

AS APPROVED ON FIRST READING – JUNE 13

COUNCIL BILL NO. 20

Series 2017

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 6 OF TITLE 11 OF THE BRECKENRIDGE TOWN CODE CONCERNING LICENSE AGREEMENTS FOR THE USE OF TOWN REAL PROPERTY

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

Section 1. Chapter 6 of Title 11 of the Breckenridge Town Code is repealed and readopted with changes to read as follows:

CHAPTER 6

LICENSE AGREEMENTS FOR USE OF TOWN REAL PROPERTY

SECTION:

11-6-1: DEFINITIONS

11-6-2: LICENSE REQUIRED; EXCEPTIONS

11-6-3: AUTHORITY OF TOWN MANAGER TO APPROVE LICENSE

11-6-4: APPROVAL CRITERIA

11-6-5: FORM AND CONTENT OF LICENSE AGREEMENT

11-6-6: LICENSEE TO PAY TOWN ATTORNEY'S FEES

11-6-7: LICENSE FOR USE OF TOWN PROPERTY BY PUBLIC ENTITY

11-6-1: DEFINITIONS: As used in this chapter, the following words have the following meanings:

LICENSE AGREEMENT: A written agreement granting a revocable, personal privilege to use a specified portion of the town's real property for a defined and limited public or nonpublic use entered into by the town manager on behalf of the town pursuant to this chapter.

LICENSEE: A person named as a licensee in a license agreement.

NONPUBLIC USE: Any use of town real property by any person other than a quasi-municipal corporation, a county, a political subdivision of the state of Colorado or the United States government, or any agency or instrumentality thereof.

PUBLIC USE: Any use of town real property by a quasi-municipal corporation, a county, a political subdivision of the state of Colorado or the United States government, or any agency or instrumentality thereof.

TOWN REAL PROPERTY: Any real property interest owned by the town.

11-6-2: LICENSE REQUIRED; EXCEPTIONS:

A. Except as provided in section B, below, a license agreement is required for any public or nonpublic use of town real property.

B. This section does not apply to:

- 1. Use of town real property by the town.**
- 2. Landscaping materials, including, but not limited to, grass, trees, shrubs and flowers, which materials may be placed within a town right of way without a license agreement or other authorization. The town shall have no liability to any person for the loss, damage or destruction of any landscaping materials placed within town right of way.**
- 3. Use of town real property pursuant to a valid agreement, including, but not limited to, an easement, a lease, or a permit issued by the town.**
- 4. Use of town real property when such property is made available by the town for use by the general public.**

5. Use of town property as permitted by law.

11-6-3: AUTHORITY OF TOWN MANAGER TO APPROVE LICENSE: The town manager shall have the authority to approve and sign a license agreement for the public or nonpublic use of any town real property.

11-6-4: APPROVAL CRITERIA:

- A. **A license agreement may be approved by the town manager when such license is required as a condition of an approved development permit issued by the town.**
- B. **Other license agreements may only be approved by the town manager if:**
1. **the nature, scope, location, and duration of the licensee's use or proposed use of the town real property will not substantially interfere with the town's need for complete control over its property; and**
 2. **the approved use of town real property pursuant to the requested license agreement will not result in the creation or continuation of a nuisance, or a threat to the public health, safety, or welfare.**

Except as provided in section A of this section, any request for the granting of a license agreement that fails to satisfy both of these criteria shall be denied by the town manager.

11-6-5: FORM AND CONTENT OF LICENSE AGREEMENT: The form and content of a license agreement shall be acceptable to the town attorney.

11-6-6: LICENSEE TO PAY TOWN ATTORNEY'S FEES: The licensee shall pay the cost of having the town attorney prepare a license agreement approved pursuant to this chapter. The town manager may waive the requirements of this section in connection with a license for the public use of town real property approved pursuant to section 11-6-7.

