

ORDINANCE NO. 12

Series 2010

AN ORDINANCE ADOPTING CHAPTER 21 OF TITLE 1 OF THE BRECKENRIDGE TOWN CODE CONCERNING PROCEDURES FOR THE EXERCISE OF THE RIGHTS OF INITIATIVE AND REFERENDUM

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

Section 1. The Breckenridge Town Code is amended by the addition of a new Chapter 21 of Title 1, to be entitled "Initiative and Referendum Procedures", which shall read in its entirety as follows:

CHAPTER 21

INITIATIVE AND REFERENDUM PROCEDURES

SECTION:

- 1-21-1: AUTHORITY
- 1-21-2: PURPOSE; INTERPRETATION
- 1-21-3: DEFINITIONS
- 1-21-4: COMPUTATION OF TIME
- 1-21-5: ORDINANCES–INITIATIVE–CONFLICTING MEASURES
- 1-21-6: ORDINANCES–WHEN EFFECTIVE–REFERENDUM
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- 1-21-17: TAMPERING WITH INITIATIVE OR REFERENDUM PETITION

1-21-1: AUTHORITY: This Chapter is adopted pursuant to the authority granted to the Town Council by Section 6.2 of the Breckenridge Town Charter.

1-21-2: PURPOSE; INTERPRETATION: This Chapter sets forth the procedures for exercising the initiative and referendum powers reserved to the Town's electors in Subsection (9) of Section 1 of Chapter V of the Colorado Constitution and Article VI of the Breckenridge Town Charter. The intent of this Chapter is not to limit or abridge in any manner these powers, but rather to properly safeguard, protect, and preserve inviolate for Town electors these modern instrumentalities of democratic government. If any part of this Chapter conflicts with the Breckenridge Town Charter, the provisions of the Breckenridge Town Charter shall control.

1-21-3: DEFINITIONS: As used in this Chapter, unless the context otherwise requires:

BALLOT TITLE:	The language that is printed on the ballot that is comprised of the submission clause and the title.
CHARTER:	The Breckenridge Town Charter, as amended from time to time.
FINAL DETERMINATION OF PETITION SUFFICIENCY:	The date following passage of the period of time within which a protest must be filed pursuant to Section 1-21-11 or the date on which any protest filed pursuant to Section 1-21-11 results in a finding of sufficiency, whichever is later.
PETITION SECTION:	The stapled or otherwise bound package of

documents described in Section 1-21-7.

**REGISTERED ELECTOR:** A "registered elector" as defined in Section 15.12(d) of the Charter.

**SUBMISSION CLAUSE:** The language that is attached to the title to form a question that can be answered by "yes" or "no".

**TITLE:** A brief statement that fairly and accurately represents the true intent and meaning of the proposed initiative, referendum, or referred measure.

**1-21-4: COMPUTATION OF TIME:** Except as otherwise provided in this Chapter, calendar days shall be used in all computations of time made under the provisions of this Chapter. In computing time for any act to be done before any Town election, the first day shall be included, and the last or election day shall be excluded. Except when computing business days, Saturdays, Sundays, and legal holidays shall be included, but, if the time for any act to be done or the last day of any period is a Saturday, Sunday, or a legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday. If the time for an act to be done under this Chapter is referred to in business days, the time shall be computed by excluding Saturdays, Sundays, and legal holidays.

**1-21-5: ORDINANCES–INITIATIVE–CONFLICTING MEASURES:**

A. Any proposed ordinance may be submitted to the Town Council by filing written notice of the proposed ordinance with the Town Clerk and, within one hundred eighty days after approval of the petition pursuant to Section 1-21-7(A), by filing a petition signed by at least fifteen percent of the of the total number of electors registered to vote at the last municipal election. The proposed ordinance may be adopted without alteration by the Town Council within twenty days following the final determination of petition sufficiency. If the proposed ordinance is not adopted by the Town Council, the Town Council shall forthwith publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance, in the form petitioned for, to the registered electors of the Town at a regular or special election held not less than sixty days and not more that one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the Colorado Constitution. The ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

B. Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

**1-21-6: ORDINANCES–WHEN EFFECTIVE–REFERENDUM:**

A. The effective dates of Town ordinances shall be as provided in Section 5.9 of the Charter.

B. Within thirty days after final publication of the ordinance, a referendum petition protesting against the effect of the ordinance or any part thereof may be filed with the Town Clerk; provided, however, that the right of referendum shall not extend to an ordinance appropriating revenues, an ordinance calling for a special election, an ordinance authorizing municipal borrowing requiring an election pursuant to Article XI of the Charter, and an emergency ordinance adopted pursuant to Section 5.11 of the Charter. The petition must be signed during the thirty-day period by at least ten percent of the total number of electors registered to vote at the last municipal election.

