

ORDINANCE NO. 32

Series 2007

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES SECTION 9-1-6 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE", CONCERNING THE ENFORCEMENT OF THE "BRECKENRIDGE DEVELOPMENT CODE" AND PENALTIES AND REMEDIES FOR THE VIOLATION OF THE "BRECKENRIDGE DEVELOPMENT CODE"; AMENDING SECTION 9-1-22 OF THE "BRECKENRIDGE DEVELOPMENT CODE" CONCERNING THE LEGAL EFFECT OF A DEVELOPMENT PERMIT; AND MAKING CONFIRMING AMENDMENTS TO THE "BRECKENRIDGE DEVELOPMENT CODE" IN CONNECTION THEREWITH

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

Section 1. Section 9-1-6 of the Breckenridge Town Code is hereby repealed and readopted with changes so as to read in its entirety as follows:

9-1-6: ENFORCEMENT AND PENALTIES:

A. Enforcement Officer: It shall be the duty of the director to administer and enforce the provisions of this chapter.

B. Violations:

1. As used in this section, the term "development permit" shall include, without limitation, any specific condition of approval contained in a development permit issued by the Town pursuant to this chapter which has been signed by both the director and the holder of such development permit.

2. It shall be unlawful and a misdemeanor offense for any person to do any of the following:

a. to engage in "development" as defined in section 9-1-5 of this chapter without a valid development permit issued pursuant to this chapter authorizing such development. This is a strict liability offense.

b. to use or occupy any real property without a valid development permit issued pursuant to this chapter authorizing such use or occupancy. This is a strict liability offense.

c. to intentionally, knowingly or recklessly engage in any development, use, construction, remodeling, or other activity of any nature which is materially inconsistent with the terms and conditions of a development permit issued pursuant to this chapter, including, but not limited to, any site plan approved by the Town as part of the approval of a development permit. As used in this subsection the term "materially inconsistent" means any development, use, construction, remodeling, or other activity of any nature that is inconsistent with at least one of the following provisions of an approved development permit:

- (i) the site plan (including, without limitation, parking, grading, drainage, utilities and the location on the site of the approved improvements);
- (ii) the landscape plan;
- (iii) the floor plans, but only as to:
 - (a) density;
 - (b) mass;
 - (c) the parking requirement for the project; or
 - (d) the project's plant investment fees.
- (iv) the building elevations (including, but without limitation, existing and proposed grades, finished floor elevations, ridge elevations, and exterior material specifications);
- (v) the building roof plan;
- (vi) the exterior building details;
- (vii) the project's density, mass, aboveground density (if located in the historic district), and the site area calculations (including, without limitation, building footprint, hard surface and open space); and

(viii) the project's land uses.

d. to intentionally, knowingly or recklessly violate the terms of any restrictive covenant required by the Town to be recorded with the Clerk and Recorder of Summit County, Colorado in connection with the issuance of a development permit pursuant to this chapter.

e. to intentionally, knowingly or recklessly violate any other provision of this chapter.

f. to remove, deface, obscure or otherwise interfere with any notice required to be given or posted pursuant to this chapter. This is a strict liability offense.

C. Continuing Violations: A person shall be guilty of a separate offense for each and every day during any portion of which any violation of subsection (B) of this section is committed, continued or permitted by such person, and such person shall be punished accordingly.

D. Criminal Penalties:

1. Any person convicted of having violated subsection (B)(2)(a) or (B)(2)(b) of this section shall be punished as set forth in title 4 of chapter 4 of this code; provided, however, that upon conviction such person shall receive a minimum fine of \$500.00, no portion of which may be suspended by the court. A defendant convicted of having violated subsection (B)(2)(a) or (B)(2)(b) of this section may also be imprisoned pursuant to subsection (D)(5) of this section.

