

ORDINANCE NO. 37

Series 2006

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 9 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING SMOKING

WHEREAS, the Colorado legislature recently adopted and the Governor signed into law HB06-1175, entitled the "Colorado Clean Indoor Air Act"; and

WHEREAS, HB06-1175 became effective July 1, 2006; and

WHEREAS, Section 25-14-207(2)(a), C.R.S., as amended by HB06-1175, authorizes home rule municipalities to enact, adopt and enforce smoking regulations within their jurisdiction that cover the same subject matter as HB06-1175 so long as the local regulations are no less stringent than the provisions adopted by HB06-1175; except that a home rule municipality may specify a radius of less than fifteen feet for the area included within an entryway; and

WHEREAS, the Town Council of the Town of Breckenridge finds and determines that smoking should not be prohibited in the entryway of a building or facility; and

WHEREAS, the Town Council further finds and determines that "cigar-tobacco bars", as defined in the Colorado Clean Indoor Air Act, should not be exempted from the Town's smoking regulations as hereinafter set forth.

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

Section 1. Chapter 9 of Title 5 of the Breckenridge Town Code is hereby repealed and readopted with changes so as to read in its entirety as follows:

CHAPTER 9

SMOKING

SECTION:

- 5-9-1: Legislative Declaration; Findings
- 5-9-2: Definitions
- 5-9-3: General Smoking Restrictions
- 5-9-4: Exceptions to Smoking Restrictions
- 5-9-5: Optional Prohibitions
- 5-9-6: Other Applicable Regulations of Smoking
- 5-9-7: Unlawful Acts; Penalty
- 5-9-8: Nonretaliation

5-9-1: LEGISLATIVE DECLARATION; FINDINGS:

A. The Town Council hereby finds and determines as follows:

1. It is in the best interest of the people of the Town to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, food service establishments, and places of employment;

2. A balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places;

3. Smoking should not be prohibited in the entryway of any building or facility, and such determination is expressly authorized to be made by the Town pursuant to Section 25-14-207(2)(a), C.R.S.; and

4. "Cigar-tobacco bars", as defined in Section 25-14-203(3), C.R.S., should not be exempted from the Town's smoking regulations as set forth in this chapter.

B. The Town Council hereby declares that the purpose of this chapter is to preserve and improve the health, comfort, and environment of the people of the Town by limiting exposure to tobacco smoke.

C. The Town Council further finds and determines that the local smoking regulations set forth in this chapter are no less stringent than the provisions of Article 14 of Title 25, C.R.S., known as the "Colorado Clean Indoor Air Act."

5-9-2: DEFINITIONS: As used in this chapter, unless the context otherwise requires:

AUDITORIUM:	The part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.
BAR:	Any indoor area that is operated and licensed under article 47 of title 12, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.
EMPLOYEE:	Means any person who:  (a) Performs any type of work for benefit of another in consideration of direct or indirect wages or profit; or  (b) Provides uncompensated work or services to a business or nonprofit entity.  "Employee" includes every person described above in this definition regardless of whether such person is referred to as an employee, contractor, independent contractor, or volunteer or by any other designation or title.
EMPLOYER:	Any person, partnership, association, corporation, or nonprofit entity that employs one or more persons. "Employer" includes, without limitation, the legislative, executive, and judicial branches of state government; any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, special district, authority, commission, or agency; or any other separate corporate instrumentality or unit of state or local government.
ENTRYWAY:	The area of public or private property located outside of the front or main doorway leading into a building or facility specifically listed in section 5-9-3.
ENVIRONMENTAL TOBACCO SMOKE:	The complex mixture formed from the escaping smoke of a burning tobacco product, also known as "sidestream smoke", and smoke exhaled by the smoker.
FOOD SERVICE ESTABLISHMENT:	Any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops, and short-order cafes.
GONDOLA:	An aerial tramway carrier primarily used to convey persons and property to and from a ski

	area as defined in section 6-3B-18.
INDOOR AREA:	Any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.
PLACE OF EMPLOYMENT:	Any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.
PUBLIC BUILDING:	Any building owned or operated by: <ul style="list-style-type: none"> <li>(a) The state, including the legislative, executive, and judicial branches of state government;</li> <li>(b) Any county, city and county, city, or town, or instrumentality thereof, or any other political subdivision of the state, a special district, an authority, a commission, or an agency; or</li> <li>(c) Any other separate corporate instrumentality or unit of state or local government.</li> </ul>
PUBLIC MEETING:	Any meeting open to the public pursuant to part 4 of article 6 of title 24, C.R.S., or any other law of the state or the Town.
SMOKE-FREE WORK AREA:	An indoor area in a place of employment where smoking is prohibited under this chapter.
SMOKING:	The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.
TOBACCO:	Cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. "Tobacco" also includes cloves and any other plant matter or product that is packaged for smoking.
TOBACCO BUSINESS:	A sole proprietorship, corporation, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.
WORK AREA:	An area in a place of employment where one or more employees are routinely assigned and perform services for or on behalf of their employer.

