

ORDINANCE NO. 36

Series 1998

AN ORDINANCE AMENDING TITLE 11 OF THE BRECKENRIDGE TOWN CODE CONCERNING PUBLIC WAYS AND PROPERTY; ADOPTING PROVISIONS REQUIRING THE RELOCATION UNDERGROUND OF OVERHEAD ELECTRICITY AND COMMUNICATION FACILITIES; AND PROVIDING FOR THE ENFORCEMENT THEREOF

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

Section 1. There is hereby added to Title 11 of the Breckenridge Town Code a new Chapter 6, to be entitled "Relocation Underground of Overhead Electricity and Communications Facilities", which shall read in its entirety as follows:

RELOCATION UNDERGROUND OF OVERHEAD ELECTRICITY AND COMMUNICATIONS UTILITIES

SECTION:

- 11-6-1: Findings
- 11-6-2: Definitions
- 11-6-3: Facility Relocation
- 11-6-4: Exceptions to Relocation Requirements
- 11-6-5: Notice to Owner and Operator
- 11-6-6: Cooperation With Other Owner or Operator
- 11-6-7: Variance--Opportunity For Hearing
- 11-6-8: Town Not to Pay Relocation Costs
- 11-6-9: No Limitation on Allocation of Costs to Customers
- 11-6-10: Violation; Penalty

11-6-1: FINDINGS: The Town Council finds and determines that:

A. The relocation underground of overhead facilities used for the distribution of electricity and the transmission or distribution of communications, hereinafter referred to as "overhead facilities", would improve the aesthetics of the Town by keeping unsightly poles, lines and related aboveground appurtenances out of the view of the public.

B. The relocation underground of overhead facilities would generally provide better protection against damage to such facilities caused by accidents with vehicles, inclement weather or other causes, such as cars and trucks hitting poles or pedestals, the snagging of overhead facilities by high-profile vehicles, the knocking down of overhead facilities due to high winds or heavy snows, and would further reduce the chance of a utility service outage due to such causes.

C. The relocation underground of overhead facilities would better protect the safety of the citizens of the Town because of the reduced likelihood of involvement of overhead facilities in vehicular mishaps, and the improvement of visibility along public rights of way which would improve the operational safety of roads within the Town.

D. The relocation underground of overhead facilities would make them less vulnerable to damage resulting from property maintenance performed by adjacent property owners.

E. The owners or operators of overhead facilities may realize savings by using a common trench when relocating such facilities underground.

F. The relocation of underground overhead facilities will facilitate implementation of the Town's Master Plan.

G. The Town's current franchise with Public Service Company of Colorado provides funds for use in the undergrounding of the franchisee's electric utility lines and, pursuant to Town Council's direction, the Town has embarked on a program, known as the Electric Undergrounding Program, to relocate underground Public Service Company's existing overhead electric main feeder lines at a reasonable pace.

H. The Town's Charter grants the Town the power of local self-government and home rule and it is reasonable to exercise the power to require relocation of overhead facilities when the Town relocates an electric utility line.

I. After the date given by the Town in a notice to relocate underground, unless acting pursuant to a specific exception or a written grant of variance in accordance with this Chapter, it shall constitute a nuisance for an owner or operator of an overhead facility to attach, affix, place, install, use, operate or maintain an overhead facility within the street area identified in the notice, which area shall be part of the Town's Electric Undergrounding Program, as the Council may update and approve from time to time.

J. Section 31-15-702, C.R.S., provides the Town with the power to regulate the use of utility poles on sidewalks, streets and other public grounds; such regulatory power includes the power to decide, as is reasonably necessary, where the utility poles may and may not be located, as well as the power to decide when relocation of utility poles, including underground relocation, is required.

K. This Chapter is reasonably necessary to protect, enhance and preserve the public health, safety and welfare.

L. An Ordinance substantially similar in all material respects to the provisions of this Chapter was found to be a valid exercise of the municipal police power in U.S. West Communications v. City of Longmont, 948 P.2d 509 (Colo. 1997).

11-6-2: DEFINITIONS: Unless otherwise required by context or usage, words and terms used in this Chapter shall be defined as follows:

CODE	The Breckenridge Town Code, as amended from time to time.
ELECTRIC UNDERGROUNDING PROGRAM	A program established by the Town Council, and updated from time to time, to relocate underground existing overhead electric main feeder lines within the Town at a reasonable pace.
ELECTRIC UTILITY LINE	Main feeder electric utility wire, cables and other equipment used for the distribution of electrical current impulses which are owned by the Town's electric franchisee and designated for placement underground as part of the Electric Undergrounding Program.
OVERHEAD FACILITY	All overhead wires, cables, poles or other equipment for the transmission or distribution of electrical current impulses, sounds, voices, communications or data, other than an overhead electric utility line owned by the Town's electric franchisee, located within a street.
OWNER or OPERATOR	Any person, firm, corporation, association, partnership, limited liability entity, or any other form of association or organization, which has an ownership or leasehold interest in an overhead facility.
STREET	The surface of and the space above any public street, sidewalk, easement or right-of-way in the Town intended or available for public travel or for the location of wires, cables, poles or other equipment for the transmission or distribution of electrical current impulses, sounds, voices, communications or data.
TOWN	The Town of Breckenridge, Colorado
TOWN COUNCIL	The Town Council of the Town of Breckenridge, Colorado

11-6-3: FACILITY RELOCATION: Upon the expiration of the date given in a notice under Section 11-6-5 requiring the relocation underground of overhead facilities, it shall be unlawful for any owner or operator to attach, affix, place, install, use, operate or maintain an overhead facility within the street area identified in the notice, unless pursuant to a specific exception under Section 11-6-4, or a written grant of variance in accordance with Section 11-6-7. Each day a violation continues shall constitute a separate offense.

