

ORDINANCE NO. 7

Series 2010

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 2 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING SOLID WASTE AND WEEDS; AND MAKING CONFORMING AMENDMENTS TO THE BRECKENRIDGE TOWN CODE

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

Section 1. Chapter 2 of Title 5 of the Breckenridge Town Code is repealed and readopted with changes so as to as to read in its entirety as follows:

CHAPTER 2

SOLID WASTE AND WEEDS

Section:

- 5-2-1: Definitions
- 5-2-2: Garbage Receptacles; Placement of Receptacles At Curbside
- 5-2-3: Littering of Public or Private Property
- 5-2-4: Construction Materials Removed From Construction Sites And Prevented From Being Scattered
- 5-2-5: Prohibited Accumulations
- 5-2-6: Polluting Streams and Waters
- 5-2-7: Misuse of Trash Dumpster Enclosure
- 5-2-8: Procedure to Compel Removal of Weeds, Rubbish, Or Garbage
- 5-2-9: Strict Liability
- 5-2-10: Nuisance
- 5-2-11: Penalty

5-2-1: DEFINITIONS: As used in this Chapter the following words have the following meanings, unless the context clearly requires otherwise:

DIRECTOR:	The Director of the Department of Community Development, or his or her designee acting pursuant to Section 1-7-2 of this Code.
GARBAGE:	All putrescible animal or vegetable matter resulting from the processing, preparation, cooking, serving, sale or storage of meats, fowl, fish, fruits or vegetables.
INDOOR GARBAGE RECEPTACLE:	A water-tight and fire-resistant galvanized metal or non-absorbent container equipped with a tightly fitting galvanized metal or nonabsorbent cover or lid.
OUTDOOR GARBAGE RECEPTACLE:	A water-tight and fire-resistant galvanized metal or non-absorbent container equipped with both a tightly fitting galvanized metal or nonabsorbent cover or lid and a latching mechanism that keeps the lid tightly closed against the receptacle and prevents access to the contents of the receptacle by wildlife.
PERSON IN CHARGE OF REAL PROPERTY:	Any person owning or being entitled to the possession, use, or control of any residential, commercial, or mixed-use real property within the Town.
RECEPTACLE:	Includes only indoor garbage receptacles and outdoor garbage receptacles as defined in this Section.
RUBBISH:	All nonputrescent solid wastes, consisting of

both combustible and noncombustible wastes, including, but not limited to, paper, ashes, cardboard, metal cans, yard clippings, sod, dirt, wood, glass, rags, discarded clothes or wearing apparel of any kind, abandoned or unsafe household furnishings or appliances, discarded or waste construction materials as defined in Section 5-2-4, discarded tires, and any other discarded or waste object or item of every form, size, kind, and description that does not meet the definition of "garbage."

WEEDS:

A plant not less than twelve inches (12") in height that tends to grow thickly where it is not wanted and to choke out any desirable plants.

5-2-2: GARBAGE RECEPTACLES; PLACEMENT OF RECEPTACLES AT CURBSIDE:

- A. Except when placed for curbside pickup in accordance with Subsection B of this Section, all garbage that is placed, stored, or kept outside of a building, structure, or an approved trash dumpster enclosure as defined in Section 5-6-3 of this Code shall be kept in an outdoor garbage receptacle.
- B. Garbage may be placed at the curbside for pickup by a trash collector only in accordance with the following regulations:
 - 1. Garbage may be placed at the curbside for pickup only when fully contained within a receptacle. No garbage may be placed at the curbside in a paper or plastic bag, or other container that is not a receptacle.
 - 2. Any receptacle placed for curbside pickup shall be kept closed and secured with no gap between the container and the lid until it has been emptied by the trash contractor and moved back to its normal location.
 - 3. Receptacles may be placed at the curbside only after 6 A.M. on the day of pickup. After pickup, each receptacle must be moved back to its normal location by 10 P.M. of the same day.
- C. The provisions of this Section shall not apply to: (i) a receptacle maintained by a business that is: (a) primarily intended as a convenience for use by the customers of the business (and not the business itself); (b) designed in such a manner as to discourage wildlife from getting into the receptacle; and (c) emptied on a daily basis; or (ii) rubbish, including, but not limited to, recyclable material as defined in Section 5-2-7, that is placed at the curbside for pickup by a trash collector.
- D. The owner of real property and any other person who causes the accumulation of garbage at the owner's property are both individually responsible for any garbage placed, stored, or kept at such property in violation of this Section.

