

ORDINANCE NO. 32

SERIES 2012

AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE CONCERNING  
RESTITUTION TO BE AWARDED TO VICTIMS OF CRIMES

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

Section 1. Section 1-4-3 of the Breckenridge Town Code is amended to read in its  
entirety as follows:

1-4-3: RESTITUTION:

A. The Town Council finds and declares that:

1. Crime victims endure undue suffering and hardship resulting from physical injury, emotional and psychological injury, or loss of property;
2. Persons found guilty of causing such suffering and hardship should be under a moral and legal obligation to make full restitution to those harmed by their misconduct;
3. The payment of restitution by criminal offenders to their victims is a mechanism for the rehabilitation of offenders;
4. Restitution is recognized as a deterrent to future criminality;
5. An effective criminal justice system requires timely restitution to victims of crime and to members of the immediate families of such victims in order to lessen the financial burdens inflicted upon them, to compensate them for their suffering and hardship, and to preserve the individual dignity of victims;
6. The purposes of this Section is to provide for and collect full restitution for victims of those municipal ordinance offenses that are under the jurisdiction of the Town's municipal court in the most expeditious manner.

B. It is the intent of the Town Council that restitution be ordered, collected, and disbursed to the victims of crime and their immediate families. Such restitution will aid the offender in reintegration as a productive member of society. This Section shall be liberally construed to accomplish all such purposes.

C. As used in this Section, unless the context otherwise requires:

1. "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the municipal court for any municipal ordinance offense. "Conviction" also includes having received a deferred judgment and sentence; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence.
2. "Money advanced by a governmental agency for a service animal" means costs incurred by a peace officer, law enforcement agency, fire department, fire protection district, or governmental search and rescue agency for the veterinary treatment and disposal of a service animal that was harmed while aiding in official duties and for the training of an animal to become a service animal to replace a service animal that was harmed while aiding in official duties, as applicable.
3. "Money paid by the Town in connection with the defendant's arrest or incarceration" means all money paid by the Town to the Summit County Sheriff, or any other person or governmental entity, in connection with the defendant's arrest, booking, incarceration, care while incarcerated, or safekeeping in a detoxification center or otherwise. Such term also includes, all money paid by the Town for the care and treatment of a defendant's animal, and the care of a defendant's property.

4. "Municipal court" or "court" means the municipal court of the Town of Breckenridge.
5. "Municipal ordinance offense" means a violation of this Code, or any code adopted by reference in this Code, for which a penalty is provided.
6. "Person" means any public or private corporation, firm, partnership, limited liability entity of any kind, association, organization, municipality, county, special district, state, or other governmental entity, or any other group acting as a unit, as well as a natural person.
7. "Proximately caused" means a cause which in the natural and probable sequence produced the claimed injury and without which the claimed injury would not have been sustained.
8. (a) "Restitution" means any pecuniary loss suffered by a victim and includes but is not limited to all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, money advanced by law enforcement agencies, money advanced by a governmental agency for a service animal, adjustment expenses, and other losses or injuries proximately caused by an offender's conduct and that can be reasonably calculated and recompensed in money. "Restitution" does not include damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages.

(b) "Restitution" may also include extraordinary direct public and all private investigative costs.

(c) "Restitution" shall also include all costs incurred by a government agency or private entity to:

- i. Remove, clean up, or remediate a place used to manufacture or attempt to manufacture a controlled substance or which contains a controlled substance or which contains chemicals, supplies, or equipment used or intended to be used in the manufacturing of a controlled substance;
- ii. Store, preserve, or test evidence of a controlled substance violation; or
- iii. Sell and provide for the care of and provision for an animal disposed of under any applicable animal cruelty law.

Costs under this subsection shall include, but are not limited to, overtime wages for peace officers or other government employees, the operating expenses for any equipment utilized, and the costs of any property designed for one-time use, such as protective clothing.

(d) If a loss claimed is not specifically mentioned in this Section it must be a loss that was proximately caused by the defendant's conduct.

9. "Service animal" means any animal, the services of which are used to aid the performance of official duties by a peace officer, law enforcement agency, fire department, fire protection district, or governmental search and rescue agency.
10. (a) "Victim" means any person aggrieved by the conduct of an offender and includes but is not limited to the following:
  - i. Any person against whom any municipal ordinance offense has been perpetrated or attempted;
  - ii. Any person harmed by an offender's criminal conduct in the course of a scheme, conspiracy, or pattern of criminal activity;
  - iii. Any person who has suffered losses because of a contractual relationship with, including but not limited to an insurer, or because of liability under Section 14-6-110. C.R.S., for a person described in subsection (i) or (ii) of this subsection (a);

- iv. Any victim compensation board that has paid a victim compensation claim;
- v. If any person described in subsection (i) or (ii) of this subsection (a) is deceased or incapacitated, the person's spouse, parent, legal guardian, natural or adopted child, child living with the victim, sibling, grandparent, significant other, as defined in Section 24-4.1-302(4), C.R.S., or other lawful representative;
- vi. Any person who had to expend resources for the purposes described in subsection 8(c) of this Section.

(b) "Victim" shall not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan under this Code.

(c) Any "victim" under the age of eighteen is considered incapacitated, unless that person is legally emancipated or the court orders otherwise.

