

ORDINANCE NO. 31

Series 2006

AN ORDINANCE AMENDING CHAPTER 3F OF TITLE 6 OF THE BRECKENRIDGE TOWN CODE CONCERNING ALCOHOL CONSUMPTION

WHEREAS, the Town of Breckenridge's municipal ordinances regulating the possession, sale to and consumption of alcohol by persons under the age of 21 years are based upon the similar provisions of the Colorado Revised Statutes; and

WHEREAS, a number of changes to the provisions of the Colorado Revised Statutes which regulate the possession, sale to and consumption of alcohol by underage persons have been made by the Colorado Legislature since the Town ordinances were last amended; and

WHEREAS, the Town Council finds and determines that it is appropriate for the Town to amend its ordinances which regulate the possession, sale to and consumption of alcohol by underage persons to incorporate some of the changes to the similar provisions of the Colorado Revised Statutes that have been made by the Colorado Legislature since the Town ordinances were last amended.

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

Section 1. The definition of "Ethyl Alcohol" set forth in Section 6-3F-1 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

ETHYL ALCOHOL: Any substance which is or contains ethyl alcohol.

Section 2. The definition of "Private Property" set forth in Section 6-3F-1 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

PRIVATE PROPERTY: Any dwelling and its curtilage which is being used by a natural person or natural persons for habitation and which is not open to the public and privately owned real property which is not open to the public. "Private property" shall not include:

- A. Any establishment which has or is required to have a license pursuant to the Colorado Beer Code, Colorado Liquor Code, or the provisions of article 48 of title 12, C.R.S., pertaining to special events licenses; or
- B. Any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold; or
- C. Any establishment which leases, rents, or provides accommodations to members of the public generally.

Section 3. Section 6-3F-2 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

6-3F-2: ILLEGAL POSSESSION OR CONSUMPTION OF ALCOHOL BY UNDERAGE PERSON:

A. It shall be unlawful for any person under the age of twenty one (21) years to possess or consume ethyl alcohol anywhere within the Town. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

B. It shall be an affirmative defense to the offense described in subsection A of this section that the ethyl alcohol was possessed or consumed by a person under twenty one (21) years of age under the following circumstances:

1. While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the ethyl alcohol was possessed or consumed with the consent of such person's parent or legal guardian who was present during such possession or consumption; or

2. When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed by section 25-5-410(1)(i)(II), C.R.S., or the ingestion of any substance which was manufactured, designed, or intended primarily for a purpose other than oral human ingestion, or the ingestion of any substance which was manufactured, designed, or intended solely for medicinal or hygienic purposes, or solely from the ingestion of a beverage which contained less than one-half ($1/2$) of one percent (1%) of ethyl alcohol by weight.

3. The person is a student who:

(a) Tastes but does not imbibe an alcohol beverage only while under the direct supervision of an instructor who is at least twenty-one years of age and employed by a post-secondary school;

(b) Is enrolled in a university or a post-secondary school accredited or certified by an agency recognized by the United States Department of Education, a nationally recognized accrediting agency or association, or the "Private Occupational Education Act of 1981", Article 59 of Title 12, C.R.S.;

(c) Is participating in a culinary arts, food service, or restaurant management degree program; and

(d) Tastes but does not imbibe the alcohol beverage for instructional purposes as a part of a required course in which the alcohol beverage, except the portion the student tastes, remains under the control of the instructor.

C. The possession or consumption of ethyl alcohol shall not constitute a violation of subsection A of this section if such possession or consumption takes place for religious purposes protected by the First Amendment to the United States Constitution.

