

ORDINANCE NO. 15

Series 2009

AN ORDINANCE ADOPTING CHAPTER 12 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE; ADOPTING MANDATORY REQUIREMENTS FOR THE CREATION OF DEFENSIBLE SPACE AROUND BUILDINGS AND STRUCTURES WITHIN THE TOWN OF BRECKENRIDGE; PROVIDING PROCEDURES AND GUIDELINES FOR CREATING THE REQUIRED DEFENSIBLE SPACE; AND PROVIDING PENALTIES AND OTHER ENFORCEMENT MECHANISMS FOR VIOLATIONS OF THE ORDINANCE

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

Section 1. The Breckenridge Town Code is hereby amended by the addition of a new Chapter 12 of Title 5, to be entitled "Defensible Space", which shall read in its entirety as follows:

CHAPTER 12

DEFENSIBLE SPACE

Section:

- 5-12-1: Title
- 5-12-2: Authority
- 5-12-3: Intent
- 5-12-4: Legislative Findings
- 5-12-5: Definitions
- 5-12-6: Director to Enforce; Training; Intergovernmental Agreement
- 5-12-6: Director to Identify High Risk Areas
- 5-12-7: Inspection for Defensible Space
- 5-12-8: Inspection Warrant
- 5-12-9: Director to Develop Defensible Space Plan
- 5-12-10: Standards for Defensible Space
- 5-12-11: Service of Defensible Space Plan Upon Landowner; Landowner's Appeal Rights; Relief Provisions
- 5-12-12: Duty Of Landowner to Establish And Maintain Defensible Space
- 5-12-12: Director to Determine Compliance With Plan
- 5-12-13: Permit for Establishment Of Defensible Space; Permit Fee
- 5-12-14: Notice of Violation
- 5-12-15: Court Order
- 5-12-16: Responsibility for Costs of Compliance; Collection; Failure to Pay
- 5-12-17: Unlawful Acts
- 5-12-18: Town Property
- 5-12-19: Condition Precedent to Challenge
- 5-12-20: No Liability
- 5-12-21: Applicability
- 5-12-22: Rules and Regulations
- 5-12-23: Town-Approved Tree Removal Contractors

5-12-1: TITLE: This chapter shall be known and may be cited as the "Town of Breckenridge Defensible Space Ordinance."

5-12-2: AUTHORITY: The Town Council hereby finds, determines, and declares that it has the power to adopt this chapter pursuant to the provisions of: (i) section 31-15-103, C.R.S., (concerning municipal police power); (ii) section 31-15-401, C.R.S. (concerning general municipal police power and the power to declare and require abatement of a nuisance) and, in particular, sections 31-15-401(1)(a), (1)(b), (1)(c), (1)(d) and (1)(q)(I); (iii) section 31-15-601, C.R.S. (concerning municipal building and fire regulations) and, in particular, sections 31-15-601(1)(j.5) and (1)(k); (iv) section 24-65.1-202(2)(a)(I)(B)(II), C.R.S. (concerning the required creation of firebreaks and other means of reducing conditions conducive to fire; (v) the powers contained in the Breckenridge Town Charter; and (vi) other powers possessed by home rule municipalities in Colorado.

5-12-3: INTENT: The intent of this chapter is as follows:

- A. To preserve healthy trees and approved landscaping within the Town, while at the same time reducing fuels that can feed a fire. This will reduce the chance of a structure fire spreading to the surrounding forest.
- B. To provide areas around structures within the Town where fire suppression personnel and equipment can more effectively fight fires.
- C. To protect life and property.

- D. To encourage the development of new diverse forests.
- E. To preserve visual buffers to the greatest extent possible so long as the removal of trees and landscaping is not required to achieve defensible space.
- F. To protect the Town's scenic backdrop which is vital to the economic well being of the Town and its citizens.

This chapter shall be interpreted and applied consistently with this intent.

