

ORDINANCE NO. 4

Series 2019

AN ORDINANCE AMENDING TITLE 4 OF THE BRECKENRIDGE TOWN CODE
BY ADDING A NEW CHAPTER 17 ENTITLED
“DOCKLESS BICYCLE SHARE LICENSING”

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

Section 1. Title 4 of the Breckenridge Town Code is amended by the addition of a new chapter 17, to be entitled “Dockless Bicycle Share Licensing”, which shall read in its entirety as follows:

CHAPTER 17

DOCKLESS BICYCLE SHARE LICENSING

SECTION:

- 4-17-1: Short title
- 4-17-2: Authority
- 4-17-3: Legislative Intent
- 4-17-4: Definitions
- 4-17-5: License Required
- 4-17-6: Application For License
- 4-17-7: Application Fee
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- 4-17-11: Contents of License
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- 4-17-13: Duration of License
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- 4-17-16: Licensee’s Specific Duties and Obligations
- 4-17-17: Dockless Shared Bicycle Standards
- 4-17-18: Suspension Or Revocation of License
- 4-17-19: Town Manager’s Decision Is Final
- 4-17-20: Signage
- 4-17-21: Parking Shared Bicycles
- 4-17-22: Penalties; Injunctive Relief
- 4-17-23: No Town Liability
- 4-17-24: Rules and Regulations

4-17-1: SHORT TITLE: This chapter shall be known and may be cited as the “Town Of Breckenridge Dockless Bicycle Share Licensing Ordinance.”

4-17-2: AUTHORITY: The town council finds, determines, and declares that it has the power to adopt this chapter pursuant to:

- A. Section 31-17-702, C.R.S. (concerning municipal regulation of streets and alleys);
- B. Section 31-17-103, C.R.S. (concerning municipal police powers);
- C. Section 31-17-401, C.R.S.(concerning general municipal police powers);
- D. The authority granted to home rule municipalities by Article XX of the Colorado Constitution; and
- E. The powers contained in the Breckenridge Town Charter.

DOCKLESS BICYCLE SHARE LICENSING ORDINANCE

4-17-3: LEGISLATIVE INTENT: The intent and purpose of this chapter is to protect the public health, safety, and welfare to prevent or mitigate against any adverse impact that dockless shared bicycles may have to public or private property by licensing all persons who make available dockless shared bicycles in the town.

4-17-4: DEFINITIONS: As used in this chapter the following words have the following meanings:

APPLICANT:	A person who has submitted an application for license pursuant to this chapter.
APPLICATION:	An application for license submitted pursuant to this chapter.
DAY:	A calendar day, unless otherwise indicated.
DOCKLESS:	Not having a docking station in a fixed location from which users must lock and unlock their rented bicycles.
DOCKLESS BICYCLE SHARE:	A transportation system providing users the ability to access bicycles via mobile technology and that does not need to be attended by the licensee, allowing the user to pick up a bicycle from one location and leave it at another within a system's service area.
DOCKLESS SHARED BICYCLE (OR SHARED BICYCLE):	A bicycle offered or operating in a system through which members of the public are offered for consideration the use of bicycles without the use of fixed docking facilities.
ELECTRICAL ASSISTED BICYCLE:	Has the meaning provided in the town's model traffic code adopted in title 7, chapter 1 of this code.
GOOD CAUSE (for the purpose of refusing or denying a license renewal under this chapter):	Means: <ul style="list-style-type: none">A. The licensee has violated, does not meet, or has failed to comply with: (i) any of the terms, conditions, or provisions of this chapter; or (ii) any rule and regulation promulgated by the town manager pursuant to this chapter; orB. The licensee has failed to comply with (i) any of the terms and conditions of its license including, but not limited to, any special terms or conditions that were placed on its license at the time the license was issued or were subsequently modified by the town manager pursuant to Section 4-17-10B, or (ii) any special conditions that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings.
MOBILE APPLICATION:	The software installed on a user's mobile device that allows the user to access dockless shared bicycles.

LICENSEE:	The person to whom a license has been issued pursuant to this chapter.
PERSON:	Has the meaning provided in Section 1-3-2 of this code.
POLICE CHIEF:	The police chief of the town, or the police chief designee authorized to act pursuant to Section 1-7-2 of this code.
REBALANCING:	Redistributing bicycles throughout the town to ensure all areas are served by dockless bicycle share.
TOWN:	Has the meaning provided in Section 1-3-2 of this code.
TOWN MANAGER:	The town manager of the town, or the town manager's designee authorized to act pursuant to Section 1-7-2 of this code.
USER:	The operator of a shared bicycle rented from a licensee.

