

ORDINANCE NO. 15

Series 2001

AN ORDINANCE ADOPTING CHAPTER 8 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING NOISE AND NOISE POLLUTION; PROVIDING PENALTIES FOR THE VIOLATION OF SUCH CHAPTER; AND MAKING CONFORMING AMENDMENTS TO THE BRECKENRIDGE TOWN CODE

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 8 of Title 5, to be entitled "Noise", which shall read in its entirety as follows:

Chapter 8

NOISE

Section:

- 5-8-1: Purpose
- 5-8-2: Findings
- 5-8-3: Definitions
- 5-8-4: Noise Measurement
- 5-8-5: Maximum Permissible Noise Levels--Generally
- 5-8-6: Construction Noise
- 5-8-7: Exterior Loudspeakers and Amplifiers
- 5-8-8: Radios, Stereos, Tape Players, Compact Disk Players, Musical Instruments and Similar Devices
- 5-8-9: Use of Sound for Advertising
- 5-8-10: Motor Vehicle Noise
- 5-8-11: Exemptions
- 5-8-12: Permit To Exceed Limits; Appeal
- 5-8-13: Strict Liability
- 5-8-14: Enforcement
- 5-8-15: Penalty
- 5-8-16: Court-ordered Abatement

5-8-1: PURPOSE: The purpose of this Chapter is to protect, preserve and promote the health, safety, welfare, peace and quiet of the citizens of the Town of Breckenridge through the reduction, control and prevention of loud and potentially harmful noise. Unless specified within this Chapter, the restrictions contained in the following Sections are not to be construed as repealing any other noise-related ordinances in this Code.

5-8-2: FINDINGS: The Town Council of the Town of Breckenridge hereby finds and determines as follows:

A. Article 12 of Title 25, C.R.S., establishes statewide minimum standards for noise level limits for various times and areas.

B. §25-12-108, C.R.S., provides that the provisions of Article 12 of Title 25 shall not be construed to preempt or limit the authority of any municipality to adopt standards which are no less restrictive than the provisions of said Article.

C. The regulations and standards adopted by this ordinance are no less restrictive than the provisions of Article 12 of Title 25.

D. The Town of Breckenridge is a home rule municipality organized and existing pursuant to Article XX of the Colorado Constitution and, pursuant to its home rule powers, the Town has the further additional power to regulate, reduce and control noise.

E. Noise is a significant source of environmental pollution that represents a present and increasing threat to the public peace and to the health, safety and welfare of the residents of the Town of Breckenridge and to its visitors. The control of noise is essential to the health and welfare of the Town's citizens and visitors, and to the conduct of normal pursuits of life, including recreation, work, and communication. Further, the use of sound amplification equipment creates a special kind of loud and raucous noise which may, in a particular manner and at a particular time and place, substantially invade the privacy, peace, and freedom of the citizens of the Town and its visitors.

F. Excessive sound vibration and inadequately controlled noise are serious hazards to the public health, safety and welfare, and a source of annoyance to the populace.

G. The citizens of the Town of Breckenridge have a right to an environment free from excessive sound and vibration that may jeopardize their health and welfare or degrade their quality of life.

H. It is the policy of the Town Council of the Town of Breckenridge to protect the health, safety, and welfare of its citizens and to promote an environment free from sound and noise which is disruptive of peace and good order, and which may jeopardize the health or welfare of its citizens or degrade the quality of life.

5-8-3: DEFINITIONS: As used in this Chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

AMBIENT NOISE LEVEL:	The sound level of all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources.
COMMERCIAL ESTABLISHMENT:	A retail trade or service place of business, an office, a restaurant or a liquor-licensed establishment, or any combination thereof.
COMMERCIAL NOISE ZONE:	That portion of the Town of Breckenridge indicated as the "Commercial Noise Zone" in the Noise Zones Map, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference.
CONSTRUCTION NOISE:	Any and all sound created by or arising from any activity incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances thereof, including land clearing, grading, excavation and filling.
db(A):	The sound level in decibels measured on the "A" scale of a standard sound level meter having characteristics defined by the American National Standards Institute, publication S1.4-1971, including successor publications.
DECIBEL:	A unit used to express the magnitude of a change in sound level. The difference in decibels between two sound pressure levels is twenty times the common logarithm of their ratio. In sound pressure measurements sound levels are defined as twenty times the common logarithm of the ratio of that sound pressure level to a referenced level of 2×10^{-5} N/m ² (Newton's/meter squared). As an example of the effect of the formula, a three-decibel change is a one hundred percent increase or decrease in the sound level, and a ten-decibel change is a one thousand percent increase or decrease in the sound level.
DEVICE:	Any mechanism which is intended to, or which actually produces, audible sound when operated or handled.
EXTERIOR LOUDSPEAKER OR AMPLIFIER:	A device for the amplification of sound which: (i) is located on an 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.
EMERGENCY VEHICLE:	A vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.
EMERGENCY WORK:	Work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.
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.
NOISE:	Any sound which is unwanted or which causes or tends to cause an adverse psychological or physiological effect on human beings.