11-6-4: EXCEPTIONS TO RELOCATION REQUIREMENTS: If otherwise in conformance with the intent of this Chapter and all applicable provisions of other Town Ordinances and regulations, the following shall constitute exceptions to the requirements of Section 11-6-3:

- A. A facility designed for transmission or distribution of electric energy at voltages in excess of fifteen thousand volts;
- B. Transformers, pull boxes, service terminals, meters, pedestal terminals, ducts, splice closures, apparatus cabinets, substations or distribution of electrical current impulses, sounds, voices, communications or data which are not attached to an overhead pole.
- C. Temporary wires and cables or other equipment for the transmission or distribution of electrical current impulses, sound, voices, communication or data required for construction purposes;
- D. An overhead facility for which the owner or operator has given written commitment, approved by the Town Attorney and Town Engineer, to relocate underground, remove or reroute, in conformance with the intent of the Chapter and all applicable Town Ordinances and regulations, within two (2) years from date given in the notice under Section 11-6-5.

11-6-5: NOTICE TO OWNER AND OPERATOR: Where, pursuant to the Electric Undergrounding Program, the Town plans relocation underground of an overhead electric utility line within a street, the Town shall give a minimum of one hundred twenty (120) days' advance notice of the street area and date by which each owner or operator of an overhead facility must relocate its facility underground.

11-6-6: COOPERATION WITH OTHER OWNER OR OPERATOR: After giving notice under Section 11-6-5, the Town shall attempt to work with the owner or operator of an overhead facility so all owners or operators may relocate underground in a common trench. The Town shall pay for excavation and backfill of a common trench if, within sixty (60) days of mailing the notice under Section 11-6-5, the owner or operator makes a written commitment, approved by the Town Attorney and Town Engineer, to relocate its overhead facility in a common trench in a manner that will not delay the relocation of the electric utility line.

11-6-7: VARIANCE--OPPORTUNITY FOR HEARING:

A. An owner or operator may request a variance from the strict application of the Chapter and have a hearing before the Town Manager. All requests must be in writing and filed with the Town Manager within sixty (60) days of mailing by the Town of the notice under Section 11-6-5. The request must contain the name and address of the owner or operator, and specify the nature of and reasons for the request. The Town Manager shall hold a hearing within fourteen (14) days of receipt of the written request, at which time the owner or operator and the Town may present testimony and evidence. A record of the hearing shall be made by electronic or stenographic means.

B. The Town Manager shall have the authority to grant a variance from the strict application of this Chapter on terms and conditions the Town Manager deems sufficient to preserve its intent, but only upon making the following affirmative findings:

1. The request will not negatively impact the health, safety or welfare of the residents of the Town; and
2. One of the following:
 - a. Extreme technological difficulty in relocation underground of the overhead facility; or
 - b. Potential for significant land development adjacent to the subject street area justifies not relocating underground the overhead facility until development occurs.

C. The Town Manager shall notify the owner or operator making the request of the decision, in writing, within ten (10) days of the hearing. Review of the decision of the Town Manager shall be pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. Any party aggrieved by the decision, including the Town through the Town Engineer, may initiate review pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

11-6-8: TOWN NOT TO PAY RELOCATION COSTS: Except as otherwise expressly provided in this Chapter, nothing in this Chapter shall require the Town pay for relocation underground of an overhead facility of an owner or operator.

11-6-9: NO LIMITATION ON ALLOCATION OF COSTS TO CUSTOMERS: Nothing in this Chapter shall prevent an owner or operator from allocating the costs of relocating underground its overhead facilities if otherwise permitted by applicable law.

11-6-10: VIOLATION; PENALTY:

A. The Court shall punish an owner or operator convicted of violating any provision of this Chapter in accordance with the provisions of Chapter 4 of Title 1 of this Code.

B. After the date given in the notice under Section 11-6-5 to relocate underground, it shall be a nuisance for an owner or operator to attach, affix, place, install, use, operate or maintain an underground facility within the street area identified in the notice, unless acting under a specific exemption in Section 11-6-4 or a written grant of variance under Section 11-6-7. Any court of competent jurisdiction shall, upon complaint of the Town Attorney, enjoin or abate the nuisance in accordance with the provisions of Chapter 1 of Title 5 of this Code, or other applicable law.

C. In addition to the penalties provided in this Section, the Town Attorney may seek an appropriate remedy for damages or equitable relief to secure compliance with this Chapter and to preserve the Town's interest in public property.

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. 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 4. 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.

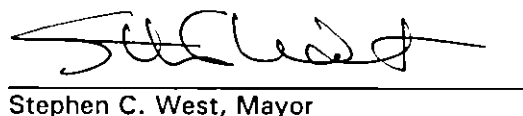
Section 5. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 24th day of November, 1998. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 8th day of December, 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

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE this 8th day of December, 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

12/8/98

Date

This Ordinance was published by title in The Summit County Journal a newspaper of general circulation within the Town of Breckenridge, on December 18, 1998.