

ORDINANCE NO. 9

Series 2018

AN ORDINANCE AMENDING TITLE 11 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING A NEW CHAPTER 9 CONCERNING REGULATIONS FOR WORK UNDERTAKEN IN TOWN STREETS; AND MAKING A CONFORMING AMENDMENT TO THE CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS "THE TOWN OF BRECKENRIDGE DEVELOPMENT CODE"

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

Section 1. Title 11 of the Breckenridge Town Code is amended by the addition of a new Chapter 9, to be entitled "Work Performed in Town Streets," which shall read as follows:

**CHAPTER 9**

**WORK PERFORMED IN TOWN STREETS**

Section:

- 11-9-1: Short Title
- 11-9-2: Purpose and Objectives
- 11-9-3: Definitions
- 11-9-4: Town Public Work Projects
- 11-9-5: Specifications and Cost to be Paid by the Town to Install Conduit in the Town's Right of Way
- 11-9-6: Police Powers
- 11-9-7: Joint Planning and Construction; Coordination of Planned Excavations
- 11-9-8: Joint Excavation
- 11-9-9: Construction of New Streets
- 11-9-10: Regulations

**11-9-1: SHORT TITLE:** This Chapter is to be known and may be cited as the "Town of Breckenridge 2018 Dig Once Ordinance."

**11-9-2: PURPOSE AND OBJECTIVES:**

A. The purpose of this Chapter is to provide principles and procedures for the coordination of construction excavation within any public rights of way within the Town, and to protect the integrity of the Town's rights of way and street system.

B. Public and private uses of rights of way for location of utilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the Town must insure that the primary purpose of the rights of way, namely, the safe and efficient passage of pedestrian and vehicular traffic, is maintained to the greatest extent possible. In addition, the value of other public and private installations, facilities, and properties should be protected, competing uses must be reconciled, and the public safety preserved. The use of the Town's rights of way corridors for the location of facilities is secondary to these public objectives. This Chapter is intended to assist in striking a balance between the public need for efficient, safe transportation routes and the use of rights of way for location of facilities by public and private entities. It thus has several objectives:

1. To ensure that the public health, safety, and welfare is maintained and that public inconvenience is minimized.
2. To facilitate work within the rights of way through the standardization of regulations.
3. To conserve and fairly apportion the limited physical capacity of the public rights of way held in public trust by the Town.
4. To promote cooperation among the applicants and permittees (as defined in this Chapter) and the Town in the occupation of the public rights of way, and work therein, in order to: (i) eliminate duplication that is wasteful, unnecessary or unsightly; (ii) lower the permittee's

and the Town's costs of providing services to the public, and (iii) minimize the number of excavations that occur in the Town's rights of way.

**11-9-3: DEFINITIONS:** In this Chapter the following words shall have the following meanings:

ADMINISTRATIVE DOCUMENT:	Includes the specifications of conduit placements along with the guidelines for determining direct costs on a per-project basis.
APPLICANT:	An owner or duly authorized agent of such owner, who has applied for a permit to Excavate in the rights of way.
BROADBAND:	Has the meaning provided by applicable federal law.
COLLECTOR STREET:	Has the meaning provided in the Town's Engineering Standards, as amended from time to time .
CONDUIT:	A single enclosed raceway for cables, fiber optics or other wires, or a pipe or canal used to convey fluids or gases.
DEVELOPER:	The person, partnership, corporation, or other legal entity who is improving property within Town and who is legally responsible to the Town for the construction of improvements within a subdivision or as a condition of a building permit or other land use or development authorization.
DIRECT COST:	All necessary and usual costs associated with the placement of Conduits as determined and approved by the Town Engineer,.
EMERGENCY:	Any event which may threaten public health or safety, or that results in an interruption in the provision of services, including, but not limited to, damaged or leaking water or gas conduit systems, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged electrical and communications facilities, making it impracticable under the circumstances to provide advanced notice of needed repairs.
EXCAVATE OR EXCAVATION:	Any Work in the surface or subsurface of the rights of way, including, but not limited to opening the rights of way; installing, servicing, repairing, or modifying any Facility(ies) in or under the surface or subsurface of the rights of way, and restoring the surface and subsurface of the rights of way.
FACILITIES:	Includes, without limitation, any pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, ducts, fixtures and appurtenances and other like equipment used in transmitting, receiving, distributing, offering, and providing broadband, utility and other services.
LANDSCAPING:	Materials, including without limitation, grass, ground cover, shrubs, vines, hedges, or trees and nonliving natural materials commonly used in landscape development, as well as attendant irrigation systems.