5-12-4: LEGISLATIVE FINDINGS: The Town Council hereby finds, determines, and declares as follows:

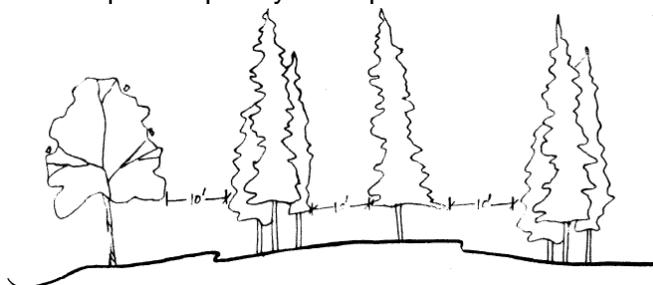
- A. Substantial portions of the Town include heavily forested private lands that are susceptible to wildfire.
- B. The Town is bounded by areas that include national forest lands that are also susceptible to wildfire.
- C. A wildfire affecting all or a substantial portion of the Town would seriously threaten both the aesthetic values which are of great importance to the social and economic vitality of the Town, as well as the overall socio-economic future of the Town.
- D. The threat to the Town from a wildfire comes in substantial part from the exposure of buildings or structures to flames and firebrands (burning airborne materials) resulting in ignitions that could produce widespread extreme losses.
- E. A wildfire in or near the Town could result in rapid fire spread within residential areas; a large number of simultaneously exposed structures; overwhelmed fire-protection and firefighting capabilities; and the total loss of a substantial number of buildings and structures, as well as the potential for a significant loss of life.
- F. A wildland fire does not spread to a building or structure unless it meets the fuel and heat requirements sufficient for ignition and continued combustion.
- G. The vegetation surrounding a building or structure is fuel for a fire.
- H. The reduction or elimination of certain types of vegetation in the area surrounding a building or structure results in an area of defensible space around that building or structure.
- I. A defensible space perimeter around a building or structure provides firefighters with a safer working environment that allows them to protect the building or structure from encroaching wildfires and minimizes the chance that a structure fire will escape into the surrounding areas.
- J. Under the legal authority described in section 5-12-2 of this chapter, the Town has the authority to require that each building or structure located within the Town have a defensible space around it.
- K. The provisions of this chapter are necessary in order to protect the public health, safety and welfare, and to protect the lives and property of others from harm.
- L. The inspection provisions contained in this chapter are necessary in the interest of public safety within the meaning of Rule 241(b)(2) of the Colorado Municipal Court Rules of Procedure.
- M. The courts in Colorado have defined a "public nuisance" as the doing or failure to do something that injuriously affects the safety, health, or morals of the public or works some substantial annoyance, inconvenience, or injury to the public, and which causes hurt, inconvenience, or damage to the public generally, or such part of the public as necessarily comes into contact with it. A "public nuisance" is further defined by the Colorado legislature in part 3 of article 13 of title 16, C.R.S.
- N. For the reasons set forth above, a landowner's failure to create defensible space around his property as required by this chapter constitutes a "public nuisance" as that term has been defined by well-established and existing Colorado case and statutory law.
- O. A landowner's compliance with the requirements of this chapter will prevent the creation of a dangerous public nuisance.

5-12-5: DEFINITIONS: In this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Defensible Space" means the area where basic wildfire protection practices described in this chapter are implemented, and which provides the key point of defense from an approaching wildfire or fire escaping a structure fire. The area is characterized by the establishment and maintenance of a firebreak within 30 feet around a building or structure and a reduced fuel zone extending up to 75 feet or greater, depending on slope away from the building or structure.

"Defensible Space Plan" or " Plan" means a site specific defensible space plan for a specific property established by the Director pursuant to section 5-12-9 of this chapter.

“Defensible Space Permit”	means a permit issued by the Town or Red, White and Blue Fire Protection District authorizing the implementation of a Defensible Space Plan.
“Director”	has the meaning provided in section 9-1-5 of this code.
“Fire District”	means the Red, White and Blue Fire Protection District, a Colorado special district organized pursuant to title 32, C.R.S.
“Fire-wise Landscaping”	means trees, shrubs, and other landscaping which: (i) meet the criteria for fire-resistant landscaping as established from time to time by the Colorado State University Cooperative Extension Service, (ii) are suited to the Town’s sub-alpine environment in accordance with the Development Code, and (iii) are located in conformance with requirements of this chapter, and all other applicable Town codes and ordinances.
“Financial Services Manager”	means the Financial Services Manager of the Town.
“Good Cause”	means a showing by a landowner that compliance with the requirements of section 5-12-12 of this chapter will result in a substantial hardship to the landowner.
“Landowner”	means any person who owns any lot, tract, or parcel of property located within the corporate limits of the Town.
“Property”	means any lot, tract, or parcel of property located within the corporate limits of the Town.
“Person”	has the meaning provided in section 1-3-2 of this code.
“Snag”	means a dead tree determined by the Director to be suitable for a bird habitat.
“Well Spaced”	means that the space between the crowns of trees, or between the crowns of trees and the center point of other landscaping, is adequate to reduce the risk of a fire spreading to other vegetation or structures. As indicated in section 5-12-10(H), the adequacy of spacing depends upon slopes, vegetation size, vegetation types (trees, shrubs, grass), and other fuel characteristics (including, but not limited to, fuel compaction and chemical content). In general, a minimum of ten-feet between the widest portion of the crowns of individual trees or groups of trees is adequate. Additional spacing may be required on steeper slopes. The following are examples of trees that are presumptively well spaced:



