

ORDINANCE NO. 2

SERIES 1991

AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE BY ADOPTING GENERAL PROVISIONS RELATING TO PARTIES TO AN OFFENSE, ACCOUNTABILITY FOR MUNICIPAL ORDINANCE VIOLATIONS, JUSTIFICATIONS AND EXEMPTIONS FROM RESPONSIBILITY FOR MUNICIPAL ORDINANCE VIOLATIONS, AND PROVISIONS CONCERNING THE OFFENSE OF ATTEMPTING TO COMMIT A MUNICIPAL ORDINANCE VIOLATION

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

Section 1. There is hereby added to the Breckenridge Town Code a new Chapter 13 of Title 1, entitled "Parties To Offenses -- Accountability", which shall read in its entirety as follows:

Chapter 13  
Parties To Offenses -- Accountability

Sections:

- 1-13-1 Liability Based Upon Behavior--Generally.
- 1-13-2 Accountability For Behavior of Another.
- 1-13-3 Complicity.
- 1-13-4 Liability Based Upon Behavior Of Another -- Exemptions.
- 1-13-5 Liability Based Upon Behavior Of Another -- No Defense.
- 1-13-6 Liability Of Corporation.
- 1-13-7 Liability Of An Individual For Corporate Conduct.

1-13-1 Liability Based Upon Behavior -- Generally. A person is guilty of an offense if it is committed by the behavior of another person for which he is legally accountable as provided in Sections 1-13-2 through 1-13-7.

1-13-2 Accountability For Behavior Of Another.

A. A person is legally accountable for the behavior of another person if:

1. He is made accountable for the conduct of that person by the ordinance defining the offense, or by specific provisions of this Code; or

2. He acts with the culpable mental state sufficient for the commission of the offense in question and he causes an innocent person to engage in such behavior.

B. As used in Subsection A of this Section, "innocent person" includes any person who is not guilty of the offense in question, despite his behavior, because of duress, legal incapacity or exemption, or unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose, or any other factor precluding the mental state sufficient for the commission of the offense in question.

1-13-3 Complicity. A person is legally accountable as principal for the behavior of another constituting a municipal offense if, with the intent to promote or facilitate the commission of the offense, he aids, abets, or advises the other person in planning or committing the offense.

1-13-4 Liability Based Upon Behavior Of Another -- Exemptions.

A. Unless otherwise provided by the ordinance defining the offense, a person shall not be legally accountable for behavior of another constituting an offense if he is a victim of that offense or the offense is so defined that his conduct is inevitably incidental to its commission.

B. It shall be an affirmative defense to a charge under Section 1-13-3 if, prior to the commission of the offense, the defendant terminated his effort to promote or facilitate its commission and either gave timely warning to law enforcement authorities or gave timely warning to the intended victim.

1-13-5 Liability Based Upon Behavior of Another -- No Defense. In any prosecution for an offense in which criminal liability is based upon the behavior of another pursuant to Sections 1-13-1 through 1-13-7, it is no defense that the other person has not been prosecuted for or convicted of any offense based upon the behavior in question, or has been convicted of a different offense or degree of offense, or the defendant belongs to a class of persons who by definition of the offense are legally incapable of committing the offense in an individual capacity.

1-13-6 Liability Of Corporations.

A. A corporation is guilty of an offense if:

1. The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

2. The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment or in behalf of the corporation.

B. As used in this section, "agent" means any director, officer, or employee of a corporation, or any other person who is authorized to act in behalf of the corporation, and "high managerial agent" means an officer of a corporation, or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

C. For every offense committed by a corporation, the corporation shall only be subject to the imposition of a fine as provided in Chapter 4 of Title 1 of this Code.

1-13-7 Liability Of An Individual For Corporate Conduct. A person is criminally liable for conduct constituting an offense which he performs or causes to occur in the name of or in behalf of a corporation to the same extent as if that conduct were performed or caused by him in his own name or behalf.

