

ORDINANCE NO. 22

SERIES 1993

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES  
ARTICLE 1 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE  
CONCERNING NUISANCES; AND MAKING  
AMENDMENTS TO THE BRECKENRIDGE TOWN CODE CONSISTENT THEREWITH

WHEREAS, the Town of Breckenridge has adopted numerous codes designed to preserve the health, safety and welfare of the community; and WHEREAS, the Town Council finds and determines that nuisances are hazardous to the health, safety, and welfare of the residents of, and visitors to, the Town of Breckenridge; and

WHEREAS, the Town desires to eliminate nuisances in order to protect the health, safety and welfare of its residents and the visitors to the Town; and

WHEREAS, the Town Council has carefully considered the costs and benefits associated with regulating the conditions declared to be nuisances in this Ordinance.

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

Section 1. Chapter 1 of Title 5 of the Breckenridge Town Code is hereby repealed and readopted with changes so as to read in its entirety as follows:

Chapter 1  
NUISANCES

SECTION:

- 5-1-1: Title
- 5-1-2: Purpose
- 5-1-3: Findings
- 5-1-4: Definitions
- 5-1-5: Nuisances Prohibited
- 5-1-6: Authority To Declare Nuisances
- 5-1-7: Declared Nuisances
- 5-1-8: Complaints
- 5-1-9: Inspections; Right of Entry; Emergencies
- 5-1-10: Abatement of Nuisances
- 5-1-11: Responsibility For Costs of Abatement;  
Collection: Failure To Pay
- 5-1-12: Remedies Cumulative and Nonexclusive
- 5-1-13: Violations and Penalties

5-1-1: TITLE: This Chapter shall be known and may be cited as the "Breckenridge Nuisance Ordinance."

5-1-2: PURPOSE: The purpose of this Chapter is to prohibit the existence of nuisances within the Town in order to protect the public health, safety, and welfare.

5-1-3: FINDINGS: Upon careful consideration of the costs and benefits associated with prohibiting the conditions declared as nuisances herein, the Town Council finds and determines that the regulations contained in this Chapter are not unreasonable, are not discriminatory, and are rationally related to the legitimate purpose of protecting and preserving the health, safety, and welfare of the residents of, and visitors to, the Town. The Town Council further finds that this Chapter is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort, and convenience of the Town and its inhabitants.

5-1-4: DEFINITIONS: Unless otherwise required by context or usage, words and terms used in this Chapter shall be defined as follows:

EMERGENCY Any situation where there is imminent danger of loss of life, limb and/or property.

INOPERABLE VEHICLE Any automobile, truck or self-propelled vehicle incapable of moving under its own power and which either lacks a valid current license plate, or does not comply with the minimum safety requirements of the Colorado Motor Vehicle Law.

MUNICIPAL JUDGE The Municipal Judge, or any associate judge, of the Breckenridge Municipal Court.

NUISANCE Any substance, act, occupation, condition or use of property which is (i) declared to be a "nuisance" by this Chapter; (ii) declared to be a "nuisance" by any other provision of this Code; (iii) declared to be a "nuisance" by the laws of the State of Colorado, or by any court or agency thereof; (iv) known as a "nuisance" at common law; or (v) which is of such nature and duration as to: 1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; 2) In any way render the public insecure in life or in the use of property; or 3) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public way.

5-1-5: NUISANCES PROHIBITED: No person who is the owner, agent or occupant of any building, lot, premises or unimproved real estate within the limits of the Town, or who has the same under such person's control, shall maintain or allow any nuisance to be or remain therein or thereon. The violation of this Section is unlawful.

5-1-6: AUTHORITY OF TOWN TO DECLARE NUISANCES: Any act, condition, substance, occupation or use of property which substantially meets the criteria of a nuisance as defined in Section 5-1-4, above, may be declared to be nuisance by the Town Council, and nothing in the enumeration of declared nuisances in Section 5-1-7, below, shall be construed to limit the power of the Town to make such declaration.