D. An underage person and one or two other persons shall be immune from criminal prosecution under this section if they establish the following:

1. One of the underage persons called 911 and reported that another underage person was in need of medical assistance due to alcohol consumption;

2. The underage person who called 911 and, if applicable, one or two other persons acting in concert with the underage person who called 911, provided each of their names to the 911 operator;

3. The underage person was the first person to make the 911 report; and

4. The underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 911 call, remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

E. Prima facie evidence of a violation of subsection A of this section shall consist of:

1. Evidence that the defendant was under the age of twenty one (21) years and possessed or consumed ethyl alcohol anywhere in this Town; or

2. Evidence that the defendant was under the age of twenty one (21) years and manifested any of the characteristics commonly associated with ethyl alcohol intoxication or impairment while present anywhere in this Town.

F. During any trial for a violation of subsection A of this section, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and the information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may

consider the information upon such label in determining whether the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can, or other container as "beer", "ale", "malt beverage", "fermented malt beverage", "malt liquor", "wine", "wine cooler", "champagne", "whiskey" or "whisky", "gin", "vodka", "tequila", "schnapps", "brandy", "cognac", "liqueur", "cordial", "alcohol", or "liquor" shall constitute prima facie evidence that the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol.

G. A parent or legal guardian of a person under twenty one (21) years of age, or any natural person who has the permission of such parent or legal guardian, may give, or permit the possession and consumption of, ethyl alcohol to or by a person under the age of twenty one (21) years under the conditions described in subsection B1 of this section. This subsection shall not be construed to permit any establishment which is or is required to be licensed pursuant to the Colorado Beer Code, Colorado Liquor Code or the provisions of Article 48 of Title 12, C.R.S., or any members, employees, or occupants of any such establishment, to give, provide, make available, or sell ethyl alcohol to a person under twenty one (21) years of age.

H. Any underage person shall be required to take and complete, and to cooperate in the taking and completion of, any test or tests of such person's breath for the purpose of determining the presence of ethyl alcohol in such person's breath when so requested and directed by a law enforcement officer having probable cause to believe that such person has violated subsection A of this section. The breath test shall be administered in accordance with the rules and regulations prescribed by the Colorado Department of Public Health and Environment; provided however, strict compliance with such rules and regulations shall not be a prerequisite to the admissibility of a test result at trial unless the Court finds that the extent of noncompliance with a Department of Public Health and Environment rule has so impaired the validity and reliability of the testing method and the test results so as to render the evidence unreliable. In all other circumstances, failure to strictly comply with such rules and regulations shall only be considered in the weight to be given to the test results and not to the admissibility of such test result. If an underage person refuses to take or to complete, or to cooperate with the completion of, a breath test as described above, such refusal shall be admissible into evidence at any trial for an alleged violation of subsection A of this section.

I. The qualitative result of an alcohol test or tests shall be admissible at the trial of any person charged with a violation of subsection A of this section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting alcohol by the executive director of the Colorado Department of Public Health and Environment.

J. Official records of the Colorado Department of Public Health and Environment relating to the certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions, and certification of laboratories shall be official records. Copies of such records, attested by the executive director of the Department of Public Health and Environment or his or her deputy and accompanied by a certificate bearing the official seal for said department, which state that the executive director of the department has custody of such records, shall be admissible in the Municipal Court and shall constitute prima facie evidence of the information contained in such records. The official seal of the department described in this subsection J may consist of a rubber stamp producing a facsimile of the seal stamped upon the document.

K. In any judicial proceeding in the Municipal Court concerning a charge under subsection A of this section, the Court shall take judicial notice of methods of testing a person's blood, breath, saliva, or urine for the presence of ethyl alcohol and of the design and operation of devices certified by the Colorado Department of Public Health and Environment for testing a person's blood, breath, saliva, or urine for the presence of ethyl alcohol. This subsection K shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection K shall preclude a defendant from offering evidence concerning the accuracy of such testing devices..

L. No law enforcement officer shall enter upon any private property within the Town to investigate any violation of this section without probable cause.

M. Any person convicted of violating the provisions of subsection A of this section shall be punished as provided in Chapter 4 of Title 1 of this Code. The Court, upon sentencing a defendant for a violation of subsection A of this section, may, in addition to any fine, order that the defendant perform up to twenty four (24) hours of useful public service and may further order that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program, at such defendant's own expense.