C. If a referendum petition is filed, the ordinance or part thereof protested against shall not take effect, and, upon a final determination of petition sufficiency, the Town Council shall promptly reconsider the ordinance. If the petition is declared not sufficient by the Town Clerk or found not sufficient in a protest, the ordinance shall forthwith take effect, unless otherwise provided therein.

D. If, upon reconsideration, the ordinance or part thereof protested is not repealed, the Town Council shall submit the measure to a vote of the registered electors at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution.

The ordinance or part thereof shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

1-21-7: FORM OF PETITION SECTIONS:

A. Each petition section shall be printed in a form consistent with the requirements of this Chapter. No petition section shall be printed or circulated unless the form and the first printer's proof of the petition section have first been approved by the Town Clerk. The Town Clerk shall approve or reject the form and the first printer's proof of the petition no later than five business days following the date on which the Town Clerk received such material. The Town Clerk shall assure that the petition section contains only those elements required by this Chapter and contains no extraneous material. The Town Clerk may reject a petition or a section of a petition on the grounds that the petition or a section of the petition does not propose municipal legislation pursuant to Subsection (9) of Section 1 of Chapter V of the Colorado Constitution.

B. Each petition section shall designate by name and mailing address two persons who shall represent the proponents thereof in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

C. (1) At the top of each page of every initiative or referendum petition section, the following shall be printed, in a form as prescribed by the Town Clerk:

**"WARNING:**

**IT IS AGAINST THE LAW:**

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A**

**REGISTERED ELECTOR  
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

**TO BE A REGISTERED ELECTOR,**

**YOU MUST BE A CITIZEN OF COLORADO  
AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning."

(2) A summary of the proposed initiative or ordinance that is the subject of a referendum petition shall be printed following the warning on each page of a petition section. The summary shall be true and impartial and shall not be an argument, or likely to create prejudice, either for or against the measure. The summary shall be prepared by the Town Clerk.

(3) The full text of the proposed initiated measure or ordinance that is the subject of a referendum petition shall be printed following the summary on the first page or pages of the petition section that precede the signature page. Notwithstanding the requirement of paragraph (1) of this subsection (c), if the text of the proposed initiated measure or ordinance requires more than one page of a petition section, the warning and summary need not appear at the top of other than the initial text page.

(4) The signature pages shall consist of the warning and the summary, followed by ruled lines numbered consecutively for registered electors' signatures. If a petition section contains multiple signature pages, all signature lines shall be numbered consecutively, from the first signature page through the last. The signature pages shall follow the page or pages on which the full text of the proposed initiated measure or ordinance that is the subject of the referendum petition is printed.

(5)(a) Following the signature pages of each petition section, there shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include the following:

(1) The affiant's printed name, the address at which the affiant resides, including the

street name and number, the city or town, the county, and the date the affiant signed the affidavit;

(II) That the affiant has read and understands the laws governing the circulation of petition;

(III) That the affiant was eighteen years of age or older at the time the section of the petition was circulated and signed by the listed electors;

(IV) That the affiant circulated the section of the petition;

(V) That each signature thereon was affixed in the affiant's presence;

(VI) That each signature thereon is the signature of the person whose name it purports to be;

(VII) That, to the best of the affiant's knowledge and belief, each of the persons signing the petition section was, at the time of signing, a registered elector; and

(VII) That the affiant has not paid or will not in the future pay and that the affiant believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition.

(b) The Town Clerk shall not accept for filing any section of a petition that does not have attached thereto the notarized affidavit required by subparagraph (A) of this paragraph (5). Any disassembly of a section of the petition that has the effect of separating the affidavit from the signature page or pages shall render that section of the petition invalid and of no force and effect.

(c) Any signature added to a section of a petition after the affidavit has been executed shall be invalid.

D. All sections of any petition shall be prenumbered serially.

E. Any petition section that fails to conform to the requirements of this Chapter or that is circulated in a manner other than that permitted by this Chapter shall be invalid.

**1-21-8: CIRCULATORS–REQUIREMENTS:** The circulation of any petition section other than personally by a circulator is prohibited. No section of a petition for any initiative or referendum measure shall be circulated by any person who is not at least eighteen years of age at the time the section is circulated.