MAJOR WORK:	Any reasonably foreseeable excavation that will affect the rights of way for more than five (5) consecutive calendar days.
OWNER:	Any Person, including the Town, who owns any facilities that are or are proposed to be installed or maintained in the rights of way.
PERMIT:	Any authorization for use of the rights of way granted in accordance with the terms of this Chapter, and other applicable laws and policies of the Town.
PERMITTEE:	The holder of a valid permit issued pursuant to this Chapter and other applicable provisions of applicable law for excavation in the rights of way.
PERSON:	Any person, firm, partnership, special, metropolitan, or general district formed under Title 32 of the Colorado Revised Statutes, or other applicable state law, association, corporation, company, or organization of any kind.
RIGHTS OF WAY:	Any public street, road, way, place, alley, sidewalk or easement, that is owned, held or otherwise dedicated to the Town for public use.
TOWN ENGINEER:	The Town Engineer of the Town, or such person's designee acting pursuant to Section 1-7-2 of this Code.
TOWN:	The Town of Breckenridge, Colorado.
WORK:	Any labor performed on, or any use or storage of equipment or materials, including but not limited to, construction of streets and all related appurtenances, fixtures, improvements, sidewalks, driveway openings, street lights, and traffic signal devices. Such term shall also mean construction, maintenance, and repair of all underground structures such as pipes, conduit, ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar facilities located below surface, and installation of overhead poles used for any purpose.

**11-9-4: TOWN PUBLIC WORK PROJECTS:**

A. Unless waived by the Town Engineer based on undue burden, an unfavorable cost benefit analysis, or the consideration of other relevant factors, the Town will install or have installed communications conduit whenever the Town undertakes or authorizes the following types of projects:

1. New street, road, sidewalk, bike path, or other transportation infrastructure construction.
2. Major maintenance, repaving, or other significant work on the above infrastructure.
3. Excavations for repairing or installing utilities, including but not limited to broadband communications, electricity, gas, water, and storm drainage.
4. Other excavations, or work on public property or in the public right of way that provide a similar opportunity to install conduit for future use at a low additional cost.

5. When determining if a specification is feasible or practicable, the Town Engineer will take into account the added cost, the length of the conduit installed (and therefore its potential future value), the impact on the overall project, and other relevant factors.

B. Because communications facilities are needed to monitor, manage, and provide security for the Town to support public safety and economic development in general, the cost of purchasing, installing, and documenting the conduit may be included in the cost of the overall project. However, other sources of funds may also be used if available.

C. Conduit installed by or on behalf of the Town will be owned and maintained by the Town.

D. A record of all Town-owned conduits will be maintained the Public Works Department, and transferred into the Town's geographic information system (GIS).

**11-9-5: SPECIFICATIONS AND COST TO BE PAID BY THE TOWN TO INSTALL CONDUIT IN THE TOWN'S RIGHT OF WAY:** The Town will work with local agencies to establish common standards for the type, size, and number of conduits and associated fixtures to be installed. Until these standards are established, a single conduit will be installed. The Town Engineer shall determine the "direct cost" to be paid by the Town in connection with the installation of conduit in the Town's right of way as provided in this Chapter. The "Administrative Document" can be obtained from the Town Engineer.

**11-9-6: POLICE POWERS:** A permittee's rights under this Chapter and a permit issued pursuant to this Chapter are subject to the police powers of the Town, which include the power to adopt and enforce ordinances, including amendments to this Chapter, and regulations necessary to the safety, health, and welfare of the public. A permittee shall comply with all applicable ordinances and regulations enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town reserves the right to exercise its police powers, notwithstanding anything in this Chapter or any permit to the contrary. Any conflict between the provisions of a Town ordinance, resolution, or permit issued by the Town and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

**11-9-7: JOINT PLANNING AND CONSTRUCTION; COORDINATION OF PLANNED EXCAVATIONS:**

A. Excavations in the Town's rights of way disrupt and interfere with the public use of those rights of ways and can damage the pavement and Landscaping. The purpose of this section is to reduce this disruption, interference, and damage by promoting better coordination among applicants and permittees making excavations in Town's rights of way and between such Persons and the Town. Better coordination will assist in minimizing the number of excavations being made wherever feasible, and will ensure the excavations in Town's rights of way are, to the maximum extent possible, performed before, rather than after, the resurfacing of the rights of way by the Town.