- A. The Director shall enforce the provisions of this chapter.
- B. The Fire District shall administer the Defensible Space Program pursuant to an intergovernmental agreement with the Town. The intergovernmental agreement shall be consistent with the provisions of this chapter. No action to enforce this chapter shall be undertaken unless an intergovernmental agreement between the Town and Fire District is in effect. The Fire District shall have all power and authority required to administer the Defensible Space Program and this chapter.
- C. All personnel involved in the enforcement of this chapter, including both Town staff and employees of the Fire District shall be trained by the Director to make sure that they are aware of the Town's goals of preserving buffers and required landscape materials while creating defensible space.

5-12-7: INSPECTION FOR DEFENSIBLE SPACE:

- A. The Director or the Fire District shall conduct a physical inspection of each building, structure, or property to determine how best to achieve defensible space around such building or structure. Any area within Town that already meets the intent of this chapter shall not be required to create defensible space.
- B. Subject to the requirements and limitations of this section, the Fire District shall have the right to enter upon any property, whether public or private, during reasonable hours for the purpose of conducting the physical inspection described in subsection A of this section. However, no agent or employee of the Town shall enter upon any property to conduct a physical inspection described in subsection A of this section without the permission of the landowner or occupant, or without an inspection warrant issued pursuant to section 5-12-8.
- C. If verbal permission to inspect the property from the affected landowner or occupant is not obtained, or in lieu of attempting to obtain such verbal permission, the Director may request that an inspection warrant be issued by the municipal court.
- D. In case of an emergency involving imminent danger to public health, safety, or welfare, the Director may enter any property within the Town to conduct an emergency inspection for defensible space without a warrant and without complying with the requirements of section 5-12-8.

5-12-8: INSPECTION WARRANT:

- A. The municipal court judge shall issue an inspection warrant authorizing the inspection of property located within the Town pursuant to this chapter upon presentation by the Director of an affidavit satisfying the requirements of Rule 241(b)(2) of the Colorado Municipal Court Rules of Procedure; provided, however, that when issuing an area-wide inspection warrant pursuant to subsection B of this section the Municipal Judge shall not require a showing that the owner or occupant of the property to be inspected has refused entry to the Town inspector or that the premises are locked and the Town inspector has been unable to obtain permission of the owner or occupant to enter.
- B. The municipal court judge shall issue an area-wide inspection warrant for two or more properties upon a finding that:
 1. The Town has established and currently maintains a program to inspect properties throughout the Town for defensible space.
 2. There are a significant number of publicly and privately owned lands within the Town that need to be inspected for defensible space, and an urgent public need to implement this chapter. The extremely high number of properties that need to be inspected in such a short time period, combined with the limited Town and Fire District staff who are available to conduct the necessary inspections, makes it impracticable for the Town to attempt to obtain the individualized permission from each affected landowner before going onto the property to inspect for defensible space.
 3. Requiring the Town to first attempt to obtain permission from the numerous landowners within the area to be inspected would frustrate the purpose of an area-wide inspection warrant; would create an undue delay in the performance of the necessary defensible space inspections; would be an unreasonable burden and precondition to the issuance of an area-wide inspection warrant; and, as a result, would jeopardize the public health, safety and welfare.
 4. No good reason exists to require the Town to first seek the permission of the

landowners of lands to be included in an area-wide inspection warrant, and there is no need to impose such a requirement on the Town as a precondition to the issuance of the requested inspection warrant.

