CONSUMPTION OF ALCOHOL BY UNDERAGE PERSON:

A. It shall be unlawful for any person under the age of twenty-one (21) years to possess or consume ethyl alcohol anywhere within the Town. Illegal possession or consumption of alcohol by an underage person is a strict liability offense.

B. It shall be an affirmative defense to the offense described in Subsection (A) of this Section that the ethyl alcohol was possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:

(1) While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private pro-

perty and the ethyl alcohol was possessed or consumed with the consent of such person's parent or legal guardian who was present during such possession or consumption; or

(2) When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S., or the ingestion of any substance which was manufactured, designed, or intended primarily for a purpose other than oral human ingestion, or the ingestion of any substance which was manufactured, designed, or intended solely for medicinal or hygienic purposes, or solely from the ingestion of a beverage; which contained less than one-half of one percent of ethyl alcohol by weight.

C. Prima facie evidence of a violation of Subsection (A) of this Section shall consist of:

(1) Evidence that the Defendant was under the age of twenty-one (21) years and possessed or consumed ethyl alcohol anywhere in this Town; or

(2) Evidence that the Defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with ethyl alcohol intoxication or impairment while present anywhere in this Town.

D. During any trial for a violation of Subsection (A) of this Section, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and the information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can, or other container as "beer", "ale", "malt beverage", "fermented malt beverage", "malt liquor", "wine", "wine cooler", "champagne", "whiskey", "gin", "vodka", "tequila", "schnapps", "brandy", "cognac", "liqueur", "cordial", "alcohol", or "liquor" shall constitute prima facie evidence that the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol.

E. A parent or legal guardian of a person under twenty-one (21) years of age, or any natural person who has the permission of such parent or legal guardian, may give, or permit the possession and consumption of, ethyl alcohol to or by a person under the age of twenty-one (21) years under the conditions described in Paragraph (1) of Subsection (B) of this Section. This Subsection shall not be construed to permit any establishment which is or is required to be licensed pursuant to the Colorado Beer Code, Colorado Liquor Code or the provisions of Article 48 of Title 12, C.R.S., or any members, employees, or occupants of any such establishment, to give, provide, make available, or sell ethyl alcohol to a person under twenty-one (21) years of age.

F. Any underage person shall be required to take and complete, and to cooperate in the taking and completion of, any test or tests of such person's breath for the purpose of determining the presence of ethyl alcohol in such person's breath when so requested and directed by a law enforcement officer having probable cause to believe that such person has violated Section (A) of this Section. The breath test shall be administered in accordance with the rules and regulations prescribed by the Colorado State Board of Health; provided however, strict compliance with such rules and regulations shall not be a prerequisite to the admissibility of a test result at trial unless the Court finds that the extent of non-compliance with a Board of Health rule has so impaired the validity and reliability of the testing method and the test results so as to render the evidence unreliable. In all other circumstances, failure to strictly comply with such rules and regulations shall only be considered in the

weight to be given to the test results and not to the admissibility of such test result. If an underage person refuses to take or to complete, or to cooperate with the completion of, a breath test as described above such refusal shall be admissible into evidence at any trial for an alleged violation of Subsection (A) of this Section.

G. In any judicial proceeding in the Municipal Court concerning a charge under Subsection (A) of this Section, the Court shall take judicial notice of methods of testing a person's breath for the presence of ethyl alcohol and of the design and operation of devices certified by the Colorado Department of Health for testing a person's breath for the presence of ethyl alcohol. Nothing in this Subsection (G) shall preclude a Defendant from offering evidence concerning the accuracy of such testing device.

H. No law enforcement officer shall enter upon any private property within the Town to investigate any violation of this Section without probable cause.

I. Any person convicted of violating the provisions of Subsection (A) of this Section shall be punished as provided in Chapter 4 of Title 1 of this Code. The Court, upon sentencing a Defendant for a violation of Subsection (A) of this Section, may, in addition to any fine, order that the Defendant perform up to twenty-four (24) hours of useful public service and may further order that the Defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program, at such Defendant's own expense.

6-3F-3 UNLAWFUL PURCHASING OF ALCOHOLIC BEVERAGE BY UNDERAGE PERSON:

It shall be unlawful for any person under the age of twenty-one (21) years to purchase, procure or obtain any alcoholic beverage from any place where alcoholic beverages are sold. This offense is a strict liability offense.