4-17-5: LICENSE REQUIRED: No person shall conduct or carry on the business of offering shared bicycles that are not deployed from a fixed docking station without first obtaining a license from the town manager under this chapter.

4-17-6: APPLICATION FOR LICENSE:

- A. A person seeking to obtain a license pursuant to this chapter shall file an application with the town manager. The form of the application shall be provided by the town manager.
- B. The applicant shall provide a financial guaranty upon which the town may draw, in the amount of \$80 per bicycle, with a cap of \$8,000, to secure performance of the terms of the applicant's license following issuance. The financial guaranty shall be cash, a letter of credit from a surety or financial institution located in the state of Colorado and in a form acceptable to the town manager, payable to the town as beneficiary, or another form of financial guaranty approved by the town manager. If a permitted licensee increases the size of its fleet as permitted by this chapter, the financial guaranty shall be adjusted appropriately before deploying additional bicycles. The financial guaranty will be used to pay town expenses related to the enforcement of this chapter including, without limitation, the following:
 - 1. Public property repair and maintenance costs caused by the licensee's equipment;
 - 2. Any cost for removing or storing a licensee's bicycles that are improperly parked; and
 - 3. Any cost to the town to remove a licensee's bicycles if its license expires or is otherwise terminated.

If the financial guaranty is exhausted prior to the term of the license, the licensee shall restore the financial guaranty to \$8,000, or such other amount as may be required by the town manager. A licensee's failure to restore the financial guarantee shall be a violation of the terms and conditions of the license. If an applicant's license is not granted, the financial guaranty shall be returned to the applicant without interest. Upon the expiration or termination of a license the remaining balance of the financial guarantee shall be refunded to the licensee without interest.

- C. An applicant for a license shall submit, along with the application, a management plan that addresses accessibility of the applicant's proposed dockless bicycle share system, and how the applicant will prevent or mitigate adverse impacts that its dockless shared bicycles may have to public or private property. The town manager shall not approve a management plan unless it adequately addresses such impacts. The management plan shall include the following components:
1. A description of how the applicant will develop and implement assistance programs to enhance equitable access to potential dockless bicycle share users who do not have access to smart phones or credit cards;
 2. A proposed service plan to achieve equitable distribution of shared bicycles and electric assisted bicycles, including deployment of dockless shared bicycles at transit facilities, high demand areas of the town, and areas of the town that are not currently served by shared bicycle stations;
 3. A description of how the applicant will respond to complaints of improperly parked or abandoned shared bicycles;
 4. A description of how the applicant will respond when notified of safety or operational concerns of a shared bicycle in the system;
 5. A maintenance plan for shared bicycles; and
 6. A proposed user education and outreach plan for proper bicycle parking and riding.
- D. A license issued pursuant to this chapter does not eliminate the need for the licensee to obtain other required town licenses related to the operation of the licensee's business, including, without limitation:
1. a town sales tax license; and
 2. a town Business and Occupational Tax License.

4-17-7: APPLICATION FEE: An applicant shall pay to the town a non-refundable application fee when the application is filed. The purpose of the fee is to cover the Town's administrative costs of processing the application, and the Town's costs of monitoring and enforcing licenses issued pursuant to this chapter. For applications filed in 2019 the application fee is \$500.00. Thereafter, the amount of the application fee shall be fixed by the town council as part of its annual budget process.

4-17-8: TOWN MANAGER'S REVIEW OF APPLICATION:

- A. Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application fee as required by section 4-17-7, and the financial guaranty required by section 4-7-6B, the town manager shall transmit copies of the application to:
1. the Police Department;
 2. the Community Development Department;
 3. the Public Works Department; and
 4. any other person or agency that the town manager determines should properly investigate and comment upon the application.
- B. Within twenty days of receipt of a completed application those town departments and other referral agencies described in subsection A of this section shall provide the town manager with comments concerning the application.
- C. If the town manager requests the applicant to provide additional information that the town manager reasonably determines to be necessary in connection with the investigation and review of the application, the applicant shall provide such

information within five days of the town manager's request, unless the town manager agrees to a longer time period.