- C. An inspection warrant issued pursuant to this chapter shall contain the following conditions:
1. The inspector shall attempt to verbally notify the affected landowner or occupants prior to beginning the inspection. This shall be done by knocking on the front door of any building located on the property and, if the landowner or an occupant is present, the inspector shall present his or her credentials identifying the inspector as an employee or agent of the Town or the Fire District. The inspector shall also explain to the property landowner or occupant the purpose of the inspection. If: (a) neither the landowner nor an occupant is home when the inspector goes to inspect the property; (b) the building is locked; or (c) the property consists of unimproved property, no notice shall be required prior to the inspector entering the property to inspect for defensible space.
 2. No Town inspector, or Fire District staff acting pursuant to an inspection warrant shall enter any residence, building, or structure located upon any property without the permission of the landowner or occupant.
 3. Except in the event of an emergency, no inspection undertaken pursuant to this chapter shall be done except between 8 A.M. and 6 P.M, Monday through Saturday.
- D. The municipal judge may impose such other conditions on an inspection warrant as may be necessary in the judge's opinion to protect the private property rights of the landowner of the property to be inspected, or to otherwise make the warrant comply with applicable law.

5-12-9: DIRECTOR TO DEVELOP DEFENSIBLE SPACE PLAN:

- A. Based upon his inspection and other relevant information and data, the Director, with the assistance of the Fire District, shall develop an individualized plan for defensible space for the inspected property. In developing such plan, the Director shall follow the standards set forth in section 5-12-10 of this chapter.
- B. Trees, shrubs, and other landscaping required by the Director to be removed in order to achieve the required defensible space shall be clearly identified in the field and photographed or located by global positioning satellite software by the Director.
- C. The Director may amend the Defensible Space Plan based on scientific data from the Colorado State Forest Service. A copy of any amended Defensible Space Plan shall be provided to the landowner in the same manner as the original Plan was provided, and the provisions of section 5-12-11 shall apply to the Director's amendment of a Defensible Space Plan.

5-12-10: STANDARDS FOR DEFENSIBLE SPACE: The following standards shall govern the creation of a defensible space plan:

- A. The property shall be divided into three zones. Zone One shall be measured 30 feet from the eave of building or structure including attached structures or protrusions, such as a deck on the property. Zone Two shall be measured 75 feet or greater from the eave of building or structure including attached structures or protrusions, such as a deck on the property, depending on slope from the eave of the building or structure on the property, and shall exclude the portion of the property located within Zone One. Zone Three shall extend beyond Zone Two to the property boundary.
- B. It is not the intent of this chapter that any portion of a property be "clear cut" in order to achieve the required Defensible Space. No Defensible Space Plan prepared by the Director shall require or permit the "clear cutting" of any property.
- C. In formulating a Defensible Space Plan the Director shall consider both the horizontal clearance between aerial fuels, such as the outside edge of the tree crowns or high brush, as well as the vertical clearance between lower limbs of aerial fuels and the nearest surface fuels and grass/weeds.
- D. In determining the action that must be taken by a landowner to establish required defensible space under this chapter each property shall be reviewed individually, and the location and other physical characteristics of the property shall be considered. Properties with greater fire hazards will require greater buffers between fuels. Without limiting the generality of the preceding provisions, when establishing the requirements for the creation of defensible space the Director shall consider the property's proximity to a roadway,

parking lot, and other similar areas that create firebreaks. Similarly, large tracts of open space and Forest Service land that may require larger buffers shall be considered.

