

ORDINANCE NO. 8

Series 2003

AN ORDINANCE ADOPTING CHAPTER 19 OF TITLE 1 OF THE BRECKENRIDGE TOWN CODE CONCERNING ADMINISTRATIVE HEARINGS

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

Section 1. Title 1 of the Breckenridge Town Code is hereby amended by the addition of a new Chapter 19, to be entitled "Administrative Hearings", which shall read in its entirety as follows:

CHAPTER 19

ADMINISTRATIVE HEARINGS

SECTION:

- 1-19-1: Short Title
- 1-19-2: Purpose
- 1-19-3: Applicability
- 1-19-4: Definitions
- 1-19-5: Notice of Hearing
- 1-19-6: Content of Notice
- 1-19-7: Continuance of Hearing
- 1-19-8: Right to Counsel
- 1-19-9: Right to Present Evidence and Cross-Examine Witnesses
- 1-19-10: Rules of Evidence
- 1-19-11: Burden of Proof
- 1-19-12: Record of Proceeding
- 1-19-13: Right to Appeal to Town Council
- 1-19-14: Appeal From Decision of Administrative Hearing

1-19-1: **SHORT TITLE:** This Chapter shall be known and may be cited as the "Town of Breckenridge Administrative Hearing Procedure Ordinance."

1-19-2: **PURPOSE:** The purpose of this Chapter is to establish procedures which shall govern any quasi-judicial administrative hearing to be held by the Town of Breckenridge, except as provided in Section 1-19-3.

1-19-3: **APPLICABILITY:** This Chapter shall apply to any administrative hearing to be conducted by the Town Council, any Town board or commission, or any officer or employee of the Town of Breckenridge, except: (i) personnel hearings and internal investigations involving Town employees; (ii) proceedings conducted pursuant to the Colorado Beer Code (Article 46 of Title 12, C.R.S.), the Colorado Liquor Code (Article 47 of Title 12, C.R.S.), Colorado statutes pertaining to special event liquor permits (Article 48 of Title 12, C.R.S.), or the regulations promulgated under such statutes by the Colorado Department of Revenue, Liquor Enforcement Division; (iii) proceedings conducted by the Planning Commission or Town Council pursuant to Title 9 of this Code; (iv) proceedings in the Town's Municipal Court; and (v) where a specific statute or ordinance specifies a different procedure or provides that this Chapter is not applicable to proceedings under such statute or ordinance. In the event of a conflict between the provisions of this Chapter and any specific statute or ordinance, the provisions of the specific statute or ordinance shall control.

1-19-4: **DEFINITIONS:** As used in this Chapter the following words shall have the following meanings, unless the context clearly requires otherwise:

**ADMINISTRATIVE HEARING:**

Any quasi-judicial hearing required or permitted to be conducted by the Town Council or any Town officer or employee pursuant to this Code, any Town ordinance or any state statute, except as otherwise provided in this Chapter.

**HEARING AUTHORITY**

The Town Council, Town officer or Town employee who conducts an administrative

hearing.

**PARTY**

A person who is a party to an administrative hearing.

1-19-5: **NOTICE OF HEARING:** Notice of an administrative hearing shall be given by the Hearing Authority to each party. Unless otherwise provided in a specific statute or ordinance, written notice of the time and place of a hearing shall be mailed by the Hearing Authority to each party by regular mail, postage prepaid, not less than twenty (20) days before the date the hearing is to be held.

1-19-6: **CONTENT OF NOTICE:** A notice of administrative hearing shall set forth the reason for the hearing, and the date, time, and place of the hearing.

1-19-7: **CONTINUANCE OF HEARING:** The Hearing Authority may continue any administrative hearing, upon timely request, for good cause shown, or upon its own initiative.

1-19-8: **RIGHT TO COUNSEL:** At an administrative hearing each party may appear with counsel at the cost of the party.

1-19-9: **RIGHT TO PRESENT EVIDENCE AND CROSS-EXAMINE WITNESSES:** At an administrative hearing each party shall have the right to present such evidence as may be relevant, and to cross-examine all witnesses.

1-19-10: **RULES OF EVIDENCE:** The strict rules of evidence shall not apply to an administrative hearing.

1-19-11: **BURDEN OF PROOF:** The burden of proof shall be determined under the specific statute or ordinance which authorizes the holding of such hearing. In the absence of an statutory or ordinance provision to the contrary, the burden of proof shall be on the proponent of a claim or issue to prove such claim or issue by a preponderance of the evidence, and on the party raising any affirmative defense or matter of mitigation to prove such affirmative defense or matter of mitigation by a preponderance of the evidence. "Preponderance of the evidence" means to prove that something is more probably true than not.

1-19-12: **RECORD OF PROCEEDINGS:** An audio-taped record of the administrative hearing shall be made. The Town shall retain the original audio-tape for not less than one (1) year. A copy of an audio-taped record of an administrative hearing shall be made available by the Town to an party upon written request and payment of a fee determined by the Town Manager to be sufficient to reimburse the Town for the cost of providing such copy. The Town shall not be obligated to provide a transcript of an administrative hearing, and any party desiring such transcript shall obtain and pay the cost thereof. A court reporter may be employed by any party, at the expense of such party, to prepare a verbatim written record of administrative hearing.

