

ORDINANCE NO. 46

Series 2002

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 3 OF TITLE 7 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE TOWING, IMPOUNDMENT AND DISPOSITION OF VEHICLES

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

Section 1. Chapter 3 of Title 7 of the Breckenridge Town Code is hereby repealed and readopted with changes so as to read in its entirety as follows:

CHAPTER 3

TOWING, IMPOUNDMENT AND DISPOSITION OF VEHICLES

SECTION:

- 7-3-1: Definitions
- 7-3-2: Unlawful Abandonment of Vehicle on Public
- 7-3-3: Unlawful Abandonment of Vehicle on Private
- 7-3-4: Officers Authorized to Tow Vehicles;
- 7-3-5: Owner May Claim Vehicle; Bond
- 7-3-6: Conduct of Hearing
- 7-3-7: Applicability of State Law
- 7-3-8: Exemptions
- 7-3-9: Penalty

7-3-1: DEFINITIONS: As used in this Chapter the following words shall have the following meanings, unless the context clearly requires otherwise:

ABANDON A VEHICLE ON PUBLIC PROPERTY:	To leave a vehicle unattended on public property, including, but not limited to, a street or highway right-of-way, for a period of twenty four (24) hours or longer.
ABANDON A VEHICLE ON PRIVATE PROPERTY:	To leave a vehicle unattended on private property for a period of twenty four (24) hours or longer without the consent of the owner or lessee of such property, or the owner's or lessee's legally authorized agent.
DISABLED MOTOR VEHICLE:	Any motor vehicle that is stopped or parked, either attended or unattended, upon a public right-of-way and that is, due to any mechanical failure or any inoperability because of a collision, a fire, or any other such injury, temporarily inoperable under its own power.
OPERATOR:	A person or firm licensed by the Public Utilities Commission as a towing carrier.
PRIVATE PROPERTY:	Any real property that is not public property.
PUBLIC PROPERTY:	Any real property having its title, ownership, use or possession held by the federal government, the state of Colorado, or any county, municipality (as defined in Section 31-1-101(6), C.R.S.) or other governmental entity of this State.
VEHICLE:	A motor vehicle as defined in Section 42-1-102, C.R.S.; or any other device which is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks, including, but not limited to, a snowmobile or an off-highway (all terrain) vehicle.

7-3-2: UNLAWFUL ABANDONMENT OF VEHICLE ON PUBLIC PROPERTY: No person shall abandon a vehicle upon public property within the Town.

7-3-3: UNLAWFUL ABANDONMENT OF VEHICLE ON PRIVATE PROPERTY: No person shall abandon a vehicle upon private property within the Town.

7-3-4: OFFICERS AUTHORIZED TO TOW VEHICLES; WHEN:

A. Any Breckenridge police officer or community service officer who finds a vehicle which such officer has reasonable grounds to believe has been abandoned in violation of Section 7-3-2 (abandonment on public property) shall require such vehicle to be removed

or cause the same to be removed and placed in storage in any impound lot designated or maintained by the Town.

B. Whenever any Breckenridge police officer or community service officer finds a vehicle, attended or unattended, standing in a manner described in Paragraph C of this section, such officer is authorized to cause the vehicle to be removed and placed in storage in any impound lot designated or maintained by the Town.

C. A Breckenridge police officer or community service officer shall be authorized to have a vehicle removed and placed in storage in any impound lot designated or maintained by the Town under any of the following circumstances:

1. When a vehicle is found standing or parked upon any portion of a street, highway or right of way generally open to the use of the public in such a manner as to constitute a hazard or an obstruction to traffic, proper highway maintenance, snow removal, construction or repair;
2. When a vehicle is found to be standing or parked in a properly designated tow away zone in violation of the Town's Traffic Code;
3. When a vehicle is found to be standing or parked upon any portion of a street, highway or right of way generally open to the use of the public in violation of Section 1208 of the Town's Traffic Code (Parking Privileges For Persons With Disabilities); or
4. When a vehicle is found to be standing or parked upon any portion of a street, highway or public right of way generally open to the use of the public if there are three (3) or more outstanding parking citations issued by the Town involving such vehicle. A parking citation shall be considered to be outstanding for the purpose of this paragraph if such citation has remained unpaid for a period of time in excess of twenty (20) days from the date of the issuance of such citation.