11-6-7: AGREEMENT FOR USE OF TOWN PROPERTY BY PUBLIC ENTITY: The town manager shall have the authority to approve and execute a license agreement for the public use of any Town property. Sections 11-6-4, 11-6-5, and 11-6-6 shall apply to the town manager's approval of any license agreement pursuant to this section.

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 13th day of June, 2017. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 27th day of June, 2017, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____/s/_____
Eric S. Mamula, Mayor

ATTEST:

_____/s/_____
Helen Cospolich, CMC
Town Clerk

THE CURRENT TOWN LICENSE ORDINANCE THAT WOULD BE REPEALED

**Chapter 6
LICENSE AGREEMENTS FOR USE OF TOWN PROPERTY**

11-6-1: DEFINITIONS:

11-6-2: LICENSE REQUIRED; EXCEPTION:

11-6-3: AUTHORITY OF TOWN ENGINEER TO APPROVE LICENSE:

11-6-4: SUBMITTAL REQUIREMENTS:

11-6-5: APPROVAL CRITERIA:

11-6-6: STANDARDS:

11-6-7: TOWN MANAGER TO EXECUTE LICENSE AGREEMENT:

11-6-8: FORM AND CONTENT OF LICENSE AGREEMENT:

11-6-9: LICENSEE TO REIMBURSE TOWN:

11-6-10: AUTHORITY OF TOWN MANAGER TO APPROVE CERTAIN LICENSES:

11-6-1: DEFINITIONS:

As used in this chapter, the following words shall have the following meanings:

LICENSE AGREEMENT: A written agreement granting a revocable, personal privilege to use a specified portion of the town's real property for a defined and limited nonpublic use.

LICENSEE: A person named as a licensee in a license agreement.

NONPUBLIC USE: Any use of town real property by any person other than the town, any quasi-municipal corporation, any political subdivision of the state of Colorado or the United States government or any agency or instrumentality thereof. Nonpublic use does not include use by the general public where town real property is made available by the town for use by the general public.

TOWN REAL PROPERTY: Any real property interest owned by the town including, but not limited to, town rights of way. (Ord. 28, Series 1998)

11-6-2: LICENSE REQUIRED; EXCEPTION:

A license agreement is required for any nonpublic use of town real property, except as otherwise permitted by law or as expressly authorized by the town by easement or other written agreement or permit. However, landscaping materials, including, but not limited to, grass, trees, shrubs and flowers, may be placed within town real property without a license agreement or other authorization. The town shall have no liability to any person for the loss, damage or destruction of any landscaping materials placed within town real property. (Ord. 28, Series 1998)

11-6-3: AUTHORITY OF TOWN ENGINEER TO APPROVE LICENSE:

The town engineer shall have the authority to approve the granting of a license agreement for the use of town real property when: a) a license agreement is required to authorize the continuation of an encroachment into town real property which existed at the date of the adoption of this chapter, b) a license agreement is required to authorize the construction of a fence within town real property, and c) a license agreement is required as a condition of approval of a development permit issued pursuant to [title 9, chapter 1](#) of this code. The town council may, in its discretion, approve the granting of a license agreement for other uses or under other circumstances. (Ord. 28, Series 1998)

11-6-4: SUBMITTAL REQUIREMENTS:

A person desiring to obtain a license agreement pursuant to this chapter shall submit to the town engineer a survey prepared by a licensed Colorado surveyor depicting the portion of the town real property for which the license agreement is requested, together with such other information as the town engineer shall reasonably require. (Ord. 28, Series 1998)

11-6-5: APPROVAL CRITERIA:

A license agreement may be approved by the town engineer only when: a) the nature, scope, location and duration of the licensee's use or proposed use of the town real property will not

substantially interfere with the town's need for complete control over its property and b) the approved use of town real property pursuant to the requested license agreement will not result in the creation or continuation of a public or private nuisance or threat to the public health, safety or welfare. Any request for the granting of a license agreement which fails to satisfy both of these criteria shall be denied by the town engineer. (Ord. 28, Series 1998)