- E. The following specific standards apply to the creation of defensible space within Zone One:
1. Healthy trees, shrubs, and other landscaping material required by a Town-approved landscape plan shall be preserved.
 2. Healthy trees, shrubs, and other landscaping material that provide visual buffers shall be preserved if they are pruned to remove dead branches and are well spaced to reduce the risk of a fire spreading to other vegetation or structures .
 3. Other healthy fire-wise trees, shrubs, and other landscaping material shall be preserved if they are pruned to remove dead branches and are well spaced to reduce the risk of a fire spreading to other vegetation or structures .
 4. Irrigated trees, shrubs, and other landscaping material shall be preserved if they are pruned to remove dead branches and well spaced to reduce the risk of a fire spreading to other vegetation or structures.
 5. All dead and diseased trees, shrubs, and other landscaping material shall be removed.
 6. All vegetation and combustible material shall be removed from under all eaves and decks.
 7. All grasses and ground cover shall be kept under 6 inches in height.
 8. All leaf and needle clutter and combustible ground debris shall be removed. Mulch within landscape beds that are irrigated may be maintained at a maximum depth of 3 inches.
 9. All firewood shall be removed unless covered by a canvas tarp, or as approved by the Fire District.
 10. Additional fire-wise landscaping material is encouraged to be planted with Town approval.
- F. The following specific standards apply to the creation of defensible space within Zone Two:
1. Healthy trees, trees shrubs, and other landscaping material required by a Town-approved landscape plan shall be preserved.
 2. Healthy trees , shrubs, and other landscaping material that provide visual buffers shall be preserved if they are pruned to remove dead branches and are well spaced to reduce the risk of a fire spreading to other vegetation or structures.
 3. Other healthy fire-wise trees, shrubs, and other landscaping material shall be preserved if they are pruned to remove dead branches and are well spaced to reduce the risk of a fire spreading to other vegetation or structures.
 4. Irrigated trees, shrubs and other landscaping material shall be preserved if they are pruned to remove dead branches and are well spaced to reduce the risk of a fire spreading to other vegetation or structures.
 5. All dead and diseased trees, shrubs, and other landscaping material shall be removed. However, one snag per acre may be preserved for wildlife habitat if it is well spaced to avoid the spread of fire to other vegetation or structures.
 6. Trees shall be thinned to open up crown spacing to a minimum of ten feet between the widest portion of individual crowns of the trees.
 7. Groups of trees with a minimum of ten feet between the edges of the widest_ portions of crowns of each grouping shall be preserved to allow buffers to remain and to prevent wind throw.
 8. Firewood may be maintained if an adequate buffer around the firewood is determined to exist by the Fire District.
 9. Additional fire-wise landscaping material is encouraged to be planted with Town approval.
- G. The following specific standards apply to the creation of defensible space within Zone Three:
1. All dead and diseased trees, shrubs, and other landscaping material shall be removed. However, one snag per acre may be preserved for wildlife habitat if it is well spaced from to avoid the spread of fire to other vegetation or structures.
 2. Additional fire-wise landscaping material is encouraged to be planted with Town approval.
- H. The Director's administrative rules adopted pursuant to section 12-5-22 may include minimum spacing guidelines for trees, shrubs, and other vegetation. Distances between vegetation will depend on slopes, vegetation size, vegetation type (trees, shrubs, grass), and other fuel characteristics (including, but not limited to, fuel compaction and chemical content).

5-12-11: SERVICE OF DEFENSIBLE SPACE PLAN UPON LANDOWNER; LANDOWNER'S APPEAL RIGHTS; RELIEF PROVISIONS:

- A. A copy of the Defensible Space Plan shall be served upon the property owner by personal service or by mail. A copy of the Defensible Space Plan shall be kept on file with the Fire District and at the Town in the Community Development Department.
- B. If a landowner disputes the Director's determination that any tree, shrub or other landscaping material must be removed in order to create the required defensible space, or any other provision of a Defensible Space Plan, the landowner shall notify the Director of such dispute within thirty days after the landowner's receipt of the Director's Defensible Space Plan for the property. If a timely notice of dispute is not given by the landowner, the Director's Defensible Space Plan becomes final. If a timely notice of dispute is given by the landowner, the matter shall be reviewed by a three-member panel consisting of one member of the Department of Community Development possessing training or experience in landscape architecture; one member of the Fire District; and a qualified independent tree expert or arborist selected by the Director who is familiar with the creation of defensible space. Prior to making its decision the panel shall consult with the landowner. The panel's determination shall be final, subject to the ability of the Town Council to grant relief to the landowner pursuant to subsection C of this section.
- C. The Town Council may modify a Defensible Space Plan developed by the Director and approved by the three-member panel upon written request by the landowner filed with the Town Manager within ten days after the date of the landowner's receipt of the panel's determination as described in subsection B of this section. The Town Council's consideration of the landowner's appeal shall be held in accordance with chapter 19 of title 1 of this code. The Town Council shall not modify a Defensible Space Plan issued by the Director, unless it makes findings based upon the evidence presented to it in each specific case that either:
 1. the Director or the appeals panel erred in applying the requirements of this chapter; or
 2. extraordinary hardships or practical difficulties will result from strict compliance with the requirements of the Defensible Space Plan; the purposes of this chapter will be served to a greater extent by an alternative proposal or requirement; the modification of the Defensible Space Plan will not be detrimental to the public health, safety, or welfare or injurious to other property; and the conditions upon which the request is based are unique to the property for which the relief is sought and are not applicable generally to other property.