5-1-7: NUISANCES DECLARED: The following are declared to be nuisances:

A. Junkyard and dumping grounds. All places used or maintained as junkyard or dumping grounds of or for (i) the wrecking or disassembling of automobiles, trucks, tractors or machinery of any kind; (ii) the storage or leaving of worn out, wrecked or abandoned automobiles, trucks, tractors, trailers, boats, housetrailer, manufactured housing or machinery of any kind or of any of the parts thereof; or (iii) the storage or leaving of any machinery or equipment used by contractors, builders or by other persons, which places interfere with the comfortable enjoyment of life or property by others.

B. Noxious liquids. The discharge out of or from any place within the Town of fluid or noxious liquids or substances of any kind whatsoever into or upon any adjacent ground or lot or upon any street, alley or public place.

C. Stale matters. The accumulation of any stale, putrid or stinking fat, grease or other matter, other than in approved containers or receptacles.

D. Sewage. Any article or materials accumulated in any sewer, sewer inlet or privy vault that shall have a sewer connection, which cause or might cause such sewer, sewer inlet or privy vault to become noxious or offensive to others or injurious to public health

E. Dead animals. The body of any animal which has died and which is undisposed of twenty-four (24) hours after death.

F. Contaminated or impure wells and cisterns. A contaminated or impure well or cistern when the water therein is used or intended for use for human consumption.

G. Unused appliances. Any refrigerator, icebox, deep-freeze locker, stove, oven, trunk or any self-latching container having a capacity of one and one-half (1 1/2) cubic feet or more, which is no longer in use and which has not had the door removed or the hinges and such portion of the latch mechanism removed as to prevent latching or locking of the door. This subparagraph shall not apply to any vendor of such appliances who keeps or stores them for sale purposes in a showroom or salesroom which is ordinarily watched or attended by sales personnel during business hours and which is locked to prevent entry when not open for business, or if the vendor takes reasonable precautions to effectively secure the door of any such appliance so as to prevent entrance by children small enough to fit therein.

H. Dangerous buildings. Any building declared to be dangerous building by the Uniform Code For The Abatement of Dangerous Buildings, as adopted by the Town.

I. Transportation of garbage or manure. The transporting of manure, garbage, swill, or offal upon any street in the Town in a vehicle which is not fitted with a substantially tight enclosed box thereon allowing no portion of such filth to be scattered or thrown into such street is hereby declared a nuisance.

J. Inoperable vehicles. Any inoperable vehicle parked on any lot or piece of ground within the Town not removed from the Town within thirty (30) days after the expiration of its registration, as determined by examining the license plate on the exterior of the vehicle, is a nuisance. A vehicle displaying no state license plate is a nuisance.

K. Excessive smoke and odors. Any smoke or odor resulting from the burning of refuse, trash or other material, including smoke or odors from food being prepared, which substantially annoys, injures or endangers the comfort, health, repose or safety of the public.

L. Accumulation of garbage. Any accumulation of garbage, refuse, rubbish, snow or ashes and similar materials as described in Section 6-3C-9 of this Code.

5-1-8: COMPLAINTS: Complaints of nuisances may be made to the Town Manager, Building Official, Chief of Police, or any other Town official. Whenever possible, any complaint shall state the nature of such nuisance, the location, including street address, name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant.

5-1-9: INSPECTIONS; RIGHT OF ENTRY; EMERGENCIES:

A. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever an authorized representative of the Town shall have reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, the Town Manager, Building Official, Chief of Police, or any police officer may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on any of them. If such building or premise is occupied, such person shall first present proper credentials and demand entry; and if such building or premises is unoccupied, such person shall first make a reasonable effort to locate the owner, occupant or other person having charge or control of the building or premises and, upon locating said owner, occupant or other person having charge or control, shall present proper credentials and request entry. If entry is refused, such person shall give the owner, occupant or person in charge or control (or, if said owner or occupant cannot be located after a reasonable effort, he shall leave at the building or premises) a twenty-four (24) hours' written notice of intention to inspect. The notice given shall state that the property owner, occupant or person in charge or control

has the right to refuse entry and that in the event that such entry is refused, inspection may be made only upon issuance of a search warrant by the Municipal Judge or a judge of any other court having jurisdiction.

