

ORDINANCE NO. 18

Series 2017

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 3 OF TITLE 2 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODE BOARD OF APPEALS

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

Section 1. Chapter 3 of Title 2 of the Breckenridge Town Code is repealed and readopted with changes to read as follows:

CHAPTER 3

BUILDING CODE BOARD OF APPEALS

SECTION:

- 2-3-1: Findings
- 2-3-2: Definitions
- 2-3-3: Creation of Board
- 2-3-4: Appointment and Qualifications of Members
- 2-3-5: Terms of Office
- 2-3-6: Compensation
- 2-3-7: Powers, Duties, and Responsibilities
- 2-3-8: Operation
- 2-3-9: Meetings
- 2-3-10: Rules and Regulations
- 2-3-11: Applicability of Code of Ethics
- 2-3-12: Legal Advisor
- 2-3-13: Town Clerk
- 2-3-14: Oaths; Subpoenas
- 2-3-15: Appeals Process
- 2-3-16: Failure to Appeal
- 3-3-17: Appeal From Board Decision
- 3-3-18: Chapter Controls In the Event of A Conflict

2-3-1: FINDINGS: The Town Council finds and determines as follows:

- A. Section 9.5 of the Town Charter authorizes the Town Council to create by ordinance permanent boards and commissions for the Town, and sets forth certain requirements that must be met with respect to the creation of a permanent Town board or commission.
- B. Section 9.2(a) of the Town Charter provides that neither the Mayor nor any Town employee shall serve on any Town board or commission.
- C. The Town of Breckenridge Building Code Board of Appeals should be created to hear and decide appeals of orders, decisions, or determinations made by the Town's building official relative to the application and interpretation of the Town's building and technical codes adopted in Chapter 1 of Title 8 of the Breckenridge Town Code.

2-3-2 DEFINITIONS: When used in this Chapter the following words have the following meanings:

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| BOARD: | The Town of Breckenridge Building Code Board of Appeals created and established by this Chapter. |
| BUILDING CODE: | Any of the Town's building and technical codes adopted in Chapter 1 of Title 8 of this Code. |
| BUILDING OFFICIAL: | The Building Official of the Town of Breckenridge, or such person's authorized |

agent or representative acting pursuant to
Section 1-7-2 of this Code.

2-3-3: CREATION OF BOARD: There is hereby created and established the Town of Breckenridge Building Code Board of Appeals. The Board shall be a permanent board of the Town, and shall operate in accordance with and subject to the provisions, duties, and limitations of this Chapter, and other applicable law.

2-3-4: APPOINTMENT AND QUALIFICATION OF MEMBERS:

- A. The Board shall consist of three (3) members who shall be appointed by the Town Manager as and when needed to hear and decide an appeal filed with the Board pursuant to this Chapter.
- B. Members of the Board shall be residents and electors of the Town, and shall be persons qualified by experience and training to pass upon matters pertaining to building construction.
- C. Neither the Mayor nor any Town employee shall serve on the Board.

2-3-5: TERMS OF OFFICE: There shall be no fixed term of office for the members of the Board. All members of the Board shall serve at the pleasure of the Town Manager, and may be removed by the Town Manager at any time without cause.

2-3-6: COMPENSATION: Members of the Board shall serve without compensation.

2-3-7: POWERS, DUTIES, AND RESPONSIBILITIES: The Board shall act as the board of appeals required or authorized by any building code. The Board shall have those powers and authority provided for in this Chapter, and the building code that is applicable to a particular appeal.

2-3-8: OPERATION: The Board shall elect a chair prior to holding an appeal hearing. There shall be no other officers of the Board. The Board shall keep an electronic record of its meetings and shall further keep written minutes thereof as required by the Colorado Open Meetings Law, Title 24, Chapter 6, Part 4, C.R.S. Two (2) members of the Board shall constitute a quorum for the transaction of business, and a decision agreed to by two (2) members shall be required for a Board decision.

2-3-9: MEETINGS: The Board shall meet at Town Hall, or such other location within the Town as the Board shall determine. The Board shall meet on such dates as the Board may determine. All meetings of the Board shall be subject to the provisions of the Colorado Open Meetings Law, Title 24, Chapter 6, Part 4, C.R.S.