4-17-9: DECISION BY TOWN MANAGER:

- A. The town manager shall conditionally approve or deny an application within thirty days of the receipt of a completed application unless, by written notice to the applicant, the decision period is extended for an additional ten days if necessary for the town manager to complete the town manager's review of the application.
- B. The town manager shall issue a license under this chapter when, from a consideration of the application, and such other information as may otherwise be obtained, the town manager determines that:
 - 1. The application (including any required attachments and submissions) is complete and signed by the applicant, and the applicant has provided any additional information concerning the application requested by either the town manager pursuant to section 4-17-8C;
 - 2. The applicant has paid the application fee and any other fees required by section 4-17-7 and made the deposit of the financial guaranty required by 4-17-6B;
 - 3. The application does not contain a material falsehood or misrepresentation; and
 - 4. The granting of the application will not endanger public health or safety.
- C. The town manager shall deny an application for a license under this chapter if the town manager determines that:
 - 1. Information contained in the application, or supplemental information requested from the applicant, is found to be false in any material respect;
 - 2. The applicant has had a license issued under this chapter revoked within the two years immediately preceding the filing of the application, or the applicant owned a fifty percent or greater interest in any business entity that has had a license issued under this chapter revoked within the two years immediately preceding the filing of the application;
 - 3. The applicant is currently indebted to the town for any lawfully assessed tax or fee; or
 - 4. The granting of the application will endanger public health or safety.
- D. If the application is denied, the town manager shall clearly set forth in writing the grounds for denial.
- E. If the application is conditionally approved, the town manager shall clearly set forth in writing the conditions of approval.
- F. If an application is denied the application fee shall not be refunded.

4-17-10: AUTHORITY TO IMPOSE CONDITIONS ON LICENSE:

- A. The town manager shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this chapter and applicable law.
- B. For good cause shown, the town manager may administratively modify or eliminate or add any license condition during the term of the license.

4-17-11: CONTENTS OF LICENSE: A license shall contain the following information:

- A. The name of the licensee;

- B. The date of the issuance of the license;
- C. The address at which the licensee is authorized to operate the business; and
- D. The date of the expiration of the license.
- E. Notice that the shared bicycles authorized by the license may only be deployed by the licensee between April 15th and October 31st of a calendar year.

A license must be signed by both the licensee and the town manager to be valid.

4-17-12: LICENSE NOT TRANSFERABLE: A license is non-transferable and non-assignable. Any attempt to transfer or assign a license shall void the license.

4-17-13: DURATION OF LICENSE: Each license issued pursuant to this chapter shall be valid for one year from the date of issuance, unless the town manager specifies a shorter term for the license.

4-17-14: RENEWAL OF LICENSE:

- A. A licensee does not have a vested right or a property right in the renewal of a license issued pursuant to this chapter.
- B. Each license issued pursuant to this chapter may be renewed as provided in this section.
- C. An application for the renewal of an existing license shall be made to the town manager not less than forty-five days prior to the date of expiration. No application for renewal shall be accepted by the town manager after the date of expiration. The town manager may waive the forty-five days' time requirement set forth in this subsection if the applicant demonstrates an adequate reason.
- D. At the time of the filing of an application for the renewal of an existing license the applicant shall pay a renewal fee in an amount fixed by the town council as part of its annual budget process.
- E. The timely filing of a renewal application shall extend the current license until a final decision is made on the renewal application by the town manager.
- F. A license may be renewed by the town manager. At the time of the renewal of a license the town manager may impose any condition on the license that the town manager could lawfully impose pursuant to this chapter.
- G. The town manager may refuse to renew a license for good cause.

4-17-15: INSURANCE AND INDEMNIFICATION: Each license issued under this chapter shall contain the following requirements:

- A. The licensee shall procure and continuously maintain throughout the term of the license a policy of comprehensive commercial general liability insurance with limits of liability not less than Two Million Dollars (\$2,000,000) per claim, Two Million Dollars (\$2,000,000) aggregate, and Fifty Thousand Dollars (\$50,000) for property damage. The town shall be named as an additional insured under such insurance policy. An ACORD Form 27, or other certificate of insurance acceptable to town clerk, shall be completed by the licensee's insurance agent and provided to the town clerk as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be reviewed and approved by town prior to commencement of the operations of the business pursuant to the license, and on each renewal or replacement of the policy during the term of the license.
- B. The licensee shall indemnify and defend the town, its officers, employees, insurers, and self-insurance pool (with counsel acceptable to the town), from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind

whatsoever, arising out of in any manner connected with the operation of the business for which the license was issued. The licensee shall investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the licensee, and bear all other costs and expenses related thereto, including court costs and attorney fees. The indemnity obligation of this subsection shall survive the expiration or revocation of the license.

