

ORDINANCE NO. 20

Series 2003

AN ORDINANCE CONCERNING THE CREATION OF THE TOWN OF BRECKENRIDGE LIQUOR LICENSING AUTHORITY

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

Section 1. The Breckenridge Town Code is hereby amended by the addition of a new Chapter 5 of Title 2, to be entitled "Liquor Licensing Authority", which shall read in its entirety as follows:

Chapter 5

LIQUOR LICENSING AUTHORITY

SECTION:

- 2-5-1: Findings
- 2-5-2: Creation
- 2-5-3: Appointment; Qualification
- 2-5-4: Term of Office; Vacancies
- 2-5-5: Compensation
- 2-5-6: Powers, Duties and Responsibilities
- 2-5-7: Operation
- 2-5-8: Meetings
- 2-5-9: Rules and Regulations
- 2-5-10: Applicability of Code of Ethics
- 2-5-11: Legal Advisor
- 2-5-12: Appeals
- 2-5-13: Town Clerk's Duties
- 2-5-14: Annual Report
- 2-5-15: Conduct of Hearings
- 2-5-16: Oaths; Subpoenas
- 2-5-17: Terms and Conditions of License
- 2-5-18: False Application Basis For Revocation
- 2-5-19: Aggravating and Mitigating Factors Considered At Show Cause Hearings
- 2-5-20: Buildings To Meet Code Standards
- 2-5-21: Licensed Premises To Be Open For Inspection
- 2-5-22: Colorado State Law Applicable
- 2-5-23: Specific Provisions Control Over General

2-5-1: FINDINGS: The Town Council finds and determines as follows:

A. The Town Council is authorized by Section 12-47-103(17), C.R.S., to create by ordinance an authority to handle all liquor-licensing matters for the Town.

B. Section 9.5 of the Town Charter authorizes the Town Council to create by ordinance permanent boards and commissions for the Town, and sets forth certain requirements which must be met with respect to the creation of a permanent Town board or commission.

C. Section 9.2(a) of the Town Charter provides that neither the Mayor nor any Town employee shall serve on any Town board or commission.

D. Section 9.2(b) of the Town Charter provides that no Town board or commission shall have more than one council member appointed to serve on such board or commission.

E. The Town of Breckenridge Liquor Licensing Authority should be created and given the authority to handle all liquor-licensing matters for the Town, all as more fully set forth in this Chapter.

F. The provisions of this Chapter comply with the requirements of Section 12-47-103(17), C.R.S., and Sections 9.2 and 9.5 of the Town Charter.

2-5-2: CREATION: There is hereby created and established a Town of Breckenridge Liquor Licensing Authority. The Town of Breckenridge Liquor Licensing Authority is referred to in this Chapter as the "Authority." The Authority shall be a permanent board of the Town, and shall operate in accordance with and subject to the provisions, duties and limitations of this Chapter, this Title, and other relevant law.

2-5-3: APPOINTMENT; QUALIFICATION:

- A. The Authority shall consist of five (5) members who shall be appointed by the Town Council.
- B. One member of the Authority shall be a member of the Town Council; provided, however, that the Mayor shall not serve on the Authority.
- C. Members of the Authority shall be residents and electors of the Town.
- D. No Town employee shall serve on the Authority.
- E. No person shall serve as a member of the Authority if such person or a member of such person's immediate family has any interest in a business for which a license has been issued by the Town pursuant to this Chapter.
- F. All members of the Authority shall serve at the pleasure of the Town Council, and may be removed by the Town Council at any time without cause.

2-5-4: TERM OF OFFICE; VACANCIES:

- A. The term of the member of the Authority who is a member of the Town Council shall be one year commencing on the second Tuesday of April each year, except that the term of the Town Council member who is appointed to the first Authority shall expire on the second Tuesday of April, 2004.
- B. The terms of the four remaining members of the Authority shall be four years, except that the terms of two of such members appointed to the first Authority shall be two years, and the terms of the remaining two members of the first Authority shall be four years.
- C. In the event that a vacancy shall occur during the term of any member of the Authority, a successor shall be appointed by the Town Council to serve the unexpired portion of the term.

2-5-5: COMPENSATION: Members of the Authority shall serve without compensation.

2-5-6: POWERS, DUTIES AND RESPONSIBILITIES: The Authority shall have the following powers, duties and responsibilities:

- A. To grant or refuse the original issuance or renewal of any license which the Town is authorized to issue under the provisions of the Colorado Beer Code, the Colorado Liquor Code, or the Colorado Special Events Code.
- B. To conduct such investigations related to such licenses or requests for licenses as are required or authorized by law.
- C. To suspend or revoke any license for cause in the manner provided by law.
- D. To require any applicant for a license to furnish any relevant information required by the Authority.
- E. To have all of the powers of the local licensing Authority for the Town of Breckenridge as are set forth in Colorado Beer Code, the Colorado Liquor Code, the Colorado Special Events Code, and the Liquor Regulations, all as from time to time amended.