1-19-13: **RIGHT TO APPEAL TO TOWN COUNCIL:**

A. Unless otherwise provided in the ordinance or statute establishing the right to an administrative hearing, a person aggrieved by the decision of a Hearing Authority shall have the right to appeal such decision to the Town Council.

B. An appeal to the Town Council shall be taken by the appealing party filing a written notice of appeal with the Town Manager within twenty (20) days after the entry of the Hearing Authority's written decision. If the appealing party receives a copy of the written decision of the Hearing Authority at the time of the administrative hearing, the time for the filing of the appeal shall commence from the date the appealing party receives the written decision. If the written decision of the Hearing Authority is transmitted to the appealing party by mail, the time for the filing of the appeal shall commence from the date of the mailing of the written decision. No additional time for filing a notice of appeal shall be granted to an appealing party because the decision of the Hearing Authority was served on the appealing party by mail. The Town Council shall have no jurisdiction to hear or consider an appeal which is not timely filed in accordance with this Section.

C. The Town Council shall conduct a de novo appeal hearing on the appeal at a regular or special Town Council meeting held within thirty (30) days of date of the filing of the notice of appeal, unless the appealing party agrees to a longer time.

D. The substantive and procedural provisions of this Chapter shall apply to any Town Council appeal hearing.

E. The decision of the Town Council in any appeal hearing shall be the final decision of the Hearing Authority for purposes of determining the right of an aggrieved party to appeal to the court as provided in Section 1-19-14.

**1-19-14: APPEAL FROM DECISION OF ADMINISTRATIVE HEARING:** The finding or decision of a Hearing Authority in connection with any administrative hearing shall be in writing. The decision of the Hearing 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 Hearing Authority shall be deemed to be final upon the Hearing Authority's issuance of the written finding or decision following the conclusion of the administrative hearing. If the appealing party receives a copy of the written decision of the Hearing Authority at the time of the administrative 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 Hearing 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.

Section 2. There is hereby added to Chapter 3 of Title 1 of the Breckenridge Town Code a new Section 1-3-5, to be entitled "Computation of Time", which shall read in its entirety as follows:

**1-3-5: COMPUTATION OF TIME:** Unless otherwise expressly provided herein, in computing any period of time prescribed or allowed by this Code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded. As used in this section the term "legal holiday" includes January 1, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; July 4, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; November 11, observed as Veterans Day; the fourth Thursday in November, observed as Thanksgiving Day; December 25, observed as Christmas Day, and any other day designated as a legal holiday by the state or federal government.

Section 3. 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.

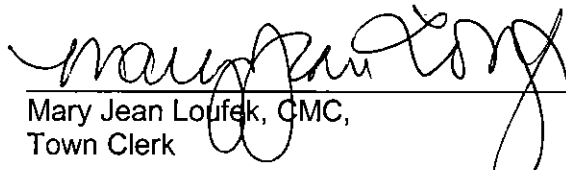
Section 4. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

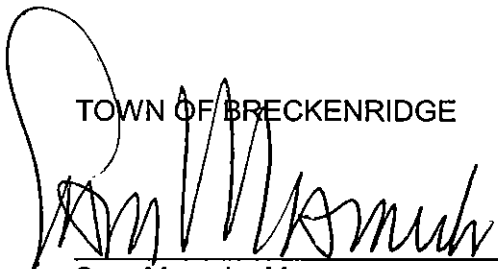
Section 5. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 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 25<sup>th</sup> day of February, 2003. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 11<sup>th</sup> day of March, 2003, 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

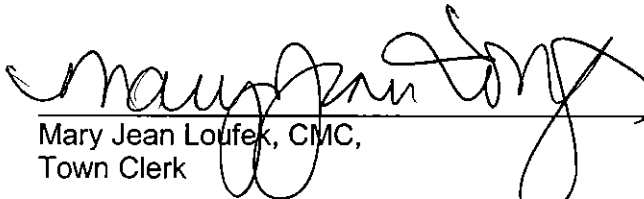
TOWN OF BRECKENRIDGE  
  
\_\_\_\_\_  
Sam Mamula, Mayor

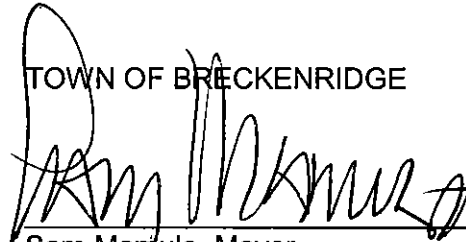
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on March 7, 2003.

The public hearing on this ordinance was held on March 11, 2003.

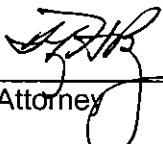
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS, this 11th day of March, 2003. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

  
\_\_\_\_\_  
Mary Jean Loufek, CMC,  
Town Clerk

TOWN OF BRECKENRIDGE  
  
\_\_\_\_\_  
Sam Mamula, Mayor

APPROVED IN FORM

  
\_\_\_\_\_  
Town Attorney

3/11/03  
Date

This ordinance was published by title in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on March 21, 2003