2. Any person convicted of having violated subsection (B)(2)(c) of this section shall be punished as set forth in title 4 of chapter 4 of this code; provided, however, that upon conviction such person shall receive a minimum fine of \$500.00, no portion of which may be suspended by the court. A defendant convicted of having violated subsection (B)(2)(a) or (B)(2)(b) of this section may also be imprisoned pursuant to subsection (D)(5) of this section. Notwithstanding the forgoing, if the court determines that the violation did not involve an imminent threat to public health, safety or welfare and that defendant was not given written notice and the opportunity to correct the violation pursuant to subsection (K)(1) of this section prior to the institution of the ordinance violation proceedings by the Town, the court shall not impose any period of imprisonment. The preceding sentence shall not apply to emergency violations as described in subsection (K)(2) of this section.

3. Any person convicted of having violated subsection (B)(2)(d) of this section shall be punished by the imposition of a fine not to exceed \$100.00 for each day during any portion of which a violation of the restrictive covenant is committed, continued or permitted by such person.

4. Any person convicted of having violated subsection (B)(2)(e) or B(2)(f) of this section shall be punished as set forth in title 4 of chapter 4 of this code.

5. Upon conviction for a violation of subsection (B)(2)(a), (B)(2)(b), or (B)(2)(c) of this section the court may impose an appropriate jail sentence upon the defendant if the court determines that the facts demonstrate beyond a reasonable doubt that the defendant acted intentionally, knowingly, recklessly, or with deliberate indifference with respect to the violation. As used in this subsection, the term "deliberate indifference" means the careful preservation of one's ignorance despite awareness of circumstances that would put a reasonable person on notice of a fact essential to the applicable violation. If the violation involves the unapproved demolition or destruction of an historic structure, in determining whether to impose a jail sentence the court shall also consider the importance of the Town's historic structures to the character of the Town, and the magnitude of the loss to the Town caused by the demolition or destruction of the particular structure involved in the violation.

6. Upon conviction for any violation of this Chapter the court shall require restitution pursuant to Section 1-4-3 of this code if appropriate.

E. Remedy For Unapproved Demolition or Destruction of Historic Structure: The unapproved demolition or destruction of an historic structure shall result in the

revocation of the original development permit, and the person determined to be responsible for the unapproved demolition or destruction of the historic structure shall be required to reconstruct the building or portion thereof as closely as possible to its original condition at the time it was destroyed, unless the Planning Commission and Town Council (if the Planning Commission's decision is called up) approve an alternative action.

F. Additional Remedies: In addition to or in lieu of the imposition of criminal penalties as provided in subsection (D) of this section, the Town shall have the following additional remedies and enforcement powers:

1. Withholding of Further Permits For Same Property: The Town may deny or withhold further development permits, building permits, certificates of occupancy or other forms of authorization for the use and occupancy of the real property on which the violation is determined to have occurred until the violation is corrected or until the expiration of five years after the date of the violation, whichever shall first occur. The provisions of this subsection (F)(1) shall apply regardless of whether the current owner or applicant is responsible for the violation in question.

2. Withholding of Further Permits For Same Developer: The Town may deny or withhold all development permits, building permits, certificates of occupancy or other forms of authorization on any land, structure or improvements thereon owned or being developed by the same person who owns, developed or otherwise caused an uncorrected violation of this chapter until such time as the violation is corrected. The provisions of this subsection (F)(2) shall apply regardless of whether the property for which the permit or other approval is sought is the property which is in violation.

3. Permits Approved With Conditions: Instead of withholding or denying a permit or other authorization as described in subsections (F)(1) and (F)(2) of this section, the Town may grant such permit or authorization subject to the conditions that the violation be corrected within a specified time period, and an adequate financial guarantee be posted with the Town to assure the timely correction of the violation.

4. Revocation of Development Permit: Any development permit issued pursuant to this chapter may be revoked by the Planning Commission after a public hearing when the Planning Commission determines that:

- (i) there is a material departure from the approved plans, specifications, or conditions of the development permit;
- (ii) the development permit was procured by false representation or was issued by mistake; or
- (iii) any of the provisions of this chapter or the development permit itself are being violated.

