

ORDINANCE NO. 4

Series 2020

AN ORDINANCE AMENDING SECTION 6-3-5 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE DEFINITION OF "LEWD AND INDECENT DISPLAYS"

WHEREAS, in the recent case of *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 762 (10th Cir. 2020), the U.S. Court of Appeals for the Tenth Circuit held that the Fort Collins gender-specific public nudity ordinance violated the Equal Protection clause of the United States Constitution; and

WHEREAS, the Fort Collins decision was not appealed and is now final; and

WHEREAS, Colorado is located within the Tenth Circuit and, as such, the Fort Collins decision is binding on the Town of Breckenridge; and

WHEREAS, it is necessary to amend the definition of "Lewd and Indecent Displays" in Section 6-3-5 of the Breckenridge Town Code to comply with the Tenth Circuit's decision in the Fort Collins case.

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

Section 1. The definition of "Lewd and Indecent Displays" in Section 6-3-5 of the Breckenridge Town Code is amended to read as follows:

LEWD AND INDECENT DISPLAYS: Performing any of the following acts:

- A. Sexual intercourse, flagellation or any sexual acts which are prohibited by law;
- B. The touching, caressing or fondling of the breast, buttocks, anus or genitals;
- C. The displaying of the pubic hair, anus, vulva, or genitals; or
- D. The open display of urinary or excretory functions.

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 14th day of January, 2020.

This ordinance was published in full on the Town of Breckenridge website on January 17, January 18, January 19, January 20 and January 21, 2020.

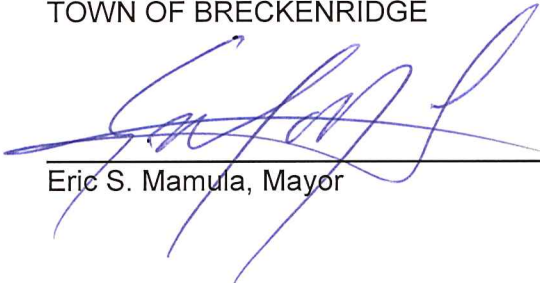
A public hearing on this ordinance was held on January 28, 2020.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 28th day of January, 2020. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

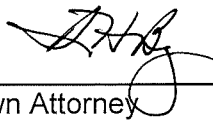
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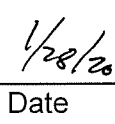
TOWN OF BRECKENRIDGE

  
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Helen Cospolich, CMC, Town Clerk

  
\_\_\_\_\_  
Eric S. Mamula, Mayor

APPROVED IN FORM

  
Town Attorney

  
Date

This Ordinance was published on the Town of Breckenridge website on January 29, January 30, January 31, February 1 and February 2, 2020. This ordinance shall become effective on March 3, 2020.