4-17-16: LICENSEE SPECIFIC DUTIES AND OBLIGATIONS: In addition to the other requirements of this chapter, it is the duty and obligation of each licensee to:

- A. Comply with the following:
 - 1. All of the terms and conditions of the license, including, without limitation, any special condition imposed by the town manager pursuant to section 4-17-10;
 - 2. The licensee's approved management plan;
 - 3. All of the requirements of this chapter; and
 - 4. All other town ordinances that are applicable to the licensee' business.
- B. Provide, on its mobile application, a link for customers to notify the licensee if there is a safety or maintenance issue with the bicycle; conspicuously post the licensee's privacy policy on the rental agreement between the licensee and the user; and comply with such policy.
- C. Include, in its mobile application, prominently displayed notification to users that:
 - 1. Helmet use is encouraged while riding a bicycle;
 - 2. Bicyclists are required to yield to pedestrians on sidewalks;
 - 3. When riding on-street, users must comply with all traffic regulations, as drivers would in a motor vehicle; and
 - 4. Shared bicycles may only be parked in bicycle racks, designated bicycle parking areas or on private property with the consent of the property owner, or in designated areas on town property that have been approved by the town.
 - 5. The shared bicycle is rented only for use within the Town of Breckenridge.
- D. Provide users with a 24-hour customer service telephone number to report safety concerns, complaints, or ask questions.
- E. Understand and educate users regarding the laws applicable to riding and operating a bicycle or electric assisted bicycle in the town, and within Summit County.
- F. Provide the town manager with current contact information for the licensee or the licensee's staff who are capable of rebalancing shared bicycles or picking up abandoned or damaged shared bicycles as required by subsection H of this section.
- G. Relocate or rebalance shared bicycles within two hours of receiving a request from the town.
- H. Remove or maintain any inoperable shared bicycle or shared bicycle that is not safe to operate, within twenty-four hours of notice by any means to the licensee by any individual or entity.
- I. Comply with the record keeping, ridership data, and reporting requirements established by the town manager under this chapter.

- J. Refrain from initially deploying more than 25 shared bicycles. During the term of a license the town manager is authorized to modify the number of shared bicycles each licensee may deploy based on the licensee's ability to meet key performance indicators established by the manager.

4-17-17: DOCKLESS SHARED BICYCLE STANDARDS:

- A. No person shall offer a dockless shared bicycle for use that does not meet each of the standards set forth in this section.
- B. The shared bicycle shall meet the standards outlined in the Code of Federal Regulations (C.F.R.) under title 16, chapter II, Subchapter C, Part 1512 – Requirements for Bicycles. Additionally, the shared bicycle shall meet the safety standards outlined in International Organization for Standardization (I.S.O.) 43.150 – Cycles, subsection 4210.
- C. Each electric assisted shared bicycle shall meet the definition of a class 1 electric assisted bicycles in the town's model traffic code adopted by reference in title 7, chapter 1 of this code.
- D. The shared bicycle shall be equipped with a locking mechanism that enables the bicycle to be locked to a fixed structure.
- E. The shared bicycle shall be equipped with technology to track ridership data required by the license.
- F. The shared bicycle shall have affixed, in a prominent location, identifying information that includes:
 - 1. The name, address, electronic mail address, and 24-hour customer service telephone number of the licensee; and
 - 2. A unique identifier number or series of numbers for each shared bicycle.
- G. No sign or other form of advertising shall be placed on the shared bicycle; provided, however, the licensee's name, contact information, and other technical information concerning the shared bicycle itself may be placed on the bicycle or on a placard not larger than four inches by six inches (4" x 6").

4-17-18: SUSPENSION OR REVOCATION OF LICENSE:

- A. A license issued pursuant to this chapter may be suspended or revoked by the town manager after a hearing for any of the following reasons:
 - 1. Fraud, misrepresentation, or a false statement of material fact contained in the license application.
 - 2. A violation of any town, state, or federal law or regulation pertaining to the operation of the business for which the license was issued.
 - 3. A violation of this chapter.
 - 4. A violation of any of the terms and conditions of the license, including, without limitation, any special condition imposed upon the license by the town manager pursuant to section 4-17-10.
 - 5. Licensees operations at its licensed location have ceased for more than six months for any reason.
 - 6. Ownership of the licensee business has been transferred without the new owner obtaining a license pursuant to this chapter.
- B. In connection with the suspension of a license, the town manager may impose reasonable conditions.