B. After the expiration of said twenty-four (24) hour period from the giving or leaving of the notice, the Town Manager, Building Official, Chief of Police or police officer, or any of them, may appear before the Municipal Judge and, upon a showing of probable cause, obtain a search warrant entitling such person to enter the building or go upon such premises. Upon presentation of the search warrant and proper credentials, or possession of the same in the case of an unoccupied building or premises, said person may enter into said building or go upon said premises using such reasonable force as may be necessary to gain entry.

C. For the purposes of the above Subsection (B), a determination of probable cause shall be based upon reasonableness, and if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises in issue in order to obtain a search warrant.

D. Whenever an emergency exists the Town Manager, Building Official, Chief of Police or police officer, upon presentation of proper credentials or identification in the case of an occupied building or premises, or possession of said credentials in the case of an unoccupied building or premises, may enter into any building or go upon any premises within the jurisdiction of the Town. In an emergency, such persons may use such reasonable force as may be necessary to gain entry into said building or upon said premises.

E. It shall be unlawful for any owner, occupant or person in charge or control of said building or premises to resist reasonable force used by the Town Manager, Building Official, Police Chief or any police officer acting pursuant to this Section.

**5-1-10: ABATEMENT OF NUISANCES; FAILURE TO COMPLY:**

A. The Town Manager or Chief of Police are hereby authorized, in their discretion, to cause any nuisance which is found to exist on private property within the Town to be abated in accordance with the provisions of this Chapter. If any nuisance is found to exist upon public property, it shall be the duty of the Town to abate such nuisance immediately.

B. Any nuisance found to exist within the Town which presents such an imminent danger to life, limb, property or health as to require immediate abatement may be summarily abated by action of the Town Manager, Chief of Police, police officer, Building Official.

C. In the case of any nuisance not requiring summary abatement, the Town Manager or Chief of Police may cause a notice to be served upon the person responsible under this Chapter for any nuisance which may be found. Such notice shall require such person to abate the nuisance in a reasonable time and in such reasonable manner as may be prescribed. Such notice may be given or served by any police officer. The reasonable time for abatement shall not exceed fourteen (14) days, unless it appears from the facts and circumstances that compliance could not reasonably be made within fourteen (14) days, or that a good faith attempt at compliance is being made. Such notice shall be in writing, signed by the Town official issuing the same, and shall be personally served upon the owner, occupant or person in charge or control of the premises upon which said nuisance exists or, if not occupied, then by posting the same prominently at some place on the premises upon which said nuisance exists. If service is by posting, then a copy of the notice shall also be

mailed by certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Summit County, Colorado, at the address of such owner as therein shown.

D. If, after notification as provided above, a nuisance is not voluntarily abated, the following procedures shall apply:

(1) If the person notified in accordance with Subsection (C) shall neglect or refuse to comply with the requirements of the notice to abate within the time specified, such person shall be guilty of a violation of this Chapter, and the Town Manager, Chief of Police or Town Attorney, may proceed at once to commence appropriate legal action to cause such nuisance to be abated; provided, however, that, if the owner of the property upon which the nuisance exists is unknown or cannot be found, the Town Manager or the Chief of Police may proceed to abate such nuisance at the end of the time period provided for voluntary abatement of the nuisance in the notice described in Subparagraph (C), above, and such persons shall have no liability in connection therewith.

(2) When any owner has responsibility for a nuisance and such owner fails to abate the nuisance within the time limit provided in the notice described in Subparagraph (C), above, or as extended, then the Town Attorney is authorized to institute proceedings in a court of competent jurisdiction to obtain a judicial determination that such nuisance exists, to abate such nuisance, to enjoin the nuisance and for such other and further relief as may seem necessary or proper, including but not limited to recovery of the costs and expenses of abatement, including the Town's reasonable attorney's fees incurred in connection with such proceeding.

