

ORDINANCE NO. 15

Series 2012

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE", BY ADOPTING A NEW POLICY 49 (ABSOLUTE), ENTITLED "VENDOR CARTS", AND MAKING MISCELLANEOUS AMENDMENTS TO THE BRECKENRIDGE TOWN CODE RELATED TO SUCH NEW DEVELOPMENT POLICY

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

Section 1. The definitions of "Transient Vendor Cart", "Temporary Vendor Cart," and "Transient Vendor Carts" set forth in Section 9-1-5 of the Breckenridge Town Code are deleted.

Section 2. Section 9-1-5 of the Breckenridge Town Code is amended by the adoption of the following additional definitions:

LARGE VENDOR CART:	A vendor cart that is either: (i) larger than forty square feet in size; or (ii) is not removed from its site and properly stored out of public view each day.
SMALL VENDOR CART:	A vendor cart that is both: (i) forty square feet or smaller in size; and (ii) removed from its site and properly stored out of public view each day.
SPECIAL EVENT VENDOR CART:	A wagon, cart, booth, or similar temporary structure designed and used for the sale of goods and services at a special event for which the Town has issued a special event permit pursuant to Chapter 13 of Title 4 of this Code.
VENDOR CART:	A temporary structure in the form of a wagon, cart, booth, or other similar structure designed and intended for the sale of goods and services. The term "vendor cart" includes (i) a large vendor cart; (ii) a small vendor cart; and (iii) a special event vendor cart.

Section 3. Item S (Temporary vendor carts.) in the definition of "Class D Development" in Section 9-1-5 of the Breckenridge Town Code is deleted.

Section 4. The definition of "Class B – Minor" development in Section 9-1-5 of the Breckenridge Town Code is amended by the addition of a new items E and F, which shall read in their entirety as follows:

- E. Vendor Carts (Large Vendor Carts and Small Vendor Carts*)
- F. Application for Exempt Large Vendor Cart designation

*Because a Small Vendor Cart development permit is valid for only one (1) year, the application fee for a Small Vendor Cart development permit shall be one-third (1/3) of the normal Class B-Minor application fee.

Section 5. Policy 36 (Absolute) of Section 9-1-19 of the Breckenridge Town Code is repealed and adopted with changes so as to read in its entirety as follows:

36. (ABSOLUTE) TEMPORARY STRUCTURES: The placement of temporary structures within the Town is strongly discouraged.

A. Temporary Structures or Uses: Temporary structures as defined in section 9-1-5 of this Code are allowed subject to the following conditions:

(1) Temporary structures shall only be utilized to replace an existing structure being demolished on site while a new, permanent structure on the same site is being constructed.

(2) The temporary structure shall have no greater floor area than the structure it is temporarily replacing.

(3) The temporary structure shall not be placed on site until a building permit has been issued for the new structure, and shall be removed once a certificate of occupancy for the new structure has been issued.

(4) The holder of the development permit for a temporary structure shall provide a monetary guarantee to the Town, in a form acceptable to the Town Attorney, ensuring the complete removal of the structure, site clean-up, and site revegetation, once a certificate of occupancy for the new structure has been issued. In addition, the holder of the development permit shall enter into an agreement with the Town authorizing the Town to take possession of the temporary structure and to dispose of the structure, without the Town being accountable for any damages for the loss or destruction of the structure, if the permit holder fails to remove the structure within a reasonable period of time after a certificate of occupancy for the new structure has been issued.

B. Other Permitted Temporary Structures: Subsection A of this Section does not prohibit temporary tents, air structures, or other similar temporary structures that are not designed and intended for office, retail, industrial or commercial uses, and such temporary structures may be approved subject to all other relevant development code policies.

C. Temporary Construction Trailers: Temporary construction trailers may be utilized for storage or office uses during the construction of a project within the Town. The construction trailer's location, size and general design shall be disclosed to the Town as a component of the construction staging plan as required by policy 29 "(Absolute) Construction Activities" of this section. Construction trailers shall not be placed on site prior to the issuance of a building permit and shall be removed upon issuance of a certificate of occupancy.