NOISE SOURCE:	Any equipment, facility or device capable of emitting sound beyond the property boundary of the property on which it is located.
PERSON:	Any individual, firm, association, organization, partnership, business, trust, corporation, company, limited liability entity, contractor, supplier, installer, user, owner or operator, including any municipal corporation or its officers or employees.
PUBLIC SPACE:	Any real property or structure on real property owned by a governmental entity and normally accessible to the public, including, but not limited to, parks and other recreational areas.
REAL PROPERTY BOUNDARY:	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.
RESIDENTIAL NOISE ZONE:	That portion of the Town of Breckenridge indicated as the "Residential Noise Zone" in the Noise Zones Map, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference. Unless otherwise determined by the Town Council, any real property annexed to the Town after the effective date of this Chapter shall be presumed to be located in the Town's Residential Noise Zone even though not indicated on the Noise Zone Map.
TOWN NOISE ZONES:	The portions of the Town which are defined as the "Commercial Noise Zone" and the "Residential Noise Zone" in this Section.

5-8-4: NOISE MEASUREMENT: For purposes of determining and classifying any noise under this Chapter, the following requirements shall be applied:

- A. Except for motor vehicle noise and noise emanating from a public right of way, all noise within the Town shall be measured at the approximate real property boundary of the property on which the noise source is located. No minor variation from the requirements of this Paragraph shall affect the validity of a noise measurement.
- B. Noise emanating from a public right of way shall be measured at least twenty-five feet from the noise source.
- C. The noise shall be measured on the A-weighted scale using a sound level meter having characteristics defined by the American National Standards Institute, publication S1.4-1971, including successor publications. At the time the measurement is taken, the sound level meter shall be operated in the "slow mode."
- D. A sound measurement taken with a sound level meter shall be taken in accordance with the manufacturer's recommendations regarding wind speed in the "slow mode" at the time of the measurement.
- E. In all sound level measurements, consideration shall be given to the effect of the ambient noise level at the time and place of such sound level measurement.
- F. Motor vehicle noise shall be measured at a distance of at least twenty-five feet from the motor vehicle. The measurement period for motor vehicle noise may be any single point in time.

5-8-5: MAXIMUM PERMISSIBLE NOISE LEVELS--GENERALLY: It shall be unlawful for any person to operate or permit to be operated any noise source which creates a sound which exceeds the limits set forth below. The sound shall be measured in accordance with the requirements of Section 5-8-4. When a noise source can be identified and its noise measured in more than one of the Town Noise Zones, the limits of the most restrictive Town Noise Zone shall apply at the boundaries between the different Town Noise Zones.

MAXIMUM PERMISSIBLE NOISE LEVELS--GENERALLY

Town Noise Zone	7:01 A.M. to next 10:59 P.M. (in decibels)	11:00 P.M. to next 7:00 A.M. (in decibels)
Commercial Noise Zone	70	65
Residential Noise Zone	55	50

5-8-6: CONSTRUCTION NOISE:

- A. Because construction noise is often extremely loud and of prolonged duration, the provisions of Section 5-8-5 shall not apply to construction noise, and instead construction noise shall be regulated by the provisions of this Section.
- B. There shall be no limit on construction noise between the hours of 7:00 A.M. and 6:59 P.M., Monday through Saturday.
- C. Except as provided in Subparagraph D of this Section, it shall be unlawful for any person to cause or make construction noise between the hours of 7:00 P.M. and the next 6:59 A.M., Monday through Saturday, and all day on Sunday.
- D. It shall not be a violation of this Section if construction noise is made or caused under the following circumstances: (i) in connection with emergency work as defined in Section 5-8-4, or (ii) in connection with a residential home improvement project conducted by the owner-occupant thereof between the hours of noon and 7 P.M. on Sundays.
- E. The provisions of this Section may be varied by a Development Permit issued under the Breckenridge Development Code (Chapter 1 of Title 9 of this Code) or the Breckenridge Subdivision Standards (Chapter 2 of Title 9 of this Code). It shall be a violation of this Section to violate any restriction on construction noise established by such a Development Permit.

