

ORDINANCE NO. 24

SERIES 1991

AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE
TO REGULATE THE DISTRIBUTION OF HANDBILLS

WHEREAS, Section 31-15-702(1)(a)(VI), C.R.S., authorizing the governing body of each municipality in Colorado to regulate and prevent the use of streets and sidewalks for the posting of handbills and advertisements; and

WHEREAS, the United States Supreme Court and the Colorado Supreme Court have recognized a distinction between commercial speech and political, religious or noncommercial speech; and

WHEREAS, municipalities have the power to regulate the time, place and manner of the distribution of commercial advertising within the Town; and

WHEREAS, the Town Council of the Town of Breckenridge finds and determines that the imposition of the restrictions and limitations contained in this Ordinance are reasonable time, place and manner restrictions on the dissemination of handbills.

NOW, THEREFORE, 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 5 of Title 11, to be entitled "Handbills", which shall read in its entirety as follows:

Chapter 5, Handbills

<u>Sections:</u>	11-5-1	Intent
	11-5-2	Definitions
	11-5-3	Limitation of Manner of Distributing Commercial Handbills in Public Places
	11-5-4	Placing Of Handbills On Vehicles Prohibited
	11-5-5	Unlawful Posting Of Handbills
	11-5-6	Limitation Of Use Of Dispensers To Distribute Commercial Handbills on Private Property
	11-5-7	Removal Of Illegal Dispensers
	11-5-8	Exemptions
	11-5-9	Penalties

Section 11-5-1. Intent. In adopting this Chapter it is the intent of the Town Council to exercise its right to adopt reasonable time, place and manner restrictions upon the distribution of handbills within the Town. The Town Council finds that commercial handbills are commercial speech, as that term is defined by law, and that the regulations contained in this Chapter advance and implement the substantial government interests of protecting and preserving the public health, safety and welfare by preventing nuisances and insuring that the streets and sidewalks remain unobstructed by persons or vending machines engaged in the dissemination of commercial handbills.

The Town Council also finds that the regulations contained in this Chapter advance the Town's substantial interest in enhancing the unique aesthetic character of the Town by confining and limiting the places where handbills may be disseminated, thereby reducing the visual blight which can result from the unregulated distribution of such materials. The Town Council additionally finds that the implementation of the provisions of this Chapter will further the Town's on-going effort to enhance the attractiveness of the Town, and make the Town more aesthetically appealing to the residents and many visitors to the Town. The Town Council lastly finds and concludes that the regulations contained in this Chapter reach no further than is necessary to accomplish the objectives described above.

Section 11-5-2. Definitions. As used in this Chapter:

"Commercial Handbill" means and includes any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter which:

1. Advertises for sale any goods, merchandise, product, commodity, service, or thing, including, but not limited to real property, the improvements thereon, or any interest therein; or
2. Directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interests thereof by sales; or
3. While containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor; or
4. Directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of any profit or gain; provided, however, that the terms of this Chapter shall not apply where an admission fee is charged or a collection is taken solely for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition or event; or
5. Which is not covered by the definition of a sign in Section 8-2-3 of this Code.

A Newspaper is not a commercial handbill.

"Distribute" means the act of handing, or attempting to hand, disseminating, giving away, throwing, depositing or scattering handbills.

"Dispenser" means any self service or coin-operated box, container, rack, stand, unit or other dispenser installed, placed, located, used or maintained for the display, dissemination or distribution of commercial handbills.

"Fully Enclosed Building" means that portion of a structure contained fully within the exterior walls of a building. The term "fully enclosed buildings" shall not include decks, porches, carports, areas under roof overhangs, or any other area not contained totally within the exterior walls.

"Motor Vehicle" means any self-propelled vehicle which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways.

"Newspaper" means and includes a printed publication, the primary purpose of which is to provide comprehensive and detailed information regarding state, local, national or world news, and which may be free or may be sold for a fee. The term "newspaper" as used in this Chapter shall include any newspaper of general circulation as defined by the statutes of the State of Colorado; and, in addition thereto, any periodical or current magazine regularly published not less than four (4) issues per year, and sold to the public. No publication, no matter how frequently published, shall be considered as a newspaper under this Chapter unless it is qualified for second class mail privileges under applicable regulations of the United States Postal Service; but the mere fact that a publication qualifies for such privileges shall not be determinative of the classification of such publication as a newspaper under this Chapter. No publication shall be deemed to be a newspaper under this Chapter. These include, without limitation:

1. A publication which contains more than 75% advertising in more than half of the issues published during any 12-month period.

2. A publication owned or controlled by individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of any business or calling of those who own or control such publication.

3. A publication that has only a token list of subscribers and which prints advertisements free for advertisers who pay for copies to be sent to a list of persons furnished by the advertisers.