Section 2. There is hereby added to the Breckenridge Town Code a new Chapter 14 of Title 1, entitled "Justification And Exemption From Responsibility", which shall read in its entirety as follows:

Chapter 14  
Justification And Exemption From Responsibility

Sections:

- 1-14-1 Execution Of Public Duty.
- 1-14-2 Choice Of Evils.
- 1-14-3 Use Of Force -- Special Relationships.
- 1-14-4 Physical Force -- Defense Of A Person.
- 1-14-5 Physical Force -- Defense Of Premises.
- 1-14-6 Physical Force -- Defense Of Property.
- 1-14-7 Physical Force -- Arrest, Escape.
- 1-14-8 Entrapment.
- 1-14-9 Duress.
- 1-14-10 Insufficient Age.
- 1-14-11 Intoxication.
- 1-14-12 Affirmative Defenses.

1-14-1 Execution Of Public Duty.

A. Unless inconsistent with other provisions of Section 1-14-3 through 1-14-7, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and shall not constitute an offense when it is required or authorized by a provision of law or a judicial decree binding in Colorado.

B. A "provision of law" and a "judicial decree" in Subsection A of this Section means:

1. Laws defining duties and functions of public servants;
  2. Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;
  3. Laws governing the execution of legal process;
  4. Laws governing the military service and conduct of war;
- and;
5. Judgments and orders of court.

#### 1-14-2 Choice Of Evils.

A. Unless inconsistent with other provisions of Sections 1-14-3 through 1-14-7, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and shall not constitute an offense when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no conduct of the actor, and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.

B. The necessity and justifiability of conduct under Subsection A of this Section shall not rest upon considerations pertaining only to the morality and advisability of the ordinance, either in its general application or with respect to its application to a particular class of cases arising thereunder. When evidence relating to the defense of justification under this Section is offered by the defendant, before it is submitted for the consideration of the jury the court shall first rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a justification.

#### 1-14-3 Use Of Force -- Special Relationships.

A. The use of physical force upon another person which would otherwise constitute an offense is justifiable and shall not constitute an offense under any of the following circumstances:

1. A parent, guardian, or other person entrusted with the care and supervision of a minor or an incompetent person, and a teacher or other person entrusted with the care and supervision of a minor, may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent it is reasonably necessary and appropriate to maintain discipline or promote the welfare of the minor or incompetent person.

2. A superintendent or other authorized official of a jail, prison, or correctional institution may, in order to maintain order and discipline, use reasonable and appropriate physical force when and to the extent that he reasonably believes it necessary to maintain order and discipline.

3. A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his direction, may use reasonable and appropriate physical force when and to the extent that it is necessary to maintain order and discipline.

4. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself may use reasonable and appropriate physical force upon that person to the extent that it is reasonably necessary to thwart the result.

5. A duly licensed physician, or a person acting under his direction, may use reasonable and appropriate physical force for the purpose of administering a recognized form of treatment which he reasonably believes to be adapted to promoting the physical or mental health of the patient if:

(a) the treatment is administered with the consent of the patient, or if the patient is a minor or an incompetent person, with the consent of his parent, guardian, or other person entrusted with his care and supervision; or

(b) the treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

1-14-4 Physical Force -- Defense Of A Person. A person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

1-14-5 Physical Force -- Defense Of Premises. A person in possession or control of any building, realty, or other premises, or a person who is licensed or privileged to be thereon, is justified in using reasonable and appropriate physical force upon another person when and to the extent that it is reasonably necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of an unlawful trespass by the other person in or upon the building, realty, or premises.

1-14-6 Physical Force -- Defense Of Property. A person is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by the other person to commit theft, criminal mischief, or criminal tampering involving property.

1-14-7 Physical Force -- Arrest, Escape. A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary to do the following:

A. to effect an arrest or prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

B. to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

1-14-8 Entrapment. The commission of acts which would otherwise constitute an offense shall not constitute an offense if the defendant engaged in the proscribed conduct because he was induced to do so by a law enforcement official or other person acting under his direction, seeking to obtain evidence for the purpose of prosecution, and the methods used to obtain that evidence were such as to create a substantial risk that the acts would be committed by a person who, but for such inducement, would not have conceived of or engaged in conduct of the sort induced. Merely affording a person an opportunity to commit an offense is not entrapment even though representations or inducements calculated to overcome the offender's fear of detection are used.