D. Seasonal Noncommercial Greenhouses: Seasonal noncommercial greenhouses may be allowed when they meet the following criteria:

(1) A seasonal noncommercial greenhouse may be erected and operated only from May 1 to July 1 of the same year. Not later than July 2, the seasonal noncommercial greenhouse (including frame) shall be completely removed from its location;

(2) A seasonal noncommercial greenhouse shall not exceed five hundred (500) square feet in size;

(3) A seasonal noncommercial greenhouse shall not be placed on a permanent foundation;

(4) A seasonal noncommercial greenhouse shall be constructed of materials which, taken as a whole, give the appearance of a unified and coordinated design;

(5) A seasonal noncommercial greenhouse shall be maintained at all times in a neat and orderly condition;

(6) All materials related to the operation of a seasonal noncommercial greenhouse shall be stored within the greenhouse. The outdoor storage of such materials is prohibited; and

(7) If a seasonal noncommercial greenhouse is located on land normally used for required off street parking, the greenhouse shall not occupy more than two (2) parking spaces.

A seasonal noncommercial greenhouse authorized by a permit issued under this policy shall not count as density or mass.

The director of the department of community development shall not collect an application fee in connection with a class D development permit application to construct a seasonal noncommercial greenhouse which is submitted by the owner of a single-family residential structure.

Section 6. Chapter 1 of Title 9 of the Breckenridge Town Code is amended by the addition of a new Policy 49 (Absolute)(Vendor Carts), which shall read in its entirety as follows:

49. (ABSOLUTE) VENDOR CARTS:

A. Vendor Cart Locations: Large vendor carts and small vendor carts are permitted only in those Land Use Districts where commercial uses are an allowed or recommended land use. Special event vendor carts are permitted anywhere within the Town if authorized by a special event permit issued by the Town pursuant to Chapter 13 of Title 4 of this Code

B. Vendor Cart General Design Standards: Large vendor carts and small vendor carts are subject to the following general design standards:

1. General Design Standards - Within the Conservation District: The following general design standards apply as indicated to large vendor carts and small vendor carts located within the Conservation District:

A. All large vendor carts and small vendor carts shall be designed to blend in with the existing historic character. This shall be accomplished through the proper use of architecture, materials and site planning. In the Conservation District, large vendor carts shall complement the surrounding building character through the use of high quality materials and detailing. Placing a large vendor cart in an unfinished vacant lot with no site improvements is prohibited.

B. All large vendor carts and small vendor carts must be constructed of professional quality for use as a food vending cart.

C. All large vendor carts and small vendor carts must be maintained in good working condition with no broken or rusty parts. All exterior materials must be kept clean and in a neat appearance. No rusty or broken metal or chipped or broken wood is allowed. All exposed edges must be finished. All wood details and finishes must be suitable for long wear in an exterior location. All detailing, construction and finishing shall be done in a craftsman like manner.

2. General Design Standards - Outside the Conservation District: The following general design standards apply as indicated to large vendor carts and small vendor carts located outside of the Conservation District:

A. All large vendor carts and small vendor carts must be constructed of a professional quality for use as a food vending cart.

B. All large vendor carts and small vendor carts must be in good working condition, with no broken or rusty parts. All exterior materials must be kept clean and in neat appearance. No rusty or broken metal or chipped or broken wood is allowed. Metal and wood may be used as exterior finishes. The gauge, detailing and finish of all metal surfaces shall be suitable for long-term use in an exterior location. All exposed edges must be finished. All metal used in carts shall have concealed seams and overlapping joints. All wood details and finishes must be suitable for long wear in an exterior location. All detailing, construction and finishing shall be done in a craftsman like manner. No rough-cut, unfinished or distressed woods will be considered as finish materials.

3. Additional Requirements for All Vendor Carts:

A. Large Vendor Carts: The following additional design and operational standards apply to large vendor carts:

1. Large vendor carts must be located on private property.
2. Large vendor carts may only sell food and beverages in forms suited for immediate consumption. This shall include hot or cold prepared foods and beverages, and pre-packaged food and snacks, whether eaten at the site of sale,

or "carry out/to go". Fresh fruits and vegetables may be sold from a large vendor cart in limited amounts if they are normally and customarily eaten in a raw form, but a large vendor cart shall not be used primarily to sell fresh foods and vegetables.

