

ORDINANCE NO. 29

Series 1996

AN ORDINANCE REGULATING EXTERIOR LOUDSPEAKERS; AND ESTABLISHING THE MUNICIPAL OFFENSE OF IMPROPER USE OF LOUDSPEAKER

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

Section 1. There is hereby added to the definition of Class D Development set forth in Section 9-1-5 of the Breckenridge Town Code a new item which shall read in its entirety as follows:

- Placement or change in location of an exterior loudspeaker

Section 2. There is hereby added to Section 9-1-5 of the Breckenridge Town Code a new definition of "Exterior Loudspeaker" which shall read in its entirety as follows:

EXTERIOR LOUDSPEAKER: a loudspeaker for the amplification of sound which is located outside a building or structure.

Section 3. There is hereby added to Section 9-1-5 of the Breckenridge Town Code a new definition of "Liquor Licensed Establishment" which shall read in its entirety as follows:

LIQUOR-LICENSED ESTABLISHMENT: an establishment for which a license has been issued under the Colorado Beer Code, the Colorado Liquor Code, or for which a special events alcoholic beverage license has been issued.

Section 4. There is hereby added to the Breckenridge Town Code a new Section 9-1-19-42, to be entitled "EXTERIOR LOUDSPEAKERS (Absolute)", which shall read in its entirety as follows:

42. (ABSOLUTE) EXTERIOR LOUDSPEAKERS: A development permit to place an exterior loudspeaker may only be issued for the deck or patio area of a restaurant or liquor-licensed establishment. Permitted exterior loudspeakers shall be located on a site so as to minimize the visibility of such speakers, and shall be affixed in such a manner as to reduce noise intrusion on adjacent properties. Permitted exterior loudspeakers shall not be used for the purpose of attracting attention to the restaurant or liquor-licensed establishment where they are located.

Section 5. There is hereby added to Article C of Chapter 3 of Title 6 of the Breckenridge Town Code a new Section 6-3C-15, to be entitled "Improper Use of Loudspeaker", which shall read in its entirety as follows:

6-3C-15: IMPROPER USE OF LOUDSPEAKER:

A. The purpose of this Ordinance is to protect the public from unwanted noise pollution emanating from the use of exterior loudspeakers at commercial establishments throughout the Town. The Town Council finds that this Ordinance is a valid time, place and manner regulation and is narrowly tailored to serve the government's legitimate content-neutral interest. As such, this Ordinance is a valid exercise of the Town's police power and does not violate free speech or the constitutional right to communicate thought.

B. As used in this Section:

Commercial establishment -- means a retail trade or service place of business, an office, a restaurant or a liquor-licensed establishment, or any combination thereof.

Exterior Loudspeaker -- means a loudspeaker for the amplification of sound which (i) is located on a exterior deck, patio or balcony of any structure, (ii) is affixed to the exterior wall of any structure, (iii) is located in or on any lawn or landscaped area outside of any structure, or (iv) is otherwise placed, affixed or located outside the exterior walls of any structure.

Liquor-licensed establishment -- means an establishment for which a license has been issued under the Colorado Beer Code, the Colorado Liquor Code or for which a special events alcoholic beverage license has been issued.

Noise Disturbance -- means any sound which (i) endangers or injures the health, welfare or safety of any human or animal, (ii) annoys or disturbs a reasonable person of normal sensitivities, or (iii) constitutes unreasonable noise.

Real Property Boundary -- means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.

C. It shall be unlawful for any person to use or operate an exterior loudspeaker to emit amplified music at or from a commercial establishment anywhere within the Town under any of the following circumstances:

1. At or from a location other than an exterior deck, patio or balcony of a restaurant or liquor-licensed establishment;
2. Between the hours of 10:00 P.M. of one day and 8:00 A.M. of the following day;
3. When the deck or patio of the restaurant or liquor-licensed establishment at which such speaker is located is unoccupied or not open for public use; or
4. When the use or operation of such exterior loudspeaker to emit amplified music creates a noise disturbance across a real property boundary.

Nothing in this Subparagraph C shall prohibit the use of an exterior loudspeaker to emit amplified music from a live musical performance.

D. Improper Use of Loudspeaker is a strict liability offense.

E. An employer is legally accountable for the conduct of such person's employees which occurs in the course and scope of such employment and which violates the provisions of this Section. It shall be conclusively presumed that such conduct was caused to be done, request, commanded or authorized by the employer as part of the employee's duties.

F. At all times when an exterior loudspeaker is used to emit amplified music from the deck or patio of a restaurant or liquor-licensed establishment, the owner of the premises (if the premises are a restaurant) or the licensee thereof (if the premises is a liquor-licensed establishment) shall designate one employee on the premises to be responsible for complying with the requirements of this Section. It shall be unlawful for the owner or licensee to fail to comply with the requirements of this Subparagraph F.

Section 6. There is hereby added to Section 6-3C-1 of the Breckenridge Town Code (entitled "Disorderly Conduct"), a new Paragraph C, which shall read in its entirety as follows:

C. Paragraph A(2) of this Section shall not apply to noise emanating from an exterior loudspeaker at a commercial establishment as defined in Section 6-3C-15 of this Code.

Section 7. 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 8. 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 9. 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.

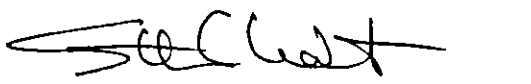
Section 10. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 9th day of July, 1996. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 23rd day of July, 1996, 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

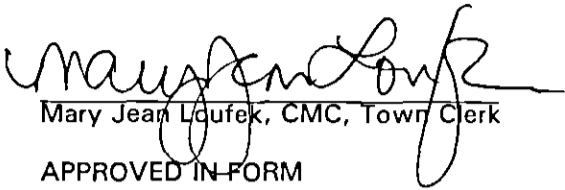
This Ordinance was published in full in *The Summit County Journal*, a newspaper of general circulation within the Town of Breckenridge, on July 17, 1996.


READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH CHANGES this 23rd day of July, 1996.

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 Date

This Ordinance was published by title with changes in *The Summit County Journal*, a newspaper of general circulation within the Town of Breckenridge, on July 31, 1996.