5-8-7: EXTERIOR LOUDSPEAKERS OR AMPLIFIERS:

- A. It shall be unlawful for any person to use or operate an exterior loudspeaker or amplifier 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 not open for public use; or
 4. When the use or operation of such exterior loudspeaker or amplifier creates a sound level in decibels which exceeds the limits set forth in Section 5-8-5. The provisions of Section 8-5-4 shall apply to the measurement of noise from an exterior loudspeaker or amplifier under this Section.
- B. Nothing in this Section shall prohibit the use of an exterior loudspeaker or amplifier to emit amplified music from a live musical performance.
- C. 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, requested, commanded or authorized by the employer as part of the employee's duties.
- D. At all times when an exterior loudspeaker or amplifier 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 is 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 Subsection D.

5-8-8: RADIOS, STEREOS, TAPE PLAYERS, COMPACT DISK PLAYERS, MUSICAL INSTRUMENTS AND SIMILAR DEVICES: It shall be unlawful for any person in a public space to use or

operate a radio, stereo, tape player, compact disk player, musical instrument or similar device that produces or reproduces musical sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by.

5-8-9: USE OF SOUND FOR ADVERTISING: It shall be unlawful for any person to use or operate any loudspeaker or sound amplifying equipment, or any radio, stereo, tape player, compact disk player, musical instrument or similar device that produces or reproduces musical sound, for the purpose of commercial advertising or attracting the attention of the public to any person, place or structure for a commercial purpose.

5-8-10: MOTOR VEHICLE NOISE: It shall be unlawful for any person to operate a motor vehicle, or for the owner of a motor vehicle to permit the operation of any motor vehicle or combination of motor vehicles, at any time or place when such operation exceeds the following maximum permissible noise levels for the category of motor vehicle and for the designated time period specified in the table set forth below. The standards set forth in the table shall apply to all noise emitted from motor vehicles, including any equipment thereon, under any conditions of acceleration, deceleration, idle, greater load, and whether or not in motion, and shall include, but shall not be limited to, noise caused by the use of an "engine brake" which converts a power-producing diesel engine into a power-absorbing air compressor, resulting in a net energy loss (commonly referred to by brand names as "Jacobs Brake", "Jake Brake" or "Dynatard Brake"). Maximum permissible noise levels for motor vehicles shall be as follows:

MAXIMUM PERMISSIBLE NOISE LEVELS--MOTOR VEHICLES

Type of Vehicle	Time Period	Maximum Allowable Noise Levels	Measurement Distance From Vehicle
Vehicles weighing less than 10,000 pounds, manufacturer's gross vehicle weight	Any time	80 decibels	At least 25 feet
Vehicles weighing 10,000 pounds or more, manufacturer's gross vehicle weight	Any time	90 decibels	At least 25 feet

5-8-11: EXEMPTIONS: The following shall be exempt from the provisions of this Chapter:

- A. The use of property by the State of Colorado, any political subdivision of the state, including, but not limited to, the Town, or other entity not organized for profit, including, but not limited to, non-profit corporations, or any of their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals and firework displays. This exemption shall include all events staged at the Town's "Riverwalk" Center, regardless of the sponsor of such event.
- B. The use of property for the purpose of manufacturing, maintaining or grooming snow.
- C. Sound made pursuant to a permit issued by the Town Manager in accordance with the provisions of Sections 5-8-12.
- D. Sound made by safety signals and warning devices; sound resulting from any emergency vehicle when responding to an emergency call or acting in time of emergency; and sound produced in connection with emergency work as defined in Section 5-8-3.
- E. Sound emitted from houses of religious worship, ice cream trucks, or seasonal solicitors.
- F. Sound emitted from an emergency signaling device, including, but not limited to, a fire alarm, burglar alarm, or similar emergency-signaling device, during a bona fide emergency.
- G. Sound resulting from reasonable activities conducted on public playgrounds and public or private school grounds, conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, school athletic and school entertainment events.
- H. Sport shooting ranges to the extent provided in §25-12-109, C.R.S.
- I. Any noise which the Town is prohibited from regulating under the federal Noise Control Act, 42 U.S.C. §§4916-17.

