

ORDINANCE NO. 41

Series 2004

AN ORDINANCE ADOPTING CHAPTER 20 OF TITLE 1 OF THE BRECKENRIDGE TOWN CODE CONCERNING SEXUAL ORIENTATION DISCRIMINATION; PROVIDING THAT THE TOWN OF BRECKENRIDGE WILL NOT DISCRIMINATE AGAINST EMPLOYEES OR APPLICANTS FOR EMPLOYMENT ON THE BASIS OF SEXUAL ORIENTATION; CREATING A CAUSE OF ACTION AGAINST THE TOWN FOR CLAIMS OF SEXUAL ORIENTATION DISCRIMINATION; PROVIDING LIMITATIONS AND REQUIREMENTS IN CONNECTION THEREWITH; AND MAKING MISCELLANEOUS AMENDMENTS TO THE BRECKENRIDGE TOWN CODE IN CONNECTION THEREWITH

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 20 of Title 1, to be entitled "Sexual Orientation Discrimination", which shall read in its entirety as follows:

CHAPTER 20

SEXUAL ORIENTATION DISCRIMINATION

SECTION:

- 1-20-1: Definitions
- 1-20-2: Town Shall Not Discriminate
- 1-20-3: Civil Action Against Town
- 1-20-4: No Civil Action Against Town Officer or Employee
- 1-20-5: Notice of Claim Required
- 1-20-6: Statute of Limitations
- 1-20-7: Defenses
- 1-20-8: Damages
- 1-20-9: Limitations on Judgments and Other Legal and Equitable Relief
- 1-20-10: Attorney's Fees and Expert Witness Fees
- 1-20-11: No Severability
- 1-20-12: Applicability

1-20-1: DEFINITIONS: As used in this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

CLAIMANT:

A person who has filed a Notice of Claim against the Town pursuant to section 1-20-5; or the plaintiff in a private civil action brought against the Town pursuant to section 1-20-3, as the case may be. A claimant must be the person who is alleged to have been discriminated against by the Town in violation of section 1-20-2, or such person's personal representative or legal representative.

DAMAGES:

Damages awarded to indemnify the claimant for losses suffered as a result of a violation of section 1-20-2. The term "damages" as used in this chapter includes all compensation awarded for: (i) the claimant's past or future pecuniary losses, including, but not limited to, backpay and frontpay; (ii) the claimant's emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life; and (iii) all other compensation awarded or awardable as compensation for the claimant's other economic and noneconomic losses, of whatever kind or nature, and however denominated, except as otherwise expressly provided in this chapter.

SEXUAL ORIENTATION:

Having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of

that person, or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.

TOWN: The Town of Breckenridge, Colorado

1-20-2: TOWN SHALL NOT DISCRIMINATE: It shall be unlawful for the Town to fail or refuse to hire or to discharge any person from Town employment, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment, because of such person's sexual orientation.

1-20-3: CIVIL ACTION AGAINST TOWN: Any person who believes that he or she has been discriminated against by the Town in violation of section 1-20-2 shall have a private civil cause of action for money damages against the Town, subject, however, to the requirements and limitations of this chapter.

1-20-4: NO CIVIL ACTION AGAINST TOWN OFFICER OR EMPLOYEE: There shall be no right to a private civil cause of action pursuant to this chapter against any Town officer or employee who is alleged to have violated section 1-20-2. The sole remedy of a person who believes he or she has been discriminated against in violation of section 1-20-2 shall be a private civil cause of action against the Town as provided in section 1-20-3.

1-20-5: NOTICE OF CLAIM REQUIRED:

A. Any person who claims to have been discriminated against by the Town in violation of section 1-20-2 shall file a written Notice of Claim as provided in this section within one hundred twenty (120) days after the alleged violation of section 1-20-2. Compliance with the provisions of this section shall be a jurisdictional prerequisite to any action brought against the Town pursuant to this chapter, and failure to comply with the requirements of this section shall forever bar any such action. No action brought against the Town pursuant to this chapter shall be commenced until after ninety (90) days have passed after the filing of the Notice of Claim required by this section.

B. The Notice of Claim required by this section shall contain the following:

1. The name and address of the claimant and the name and address of the claimant's attorney, if any;
2. A concise statement of the factual basis of the claim, including the date, time, place and circumstances of the alleged discriminatory act which is the subject of the notice;
3. Copies of any documentary evidence in the claimant's possession supporting the claim of sexual orientation discrimination;
4. A concise statement of the nature and extent of the injury claimed to have been suffered, and the amount of damages sought to be recovered from the Town; and
5. A statement of the amount of compensatory damages that is being requested from the Town.

C. The Notice of Claim required of this section shall be filed with the Town Manager.

D. The Notice of Claim required by this section shall be effective when mailed by registered mail to the Town Manager at P.O. Box 168, Breckenridge, Colorado 80424, or upon personal service of the Notice of Claim upon the Town Manager.