As used in this definition, the term "advertising" includes all material for the publication of which a valuable consideration is paid, accepted, or promised, which calls attention to something for the purpose of getting people to buy it, sell it, seek it, or support it. Additionally, if the publication advertises its own business, goods or services, or any other business of the publisher, whether in the form of display advertising or editorial or reading matters, such shall be deemed to be "advertising."

"Noncommercial Handbill" means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper booklet or any other printed matter or literature not included in the definitions of a sign, or a commercial handbill or a newspaper.

"Private Property" means any real property which is designated or used primarily for private purposes.

"Public Property" means and includes the full width of all streets, sidewalks, alleys, avenues, lanes and other public ways owned or controlled by the Town or the public; all public parks, public grounds or public buildings; and the full width of all public easements or rights-of-way, including, but not limited to, snowstack easements.

Section 11-5-3. Limitation on Manner of Distributing Commercial Handbills In Public Places. It shall be unlawful for any person to distribute any commercial handbill in or upon any public property within the Town by the use of any dispenser.

Section 11-5-4. Placing Handbills On Vehicles Prohibited. It shall be unlawful for any person to place or deposit any commercial or noncommercial handbill in or upon any motor vehicle, whether such vehicle is located on public or private property.

Section 11-5-5. Unlawful Posting of Handbills. It shall be unlawful for any person to post, stick, stamp, paint or otherwise affix, or to cause the same to be done by any person, any commercial or noncommercial handbill to or upon any public property or any lamp post, electric light, telephone pole, fire hydrant, post, tree, building or other structure, except as may be authorized or required by the laws of the United States, the State of Colorado and the ordinances of the Town.

Section 11-5-6. Limitation Of Use Of Dispensers To Distribute Commercial Handbills On Private Property. It shall be unlawful for any person to distribute any commercial handbill on private property anywhere within the Town by the use of a dispenser unless:

A. Such dispenser is located within a fully enclosed building; or

B. If located outside of a fully enclosed building, the placement of such dispenser is authorized by a Class D Development Permit. Such Permit shall not be issued unless all of the following conditions are met:

1. The size of the dispenser (excluding any supporting structure) does not exceed twenty inches (20") in length by twenty (20") in width.

2. The dispenser is both wind and waterproof.

3. The color of the dispenser is within the range of allowed "body colors" as provided in Section 9-1-19(5) of the Breckenridge Town Code.

4. The placement of the dispenser will not disturb the landscaping of the property on which the dispenser is located.

5. No dispenser shall be placed within twenty feet (20') of any other dispenser.

Section 11-5-7. Removal Of Illegal Dispensers. Dispensers of commercial handbills placed or located on public property in violation of Sections 11-5-3 or 11-5-5 may be removed and impounded by the Town in a convenient location. Any such dispenser so removed and stored shall be released to the owner thereof if claimed within forty-five (45) days after such impoundment upon the payment of a fee of \$100 to the Town. Upon the failure of the owner to claim such dispenser and pay impoundment, such dispenser shall be deemed to be unclaimed property in the possession of the Police Department, and may be disposed of according to law.

Section 11-5-8. Exemptions. Nothing in this Chapter shall abridge the right of a person to distribute, without charge to the receiver thereof, any noncommercial handbill to any person willing to accept it; nor shall any provision of this Chapter abridge the right of a person to distribute any commercial handbill by any means not specifically prohibited by the provisions of this Chapter.

Section 11-5-9. Penalties. Every person convicted of a violation of any provision of this Chapter shall be punished as provided in Section 1-4-1 of this Code.

Section 2. The definition of "Class D Development Permit" as provided in Section 9-1-5 of the Breckenridge Town Code is hereby amended to include the following additional provision:

" - the placement of a commercial handbill dispenser outside of a fully enclosed building as provided in Section 11-5-6 of this Code."

Section 3. Section 6-3H-2 of the Breckenridge Town Code is repealed.

Section 4. 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 5. 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 6. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the provisions of Section 31-15-702, C.R.S., and the power possessed by home rule municipalities in Colorado.

Section 7. If any provision of this Ordinance, or its application to any person or circumstance, shall be held invalid, the remainder of the Ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

Section 8. This Ordinance shall be published as required by Section 5.10 of the Breckenridge Town Charter, and become effective on November 1, 1991.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 13th day of August, 1991. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 24th day of September, 1991 at 7:30 P.M. or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE

Mary Jean Loufek
Mary Jean Loufek, Town Clerk

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 August 22, 1991.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY, this 24th day of September, 1991.

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

ATTEST:

TOWN OF BRECKENRIDGE

Mary Jean Loufek
Mary Jean Loufek, Town Clerk

Stephen C. West
Stephen C. West, Mayor

APPROVED IN FORM

Bob DeW 9/24/91
Town Attorney Date

This Ordinance was published by title in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on October 3, 1991.

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