B. Any permittee owning, operating, or installing facilities in Town rights of way to provide water, sewer, gas, electric, broadband, communications, video or other utility or utility-like services shall coordinate such actions with the Town Engineer. If the Town requires that conduit be installed in the same location the permittee shall coordinate with the Town and facilitate the installation of the Town's conduit. The direct cost of installing the Town's conduit will be paid by the Town as described in Section 11-9-5. No utility shall be required to serve as a financial pass through from the Town to the contractor installing the Town's conduit. Failure to coordinate with the Town Engineer will compromise the permittee's ability to work in the right of way.

C. The Town Engineer shall review all major excavation plans for work to be done in the Town's rights of way, and identify conflicts and opportunities for coordination of excavations. The Town Engineer shall notify affected Owners and permittees of such conflicts and opportunities to the extent necessary to maximize coordination of excavation. Each Applicant for a permit shall coordinate, to the extent practicable, with each potentially affected Owner and permittee to minimize disruption in the rights of way.

D. The Town may disclose information contained in a permittee's excavation plan to any public or private entity planning on conducting excavation activities in the rights of way only on a need-to-know basis in order to facilitate coordination among excavators and to avoid unnecessary

excavation in the rights of way. To the maximum extent permissible under the Colorado Open Records Act, as amended, the Town shall not otherwise disclose to the public any information contained in a excavation plan submitted by a permittee that is proprietary, a trade secret, or is otherwise protected from public disclosure under applicable law; provided, however that the Town shall have no duty to decline to disclose any information that the permittee has not identified on its face as proprietary, a trade secret, or otherwise protected from disclosure under applicable law. The Town shall notify a permittee of any request for inspection of public records that calls for disclosure of any excavation plan on which any information has been identified as proprietary, trade secret or otherwise protected from disclosure. The Town shall consult with its legal counsel regarding any such request and shall inform the affected permittee either that the Town will refuse to disclose the protected information or, if there is no proper basis for such refusal, that the Town intends to disclose the requested information unless ordered otherwise by a court.

E. In preparation for locating facilities in the Town's rights of way a permittee shall compile all information regarding the permittee's or any other facilities already located in the rights of way and shall make that information available to the Town in a written and verified format acceptable to the Town Engineer. If the permittee fails to provide such information in a timely manner, the Town Engineer may obtain such information and charge the permittee the actual costs for obtaining the information.

#### **11-9-8: JOINT EXCAVATION:**

A. Public Entity and Special Districts Excavators. Whenever two or more public entity excavators propose Major Work in the same block within a year, such Work shall be performed by one public entity excavator when practical. The participants to the excavation shall pay their pro rata share of the Work, or as otherwise agreed to by the affected public entities. For purposes of this subsection A, the public entity excavators shall be treated as a single permit Applicant and shall submit one application.

B. Private Entity Excavators. Whenever two or more private entity excavators propose Major Work in the same block, such Work shall be performed by one private entity excavator if possible. For purposes of this subsection B, the private entity excavators will coordinate to determine who will perform the excavation work. Both entities will maintain separate and distinct permits for the purpose their intended projects. If the Town has an interest in installing conduit in the same location the permittee shall install the Town's conduit and charge the Town the direct cost associated with install conduit as described in Section 11-9-5. Such charges will be paid by the Town.

C. Public Entity Excavator and Private Entity Excavator. Whenever a public entity excavator(s) and a private entity excavator(s) propose Major Work in the same block the Department shall condition permits for such Work in a manner that maximizes coordination and minimizes the total period of construction. If the Town has an interest in installing conduit in the same location the permittee shall charge the Town the direct cost associated with install conduit as described in

Section 11-9-5.