6-3F-4 UNLAWFUL SOLICITATION OF ALCOHOLIC BEVERAGE BY UNDERAGE PERSON:

It shall be unlawful for any person under the age of twenty-one (21) years to engage or utilize the service of any other person, whether for remuneration or not, to purchase, procure or obtain for such underage person an alcoholic beverage from any place where alcoholic beverages are sold. This offense is a strict liability offense.

6-3F-5 PERMITTING USE OF FALSE IDENTIFICATION BY UNDERAGE PERSON: It shall be unlawful for any person to intentionally or knowingly permit, or to fail to prevent, the use of such person's identification in connection with the purchase, or attempted purchase, of an alcoholic beverage by a person under the age of twenty-one (21) years.

6-3F-6 UNLAWFUL PURCHASING OF ALCOHOLIC BEVERAGE FOR UNDERAGE PERSON: It shall be unlawful for any person to intentionally or knowingly purchase, procure or obtain an alcoholic beverage for any person who is under the age of twenty-one (21) years.

6-3F-7 UNLAWFUL SALE OF ALCOHOLIC BEVERAGE TO UNDERAGE PERSON: It shall be unlawful for any person to sell, serve, give away, dispose of, exchange, or deliver, or permit the sale, service, giving away, delivery or procuring of any alcoholic beverage to or for any person under the age of twenty-one (21) years. This offense is a strict liability offense.

6-3F-8 UNLAWFUL SALE OF ALCOHOLIC BEVERAGE BY UNLICENSED PERSON: It shall be unlawful for any person to sell or possess for sale any malt, vinous, or spirituous liquor or fermented malt beverage, unless licensed to do so pursuant to the Colorado Beer Code, Colorado Liquor Code, or the provisions of Article 48 of Title 12, C.R.S., unless all required licenses are in full force and effect.

6-3F-9 ILLEGAL REMOVAL OF ALCOHOLIC BEVERAGE FROM LICENSED PREMISES:

A. It shall be unlawful for any licensee, manager or employee to intentionally, knowingly or recklessly permit the removal of any alcoholic beverage from the licensed premises.

B. It shall be unlawful for any person to remove any alcoholic beverage from a licensed premises. This offense is a strict liability offense.

C. This Section shall not apply to a duly licensed package liquor store or vendor.

6-3F-10 DUTY OF LICENSEE TO REPORT: A licensee shall immediately report to the Police Department of the Town any unlawful act, conduct or disturbance committed on the licensed premises. Failure to comply with the requirements of this Section may be considered by the licensing authority in any action relating to revocation, suspension or renewal of a license. Proof of failure on at least three (3) occasions within the licensing period to comply with the requirements of this Section shall constitute prima facie grounds for the suspension, revocation or denial of renewal of a license.

6-3F-11 PARENTAL LIABILITY: It shall be unlawful for the parent or legal guardian of any person under the age of twenty-one (21) years to intentionally, knowingly, or under conditions which an average parent or guardian should have knowledge of, to permit or allow such underage person to violate any of the provisions of this Chapter.

6-3F-12 UNLAWFUL PURCHASING OF CIGARETTES BY UNDERAGE PERSON: It shall be unlawful for any person who is under the age of eighteen (18) years to purchase any cigarettes or tobacco products.

6-3F-13 UNLAWFUL SALE OF CIGARETTES TO UNDERAGE PERSON: It shall be unlawful for any person to sell, give away, dispose of, exchange, or deliver, or to permit the sale, giving away, disposal, exchange, or delivery of cigarettes or tobacco products to or for any person under the age of eighteen (18) years. This offense is a strict liability offense.

6-3F-14 UNLAWFUL USE OF FALSE IDENTIFICATION TO GAIN ADMISSION: It shall be unlawful for any minor to make false statements or to furnish, present or exhibit any fictitious or false registration card, identification card, or note or other document issued to a person other than the one presenting the same, for the purpose of gaining admission to any place which has established a minimum age for entrance.

Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 3. The Town Council hereby finds, determines, and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 4. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 5. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

Section 6. If any 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. The Town Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 14th day of May, 1991. 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 28th day of May, 1991, at 7:30 p.m. or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

Mary Jean Loufek  
Mary Jean Loufek, Town Clerk

TOWN OF BRECKENRIDGE

Stephen C. West  
Stephen C. West, Mayor

This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on May 23, 1991.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE this 28th day of May, 1991.

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

ATTEST:

Mary Jean Loufek  
Mary Jean Loufek, Town Clerk

TOWN OF BRECKENRIDGE

Stephen C. West  
Stephen C. West, Mayor

APPROVED IN FORM

Bob A. Bey  
Town Attorney

5/28/91  
Date

This Ordinance was published by title in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on June 6, 1991.