Not less than 20 days' prior written notice of the public hearing shall be provided to the holder of the development permit and other known parties in interest (including any mortgagee and any holder of building permit related to the property). If the Planning Commission determines that there is a departure from the approved plans, specifications or conditions of the development permit, the Planning Commission may decline to revoke the development permit if the holder of the permit provides such security as the Planning Commission may require to guarantee that the departure from the approved plans, specifications or conditions of the development permit will be corrected within such reasonable time period as the Planning Commission shall determine. The director shall notify the Town Council of any decision of the Planning Commission revoking a development permit at the Council's next regular meeting after the Planning Commission's decision. At that meeting, the Town Council may, by affirmative vote of the members present, call up any decision of the Planning Commission revoking a development permit for the Council's own review under section 9-1-18-5 of this chapter. If a Planning Commission decision to revoke a development permit is called up, the criteria for revocation of a development permit as set forth in this subsection (F)(4) shall apply to the Town Council's consideration of the decision which has been called up. The final decision of the Town Council with respect to the revocation of a development permit, whether such decision be made through the affirmation of the decision of the Planning Commission or as a

result of a de novo call up hearing, may be appealed to the appropriate court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

5. Injunctive or Other Equitable Relief: The Town may seek an injunction or other appropriate equitable relief in court to enjoin or abate any violation of this chapter or the violation of any development permit issued pursuant to this chapter. An action seeking injunctive or other equitable relief under this subsection shall be brought in the name of the Town. In any equitable action brought by the Town under this section, there shall be available to the defendant all defenses recognized in equity civil actions under the laws of the State of Colorado. If the Town is the prevailing party in any such equitable action, the Town shall recover its reasonable attorneys' fees and costs, including expert witness fees, incurred in such action. In addition, if the Town is the prevailing party in an abatement action, the Town shall be entitled to recover from the defendant an amount sufficient to reimburse the Town for its administrative costs incurred in connection with the abatement action. Equitable relief may be sought in the municipal court pursuant to section 1-8-10 of this Code, or in any court of competent jurisdiction.

6. Declaratory Judgment: The Town may seek a declaratory judgment pursuant to Rule 57 of the Colorado Rules of Civil Procedure to obtain a declaration of rights under this chapter or any other municipal ordinance. The declaratory judgment action may be combined with any other authorized enforcement action.

7. Other Remedies: In addition to the enforcement powers specified in this section, the Town may exercise any and all enforcement powers granted by Colorado law.

G. Remedies Cumulative: The remedies and enforcement powers established by this section shall be cumulative, and the Town may exercise them in any order. There is no prohibition against contemporaneous criminal and civil actions related to the same violation.

H. Liability of Business Entity: In any action brought under this section against a business entity as defined section 1-13-6 of this code, the provisions of section 1-13-6 of this code shall apply.

I. Liability of an Individual For Conduct of Business Entity: A person is criminally liable for conduct constituting an offense which such person performs or causes to occur in the name of or in behalf of a business entity as defined in section 1-13-6 of this code to the same extent as if that conduct were performed or caused by such person in such person's own name or behalf.

J. Liability of Landlord: A landlord shall be responsible for the conduct of a tenant which constitutes a violation of subsection (B) of this section if the landlord:

- (i) has knowledge of the violation,
- (ii) has the power to cause the tenant to cease the conduct which constitutes a violation of subsection (B) of this section, or to evict the tenant, after the landlord receives knowledge of the violation; and
- (iii) fails within a period of 90 days after receiving knowledge of the violation to either cause the tenant to cease the conduct which constitutes a violation of subsection (B) of this section, or to evict the tenant.

K. Enforcement Procedures:

1. Non-Emergency Violations: In the case of violations of this chapter or a development permit issued pursuant to this chapter that do not constitute or require immediate correction, the director shall give notice of the nature of the violation to the property owner and to the person believed to be responsible for the violation, if different from the property owner. The person receiving the notice shall have 30 days within which to correct the violation before further enforcement action shall be taken. In the event of corrective action which requires more than 30 days to complete, no further enforcement action shall be taken by the director if the person commences the corrective action within such

30 day period and thereafter corrects the violation with due diligence. The notice shall be given in person, by the United States Mail, or by posting notice on the premises. A notice of violation shall state:

- (i) the nature of the alleged violation;
- (ii) the corrective action required to be taken with respect to the alleged violation;
- (iii) the time period within which the corrective action is to be commenced and completed; and
- (iv) the nature of subsequent penalties and enforcement actions that may be imposed or taken by the Town should the violation not be corrected.