(3) Upon a judicial determination that a nuisance exists, the Chief of Police may be authorized by the Court to abate said nuisance, or cause the same to be abated, employing such force and persons as may be necessary to abate the nuisance, including the employees of the Town, or by contract or otherwise. All other Town officials and employees are hereby authorized and directed to render such assistance to the Chief of Police as may be required for the abatement of the nuisance as ordered by the Court.

(4) Any officer or employee of the Town who shall be authorized herein to abate any nuisance specified in this Chapter shall have authority to engage the necessary assistance and incur the necessary expenses therefor. In any case where a nuisance is to be abated by the Town, it shall be the duty of such authorized person to employ such assistance and adopt such means as may be necessary to effect abatement of the nuisance. It shall also be the duty of the Town, or any of its representatives, to proceed in all abatement cases with due care and without any unnecessary destruction of property.

5-1-11: RESPONSIBILITY FOR COSTS OF ABATEMENT; COLLECTION; FAILURE TO PAY:

A. The person or persons responsible for any nuisance within the Town shall be liable for and shall pay and bear all costs and expenses of the abatement of such nuisance. Such costs and expenses may be collected by the Town in any action at law, in connection with any criminal proceeding in the Municipal Court, in connection with an civil action to abate the nuisance, and/or they may be assessed against the property as hereinafter provided.

B. The notice required by this Chapter shall, in addition to other requirements set forth herein, specifically describe the property where the nuisance is alleged to exist and shall state that if the nuisance is not abated within the time stated in the notice, the costs of such abatement may be assessed pursuant to the terms of this Chapter as a lien against the property on which the nuisance is located, together with an additional fifteen-percent (15%) assessment for administrative costs and the reasonable attorney's fees incurred by the Town in abating the nuisance, and that such sums may be collected in the same manner as real estate taxes against property. If the owner of the property is not personally served with a copy of such notice, then a true copy of such notice shall be mailed by registered or certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Summit County, Colorado, at the address of such owner as therein shown.

C. If, after the expiration of the period of time provided for in said notice, or as extended, costs or expenses are incurred by or on behalf of the Town in connection with the abatement of the nuisance, and such costs are not otherwise collected, the Finance Director may thereafter certify to the Town Clerk the legal description of the property upon which such work was done, together with the name of the owner thereof as shown by the tax rolls of Summit County, Colorado, and a statement of the work performed, the date of performance and the costs thereof.

D. Upon receipt of such a statement from the Finance Director the Town Clerk shall mail a notice to the owner of said premises as shown by the tax rolls, at the address shown upon the tax rolls, by first-class mail, postage prepaid, notifying such owner that work has been performed pursuant to this Chapter, stating the date of performance of the work, the nature of the work, and demanding payment of the costs thereof (as certified by the Finance Director), together with fifteen-percent (15%) assessment for administrative expenses, and the reasonable attorney's fees incurred by the Town in abating the nuisance. Such notice shall state that if the total amount is not paid within thirty (30) days after mailing the notice it shall become an assessment on and a lien against the property of the owner, describing the same, and will be certified as an assessment against said property, together with ten percent (10%) of the whole amount for costs of collection, and that the whole amount will be collected in the same manner as a real estate tax upon the property.

E. If the Clerk shall not receive payment within the period of thirty (30) days after mailing the notice, the Clerk shall inform the Town Council of such fact, and the Council shall thereupon enact an ordinance assessing the whole cost of such work, including a charge of fifteen-percent (15%) of said whole cost for administrative expenses and the Town's reasonable attorney's fees incurred in the abatement of the nuisance, upon the lots and tracts of land upon which the nuisance was abated, together with ten percent (10%) of the whole amount for costs of collection.

F. Following the passage of such ordinance, the Clerk shall certify the same to the County Treasurer, who shall collect the assessment in the same manner as other taxes are collected.

G. Each assessment made pursuant to this Chapter shall be a lien against each lot or tract of land described in such assessment until paid and shall have priority over other liens and assessments, except general taxes and prior special assessments.