2-3-10: RULES AND REGULATIONS: The Board shall have the power to adopt rules and regulations governing its operation. Such rules shall not be inconsistent with this Chapter or other applicable law.

2-3-11: APPLICABILITY OF CODE OF ETHICS: The provisions of the Breckenridge Town Code of Ethics (Title 1, Chapter 16 of this Code) shall apply to all members of the Board.

2-3-12: LEGAL ADVISOR: The Town Attorney shall be the legal advisor to the Board. In the event that it would be a conflict of interest for the Town Attorney to both present evidence to the Board on any matter and to advise the Board as to such matter, the Town Attorney shall continue to advise the Board on the matter and shall engage independent counsel to present the evidence.

2-3-13: TOWN CLERK: The Town Clerk shall serve as the official secretary of the Board, and shall designate a person or persons to provide the necessary administrative services for the Board. The Town Clerk or the Clerk's designee shall attend the meetings of the Board.

2-3-14: OATHS; SUBPOENAS: The Board shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing which the Board is authorized to conduct. It shall be unlawful and a violation of this Code for any person to fail to comply with any subpoena

issued by the Board in the proper conduct of its hearings, and upon conviction for such violation the offender shall be punished as provided in Title 1, Chapter 4 of this Code. A subpoena shall be served in the same manner as a subpoena issued by the district court of the state.

2-3-15: APPEALS PROCESS:

- A. Form Of Notice of Appeal: Those matters subject to decision by a board of appeals under a building code may be appealed to the Board by filing a written notice of appeal with the Town's building official. A notice of appeal shall contain all of the following information:
1. A heading in the words: "Before the Building Codes Board of Appeals of the Town of Breckenridge."
 2. A caption reading: "Appeal of," giving the name of the appealing party.
 3. A brief statement setting forth the legal interest of the appealing party in the building or the land involved in the notice and order appealed from.
 4. A statement that the appeal is based on a claim by the appealing party that either: (i) the true intent of the applicable building code has been incorrectly interpreted; (ii) the provisions of the applicable building code do not fully apply; or (iii) an equally good or better form of construction is proposed by the appealing party. No other basis for an appeal shall be permitted.
 5. A brief statement in ordinary and concise language of the specific order or action appealed from, together with any material facts claimed to support the contentions of the appealing party.
 6. A brief statement in ordinary and concise language of the relief sought by the appealing party.
 7. The signatures of the appealing party and the appealing party's mailing address.
 8. The verification (by declaration under penalty of perjury) of the appealing party as to the truth of the matters stated in the appeal.

The Board shall not consider an appeal that is incomplete or untimely filed.

- B. Filing of Appeal: The appeal shall be filed within thirty (30) days from the date of issuance of an appealable order or appealable action of the building official; provided, however, that if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property, or safety of the public or adjacent property and is ordered vacated and posted in accordance with the uniform code for the abatement of dangerous buildings, or other building code, such appeal shall be filed within ten (10) days from the date of the service of the notice and order of the building official.
- C. Processing Of Appeal: Within five (5) days of receipt of a complete notice of appeal the building official shall notify the Town Manager of the filing of the appeal. The Town Manager shall then promptly appoint the members of the Board who will hear and decide the appeal.
- D. Scheduling And Noticing of Hearing of Appeal: The Board shall conduct a hearing on each appeal that is timely and properly filed under this Chapter. As soon as practicable after the Town Manager has appointed a Board to hear the appeal, the Board shall fix a date, time, and place for the hearing of the appeal. Such date shall be not less than ten (10) nor more than thirty (30) days from the date the appeal was filed with the building official, unless the appealing party agrees to a later hearing date. Written notice of the time and place of the hearing shall be given at least five (5) days (or such shorter time as may be agreed upon by the appealing party) prior to the date of the hearing to each appealing party by the Town Clerk, either by causing a copy of such notice to be delivered to the appealing party personally or by mailing a copy thereof, postage prepaid, addressed to the appealing party at the address shown in the notice of appeal.

The Board may continue any hearing, upon timely request, for good cause shown, or upon its own initiative, and such rescheduled hearing date may be later than thirty (30) days from the date the appeal was filed with the building official.