11-6-6: STANDARDS:

The following standards shall apply to the approval of a license agreement by the town engineer pursuant to this chapter:

- A. A license agreement may only be issued to the owner of real property abutting town real property, or another person with a legitimate need for a license agreement.
- B. Any fence constructed pursuant to a license agreement shall be constructed in compliance with the recommendations (both design standards and policies, whether denominated as a "priority policy" or not) of the "handbook of design standards", as well as any other applicable ordinances of the town. (Ord. 28, Series 1998)
- C. If a license agreement is requested in order to permit the erection of a fence or other improvement within town real property, such license agreement shall only be issued in connection with the issuance of a class D minor development permit. The execution of a license agreement may be a condition of approval of the required development permit. (Ord. 1, Series 2014)
- D. Any fence erected within town real property pursuant to a license agreement shall be placed no closer than eighteen inches (18") from the sidewalk. No license agreement shall be issued where no sidewalk exists within the portion of the town real property for which the license is issued, unless the town engineer determines that such a sidewalk will be constructed within a reasonable period of time following the issuance of the license agreement. (Ord. 28, Series 1998)

11-6-7: TOWN MANAGER TO EXECUTE LICENSE AGREEMENT:

Upon the approval by the town engineer of the granting of a license agreement pursuant to this chapter, the town manager shall have the authority to execute such license agreement for and on behalf of the town. (Ord. 28, Series 1998)

11-6-8: FORM AND CONTENT OF LICENSE AGREEMENT:

A license agreement shall be in form and substance acceptable to the town attorney; provided, however, that any license agreement entered into by the town shall include provisions acceptable to the town attorney which provide:

- A. The license agreement shall be fully revocable upon written notice to the licensee.
- B. The license agreement is fully transferable to subsequent owners of the licensee's property which abuts the town real property so long as the subsequent owner assumes the obligations of the licensee under the license agreement in a form acceptable to the town attorney.
- C. The town shall not be liable for the damage, destruction or loss of any property erected, installed, placed or maintained within town real property pursuant to a license agreement. (Ord. 28, Series 1998)
- D. The licensee shall provide commercial general liability insurance insuring against losses, damages or claims arising from the licensee's use of the town real property pursuant to a license agreement. Such insurance shall have limits of liability of not less than one million dollars (\$1,000,000.00), or such higher limits of liability as the town manager may require based upon the nature of the licensee's use of the town real property and other relevant factors. The town shall be named as an additional insured under such insurance policy. (Ord. 28, Series 2013)
- E. The licensee shall be required to indemnify the town from all losses, claims and damages arising from the licensee's use of the town real property pursuant to the license agreement. (Ord. 28, Series 1998)

11-6-9: LICENSEE TO REIMBURSE TOWN:

A licensee shall reimburse the town for any actual and necessary costs incurred by the town in having the town attorney prepare a license agreement approved pursuant to this chapter. (Ord. 28, Series 1998)

11-6-10: AUTHORITY OF TOWN MANAGER TO APPROVE CERTAIN LICENSES:

The town manager shall have the authority to administratively grant a revocable license for the nonpublic use of town owned real property in connection with the town manager's approval of a contract for the use of such property. The town manager shall not grant a revocable license for the use of town owned real property unless he determines that the granting of such license is necessary or appropriate and that the granting of such license would be in the best interest of the town. The provisions of section [11-6-6](#) of this chapter shall not apply to the town manager's decision to grant a revocable license for the use of town owned real property pursuant to this section. The provisions of sections [11-6-8](#) and [11-6-9](#) of this chapter shall apply to the town manager's granting of a revocable license for the use of town owned real property pursuant to this section insofar as the town manager determines that such sections are relevant and appropriate for inclusion in the contract. The form of any contract which includes the granting of a revocable license for the use of town owned property pursuant to this section shall be subject to the approval of the town attorney. (Ord. 44, Series 2002)