3. The area of a large vendor cart counts as density. The density shall be assessed against the real property on which the vendor cart is located.
4. Large vendor cart owners shall improve the immediate area around their business through the installation of pavers, landscaping, awnings, and/or small decks to help the vendor carts to look less temporary, and to blend into the surrounding character. Where the surrounding area is already improved with such finishes as listed above, this requirement may be waived by the Planning Commission.
5. The maximum size of a large vendor cart is 100 square feet.
6. The maximum height of a large vendor cart is 10 feet. The height of the cart shall be measured vertically from the ground to the highest point of the cart including signage or other equipment, if any.
7. If a large vendor cart is connected to the Town's municipal water system, the owner must pay water plant investment fees for the vendor cart. If a large vendor cart is connected to the Town's municipal water system, it must also be connected to the public sanitation system.
8. If a large vendor cart uses a commissary kitchen, the commissary kitchen must be identified on the vendor cart permit application, and any applicable water plant investment fees must be paid by the owner of the commissary kitchen. If the commissary kitchen changes during the term of the permit, the large vendor cart permit holder must notify the Director within 10 days of the date of the change.
9. Siding and other compatible materials used on a large vendor cart must wrap all sides of the vendor cart.
10. Exterior colors used on a large vendor cart must meet Town's color chroma palette. The color of all large vending carts shall be selected from the Munsell Book of Color on file with the Community Development Department. The maximum chroma for the exterior of a large vending cart shall be 4 (unless red or yellow are used, then a maximum chroma of 6) and a maximum value of 6.
11. All signs for a large vendor cart shall be subject to the Breckenridge Sign Code. One permanent free standing sign is allowed for a large vendor cart, unless otherwise prohibited by the Breckenridge Sign Code.
12. Generators are prohibited for large vendor carts, except for use as an emergency source of power when the permanent source of power to the large vendor cart is temporarily unavailable.
13. If a large vendor cart has wheels, the wheels shall be permanently screened with a skirting design architecturally compatible with the exterior of the cart.
14. Any trailer hitch on a large vendor cart must be removed or completely covered from view.
15. Owners of large vendor carts must obtain and maintain in full force and effect throughout the permit a valid Town of Breckenridge business license.
16. Large vendor carts must be wind-proof, water proof and locked when not in operation.
17. Outdoor seating for a large vendor cart is limited to a maximum of 12 seats and 3 tables .
18. The operator of a large vendor cart shall comply with all applicable health regulations with respect to the operation of the large vendor cart.

B. Small Vendor Carts: The following additional design and operational standards apply to small vendor carts:

1. Small vendor carts must be located on private property.
2. Small vendor carts may only sell food and beverages in forms suited for immediate consumption.
3. Small vendor carts must be removed from its site and properly stored out of public view each day.
4. If a small vendor cart is connected to the Town's municipal water system, the

owner must pay water plant investment fees. If a small vendor cart is connected to the Town's municipal water system, it must also be connected to the public sanitation system.

5. If a small vendor cart uses a commissary kitchen, the commissary kitchen must be identified on the vendor cart permit application. If the commissary kitchen changes during the term of the permit, the small vendor cart permit holder must notify the Director within 10 days of the date of the change.
6. Umbrellas may be used on a small vendor cart. Tents on or at small vendor carts are prohibited.
7. All signage must be attached to small vendor cart. Free standing signage on or for a small vendor cart is prohibited.
8. All storage boxes, cartons, and coolers used in connection with the operation of a small vendor cart shall be hidden from public view.
9. No decks, tables, or outdoor seating are allowed for a small vendor cart, except one seat for the operator of the small vendor cart.
10. No external piping or plumbing is allowed.
11. Extension cords may be used for a small vendor cart only if the cord is not located in an area where the public walks, and the placement of the extension cord does not create a public safety hazard.
12. Small vendor cart must be on wheels.
13. Owners of small vendor carts must obtain and maintain in full force and effect throughout the permit a valid Town of Breckenridge business license.
14. All signs for a small vendor cart shall be subject to the Breckenridge Sign Code. The maximum allowed sign area for a small vendor cart is 66% of the linear frontage of the cart.
15. The operator of a small vendor cart shall comply with all applicable health regulations with respect to the operation of the small vendor cart.

C. Special Event Vendor Carts: Special event vendor carts may be approved only in connection with and pursuant to the procedures for the review and approval of a special event permit issued by the Town pursuant to Chapter 13 of Title 4 of this Code. Special event vendor carts are subject to the applicable terms and conditions of the special event permit. Except as specifically provided in this Policy, the provisions of this Policy do not apply to special event vendor carts.