5-9-3: GENERAL SMOKING RESTRICTIONS: Except as provided in section 5-9-4, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to:

1. Public meeting places;
2. Elevators;
3. Government-owned or -operated means of mass transportation, including, but not limited to, buses, vans, trains, and transit shelters;
4. Taxicabs and limousines;
5. Gondolas;
6. Grocery stores;
7. Gymnasiums;
8. Jury waiting and deliberation rooms;
9. Courtrooms;
10. Child day care facilities;
11. Health care facilities including hospitals, health care clinics, doctor's offices, and other health care related facilities;
12. Any place of employment that is not exempted. In the case of employers who own facilities otherwise exempted from this chapter, each such employer shall provide a smoke-free work area for each employee requesting not to have to breathe environmental tobacco smoke. Every employee shall have a right to work in an area free of environmental tobacco smoke.
13. Food service establishments;
14. Bars;
15. Indoor sports arenas;
16. Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-unit residential facilities;
17. Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at least seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests;
18. Bowling alleys;
19. Billiard or pool halls;
20. Facilities in which games of chance are conducted;
21. The common areas of retirement facilities, publicly owned housing facilities, and nursing homes, not including any resident's private residential quarters;
22. Public buildings;
23. Auditoria;
24. Theaters;
25. Museums;
26. Libraries;
27. To the extent not otherwise provided in section 25-14-103.5, public and nonpublic schools;

28. Other educational and vocational institutions; and

29. Town-owned motor vehicles.

5-9-4: EXCEPTIONS TO SMOKING RESTRICTIONS: This chapter shall not apply to:

A. Private homes, private residences, and private automobiles; except that this chapter shall apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

B. Limousines under private hire;

C. A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent;

D. Any retail tobacco business;

E. The entryways of all buildings and facilities listed in section 5-9-3;

F. The outdoor area of any business;

G. A place of employment that is not open to the public and that is under the control of an employer that employs three or fewer employees; or

H. A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, C.R.S., that has annual gross income of less than five hundred thousand dollars;

5-9-5: OPTIONAL PROHIBITIONS:

A. The owner or manager of any place not specifically listed in section 5-9-3, including a place otherwise exempted under section 5-9-4, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this chapter.

B. If the owner or manager of a place not specifically listed in section 5-9-3, including a place otherwise exempted under section 5-9-4, is an employer and receives a request from an employee to create a smoke-free work area as contemplated by section 5-9-3(12), the owner or manager shall post a sign or signs in the smoke-free work area as provided in paragraph A of this section. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this chapter.

5-9-6: OTHER APPLICABLE REGULATIONS OF SMOKING: This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law.

5-9-7: UNLAWFUL ACTS; PENALTY:

A. It is unlawful for a person who owns, manages, operates, or otherwise controls the use of a premises within the Town to violate any provision of this chapter.

B. It is unlawful for a person to smoke in an area within the Town where smoking is prohibited pursuant to this chapter.

C. A person who violates this chapter is guilty of an infraction. Any person found to be violation of, or against whom a default judgment has been entered for a violation of this chapter, shall be punished by a fine not to exceed two hundred dollars for a first violation within a calendar year, a fine not to exceed three hundred dollars for a second violation within a calendar year, and a fine not to exceed five hundred dollars for each additional violation within a calendar year. Each day of a continuing violation shall be deemed a separate violation.

5-9-8: NONRETALIATION: No person shall retaliate in any manner against any person because such person exercises any right to a smoke free environment afforded by this chapter.

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.

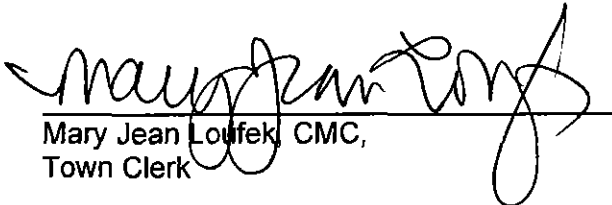
Section 3. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the provisions of Section 25-14-207(2)(a), C.R.S., and the powers possessed by home rule municipalities in Colorado.

Section 4. 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 22<sup>nd</sup> day of August, 2006. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 12<sup>th</sup> day of September, 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

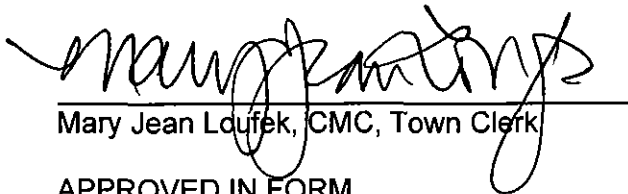
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on September 1, 2006.

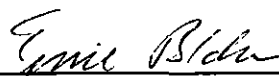
The public hearing on this ordinance was held on September 12, 2006.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY, this 12<sup>th</sup> day of September, 2006. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

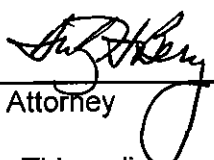
ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, CMC, Town Clerk

  
Ernie Blake, Mayor

APPROVED IN FORM

  
Town Attorney

9/12/06  
Date

This ordinance was published by title only in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on September 22, 2006.