5-2-3: LITTERING OF PUBLIC OR PRIVATE PROPERTY:

- A. As used in this Section the following terms have the following meanings, unless the context clearly requires otherwise:

LITTER:

All rubbish as defined in Section 5-2-1, all garbage as defined in Section 5-2-1, and all waste material, refuse, debris, or other foreign substances, solid or liquid, of every form, size, kind, and description.

PUBLIC OR PRIVATE

Includes, but is not limited to: (i) the

PROPERTY: right-of-way of any public street or highway, any publicly owned lot, tract, parcel, or building, any public park, playground, recreational trail, any publicly owned conservation, open space, or recreation area, and (ii) any privately owned real property or building.

WATERS: Any river, creek, or other body of water or watercourse, including frozen areas or the shores thereof

- B. Any person who deposits, throws, or leaves any litter on any public or private property or in any waters commits the offense of littering.
- C. It shall be an affirmative defense that:
- (1) Such property is an area designated by law for the disposal of such material and the person is authorized by the proper public authority to so use the property;
 - (2) The litter is placed in a receptacle or container installed on such property for that purpose, regardless of whether the receptacle or container meets the definition of receptacle in Section 5-2-1; or
 - (3) Such person is the owner or tenant in lawful possession of such property, or has first obtained written consent of the owner or tenant in lawful possession, or the act is done under the personal direction of said owner or tenant.
- D. Littering is an infraction punishable by a mandatory fine of not less than twenty dollars nor more than five hundred dollars upon a first conviction; by a mandatory fine of not less than fifty dollars nor more than one thousand dollars upon a second conviction; and by a mandatory fine of not less than one hundred dollars nor more than one thousand dollars upon a third or subsequent conviction.
- E. In the discretion of the municipal court, all or any portion of a fine imposed in excess of the mandatory minimum fine may be suspended upon the condition that the defendant gather and remove from specified public property or specified private property, with prior permission of the owner or tenant in lawful possession thereof, any litter found thereon, or upon the condition that the defendant pick up litter at a time prescribed by and at a specified place or places within the Town for not less than eight hours upon a first conviction or for not less than sixteen hours upon a second or subsequent conviction.
- F. Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle in violation of this Section, the operator of said motor vehicle is presumed to have caused or permitted the litter to be so thrown, deposited, dropped, or dumped therefrom.

5-2-4: CONSTRUCTION MATERIALS REMOVED FROM CONSTRUCTION SITES AND PREVENTED FROM BEING SCATTERED:

- A. As used in this Section the following terms have the following meanings, unless the context clearly requires otherwise:

COMPLETION OF A CONSTRUCTION PROJECT:

The first to occur of either:

1. The completion of a construction project and the issuance by the Town of a final certificate of occupancy or final certificate of completion, whichever is applicable; or
2. The suspension or revocation of the building permit for such construction project.

CONSTRUCTION MATERIALS: Includes, without limitation, all plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, wrapping, plastic sheeting, paper, sacks, or loose, and discarded or unused material of every form, size, kind, and description used in connection with or resulting from the demolition, construction or reconstruction of a building, structure, wall, fence, sidewalk or any portion thereof.

CONSTRUCTION SITE: The site of the demolition, construction, or reconstruction of a building, structure, wall, fence, sidewalk or any portion thereof, and the site of storage of materials and equipment to be used in connection therewith.

PERSON RESPONSIBLE FOR THE CONSTRUCTION WORK: The person to whom the Town has issued a building permit authorizing such work, or if no permit has been issued, the owner of the property upon which the construction work was performed.

- A. Prior to the completion of a construction project the person responsible for the construction work shall secure all construction materials located on the construction site and prevent them from being scattered off of the construction site by the wind or other cause.
- B. Not later than the completion of a construction project the person responsible for the construction work shall remove all construction materials from the construction site and properly discard such materials away from the construction site.

5-2-5: PROHIBITED ACCUMULATIONS:

- A. No person in charge of real property shall permit or allow the accumulation of rubbish upon such property.
- B. No person in charge of real property shall fail to remove weeds growing upon such property, from the sidewalks in front of such property, or from any alley in the rear of such property.
- C. Other than a spread not exceeding an average of one inch (1") of manure which may be applied on lawns or gardens for fertilizing purposes, manure shall not be kept on any property for any purpose, or kept in any place for later use, but shall be either plowed under or removed by the person in charge of such real property.