D. Duration of Development Permit: A development permit for a large vendor cart issued pursuant to this Policy shall be valid for three (3) years as provided in Section 9-1-17-8 of this Chapter, and may be renewed. A development permit for a small vendor cart issued pursuant to this Policy shall be valid for one (1) year, and may be renewed. A development permit issued pursuant to this Policy may also be revoked for cause as provided in Section 9-1-6 of this Chapter.

E. Limitation on Number of Vendor Cart Permits:

1. The total number of development permits for each type of vendor cart that may be issued by the Town under this Policy for locations within the Conservation District are as follows:

Permit Type	Maximum No. of Permits
Large Vendor Carts	3
Small Vendor Carts	4
Special Event Vendor Carts	No limit

The Town shall never issue more permits of any type than the number of permits provided in this Subsection 1.

2. There is no limit on the number of development permits that may be issued by the Town for large vendor carts or small vendor carts located outside of the Conservation District.

3. The limitations of subsection 1 of this Section E do not require the closure or removal of any vendor cart operating within the Town as of the effective date of this Policy pursuant to a valid development permit. On the effective date of this Policy all vendor carts for which a valid development permit exists may continue to be operated under the terms and conditions of the approved development permit until the first to occur of: (i) the permit expires; (ii) the permit is revoked by Town in accordance with this Chapter; (iii) the permit is voluntarily surrendered; (iv) the permit is not renewed by the permittee or the Planning Commission; or (v) the vendor cart is otherwise required to be closed or removed for any lawful reason. Upon the occurrence of any event described in the preceding sentence the owner or operator of the vendor cart that was previously permitted must obtain a new development permit, and in connection therewith must be brought into compliance with the requirements of this Policy.

4. The limitations of subsection 1 of this Section E do not require the closure or removal of any vendor cart operating within the Town as of the effective date of this Policy for which a development permit was previously issued prior to the effective date of this Policy, but which expired during the moratorium period that occurred immediately prior to the effective date of this Policy. Within sixty (60) days after the effective date of this Policy the owners or operators of all vendor carts for which an expired development permit existed must submit an application for a new development permit. The vendor cart that is the subject of the application may remain in operation until the new development permit application is finally decided by the Town. In connection with approval of the new development permit application, the vendor cart must be brought into compliance with the requirements of this Policy.

5. A large vendor cart for which a development permit is issued pursuant to this Policy may continue in operation until the first to occur of: (i) the permit is revoked by Town in accordance with this Chapter; (ii) the permitted vendor cart is not operated pursuant to the permit for a period of six (6) consecutive months; (iii) the permit is voluntarily surrendered (iv) the permit is not renewed by the permittee or the Planning Commission; or (v) the permitted vendor cart is otherwise required to be closed or removed for any lawful reason. Upon the occurrence of any of events described in the preceding sentence, the number of permitted large vendor carts described in subsection 1 of this Section E shall be permanently reduced by one (1) permit. A development permit for a large vendor cart may be transferred to a purchaser in the event of the sale of the vendor cart if the purchaser assumes and agrees to be bound by all of the terms and conditions of the development permit. The provisions of this subsection 5 do not apply to small vendor carts.

6. If the total number of small vendor cart permits issued by the Town ever drops below the cap number established in subsection 1 of this Section E, the Director shall conduct a random drawing of applications for a new small vendor cart development permit submitted by qualified applicants, and shall allow the development permit application to be processed only by the winner of the drawing. All unsuccessful development permit applications shall not be processed, and the application fee shall be refunded to the unsuccessful applicant(s). If the successful applicant withdraws the application, or if the application is not approved by the Town or accepted by the applicant, the Director shall conduct a second random drawing among the qualified applicants, and shall allow the development permit application to be processed only by the winner of the second drawing. To be permitted to participate in the drawing an applicant must have: (i) submitted a completed application; and (ii) paid the required application fee. The Director may establish further rules and regulations for the administration of the required random drawing by administrative rule and regulation adopted pursuant to Section 9-1-28. Such rules and regulations shall be consistent with the requirements of this Section.