5-8-12: PERMIT TO EXCEED LIMITS; APPEAL:

- A. Any person desiring to obtain a permit to exceed the noise levels designated in this Chapter may make an application to the Town Manager. The Town Manager shall have the authority to grant a permit to exceed the maximum permissible noise levels designated in this Chapter in accordance with the provisions of this Section. In determining whether to grant a permit under this Section, the Town Manager shall give consideration to: (i) the time of day that the noise is proposed to be created, (ii) the duration of the proposed noise, (iii) the loudness of the proposed noise relative to the required limits, (iv) whether the proposed noise is temporary or continuous in nature, (v) the extensiveness of the proposed noise, and (vi) the technical and economic feasibility of bringing such proposed noise source into conformance with the provisions of this Chapter. The Town Manager may prescribe any reasonable conditions or requirements on the permit which the Town Manager deems necessary to minimize the adverse effects upon the community or the surrounding neighborhood, including, but not limited to, specific decibel limitations, limitations on time(s) and location of the noise source, and equipment limitations or requirements. Any permit granted by the Town Manager under this Section shall be effective only for the location and times designated within the permit, and shall be further subject to such conditions as may be set forth in such permit. There shall be no charge for an application submitted to the Town Manager under this Section.
- B. An applicant for a permit under this Section whose application has been denied or who disagrees with the conditions imposed upon such permit by the Town Manager may appeal such denial or imposition of conditions to the Town Council. A request for an appeal shall be submitted in writing to the Town Manager not later than 72 hours after the denial of the application or the granting of the permit containing the condition(s) to which the applicant objects. The request for appeal shall specify the grounds for the appeal. Such appeal shall be heard and decided by the Town Council at the next regular Town Council meeting following the submission of the request for appeal, or at such later date as the Council may determine if the applicant consents to the continuation of such matter. In deciding an appeal, the Town Council shall consider only the factors set forth in Subsection A of this Section.

5-8-13: STRICT LIABILITY: The violation of any provision of this Chapter is a strict liability offense.

5-8-14: ENFORCEMENT:

- A. The Police Chief shall have the primary responsibility for the enforcement of the noise regulations contained herein. Nothing herein shall prevent the Police Chief from obtaining voluntary compliance by way of warning, notice or education.
- B. If a person's conduct would otherwise violate this Chapter and consists of (i) speech or communication, (ii) a gathering with others to hear or observe speech or communication, or (iii) a gathering with others to picket or otherwise express in a non-violent manner a position on social, economic, political or religious questions, the person must be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation prior to arrest or a citation being issued.

5-8-15: PENALTY:

- A. It shall be a misdemeanor offense for any person to violate any provision of this Chapter. Any person convicted of having violated any provision of this Chapter shall be punished as set forth in Chapter 4 of Title 1 of this Code.
- B. Each occurrence of a violation, or, in the case of a continuous violation, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

5-8-16: COURT-ORDERED ABATEMENT: The violation of any provision of this Chapter is declared to be a nuisance. In addition to other remedies available to the Town, the Town may commence an action pursuant to Section 1-8-10 of this Code to enjoin the alleged violation of this Chapter, or to authorize and compel the removal, termination or abatement of such violation.

Section 2. Section 6-3C-15 of the Breckenridge Town Code is hereby repealed.

Section 3. Subparagraphs C, D and E of Section 7-1-2 of the Breckenridge Town Code are hereby 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, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

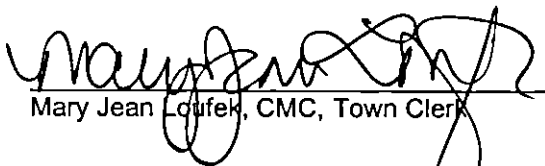
Section 6. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the provisions of Section 25-12-108, C.R.S., and the power possessed by home rule municipalities in Colorado.


Section 7. 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 May, 2001. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 12th day of June, 2001, 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

By 
John Warner, Mayor Pro Tem

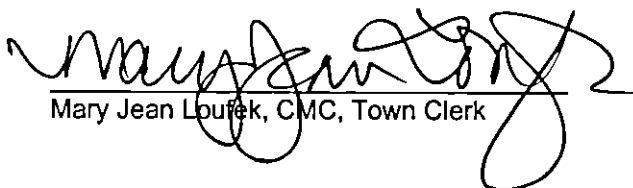
This ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on June 1, 2001.