Section 4. Section 6-3F-3 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

6-3F-3: UNLAWFUL PURCHASING OF ALCOHOLIC BEVERAGE BY UNDERAGE PERSON:

A. It shall be unlawful for any person under the age of twenty one (21) years to purchase, procure or obtain any alcoholic beverage from any place where alcoholic beverages are sold. This offense is a strict liability offense.

B. An underage person and one or two other persons shall be immune from criminal prosecution under this section if they establish the following:

1. One of the underage persons called 911 and reported that another underage person was in need of medical assistance due to alcohol consumption;
2. The underage person who called 911 and, if applicable, one or two other persons acting in concert with the underage person who called 911, provided each of their names to the 911 operator;
3. The underage person was the first person to make the 911 report; and
4. The underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 911 call, remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

Section 5. Section 6-3F-7 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

6-3F-7: UNLAWFUL SALE OF ALCOHOLIC BEVERAGE TO UNDERAGE PERSON:

A. It shall be unlawful for any person to sell, serve, give away, dispose of, exchange, or deliver, or permit the sale, service, giving away, delivery or procuring of any alcoholic beverage to or for any person under the age of twenty one (21) years. This offense is a strict liability offense.

B. If a person is convicted of an offense pursuant to subsection A of this section for serving, giving away, disposing of, exchanging, or delivering or permitting the serving, giving, or procuring of any alcoholic beverage to a person under the age of twenty-one years, the court shall consider the following in mitigation:

1. After consuming the alcohol, the underage person was in need of medical assistance as a result of consuming alcohol; and
2. Within six hours after the underage person consumed the alcohol, the defendant contacted the police or emergency medical personnel to report that the underage person was in need of medical assistance as a result of consuming alcohol.

Section 6. Section 6-3F-16 of the Breckenridge Town Code is hereby amended by the addition of a new Section E, which shall read in its entirety as follows:

E. An underage person and one or two other persons shall be immune from criminal prosecution under this section if they establish the following:

1. One of the underage persons called 911 and reported that another underage person was in need of medical assistance due to alcohol consumption;

2. The underage person who called 911 and, if applicable, one or two other persons acting in concert with the underage person who called 911 provided each of their names to the 911 operator;

3. The underage person was the first person to make the 911 report; and

4. The underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

Section 7. 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 8. 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.

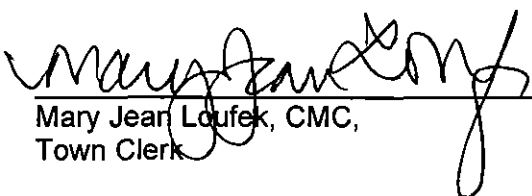
Section 9. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the provisions of Section 18-13-122(8), C.R.S., and the powers possessed by home rule municipalities in Colorado.

Section 10. 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 9th day of May, 2006. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 23rd day of May, 2006, 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

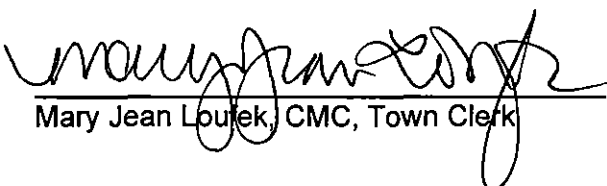
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on May 19, 2006.

The public hearing on this ordinance was held on May 23, 2006.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY, this 23rd day of May, 2006. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

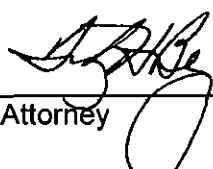


Mary Jean Loufek, CMC, Town Clerk



Ernie Blake, Mayor

APPROVED IN FORM



Town Attorney

5/23/06
Date

This ordinance was published by title only in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on June 2, 2006.