D. Neither the officer, nor anyone acting under such officer's direction, shall be liable for any damage to a vehicle occasioned by the lawful removal or towing and impoundment of such vehicle when done pursuant to this Section.

7-3-5: OWNER MAY CLAIM VEHICLE; BOND:

A. Nothing in this Chapter shall prevent the owner of a vehicle that has been towed by the Breckenridge Police Department, or said owner's agent, from appearing at the Breckenridge Police Department to reclaim the owner's vehicle. If the owner or the owner's agent can show proof of ownership, or if the Breckenridge Police Department confirms the ownership of the vehicle, and the owner does not contest the legality of the tow, the vehicle may be reclaimed by payment of the towing fee, all unpaid parking citations involving such vehicle (if applicable), any accrued storage fees, and a reasonable administrative fee assessed by the Town to offset the Town's costs incurred in processing the towed vehicle.

B. If the owner or the owner's agent can show proof of ownership, or if the Breckenridge Police Department confirms the ownership of the vehicle, and the owner wishes to contest the legality of the tow, the owner may request a hearing, in writing, on forms to be supplied by the Breckenridge Police Department. Prior to a scheduled hearing, the owner of the towed vehicle may obtain said vehicle by posting a cash bond in the amount of the towing fee, all unpaid parking citations involving the vehicle (if any), the accrued storage fees to date, plus storage fees for each day up to and including the date of the hearing, and a reasonable administrative fee assessed by the Town to offset the Town's costs incurred in processing the towed vehicle. If the person requesting the hearing fails to appear at said hearing, or if the hearing officer, pursuant to Section 7-3-6 of this Chapter, finds that there was probable cause to tow the vehicle, the amount of the bond shall be forfeited.

7-3-6: TOW HEARING:

A. The owner of any vehicle that has been towed by the Town, or the owner's agent, shall have the opportunity to request a hearing concerning the legality of the towing of the vehicle. Such request shall be made in writing within ten (10) days after the notice was sent by the Town pursuant to Section 42-4-1804(4), C.R.S., if the tow was made pursuant to Section 7-3-2 (abandonment of vehicle on public property), or within ten (10) days of the date of the tow, if the tow was made for any other reason. The tow hearing shall be conducted before a hearing officer appointed by the Town Manager within seventy two (72) hours (excluding Saturdays, Sundays and Town holidays) of receipt of a written request for such hearing, unless the person requesting the hearing waives the right to a speedy hearing. The sole issue before the hearing officer shall be whether there was reasonable grounds cause to impound the vehicle in question. "Reasonable grounds

to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was a sufficient breach of municipal, state or federal law to grant legal authority for the removal of the vehicle.

B. The hearing shall be conducted in an informal manner and shall not be governed by technical rules of evidence. The person requesting the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The Breckenridge Police Department shall carry the burden of establishing that there was reasonable grounds to impound the vehicle in question. The hearing officer shall only determine that, as to the vehicle in question, either: 1) there was reasonable grounds to impound the vehicle, or 2) there was not reasonable grounds to impound the vehicle. The decision of the hearing officer is final.

C. Upon a finding of no reasonable grounds, towing and storage fees shall be paid by the Town in accordance with arrangements made between the Town and the operator. If a bond was posted pursuant to subsection 7-3-5B of this Chapter, said bond shall be returned to the person who posted the bond. If the owner of the vehicle or the owner's agent fails to claim the vehicle from the operator within six (6) hours of a finding of no reasonable grounds to tow, excluding such days when the operator is not open for business, the person who requested the hearing shall assume liability for all subsequent storage charges. Unless the owner of the vehicle was present at the hearing, it shall be the responsibility of the Breckenridge Police Department to notify the owner in writing of a finding of no reasonable grounds to tow immediately after such finding is made.