2-5-7: OPERATION: The Authority shall elect a chair and a vice-chair from its members, together with such other officers as the Authority shall deem appropriate, and shall fix the terms of such offices. The Authority shall keep an electronic record of its meetings and shall further keep written minutes thereof as required by the Colorado Open Meetings law (Part 4 of Article 6 of Title 24, C.R.S.). Three (3) members of the Authority shall constitute a quorum for the transaction of business, and a decision of the majority of those present constituting a quorum shall control. Any absent member may join in a decision of the Authority after he or she has considered the evidence adduced in any hearings conducted during his or her absence.

2-5-8: MEETINGS: The Authority shall meet at Town Hall, or such other location within the Town as the Authority shall determine. The Authority shall meet on such dates as the Authority may determine. All meetings of the Authority shall be subject to the provisions of the Colorado Open Meetings law (Part 4 of Article 6 of Title 24, C.R.S.).

2-5-9: RULES AND REGULATIONS: The Authority shall have the power to adopt rules and regulations governing its operation. Such rules shall not be inconsistent with the Colorado Beer Code, the Colorado Liquor Code, and the Colorado Special Events Code, and the Liquor Regulations, all as from time to time amended.

2-5-10: APPLICABILITY OF CODE OF ETHICS: The provisions of the Breckenridge Town Code of Ethics (Chapter 16 of Title 1 of this Code) shall apply to all members of the Authority.

2-5-11: LEGAL ADVISOR: The Town Attorney shall be the legal advisor to the Authority and shall represent the Authority and the Town in all courts where any decision of the Authority is appealed. In the event that it would be a conflict of interest for the Town Attorney to both present evidence to the Authority on any matter and to advise the Authority as to such matter, the Town Attorney shall continue to advise the Authority on the matter and shall engage independent counsel to present the evidence.

2-5-12: APPEALS: The finding or decision of the Authority shall be in writing. The decision of the Authority shall be final, subject to the right of any aggrieved party to contest the matter in an appropriate court action commenced under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. For purposes of determining the time limit for the commencement of an action under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, the decision of the Authority shall be deemed to be final upon the Authority's issuance of a written finding or decision following the conclusion of the hearing. If the appealing party receives a copy of the written decision of the Authority at the time of the hearing, the time for the filing of the appeal pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure shall commence from the date the appealing party receives the written decision. If the written decision of the Authority is transmitted to the appealing party by mail, the time for the filing of the appeal Rule 106(a)(4) of the Colorado Rules of Civil Procedure shall commence from the date of the mailing of the written decision.

2-5-13: TOWN CLERK'S DUTIES:

A. The Town Clerk shall receive all applications for licenses, and shall issue all licenses granted by the Authority upon receipt of such license fees and taxes as are required by law.

B. The Town Clerk shall serve as the official secretary of the Authority, and shall designate a person or persons to provide the necessary secretarial and reporting services for the Authority. The Town Clerk or the Clerk's designee shall attend the meetings of the Authority. All public notice by publication in a newspaper and by posting of signs, as required by law, shall be accomplished by the Town Clerk.

C. Pursuant to Section 12-48-107(4), C.R.S., the Town Clerk is assigned the duty to approve or deny all applications for special events licenses which are submitted to the Authority. In exercising the authority hereby delegated, the Town Clerk shall follow the rules and procedures set forth in the Colorado Special Events Code (Article 48 of Title 47, C.R.S.), and all applicable regulations governing special events promulgated by the Liquor Enforcement Division of the Colorado Department of Revenue.

2-5-14: ANNUAL REPORT: On or before January 31 of each year, the Authority shall file a report with the Town Clerk setting forth the number of applications for licenses acted upon; the number of licenses granted; the number of licenses denied; and any other actions taken by the Authority during the past year.

2-5-15: CONDUCT OF HEARINGS:

- A. All hearings before the Authority shall be public, and shall be conducted according to the rules and regulations concerning the procedure for hearings promulgated by the Authority.
- B. No testimony shall be offered at a hearing before the Authority unless the same is given under oath.
- C. Applicants and all other parties in interest may appear in person or be represented by counsel at their own expense.
- D. The Authority may limit the presentation of evidence tending to be repetitious or which is immaterial or irrelevant.
- E. Any attorney at law who appears before the Authority at any hearing shall be required to state the name(s) and address(es) of all persons whom he or she has been authorized to represent at the hearing.

- F. The Authority may make such independent investigation as it deems necessary or advisable in connection with any application for a license.

2-5-16: OATHS; SUBPOENAS: The Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing which the Authority is authorized to conduct. It shall be unlawful and a violation of this Code for any person to fail to comply with any subpoena issued by the Authority in the proper conduct of its hearings. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the state.

2-5-17: TERMS AND CONDITIONS OF LICENSE:

- A. The Authority shall have the power to impose such special terms and conditions on a license, or the renewal thereof, as may be reasonably required to protect the public health, safety and welfare.
- B. It shall be a condition of each license issued by the Authority pursuant to this Chapter, whether or not expressly stated in the license, that during the term of the license the licensee shall not violate, or permit the licensee's employees to violate, any ordinance of the Town now existing or hereafter adopted related to the regulation of noise emanating from the licensed premises.