F. Exempt Large Vendor Cart Designation:

1. A large vendor cart that is determined by the Planning Commission to have:

- A. been operated in the same location for a period of 25 consecutive years (excluding seasonal closures) immediately preceding the filing of the application described in this subsection F; and

B. acquired historic, cultural or other special significance,

may apply for designation as an exempt large vendor cart.

2. An application for designation as an exempt large vendor cart shall be processed as a Class B minor Development Permit application.

3. An exempt large vendor cart is not subject to the requirements and limitations of this Policy, and may continue to be operated without being brought into compliance with the requirements and limitations of this Policy. However, an exempt large vendor cart is subject to the following requirements:

A. If an exempt large vendor cart is discontinued from active and continuous use (excluding seasonal closures) for a period of 12 consecutive months, the large vendor cart loses its designation as an exempt large vendor cart. Such large vendor cart shall not be used again until it is brought into compliance with the requirements and limitations of this Policy, and a new development permit issued pursuant to this Policy.

B. A large vendor cart that is once brought into compliance with the requirements of this Policy is no longer eligible for designation as an exempt vendor cart.

C. An exempt large vendor cart that is damaged by fire or other calamity to the extent of more than 50% of its replacement value at the time of the damage loses its designation as an exempt large vendor cart, and must be brought into compliance with the requirements of this Policy.

4. An exempt large vendor cart shall be counted as a large vendor cart for purposes of calculating the maximum number of allowed large vendor carts as described in subsection (E)(1) of this Section.

G. Conditions of Approval.

The Planning Commission may impose reasonable conditions when approving a development permit under this Policy as provided in Section 9-1-17-7 of this Chapter. Such conditions may include, if appropriate, the requirement that the permittee provide a monetary guarantee to the Town, in a form acceptable to the Town Attorney, ensuring the complete removal of the vendor cart, site clean-up, and site revegetation, when the development expires without being renewed, or is revoked.

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 following ordinances are repealed: (i) Ordinance No. 10, Series No. 2011, entitled "An Ordinance Imposing A Temporary Moratorium On The Submission, Acceptance, Processing, And Approval Of New Applications For Development Permits To Operate Temporary Vendor Carts", and (ii) Ordinance No. 10, Series 2012, entitled "An Ordinance Amending Ordinance No. 10, Series 2011, By Extending The Temporary Moratorium On The Submission, Acceptance, Processing, And Approval Of New Applications For Development Permits To Operate Temporary Vendor Carts."

Section 9. 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 10. 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. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) Section 31-15-501(1), C.R.S. (concerning the regulation of businesses); (vi) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vii) the powers contained in the Breckenridge Town Charter.

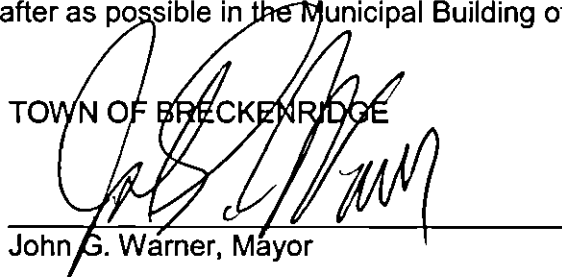
Section 11. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 13th day of March, 2012. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 27th day of March, 2012, 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

This Ordinance was published in full on the Town of Breckenridge website on March 15, March 16, March 17, March 18 and March 19, 2012.

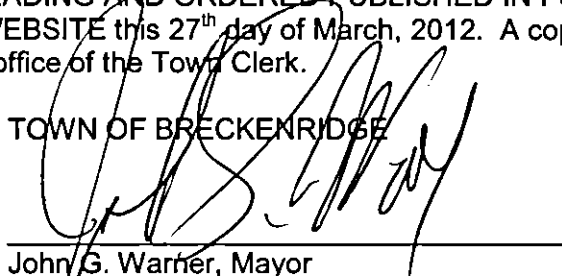
A public hearing on this ordinance was held on March 27, 2012.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL WITH AMENDMENTS ON THE TOWN'S WEBSITE this 27th day of March, 2012. 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


John G. Warner, Mayor

APPROVED IN FORM


Town Attorney 3/27/12
Date

This Ordinance was published on the Town of Breckenridge website on March 29, March 30, March 31, April 1, and April 2, 2012. This ordinance shall become effective on May 2, 2012.