**1-21-9: SIGNATURES:** Any initiative or referendum petition shall be signed only by registered electors of the Town who are eligible to vote on the measure. Each registered elector shall sign his or her own signature and shall print his or her name, the address at which he or she resides, including the street number and name, the city or town, the county, and the date of signing. Each registered elector signing a petition shall be encouraged by the circulator of the petition to sign the petition in ink. In the event a registered elector is physically disabled or is illiterate and wishes to sign the petition, the elector shall sign or make his or her mark in the space so provided. Any person, but not a circulator, may assist the disabled or illiterate elector in completing the remaining information required by this section. The person providing assistance shall sign his or her name and address and shall state that such assistance was given to the disabled or illiterate elector.

**1-21-10: SIGNATURE VERIFICATION–STATEMENT OF SUFFICIENCY:**

A. The Town Clerk shall inspect timely filed initiative or referendum petitions and the attached affidavits, and may do so by examining the information on signature lines for patent defects, by comparing the information on signature lines against a list of registered electors provided by the county, or by other reasonable means.

B. After examining the petition, the Town Clerk shall issue a statement as to whether a sufficient number of valid signatures have been submitted. A copy of the statement shall be mailed to the persons designated as representing the petition proponents pursuant to Section 1-21-7(B).

C. The statement of sufficiency or insufficiency shall be issued no later than thirty

calendar days after the petition has been filed. If the Town Clerk fails to issue a statement within thirty calendar days, the petition shall be deemed sufficient.

**1-21-11: PROTEST:**

A. Within forty days after an initiative or referendum petition is filed, a protest in writing under oath may be filed in the office of the Town Clerk by any registered elector who resides in the Town, setting forth specifically the grounds for such protest. The grounds for protest may include, but shall not be limited to, the failure of any portion of a petition or circulator affidavit to meet the requirements of this Chapter. No signature may be challenged that is not identified in the protest by section and line number. The Town Clerk shall forthwith mail a copy of such protest to the persons designated as representing the petition proponents pursuant to Section 1-21-7(B) and to the protester, together with a notice fixing a time for hearing such protest that is not less than five or more than ten days after such notice is mailed.

B. Every hearing shall be held before the Town Clerk with whom such protest is filed. The Town Clerk shall serve as hearing officer unless some other person is designated by the Town Council as the hearing officer, and the testimony in every such hearing shall be under oath. The hearing officer shall have the power to issue subpoenas and compel the attendance of witnesses. The hearing shall be summary and not subject to delay and shall be concluded within sixty days after the petition is filed. No later than five days after the conclusion of the hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient. If the hearing officer determines that a petition is not sufficient, the officer shall identify those portions of the petition that are not sufficient and the reasons therefor. The result of the hearing shall be forthwith certified to the protester and to the persons designated as representing the petition proponents pursuant to Section 1-21-7(B). The determination as to petition sufficiency may be reviewed by the Summit County, Colorado District Court upon application of the protester, the persons designated as representing the petition proponents pursuant to Section 1-21-7(B), or the Town, but such review shall be had and determined forthwith.

**1-21-12: INITIATIVE AND REFERENDA, AND REFERRED MEASURES--BALLOT TITLES:**

A. After an election has been ordered pursuant to Section 1-21-5 or Section 1-21-6, the Town Council shall promptly fix a ballot title for each initiative or referendum.

B. The Town Council may, without receipt of any petition, submit any proposed or adopted ordinance or any question to a vote of the registered electors of the Town. The Town Council shall fix a ballot title for the referred measure.

C. In fixing the ballot title, the Town Council shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote would be unclear. The ballot title shall not conflict with those titles selected for any other measure that will appear on the municipal ballot in the same election. The ballot title shall correctly and fairly express the true intent and meaning of the measure.

D. Any registered elector may file a protest concerning a ballot title by filing a written protest with the Town Clerk within five days after the ballot title has been set by the Town Council. No protest shall be considered that is not received by the Town Clerk within such five day period. The protest shall describe with particularity the basis for the protest. The Town Council shall hear and determine the protest at its next regular meeting after the protest is filed. The protesting party shall be forthwith notified of the Town Council's determination of the protest. The Town Council's determination of a protest may be reviewed by the Summit County, Colorado District Court upon application of the registered elector who filed the protest, but such review shall be had and determined forthwith.

**1-21-13: RECEIVING MONEY TO CIRCULATE PETITIONS--FILING:** The proponents of the petition shall file with the Town Clerk a report disclosing the amount paid per signature and the total amount paid to each circulator. The filing shall be made at the same time the petition is filed with the Town Clerk. Any payment made to circulators is an expenditure under Chapter 45 of Title 1, C.R.S.

**1-21-14: RETENTION OF PETITIONS:** After a period of three years from the time of submission of the petitions to the Town Clerk, if it is determined that the retention of the petitions is no longer necessary, the Town Clerk may destroy the petitions.