#### **11-9-9: CONSTRUCTION OF NEW STREETS:**

A. The intent of this section is to provide for the construction of infrastructure sufficient to allow broadband communications entities desiring to deploy facilities in the future to do so by pulling the same through the conduit and appurtenances installed pursuant to this section and without Excavating within the rights of way. This section is not intended to require Owners of broadband facilities or other conduit to install additional ducts or conduit in existing rights of way; rather, it is intended to require those constructing public streets, including the Town and Developers, to provide and install such conduit and appurtenances as may be necessary to accommodate future broadband needs within the rights of way without further excavation.

B. Whenever any new public street is constructed, whether by the Town as a public works project or by a Developer or other private party in conjunction with development, the following shall be required:

1. For all new collector streets, a minimum of two 4" conduits shall be installed by the party constructing the street; provided however that at the discretion of the Town Engineer, the number and size of the conduit and spacing of pull boxes may be modified to address the reasonably known plans and/or demand for broadband capacity in these locations. If

determined that additional conduits are required, the Town shall determine direct costs as provider for in section 11-9-5.

2. For all other new streets, a minimum of two 2" conduits shall be installed by the party constructing the street. If determined that additional conduits are required, the Town shall determine direct costs as provider for in section 11-9-5.

3. In addition to installing conduit, the party constructing the street will be required to install such vaults and other appurtenances as may be necessary to accommodate installation and connection of broadband facilities within the conduit.

4. All construction and installation shall be accomplished according to construction standards adopted by the Town. The construction standards shall be adopted with due consideration given to existing and anticipated technologies and consistent with industry standards.

5. All facilities installed by Developers or other private parties pursuant to this section shall be conveyed and dedicated to the Town with the dedication and conveyance of the public street and/or rights of way.

6. All installation costs shall be the responsibility of the party constructing the public street; provided, however, if the Town determines that more than number of conduits described in subsections B1 and B2 of this section are required, the Town will pay the direct cost of installing the additional conduits.

C. The Town reserves the right to charge reasonable fees for the use of conduit installed pursuant to this section, to the extent consistent with and as limited by federal and state laws. Any such fees shall be established by resolution or ordinance.

**11-9-10 RULES AND REGULATIONS:** The Town Engineer may from time to time adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this Chapter. Such regulations shall be adopted in accordance with the procedures established by Title 1, Chapter 18 of this Code. Pursuant to Section 1-18-6 of this Code, the Town Council authorizes the Town Engineer's rules and regulations promulgated pursuant to this Section to be enforced in the Town's municipal court.

Section 2. Section 9-1-19-28A, "Policy 28 (Absolute) Utilities" of the Breckenridge Town Code is amended by the addition of a new section K, which shall read as follows:

K. Compliance with Town's "Dig Once" Policy: The installation of all utility lines within a Town street or right of way shall be done in compliance with Chapter 9 of Title 11 of this Code, known as the "Town of Breckenridge 2018 Dig Once Ordinance."

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 Chapter 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 Chapter pursuant to: (i) Section 31-15-702, C.R.S., and the powers possessed by home rule municipalities in Colorado; (ii) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (iii) the powers contained in the Breckenridge Town Charter.

Section 6. This Chapter 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 24th day of April, 2018.

This ordinance was published in full on the Town of Breckenridge website on April 27, April 28,

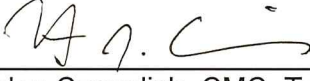
April 29, April 30 and May 1, 2018.

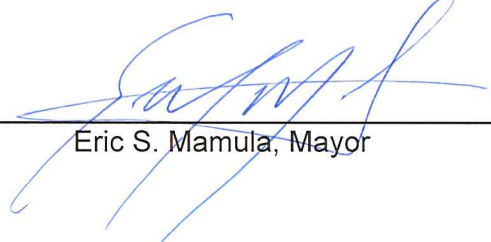
A public hearing on this ordinance was held on May 8, 2018.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 8th day of May, 2018. 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

 5/8/18  
\_\_\_\_\_  
Town Attorney                      Date

This Ordinance was published on the Town of Breckenridge website on May 9, May 10, May 11, May 12 and May 13, 2018. This ordinance shall become effective on June 8, 2018.