- C. Any hearing held pursuant to this section shall be processed in accordance with chapter 19 of title 1 of this code.
- D. For the purpose of disciplinary action imposed pursuant to this section, a licensee is responsible and accountable for the conduct of the licensee's employees, agents, and contractors occurring in connection with the operation of the business for which the license has been issued.
- E. In deciding whether a license should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the town manager shall consider all of the following:
 - 1. The nature and seriousness of the violation.
 - 2. Corrective action, if any, taken by the licensee.
 - 3. Prior violation(s), if any, by the licensee.
 - 4. The likelihood of recurrence.
 - 5. All circumstances surrounding the violation.
 - 6. Whether the violation was willful.
 - 7. The number of previous violations by the licensee.
 - 8. Previous sanctions, if any, imposed against the licensee.
- F. No fee previously paid by a licensee in connection with the application shall be refunded if such license is suspended or revoked.

4-17-19: TOWN MANAGER'S DECISION IS FINAL: Any decision made by the town manager pursuant to this chapter shall be a final decision of the town and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's or licensee's (as applicable) failure to timely appeal the decision is a waiver the applicant's or licensee's right to contest the denial or conditional approval of the application.

4-17-20: SIGNAGE: All signage for a business for which a license has been issued shall comply with the requirements of title 9, chapter 15 of this code.

4-17-21: PARKING DOCKLESS SHARED BICYCLES:

- A. No user of a dockless shared bicycle shall park a shared bicycle in any location except where authorized by this chapter or pursuant to rules issued by the town manager under this chapter. Both the licensee and user are jointly and severally liable for any parking in violation of this chapter or the town manager rules issued under this chapter.
- B. The police chief is authorized to impound any shared bicycle left in a location that is not authorized for the parking of a shared bicycle pursuant to rules issued by the town manager, to dispose of any abandoned or improperly parked shared bicycle, and to collect the cost of such impoundment or disposal from the licensee either through the financial guaranty required by this chapter or directly from the licensee if the financial guaranty is insufficient to cover the cost.

4-17-22: PENALTIES; INJUNCTIVE RELIEF:

- A. It is a misdemeanor offense for any person to violate any provision of this chapter. Any person convicted of having violated any provision of this chapter shall be punished as set forth in chapter 4 of title 1 of this code.
- B. If a person is required to have a license issued pursuant to this chapter the operation of such person's business without a valid license issued pursuant to this chapter may be enjoined by the town in an action brought in the municipal court pursuant to section 1-8-10 of this code, or in any other court of competent jurisdiction. In any case in which the town prevails in a civil action initiated

pursuant to this section, the town may recover its reasonable attorney fees plus costs of the proceeding.

- C. The remedies provided in this section are in addition to any other remedy provided by applicable law.

4-17-23: NO TOWN LIABILITY: The adoption of this chapter and the issuance of licenses pursuant to this chapter shall not create any duty to any person. No person shall have any civil liability remedy against the town, or its officers, employees or agents, for any damage or loss of any kind arising out of or in any way connected with the issuance of any license pursuant to this chapter. Nothing in this chapter shall be construed to create any liability or to waive any of the immunities, limitations on liability, or other provisions of the Colorado Governmental Immunity Act, section 24-10-101, et seq., C.R.S., or to waive any immunities or limitations on liability otherwise available to the town, or its officers, employees or agents.

4-17-24: RULES AND REGULATIONS: The town manager shall have the authority from time to time to 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. A violation of such regulations may be enforced in the Town's Municipal Court.

Section 2. 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 3. 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 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 12th day of February, 2019.

This ordinance was published in full on the Town of Breckenridge website on February 15, February 16, February 17, February 18 and February 19, 2019.

A public hearing on this ordinance was held on February 26, 2019.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 26th day of February, 2019. 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


Erin Gigliello, Mayor Pro Tem

APPROVED IN FORM

 
Town Attorney Date

This Ordinance was published on the Town of Breckenridge website on March 1, March 2, March 3, March 4 and March 5, 2019. This ordinance shall become effective on April 4, 2019.