- E. **Conduct of Hearing:** The following rules shall govern the conduct of an appeal hearing before the Board:
1. **Scope Of Hearing On Appeal:** Only those matters or issues specified by the appealing party in the appealing party's notice of appeal shall be considered, unless the Board for good cause determines to consider other issues.
 2. **Representation:** Any person may appear or be represented by an authorized agent or an attorney at their own expense. An attorney who appears before the Board shall be required to state the name and address of all persons whom he or she has been authorized to represent at the hearing.
 3. **Right To Present Evidence And Cross-Examine Witnesses:** Each party shall have the right to present such evidence as may be relevant, and to cross-examine all witnesses. The Town's building official shall be deemed to be a party to any appeal filed under this Chapter.
 4. **Testimony Under Oath:** All testimony shall be given under oath or affirmation.
 5. **Rules Of Evidence:** The strict rules of evidence shall not apply.
 6. **Audio Recording:** An audio record shall be made of each hearing. The Town Clerk shall retain the original audio record as required by Town's record retention policy. A copy of an audio record of a hearing shall be made available to any party upon written request and payment of a fee determined by the Town Clerk to be sufficient to reimburse the Town for the cost of providing such copy. A court reporter may be employed by any party, at the expense of such party, to prepare a verbatim written record of the hearing.
 7. **Burden of Proof:** The burden of proof shall be on the appealing party. The burden of proof shall be by a preponderance of the evidence. "Preponderance of the evidence" means to prove that something is more probably true than not.
- F. **Decision:** The Board shall render its decision based upon the evidence presented at the hearing and any written legal or other argument presented by the parties; the requirements of the applicable building code; and whatever additional evidence or knowledge that may be relevant. All decisions shall be issued within thirty (30) days after the hearing, and shall be transmitted in writing to the appealing party.
- G. **Staying Of Order Under Appeal:** Enforcement of any order, decision, or determinations of the building official that is the subject of a notice of appeal shall be stayed during the pendency of an appeal.

2-3-16: **FAILURE TO APPEAL:** Failure of any person to file a timely and complete notice of appeal in accordance with of this Chapter shall constitute a waiver of such person's right to an administrative hearing before the Board, and the right to an adjudication by the Board of any order, decision, or determination made the Town's building official.

2-3-17: **APPEALS FROM BOARD DECISION:** The decision of the Board shall be final, subject to the right of any aggrieved party to contest the matter in an appropriate court action commenced under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. For purposes of determining the time limit for the commencement of an action under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, the decision of the Board shall be deemed to be final upon the Board's issuance of a written finding or decision following the conclusion of the hearing. If the appealing party receives a copy of the written decision of the Board at the time of the hearing, the time for the filing of the appeal pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure shall commence from the date the appealing party receives the written decision. If the written decision of the Board is transmitted to the appealing party by mail, the time for the filing of the appeal Rule 106(a)(4) of the Colorado Rules of Civil Procedure shall commence from the date of the mailing of the written decision.

2-3-18: CHAPTER CONTROLS IN THE EVENT OF A CONFLICT: The provisions of this Chapter supersede any conflicting provision of a building code.

Section 2. Except as specifically amended by this ordinance, 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 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 4. 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 May, 2017.

This ordinance was published in full on the Town of Breckenridge website on May 11, May 12, May 13, May 14 and May 15, 2017.

A public hearing on this ordinance was held on May 23, 2017.

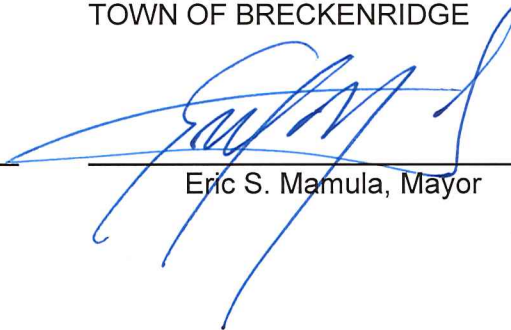
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 23rd day of May, 2017. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE



Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

5/23/17
Date

This Ordinance was published on the Town of Breckenridge website on May 26, May 27, May 28, May 29 and May 30, 2017. This ordinance shall become effective on June 29, 2017.