(d) It is the intent of the Town Council that this definition of the term "victim" shall apply to this Section and shall not be applied to any other municipal ordinance that refers to the term "victim".

- D. Every order of conviction of a municipal ordinance offense shall include consideration of restitution. Each such order shall include one or more of the following:
1. An order of a specific amount of restitution be paid by the defendant;
  2. An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the ninety-one days immediately following the order of conviction, unless good cause is shown for extending the time period by which the restitution amount shall be determined;
  3. An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; or
  4. Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.
- E. Every order of restitution shall include an order that the defendant repay to the Town all money paid by the Town in connection with the defendant's arrest or incarceration.
- F. The municipal court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims. Further, the prosecuting attorney shall present this information to the court prior to the order of conviction or within ninety-one days, if it is not available prior to the order of conviction. The court may extend this date if it finds that there are extenuating circumstances affecting the prosecuting attorney's ability to determine restitution.
- G. Any order for restitution may be:
1. Increased if additional victims or additional losses not known to the judge or the prosecuting attorney at the time the order of restitution was entered are later discovered and the final amount of restitution due has not been set by the court; or
  2. Decreased:
    - a. With the consent of the prosecuting attorney and the victim or victims to whom the restitution is owed; or
    - b. If the defendant has otherwise compensated the victim or victims for the pecuniary losses suffered.

- H. If more than one defendant owes restitution to the same victim for the same pecuniary loss, the orders for restitution shall be joint and several obligations of the defendants.
- I. Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in any federal or state civil proceeding.
- J. When a person's means of identification or financial information was used without that person's authorization in connection with a conviction for any crime, the municipal court may issue such orders as are necessary to correct a public record that contains false information resulting from any violation of such laws.
- K. (1) Notwithstanding the provisions of Section D of this Section, the municipal court shall order restitution concerning only the portion of the victim's pecuniary loss for which the victim cannot be compensated under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund.  
  
(2) The court, in determining the restitution amount, shall consider whether the defendant or the vehicle driven by the defendant at the time of the offense was covered by:
  - a. A complying policy of insurance or certificate of self-insurance as required by the laws of the State of Colorado;
  - b. Self-insurance, including but not limited to, insurance coverage pursuant to the provisions of part 15 of article 30 of title 24, C.R.S.; or
  - c. Any other insurance or indemnity agreement that would indemnify the defendant for any damages sustained by the victim.  
(3)(a) Except as otherwise provided in this subsection (a), the municipal court may not award restitution to a victim concerning a pecuniary loss for which the victim has received or is entitled to receive benefits or reimbursement under a policy of insurance or other indemnity agreement.  
  
(b) The municipal court may award a victim restitution for a deductible amount under his or her policy of insurance.  
  
(c) Nothing in this subsection (c) shall prohibit a nonowner driver or passenger in the vehicle from being awarded restitution if the driver or passenger was not covered by his or her own medical payments coverage policy.  
  
(d) Nothing in this Section shall be construed to limit or abrogate the rights and immunities set forth in the "Colorado Governmental Immunity Act", Article 10 of Title 24, C.R.S.
- L. The prosecuting attorney must establish by a preponderance of the evidence the amount of restitution owed.
- M. The municipal court may not order restitution without a hearing at which the prosecution must prove the amount of the victim's loss and its causal link to the defendant's conduct, and at which the defendant may contest those matters.
- N. A victim's confidential medical and mental health records in the possession of the prosecuting attorney as part of a victim's impact statement or for restitution purposes shall not be provided to the defendant without an in-camera review of the records by the municipal judge. To obtain an in-camera review of a victim's confidential medical or mental health records a defendant must show:
  - 1. that his or her request is not speculative; and
  - 2. that an evidentiary hypothesis warrants in-camera review because such documents would tend to disprove all or part of the prosecuting attorney's restitution request on the basis that the requested amounts were not proximately caused by the defendant's conduct, or that such documents are otherwise relevant to the criminal allegations pending against the defendant.

An in-camera review conducted under this Section means a review conducted solely by the municipal judge in his or her chambers.

Section 2. Section 6-3-4 of the Breckenridge Town Code is repealed.

Section 3. Section 6-3D-10(B) of the Breckenridge Town Code is repealed.

Section 4. Section 9-1-6(D)(6) of the Breckenridge Town Code is amended to read in its entirety as follows:

Upon conviction for any violation of this chapter the requirements of Section 1-4-3 of this Code concerning restitution shall apply.

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 the authority granted to home rule municipalities by Article XX of the Colorado Constitution and 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 25th day of September, 2012.

This ordinance was published in full on the Town of Breckenridge website on September 26th, September 27th, September 28th, September 29th and September 30th, 2012.

A public hearing on this ordinance was held on October 9th, 2012.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 9th day of October, 2012. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

ISI Linda Coxen  
Linda Coxen, Town Clerk

TOWN OF BRECKENRIDGE

John G. Warner  
John G. Warner, Mayor

APPROVED IN FORM

ISI [Signature] 10/9/12  
Town Attorney Date

This Ordinance was published on the Town of Breckenridge website on October 11th, October 12th, October 13th, October 14th and October 15th, 2012. This ordinance shall become effective on November 14th, 2012.