5-2-6: POLLUTING STREAMS AND WATERS:

- A. As used in this Section, the following words have the following meanings, unless the context clearly requires otherwise:

POLLUTANT: Includes dredged spoil dirt, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage as defined in Section 5-2-1, rubbish as defined in Section 5-2-1, chemical waste, biological nutrient, biological material, radioactive material, wrecked or discarded equipment, rock, sand, animal carcass, or any industrial, municipal or agricultural waste of every form, size, kind, and description.

- B. No person shall throw or deposit, or cause or permit to be thrown or deposited, any pollutant in any river, stream, storm or sanitary sewer,

ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created.

5-2-7: MISUSE OF TRASH DUMPSTER ENCLOSURE:

A. As used in this Section, the following words have the following meanings, unless the context clearly requires otherwise:

RECYCLABLE MATERIALS:	Includes only discarded glass, cardboard, aluminum, tin, newspaper and office paper products that are separated from other refuse for the purpose of recycling.
REFUSE:	All forms of solid waste, including, but not limited to, garbage as defined in Section 5-2-1, rubbish as defined in Section 5-2-1, and recyclable materials.
TRASH COMPACTOR:	A device that compresses refuse into small bundles for easy disposal. Where a trash compactor is installed, it is a part of a trash dumpster enclosure.
TRASH DUMPSTER:	A metal refuse container that is designed to be emptied on site by a specifically equipped refuse collection truck.
TRASH DUMPSTER ENCLOSURE:	A structure that is designed and used to: (i) house a trash dumpster and/or a trash compactor, (ii) screen a trash dumpster and/or trash compactor from view, and (iii) keep the refuse which is deposited in such enclosure from being scattered.

B. Any person who does any of the following acts commits the offense of misuse of a trash dumpster enclosure:

1. Deposits, throws, or leaves any refuse anywhere within a trash dumpster enclosure, except within the trash dumpster itself;
2. Deposits, throws, or leaves any refuse within ten feet (10') of the exterior wall of a trash dumpster enclosure; or
3. Places any recyclable material in a recycling container within a trash dumpster enclosure that is clearly indicated by signage or labeling as being intended to contain only other types of recyclable materials.

C. An employer is legally accountable under this Section for the conduct of his or her employees that that violates the provisions of this Section if such conduct occurs in the course and scope of such employment. It shall be presumed that such conduct was caused to be done, requested, commanded, or authorized by the employer as part of the employee's duties.

5-2-8: PROCEDURE TO COMPEL REMOVAL OF WEEDS, RUBBISH, OR GARBAGE

A. In addition to any other remedy provided by law, the Director may give written notice by certified or registered mail, return receipt requested, to any person in charge of real property directing the removal of weeds, or the removal of an accumulation of rubbish, garbage, or both rubbish and garbage. A true copy of such notice shall at the same time be mailed by

registered or certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of the Summit County, at the address of such owner as therein shown. Such notice shall state that if such weeds are not removed, or if such accumulation of rubbish, garbage, or both rubbish and garbage, is not removed within the time stated in the notice (which shall not be less than ten (10) nor more than twenty (20) days from the date of the notice), the costs of such removal may be assessed against the property (describing same) pursuant to the terms of this Section, together with an additional five percent (5%) for inspection and incidental costs and an additional ten percent (10%) penalty for cost of collection, and collected in the same manner as real estate taxes against the property.