2-5-18: FALSE APPLICATIONS BASIS FOR REVOCATION: Any information which is furnished to the Authority with the intent to mislead or misrepresent the true state of facts shall be a basis for denial of the application or suspension or revocation of the license.

2-5-19: AGGRAVATING AND MITIGATING FACTORS CONSIDERED AT SHOW CAUSE HEARINGS: In all cases where a violation of the applicable state or local law is found at a show cause hearing, the Authority shall consider the following factors in mitigation or aggravation prior to determining the appropriate penalty:

- A. The seriousness of the violation;
- B. Corrective action, if any;
- C. Prior violations and offenses at the licensed premises and the effectiveness of prior corrective action;
- D. Prior violations and offenses by the licensee or the licensee's employees;
- E. Whether the violation is part of a repeated course of conduct or a single event;
- F. The likelihood of recurrence;
- G. All circumstances surrounding a violation;
- H. Whether the violation was willful;
- I. The length of time a license has been held by the licensee;
- J. Previous sanctions imposed against the licensee, if any; and
- K. Other factors making the situation with respect to the licensee or the licensed premises unique.

2-5-20: BUILDINGS TO MEET CODE STANDARDS: No license shall be issued, renewed or transferred unless the building in which the business is carried on meets all of the requirements of the land use regulations and the building and other technical codes of the Town.

2-5-21: LICENSED PREMISES TO BE OPEN FOR INSPECTION: All premises licensed under this Chapter shall be open to inspection by the police department of the Town, the health department of the County, the State Licensing Authority, and any other federal, state, county or Town agency which is permitted or required by law to inspect licensed premises. It is unlawful for the licensee, the licensee's employees or agents, or for any other person, to refuse to permit any such inspection of the licensed premises or to otherwise interfere with any such inspection.

2-5-22: COLORADO STATE LAW APPLICABLE: The provisions of the Colorado Beer Code, the Colorado Liquor Code, the Colorado Special Events Code, and Liquor Regulations, all as from time to time amended, shall apply to the sale of alcoholic beverages within the Town, where applicable.

2-5-23: SPECIFIC PROVISIONS CONTROL OVER GENERAL: Where both general and specific provisions of this Title are applicable and such provisions are in conflict, the specific provisions shall control over the general.

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.

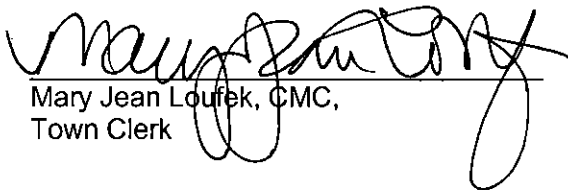
Section 4. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the provisions of Section 12-47-103(17), C.R.S., and the powers possessed by home rule municipalities in Colorado.

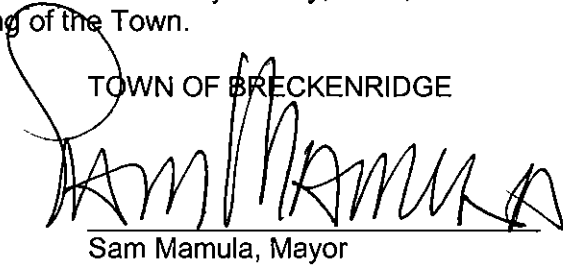
Section 5. This Ordinance shall be published as provided by Section 5.9 of the Breckenridge Town Charter, and shall become effective September 1, 2003.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 13<sup>th</sup> day of May, 2003. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 27<sup>th</sup> day of May, 2003, 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

  
Sam Mamula, Mayor

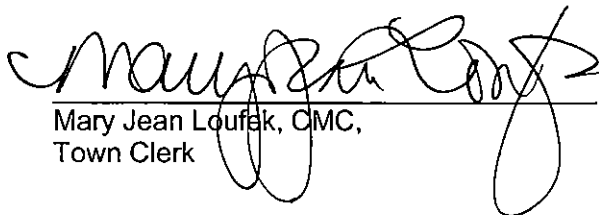
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on May 23, 2003.

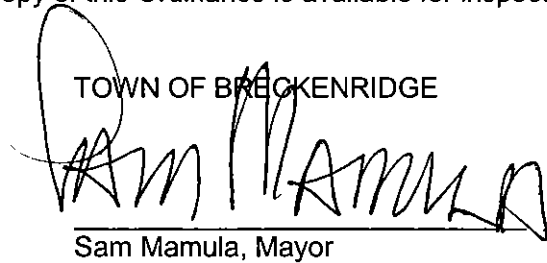
The public hearing on this ordinance was held on May 27, 2003.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS, this 27<sup>th</sup> day of May, 2003. 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

  
Sam Mamula, Mayor

APPROVED IN FORM

  
Town Attorney

5/27/03  
Date

This ordinance was published by title in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on June 6, 2003