5-12-12: DUTY OF LANDOWNER TO ESTABLISH AND MAINTAIN DEFENSIBLE SPACE:

- A. In order to maintain an acceptable level of community fire prevention/protection, achieve life safety, and otherwise achieve the goals of this chapter the owner of any property for which a Defensible Space Plan has been prepared shall take such action as is necessary to fully implement the Defensible Space Plan by July 1, 2012. For good cause shown, the Director may extend such deadline for a maximum of two additional years.
- B. Once a Defensible Space Plan has been implemented, the landowner of the property that is the subject of such Plan shall take the following action to maintain and keep the property in compliance with the Plan:
 1. Tall grasses, leaf clutter and dead branches on living trees shall also be removed within Zones One and Zone Two on an annual basis. Dead branches on living trees shall be removed a minimum of 6 feet above grade and a maximum of 10 feet above grade. Loose surface fuels shall be permitted to a maximum depth of three inches. This requirement is primarily intended to eliminate trees, shrubs and surface debris that are completely dead or with substantial amounts of dead branches or leaves/needles that may readily burn.
 2. After July 1, 2012 all dead, dying, and beetle-infested trees (as defined in chapter 11 of title 5 of this Code) located within Zone One, Zone Two and Zone three shall be removed on an annual basis in order to maintain defensible space.
- C. If ownership of property that is subject to a Defensible Space Plan is transferred prior to the deadline for the creation of the defensible space as described in the Plan, the selling landowner shall notify the purchaser of the deadline for the creation of the defensible space as described in the Plan. The purchaser shall then be required to create the defensible space required by the Plan required in subsection A of this section, and the duty to maintain the

property as required in subsection B of this section.

5-12-13: PERMIT FOR ESTABLISHMENT OF DEFENSIBLE SPACE; PERMIT FEE:

- A. No work shall be done to implement a Defensible Space Plan until the owner has obtained a Defensible Space Permit from the Fire District. The fee for such permit shall be \$45.00, unless a different fee is provided for in an intergovernmental agreement between the Town and the Fire District.
- B. When defensible space has been created on a property, the property shall be inspected by the Fire District to determine if the defensible space complies with the Defensible Space Plan for the property and the Defensible Space Permit that was issued for such work. If so, an appropriate notation shall be included in the permit file.
- C. If the Director determines that a landowner had previously created adequate defensible space on the landowner's property before the inspection by the Town or Fire District no permit fee shall be required to be paid by the landowner.

5-12-14 NOTICE OF VIOLATION:

- B. If the Director believes that a violation of section 5-12-12 exists the Director shall notify the landowner of the property. Such notice shall be given either by certified mail or personal delivery.
- C. The notice shall:
 - 1. advise the landowner that a violation of section 5-12-12 exists on the property;
 - 2. describe the nature of the violation; and
 - 3. advise the landowner that the violation of section 5-12-12 must be corrected within thirty days following receipt of the notice, or that an acceptable plan and schedule for the correction of the violation must be submitted to the Director within such thirty day period.
- D. If the landowner disputes that a violation of section 5-12-12 exists on the property, the landowner shall notify the Director of such dispute within ten days of receipt of the Director's notice. If a timely notice of dispute is given, the Town shall not file a complaint seeking a court order pursuant to section 5-12-15 until the Director has met with the landowner in an effort to resolve the dispute. If the Director meets with the disputing landowner and is unable to resolve the dispute, or if the landowner fails or refuses to meet with the Director. the Town may file a complaint for a court order pursuant to section 5-12-15.

5-12-15: COURT ORDER:

- A. If the landowner fails to comply with the Director's notice as described in section 5-12-14 within the applicable time period, the Town may apply to the municipal court for a court order pursuant to section 1-8-10 of this code.
- B. The procedure to be followed in connection with a complaint filed by the Town pursuant to this section shall be as provided in section 1-8-10 of this code. However, if the address to which the landowner's tax bills are to be sent is located outside of Summit County, Colorado according to the records of the Summit County Treasurer, service of process by mail shall be allowed in accordance with Rule 4(g) of the Colorado Rules of Civil Procedure.
- C. No person acting pursuant to a court order issued pursuant to this section shall have any personal liability except for acts intentionally taken in violation of the court order.
- D. In case of an emergency involving imminent danger to public health, safety, or welfare, the Director may authorize immediate correction of any violation of this chapter without notice or court order.
- E. Nothing in this section shall preclude the Town from seeking enforcement of this chapter in a court of competent jurisdiction other than the municipal court. Such action shall be subject to the applicable rules governing such action.