5-1-12: REMEDIES CUMULATIVE AND NONEXCLUSIVE:

A. No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge or conviction of violation of this Chapter in the Municipal Court, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist.

B. Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and, when applicable, the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law.

5-1-13: VIOLATIONS AND PENALTIES:

A. Whenever in any section of this Chapter, the doing of any act is required, prohibited or declared to be unlawful and no definite fine or penalty is provided for a violation thereof, any person, firm, or corporation who shall be convicted of a violation of any such section shall be subject to such penalties as are provided in Chapter 4 of Title 1 of this Code.

B. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of the provisions of this Chapter is committed, continued or permitted by such person, and such person shall be punished accordingly as provided in Chapter 4 of Title 1 of this Code.

Section 2. The definition of "Nuisance" set forth in Section 1-3-2 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

NUISANCE A condition as defined in Section 5-1-4 of this Code.

Section 3. Section 1-8-2 of the Breckenridge Town Code is hereby amended sa as to read in its entirety as follows:

1-8-2: JURISDICTION AND POWERS: The Municipal Court shall have original jurisdiction of all cases arising under the ordinances of the Town with full power to punish violators thereof by the imposition of such fines and penalties as are prescribed by law, ordinance or court rule. It shall have power to compel attendance at sessions of court and to punish for contempt of court by fine or by jail sentence, or both such fine ad jail sentence. The Municipal Court shall have civil jurisdiction with respect to alleged violations of the Town's Nuisance Ordinance (Chapter 1 of Title 5), the Town's Building and Technical Codes (Chapter 1 of Title 8), the Town's Sign Code (Chapter 2 of Title 8), and the Town's Land Use and Development Regulations (Title 9) and the powers as set forth in Section 1-8-10 of this Code. The Municipal Court shall also have the jurisdiction and authority to issue search warrants and inspection warrants as provided in this Code.

Section 4. There is hereby added to the Breckenridge Town Code a new Section 1-3-4 which shall read in its entirety as follows:

1-3-4: INTERPRETATION OF LANGUAGE: Words which are defined in this Code shall be construed in accordance with the definitions provided. All words and phrases used in this Code shall be construed according to the common and approved usage of the language, but technical words and phrases and such other words and phrases as may have acquired a peculiar or unique meaning in the law shall be construed and understood according to such peculiar or unique meaning.

Section 5. Section 5-2-7 of the Breckenridge Town Code is hereby repealed.

Section 6. Subsection 6-3C-9(B) of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

B. Abatement: Abatement of any nuisance declared by this Chapter shall be in accordance with the procedures established in Chapter 1 of Title 5 of this Code.

Section 7. Subsection 6-3C-9(C) of the Breckenridge Town Code is hereby repealed.

Section 8. Subsection 6-3C-9(H) of the Breckenridge Town Code is hereby repealed.

Section 9. 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 10. 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, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 11. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the provisions of Section 31-15-401, C.R.S., and the powers possessed by home rule municipalities in Colorado.

Section 12. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Code.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 10th day of August, 1993. 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 August, 1993 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, CMC, Town Clerk

  
Stephen C. West, Mayor

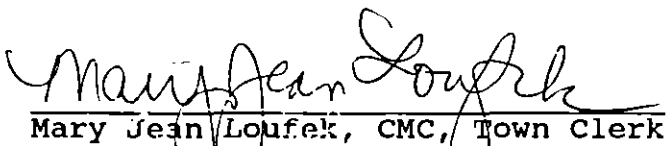
This Ordinance was published in full in the Breckenridge Journal, a newspaper of general circulation within the Town of Breckenridge, on August 19, 1993.


READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE this 24th day of August, 1993.

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

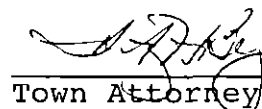
ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, CMC, Town Clerk

  
Stephen C. West, Mayor

APPROVED IN FORM

  
Town Attorney

8/21/93  
Date

This Ordinance was published by title in the Breckenridge Journal, a newspaper of general circulation within the Town of Breckenridge, on September 2, 1993