2. **Emergency Violations:** In the case of violations of this chapter or a development permit issued pursuant to this chapter that constitute an emergency as a result of an imminent threat to public health, safety or welfare, the Town may use the enforcement powers available under this section without prior notice, but the director shall attempt to give notice simultaneously with beginning enforcement action. Notice may be provided to the property owner and to the person believed to be responsible for the violation, if different from the property owner.

Section 2. Section 9-1-17-11 of the Breckenridge Town Code is amended by the inclusion of a new Paragraph L, which shall read in its entirety as follows:

L. **Revocation of Development Permit:** A development permit may be revoked in accordance with section 9-1-6(F)(4) of this chapter. The revocation of a development permit pursuant to such section shall not constitute a violation of this section or otherwise constitute an unlawful impairment of any vested property right by the Town. The sole remedy available to a person whose development permit has been revoked in accordance with section 9-1-6(F)(4) of this chapter shall be to appeal such revocation in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Section 3. Section 9-1-22 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

9-1-22: LEGAL EFFECT OF THE PERMIT:

A development permit, and the terms and conditions thereof, shall govern and control the development and use of the property described in the permit notwithstanding the issuance by the Town of a final certificate of occupancy or a certificate of compliance. The permit shall be binding upon and shall be enforceable by the Town against the permittee and all owners of the property subsequent to the issuance of the permit unless the permit is abandoned, revised, modified or superseded by another development permit issued pursuant to this chapter. The provisions of a development permit shall be specifically enforceable in an action brought by the town under section 9-1-6(F)(5) of this code or under other applicable law. A development permit which is issued for property on which one or more valid development permits already exist shall be deemed to supersede all prior permit(s) to the extent of any conflict.

Section 4. Section 9-1-26 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

9-1-26: RESTRICTIVE COVENANTS:

Any restrictive covenant required as a condition of approval of a development permit shall be in form and substance acceptable to the town attorney. Upon approval by the town attorney, any such covenant may be executed by the town manager or director on behalf of the town. At the time of the recording, a required restrictive covenant shall not be subordinate to any senior lien or encumbrance, except the lien of the general property taxes.

Section 5. 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 6. 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 7. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to:

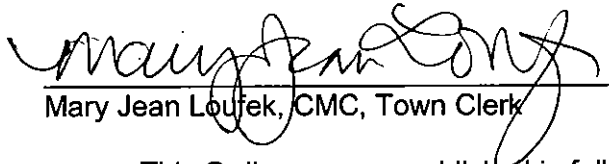
- (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
- (ii) Part 3 of Article 23 of Title 31, C.R.S. (municipal zoning powers);
- (iii) Section 31-15-401, C.R.S. (municipal police powers);
- (iv) Article 68 of Title 24, C.R.S. (vested property rights);
- (v) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and
- (vi) the powers contained in the Breckenridge Town Charter.

Section 8. 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 October, 2007. 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 October, 2007, 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

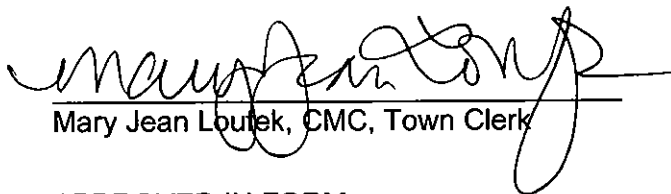
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on October 19, 2007.

The public hearing on this ordinance was held on October 23, 2007.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH PENALTY PROVISIONS, this 23rd day of October, 2007. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

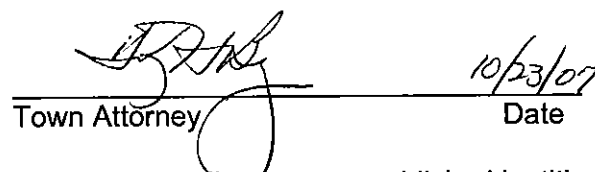
ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk


Ernie Blake, Mayor

APPROVED IN FORM


Town Attorney

10/23/07
Date

This ordinance was published by title with penalty provisions in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on November 2, 2007.