**1-21-15: POWERS OF TOWN CLERK AND DEPUTY:**

A. Except as otherwise provided in this Chapter, the Town Clerk shall render all interpretations and shall make all initial decisions as to controversies or other matters arising in the operation of this Chapter.

B. All powers and authority granted to the Town Clerk by this Chapter may be exercised by a deputy Town Clerk in the absence of the Town Clerk or in the event the Town Clerk for any reason is unable to perform the duties of the Town Clerk's office.

**1-21-16: UNLAWFUL ACTS—PENALTY:**

A. It is unlawful:

(1) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of the person, organization, association, league, or political party;

(2) For any person to sign any name other than his or her own name to any petition or knowingly to sign his or her name more than once for the same measure at one election;

(3) For any person knowingly to sign any petition relating to an initiative or referendum in a municipality who is not a registered elector of that municipality at the time of signing the petition;

(4) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in the affidavit to be true;

(5) For any person to certify that an affidavit attached to a petition was subscribed or sworn to before him or her unless it was so subscribed and sworn to before him or her and unless the person so certifying is duly qualified under the laws of this state to administer an oath;

(6) For any officer or person to do willfully, or with another or others conspire, or agree, or confederate to do, any act that hinders, delays, or in any way interferes with the calling, holding, or conducting of any election permitted under the initiative and referendum powers reserved by the people in section 1 of article V of the state constitution and provided for in Article VI of the Charter, or with the registering of electors therefor;

(7) For any officer to do willfully any act that shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election or refuse to submit any petition in the form presented for submission at any election;

(8) For any officer or person to violate willfully any provision of this Chapter.

B. Any person, upon conviction of a violation of any provision of this section, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one day less than one year in the county jail, or by both such fine and imprisonment.

**1-21-17: TAMPERING WITH INITIATIVE OR REFERENDUM PETITION:**

A. (1) It is unlawful for any person to:

(1) Willfully destroy, deface, mutilate, or suppress any initiative or referendum petition;

(2) Willfully neglect to file or delay the delivery of the initiative or referendum petition;

(3) Conceal or remove any initiative or referendum petition from the possession of the person authorized by law to have custody of the petition;

(4) Add, amend, alter, or in any way change the information on the petition as provided by the elector; or

(5) Aid, counsel, procure, or assist any person in doing any of such acts.

B. Any person, upon conviction of a violation of any provision of this section shall be

punished as provided in Chapter 4 of Title 1 of this Code.

C. This section shall not preclude a circulator from striking a complete line on the petition if the circulator believes the line to be invalid.

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 authority granted to home rule municipalities by Chapter XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

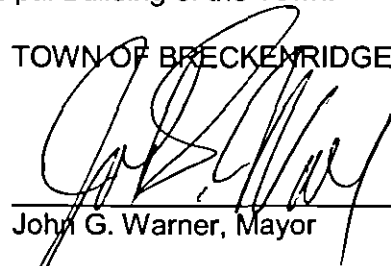
Section 4. This ordinance shall be published as provided by Section 5.9 of the Breckenridge Town Charter. It shall become effective only if ballot Question "A", concerning the citizens' rights of initiative and referendum, is passed by the voters at the regular Town election to be held April 6, 2010. If such ballot question is passed by the voters, this ordinance shall become effective April 7, 2010. If such ballot question shall not be passed by the voters, this ordinance shall be null, void and of no force or effect.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 9<sup>th</sup> day of March, 2010. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 23<sup>rd</sup> day of March, 2010, 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

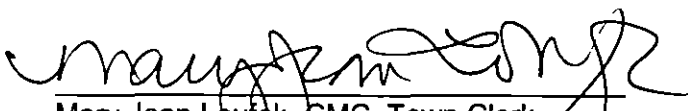
  
John G. Warner, Mayor

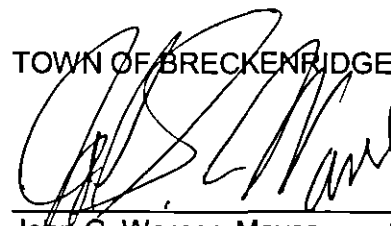
The public hearing on this ordinance was held on March 23, 2010.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY this 23<sup>rd</sup> day of March, 2010. This ordinance is available for inspection in the office of the Town Clerk.

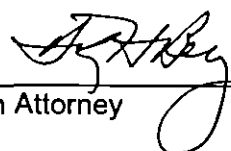
ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, CMC, Town Clerk

  
John G. Warner, Mayor

APPROVED IN FORM

  
Town Attorney

3/23/10  
Date

This ordinance was published by title in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on April 2, 2010.