1-14-9 Duress. A person may not be convicted of an offense based upon conduct in which he engaged at the direction of another person because of

the use or threatened use of unlawful force upon him or upon another person, which force or threatened use thereof a reasonable person in his situation would have been unable to resist. This defense is not available when a person intentionally or recklessly places himself in a situation in which it is foreseeable that he will be subjected to such force or threatened use thereof. The choice of evils defense, provided in Section 1-14-2, shall not be available to a defendant in addition to the defense of duress provided under this Section unless separate facts exist which warrant its application.

1-14-10 Insufficient Age. The responsibility of a person for his conduct is the same for persons between the ages of ten (10) and eighteen (18) years, except to the extent that responsibility is modified by the provisions of the "Colorado Children's Code", Title 19, C.R.S. No child under ten (10) years of age shall be found guilty of any offense.

1-14-11 Intoxication.

A. Intoxication of the accused is not a defense to a charge, except as provided in Subsection C of this Section, but in prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant when it is relevant to negate the existence of a specific intent if such intent is an element of the offense charged.

B. Intoxication does not, in itself, constitute a mental disease or defect.

C. A person is not criminally responsible for his conduct if, by reason of intoxication that is not self-induced at the time he acts, he lacks capacity to conform his conduct to the requirements of the law.

D. "Intoxication", as used in this Section, means a disturbance of mental or physical capacities resulting from the introduction of any substance into the body.

E. "Self-induced intoxication" means intoxication caused by substances which the defendant knows or ought to know have the tendency to cause intoxication and which he knowingly introduced or allowed to be introduced into his body, unless they were introduced pursuant to medical advice or under circumstances that would afford a defense to a charge of an offense under this Code.

1-14-12 Affirmative Defenses. The issues of justification, exemption from liability or responsibility under Sections 1-14-1 through 1-14-11 are affirmative defenses. The defendant may assert any other affirmative defense known to the common law.

Section 3. There is hereby added to the Breckenridge Town Code a new Chapter 15 of Title 1, entitled "Criminal Attempt", which shall read in its entirety as follows:

Chapter 15  
Criminal Attempt

Section:

1-15-1 Criminal Attempt -- Designated.

1-15-1 Criminal Attempt -- Designated.

A. A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he engages in conduct constituting a substantial step toward commission of the offense. A substantial step is any conduct, whether act, commission, or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to

be, nor is it a defense that the crime attempted was actually perpetrated by the accused.

B. A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the conduct would establish his complicity under Section 1-13-3 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense.

C. It is an affirmative defense to a charge under this Section that the defendant abandoned his effort to commit the crime or otherwise prevented its commission under circumstances manifesting the complete and voluntary renunciation of his criminal intent.

Section 4. Section 6-3H-5 of the Breckenridge Town Code is hereby repealed.

Section 5. 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 6. 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 7. 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 8. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

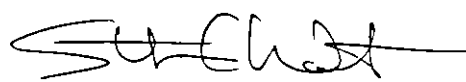
Section 9. If any section, subsection, sentence, clause of phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance, and each section, 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 8th day of January, 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 22nd day of January, 1991, at 7:30 p.m. or as soon thereafter as possible.

ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, Town Clerk

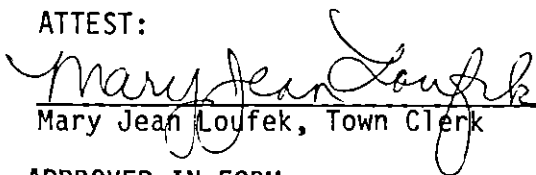
  
Stephen C. West, Mayor

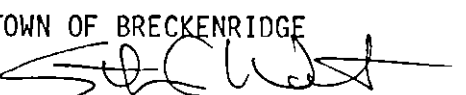
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE this 22nd day of January, 1991.

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

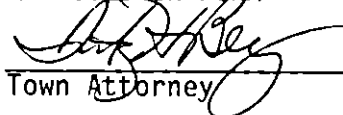
ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, Town Clerk

  
Stephen C. West, Mayor

APPROVED IN FORM

  
Town Attorney

1/22/91  
6 Date