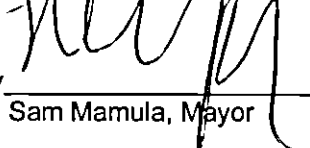
The public hearing on this ordinance was held on June 12, 2001.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS, this 12th day of June, 2001. A copy of this ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

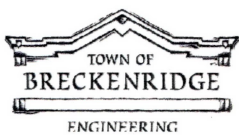
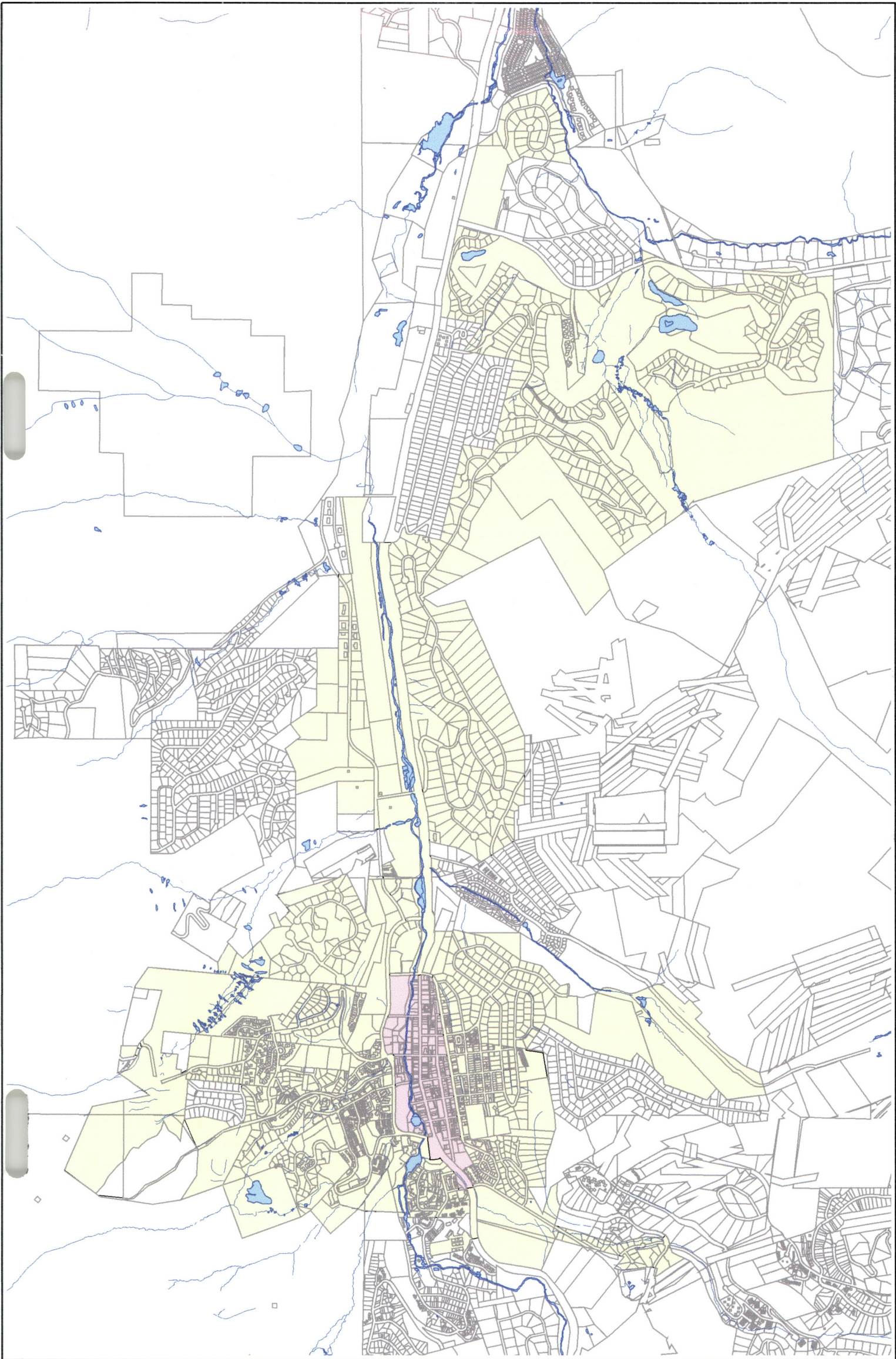

Mary Jean Loufek, CMC, Town Clerk

By 
Sam Mamula, Mayor

APPROVED IN FORM:


 6/12/01
Town Attorney 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 June 22, 2001.



printed 8/15/2001

ZONES

 Commercial


 Residential

EXHIBIT A
to Ordinance No. 15, Series 2001