- B. If such weeds are not removed, or such accumulation of rubbish or garbage, or both rubbish and garbage, as required in the notice within the time described therein, the Director is authorized and empowered to cause such weeds to be removed in such manner as the director may determine, or such rubbish and garbage, or both rubbish and garbage, to be removed.
- C. After causing such weeds to be removed or the rubbish, garbage, or both rubbish and garbage, to be removed, the Director shall certify to the Town Clerk the street address and legal description of the real property upon which such work was done, together with the name of the owner thereof as shown by the tax rolls of Summit County, together with a statement of the work performed, the date of performance, and the actual cost thereof.
- D. Upon receipt of a statement from the Director as described in Subsection C, the Town Clerk shall mail a notice to the owner of the real property as shown by the tax rolls, at the address shown upon the tax rolls, by first class mail, postage prepaid, notifying such owner that work has been performed pursuant to this Section, stating the date of performance of the work, the nature of the work and demanding payment of the actual cost thereof (as certified by the Director), together with five percent (5%) for inspection and other incidental costs in connection therewith. Such notice shall state that if the full amount is not paid within ten (10) days of mailing the notice, it shall become an assessment on and a lien against the owner's property where the work was done, and will be certified as an assessment against such property, together with a ten percent (10%) penalty for collection in the same manner as the real estate taxes upon the property.
- E. If the Town Clerk does not receive full payment within ten (10) days following the mailing of the notice described in Subsection D, the Town Clerk shall inform the Town Council of such fact, and the Town Council shall thereupon enact an ordinance assessing the whole cost of such work, including five percent (5%) for inspection and other incidental costs in connection therewith, upon the lots and tracts of land from which the weeds, garbage, rubbish, or both garbage and rubbish, has been removed, together with a ten percent (10%) penalty for cost of collection.
- F. Following adoption passage of the ordinance described in Subsection E, the Town Clerk shall certify the same to the Summit County Treasurer, who shall collect the assessment pursuant to Section 31-20-105, C.R.S., including the ten percent (10%) penalty for cost of collection, in the same manner as other real property taxes are collected. Each such assessment shall be a lien against the lot, tract or parcel of land where the work was done by the Town until fully paid, and shall have priority over all other liens except general taxes and prior special assessments.

5-2-9: STRICT LIABILITY: Each municipal offense established by this Chapter is a strict liability offense and does not require proof of specific criminal intent. Proof of performance by a person of conduct that includes a voluntary act or the omission to perform an act which he is capable of performing is sufficient to establish a violation of any municipal offense established by this Chapter.

5-2-10: NUISANCE: Any violation of this Chapter is declared to be a nuisance and, in the discretion of the Director, may be abated in accordance with the provisions of

Chapter 1 of this Title. Nothing in this Chapter, however, requires abatement of a violation of this Chapter by use of the nuisance provisions of Chapter 1 of this Title, and the Town may elect to use any remedy available to by law it in order to enforce the provisions of this Chapter.

5-2-11: PENALTY: Any person who violates any provision of this Chapter is guilty of an infraction. Except as provided in Section 5-2-3, any person found to be in violation of, or against whom a default judgment has been entered for a violation of this Section, shall be punished by a fine as provided in Section 1-4-1 of this Code.

Section 2. The following Sections and Subsections of the of the Breckenridge Town Code are repealed:

- A. Section 5-1-7(L);
- B. The definition of "litter" set forth in Section 6-3-5;
- C. Section 6-3C-7;
- D. Section 6-3C-8;
- E. Section 6-3C-9;
- F. Section 6-3D-13;
- G. Section 8-3-9; and
- H. Section 10-1-17(A)

Section 3. 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 4. 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.

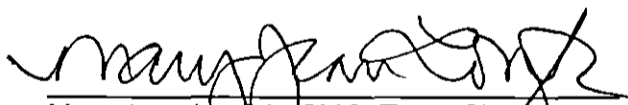
Section 5. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) Section 31-15-103, C.R.S. (concerning municipal police powers); (ii) Section 31-15-401, C.R.S.(concerning municipal police powers); (iii) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (iv) the powers contained in the Breckenridge Town Charter.

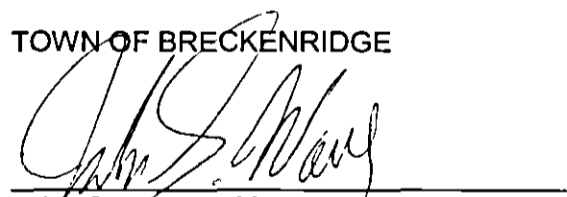
Section 6. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 9th day of February, 2010. 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 February, 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

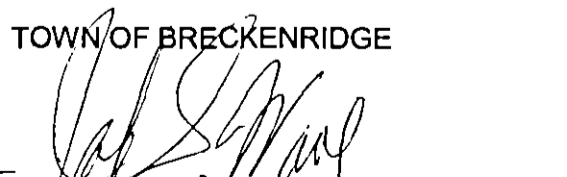
The public hearing on this ordinance was held on February 23, 2010.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS AND PENALTY CLAUSE this 23rd day of February, 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

2/23/10

Date

This ordinance was published by title with amendments and penalty provision in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on March 5, 2010.

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