1-20-6: STATUTE OF LIMITATIONS: Any action brought against the Town pursuant to this chapter shall be commenced within the time period provided for employment discrimination claims in articles 80 and 81 of title 13, C.R.S., relating to limitations of action, or it shall be forever barred; except that if compliance with the provisions of section 1-20-5 would otherwise result in the barring of an action, such time period shall be extended by the time period required for compliance with the provisions of section 1-20-5.

1-20-7: DEFENSES: In any action brought against the Town pursuant to this Chapter the Town may assert as a defense any defense available to it under the common law, as well as any

defense available under the provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e, et seq.).

1-20-8: DAMAGES:

A. A claimant who proves that the Town violated section 1-20-2 may obtain a judgment against the Town for money damages in any action brought against the Town pursuant to section 1-20-3.

B. A claimant shall be obligated to mitigate his or her damages, and interim earnings or amounts earnable with reasonable diligence shall operate to reduce any back pay otherwise allowable.

C. No punitive damages shall be awarded in an action brought against the Town pursuant to this chapter.

1-20-9: LIMITATIONS ON JUDGMENTS AND OTHER LEGAL AND EQUITABLE RELIEF:

A. In an action brought against the Town pursuant to this chapter, the sum of the amount of all damages awarded against the Town shall not exceed Two Hundred Thousand Dollars (\$200,000.00). Such damage limitation shall be exclusive of pre-judgment interest, attorney's fees and allowed court costs.

B. The limitations of paragraph A of this section shall not be disclosed to a jury in any action brought against the Town pursuant to this chapter, but shall be imposed by the court before judgment.

C. An award of a money judgment against the Town shall be the sole remedy, legal or equitable, civil or criminal, available to a person who is found to have been discriminated against by the Town in violation of section 1-20-2. There shall be no right to obtain equitable relief, including, but not limited to, an injunction or temporary restraining order, for a violation or alleged violation of any provision of this chapter. A claimant who has been terminated from Town employment in violation of section 1-20-2 shall have no right to reinstatement of his or her employment with the Town, and a court shall have no right to order or otherwise compel the Town to hire or employ any person in connection with any action brought against the Town pursuant to this chapter. There shall be no criminal liability for a violation of section 1-20-2.

1-20-10: ATTORNEYS FEES AND EXPERT WITNESS FEES:

A. In any action brought against the Town pursuant to section 1-20-3, the court, in its discretion, may allow a prevailing claimant a reasonable attorney's fee as part of the costs of such action or proceeding.

B. In awarding an attorney's fee pursuant to paragraph A of this section, the court, in its discretion, may include expert witness fees as part of the attorney's fee.

C. The court shall not award the Town its attorney's fees in any action brought under this chapter, regardless of whether the Town is the prevailing party. The provisions of Part 1 of Article 17 of Title 13, C.R.S., shall not apply in any action brought under this chapter.

D. If the Town is the prevailing party in any action brought under this chapter, the court shall award to the Town its costs (not including attorneys' fees) in accordance with Rule 54(d), C.R.C.P.

1-20-11: NO SEVERABILITY: If any provision of this chapter shall be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect for any reason whatsoever, the remainder of this chapter shall be deemed to be null, void and of no further effect. The Town Council hereby declares that in adopting this chapter it was the intention of the Town Council that the provisions of this chapter shall not be deemed to be severable.

1-20-12: APPLICABILITY: The provisions of this Chapter shall apply to acts and events occurring on and after January 1, 2005.

Section 2. Section 1-2-4 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

1-2-4: SEVERABILITY CLAUSE: Unless otherwise expressly provided in this Code, if any section, paragraph, sentence, clause or phrase of this Code or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by

any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Code, or any part thereof. The Council hereby declares that it would have passed each section, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases may be declared unconstitutional, invalid or ineffective.

Section 3. Section 1-8-2-1 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

1-8-2-1: EXCEPTION TO JURISDICTION: Notwithstanding the provisions of Section 1-8-2 or Section 8.2 of the Town Charter, the municipal court shall not have jurisdiction over any civil action brought against the Town under Rule 106 of the Colorado Rules of Civil Procedure, or an action brought against the Town pursuant to Section 1-20-3.

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.

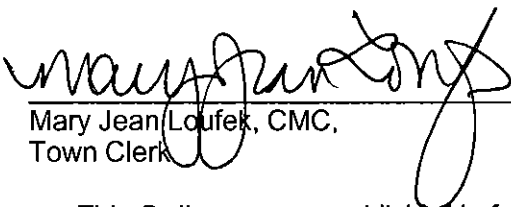
Section 6. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 7. This Ordinance shall be published as provided by Section 5.9 of the Breckenridge Town Charter. This Ordinance shall become effective January 1, 2005.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 23rd day of November, 2004. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 14th day of December, 2004, 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


Ernie Blake, Mayor

This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on December 3, 2004.

The public hearing on this ordinance was held on December 14, 2004.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY, this 14th day of December, 2004. 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


Ernie Blake, Mayor

APPROVED IN FORM


Town Attorney

12/14/04
Date

This ordinance was published by title only in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on December 24, 2004.