D. If reasonable grounds to tow are found, the owner of the vehicle may have the vehicle returned to him or her upon payment of the towing fees, all unpaid parking citations involving the vehicle (if any), accrued storage fees, and a reasonable administrative fee assessed by the Town to offset the Town's costs incurred in processing the towed vehicle.

E. Failure of the owner of the vehicle in question to request a hearing or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

7-3-7: APPLICABILITY OF STATE LAW: Except as otherwise expressly provided in this Chapter, the provisions of Parts 18 and 21 of Article 4 of Title 42, C.R.S., as amended from time to time, shall apply to the towing, impoundment and disposition of vehicles abandoned on either public or private property within the Town.

7-3-8: EXEMPTIONS:

A. Nothing in this Chapter shall be construed to include or apply to the driver of any disabled motor vehicle who temporarily leaves such vehicle on the paved or improved and main-traveled portion of a highway, subject, when applicable to the emergency lighting requirements of the Town's Traffic Code as adopted pursuant to Chapter 1 of Title 7 of this Code.

B. Nothing in this Chapter shall be construed to include or apply to authorized emergency vehicles while such vehicles are actually and directly engaged in, coming from, or going to an emergency.

7-3-9: PENALTY: It is a misdemeanor offense for any person to violate the provisions of Section 7-3-2 or 7-3-3 of this Chapter. Any person convicted of violating such sections shall be punished as provided in Section 1-4-1 of this Code.

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.

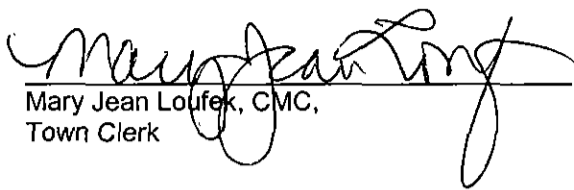
Section 3. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

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.

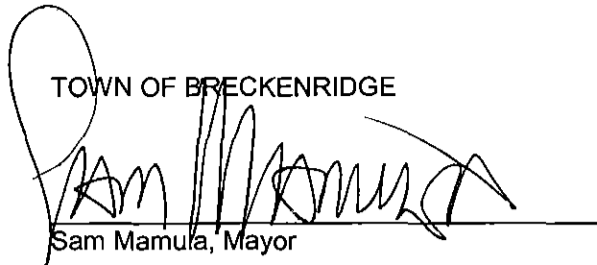
Section 5. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 12th day of November, 2002. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 26th day of November, 2002, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

TOWN OF BRECKENRIDGE

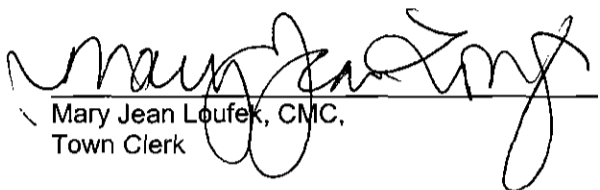

Sam Mamula, Mayor

This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on November 22, 2002.

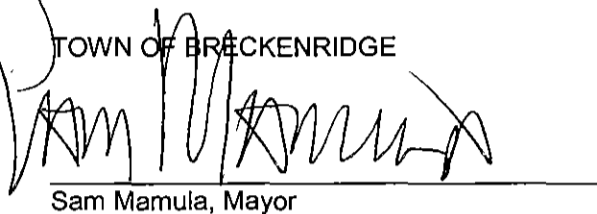
The public hearing on this Ordinance was held on November 26, 2002.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN BY TITLE WITH PENALTY CLAUSE, this 26th day of November, 2002. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

TOWN OF BRECKENRIDGE


Sam Mamula, Mayor

APPROVED IN FORM:

 11/26/02
Town Attorney Date

This Ordinance was published by title with penalty clause in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on December 6, 2002.