

ORDINANCE NO. 28

Series 1998

AN ORDINANCE AMENDING TITLE 11 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE APPROVAL OF LICENSE AGREEMENTS FOR THE USE OF TOWN REAL PROPERTY

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 6 of Title 11, to be entitled "License Agreements For Use of Town Real Property", which shall read in its entirety as follows:

CHAPTER 6

LICENSE AGREEMENTS FOR USE OF TOWN PROPERTY

SECTION:

- 11-6-1: Definitions
- 11-6-2: License Required; Exception
- 11-6-3: Authority of Town Engineer to Approve License
- 11-6-4: Submittal Requirements
- 11-6-5: Approval Criteria
- 11-6-6: Standards
- 11-6-7: Town Manager to Execute License Agreement
- 11-6-8: Form and Content of License Agreement
- 11-6-9: Licensee To Reimburse Town

11-6-1: DEFINITIONS: As used in this Chapter, the following words shall have the following meanings:

LICENSEE	A person named as a licensee in a License Agreement.
LICENSE AGREEMENT	A written agreement granting a revocable, personal privilege to use a specified portion of the Town's Real Property for a defined and limited non-public use.
NON-PUBLIC USE	Any use of Town Real Property by any person other than the Town, any quasi-municipal corporation, any political subdivision of the State of Colorado or the United States government or any agency or instrumentality thereof. Non-public use does not include use by the general public where Town Real Property is made available by the Town for use by the general public.
TOWN REAL PROPERTY	Any real property interest owned by the Town including, but not limited to Town rights of way.

11-6-2: LICENSE REQUIRED; EXCEPTION: A License Agreement is required for any non-public use of Town Real Property, except as otherwise permitted by law or as expressly authorized by the Town by easement or other written agreement or permit. However, landscaping materials, including, but not limited to grass, trees, shrubs and flowers, may be placed within Town Real Property without a License Agreement or other authorization. The Town shall have no liability to any person for the loss, damage or destruction of any landscaping materials placed within Town Real Property.

11-6-3: AUTHORITY OF TOWN ENGINEER TO APPROVE LICENSE: The Town Engineer shall have the authority to approve the granting of a License Agreement for the use of Town Real Property when (i) a License Agreement is required to authorize the continuation of an encroachment into Town Real Property which existed at the date of the adoption of this Chapter, (ii) a License Agreement is required to authorize the construction of a fence within Town Real Property, and (iii) a License Agreement is required as a condition of approval of a Development Permit issued pursuant to Chapter 1 of Title 9 of this Code. The Town Council may, in its discretion, approve the granting of a License Agreement for other uses or under other circumstances.

11-6-4: SUBMITTAL REQUIREMENTS: A person desiring to obtain a License Agreement pursuant to this Chapter shall submit to the Town Engineer a survey prepared by a licensed Colorado surveyor depicting the portion of the Town Real Property for which the License Agreement is requested, together with such other information as the Town Engineer shall reasonably require.

**11-6-5: APPROVAL CRITERIA:** A License Agreement may be approved by the Town Engineer only when (i) the nature, scope, location and duration of the Licensee's use or proposed use of the Town Real Property will not substantially interfere with the Town's need for complete control over its property and (ii) the approved use of Town Real Property pursuant to the requested License Agreement will not result in the creation or continuation of a public or private nuisance or threat to the public health, safety or welfare. Any request for the granting of a License Agreement which fails to satisfy both of these criteria shall be denied by the Town Engineer.

**11-6-6: STANDARDS:** The following standards shall apply to the approval of a License Agreement by the Town Engineer pursuant to this Chapter:

1. A License Agreement may only be issued to the owner of real property abutting Town Real Property, or another person with a legitimate need for a License Agreement.

2. Any fence constructed pursuant to a License Agreement shall be constructed in compliance with the recommendations (both Design Standards and Policies [whether denominated as a "priority policy" or not]) of the Handbook of Design Standards, as well as any other applicable Ordinances of the Town.

3. If a License Agreement is requested in order to permit the erection of a fence within Town Real Property, such License Agreement shall only be issued in connection with the issuance of a Class C Development Permit (for fences constructed within the Historic District) or a Class D Development Permit (for fences constructed outside the Historic District). The execution of a License Agreement may be a condition of approval of the required Development Permit.

4. Any fence erected within Town Real Property pursuant to a License Agreement shall be placed no closer than eighteen (18) inches from the sidewalk. No License Agreement shall be issued where no sidewalk exists within the portion of the Town Real Property for which the License is issued, unless the Town Engineer determines that such a sidewalk will be constructed within a reasonable period of time following the issuance of the License Agreement.

**11-6-7: TOWN MANAGER TO EXECUTE LICENSE AGREEMENT:** Upon the approval by the Town Engineer of the granting of a License Agreement pursuant to this Chapter, the Town Manager shall have the authority to execute such License Agreement for and on behalf of the Town.

**11-6-8: FORM AND CONTENT OF LICENSE AGREEMENT:** A License Agreement shall be in form and substance acceptable to the Town Attorney; provided, however, that any License Agreement entered into by the Town shall include provisions acceptable to the Town Attorney which provide:

A. The License Agreement shall be fully revocable upon written notice to the Licensee.

B. The License Agreement is fully transferable to subsequent owners of the Licensee's property which abuts the Town Real Property so long as the subsequent owner assumes the obligations of the Licensee under the License Agreement in a form acceptable to the Town Attorney.

C. The Town shall not be liable for the damage, destruction or loss of any property erected, installed, placed or maintained within Town Real Property pursuant to a License Agreement.

D. The Licensee shall provide general liability insurance insuring against losses, damages or claims arising from the Licensee's use of the Town Real Property pursuant to a License Agreement. Such insurance shall have limits of liability of not less than the limits of liability established for municipalities under the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S. The Town shall be named as an additional insured under such insurance policy.

E. The Licensee shall be required to indemnify the Town from all losses, claims and damages arising from the Licensee's use of the Town Real Property pursuant to the License Agreement.

**11-6-9: LICENSEE TO REIMBURSE TOWN:** A Licensee shall reimburse the Town for any actual and necessary costs incurred by the Town in having the Town Attorney prepare a License Agreement approved pursuant to this Chapter.

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. Resolution No. 31, Series 1997, adopted September 9, 1997, is hereby repealed in its entirety.

Section 4. 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 5. 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 6. 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 22nd day of September, 1998. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 13th day of September, 1998, 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

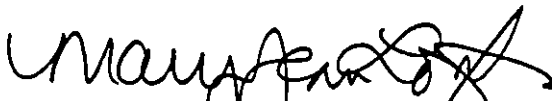
  
Stephen C. West, Mayor

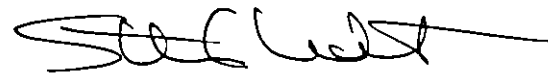
This Ordinance was published in full in The Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on October 2, 1998

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS, this 13<sup>th</sup> day of October, 1998. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

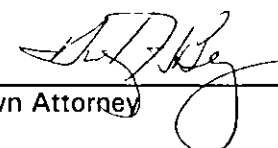
ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, CMC, Town Clerk

  
Stephen C. West, Mayor

APPROVED IN FORM:

  
Town Attorney

10/13/98  
Date

This Ordinance was published by title with amendments in The Summit County Journal a newspaper of general circulation within the Town of Breckenridge, on October 23, 1998.