5-12-16 RESPONSIBILITY FOR COSTS OF COMPLIANCE; COLLECTION; FAILURE TO PAY:

- A. A landowner who fails to comply with a court order entered pursuant to this chapter

shall be assessed twice the whole cost to create defensible space on the property, including reasonable administrative fees. Such costs and expenses are due and payable in full thirty days after an itemized statement describing such costs and expenses is mailed to the landowner at the address to which tax notices are sent according to the records of the Summit County Treasurer, or within thirty days after such itemized statement is served upon the owner by personal service.

- B. All costs and expenses owed by the landowner to the Town pursuant to this chapter may be collected by the Town in any action at law; and, at the option of the Town, assessed against the property as hereinafter provided. If the Town is the prevailing party in any action brought to collect the costs and expenses described in subsection A of this section, it shall also be entitled to recover its attorneys' fees incurred in such action.
- C. All costs and expenses owed by the landowner to the Town pursuant to this chapter shall be a lien on the landowner's property, which lien shall be prior to all existing liens or encumbrances on the property, except for the lien of the general property taxes and the lien of any prior special assessment. The Financial Services Manager may file with the Summit County Clerk and Recorder a verified lien statement describing the property that is subject to the lien and the amount due to the Town. The Town's lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage.
- D. In addition to the other methods of collection described above, if all costs and expenses owed by an landowner to the Town pursuant to this chapter are not paid when due, the Financial Services Manager may certify such unpaid fees and costs to the Summit County Treasurer pursuant to section 31-20-105, C.R.S., to be collected and paid over by the Summit County Treasurer in the same manner as taxes are authorized to be collected by title 31, C.R.S.

5-12-17: UNLAWFUL ACTS:

- A. It shall be unlawful and a misdemeanor offense for any landowner to fail or refuse to fully implement a Defensible Space Plan issued by the Director pursuant to this chapter by July 1, 2012, or such additional time as may have been approved by the Director pursuant to section 5-12-12(A).
- B. It shall be unlawful and a misdemeanor offense for any landowner to fail or refuse to comply with the requirements of section 5-12-12(B) of this chapter.
- C. It shall be unlawful and a misdemeanor offense for any person to violate any other provision of this chapter.
- D. It shall be unlawful and a misdemeanor offense for any landowner or occupant to deny the Director or a member of the staff of the Fire District access to the property owned or occupied by the landowner or occupant if the Director or a member of the staff of the Fire District presents an inspection warrant issued pursuant to this chapter.
- E. The failure or refusal of a landowner to fully comply with the requirements of section 5-12-12 constitutes a public nuisance, and may be abated in the manner provided in this chapter. The provisions of chapter 1 of title 5 of this code shall not apply to the abatement of a nuisance as described in this chapter.

An action to enforce the penal provisions of this section shall be brought separately from any action for a court order filed by the Town pursuant to section 5-12-15.

5-12-18: TOWN PROPERTY: The Town shall establish defensible space around all Town-owned buildings and structures by July 1, 2012. Such defensible space shall be created in accordance with the standards established by this chapter. The deadline may be extended by the Town Council by not more than two years if budgetary constraints or site-specific constraints preclude compliance with the July 1, 2012 deadline. Any extension of the July 1, 2012 deadline shall be made by a nonemergency ordinance duly adopted by the Town Council. In connection with the establishment of defensible space on Town property the Town shall work with state and federal agencies, Summit County, and neighboring municipalities to continue coordinated long range planning efforts designed to reduce the risks of fire by creating defensible space and fuel breaks on government-owned properties.

5-12-19: CONDITION PRECEDENT TO CHALLENGE: It is a condition precedent to any legal challenge to any portion of this chapter, or the application of any portion of this chapter to any specific property, that the person initiating such challenge shall have first given the Town written notice of intent to bring such challenge not less than ninety days before filing any legal proceeding. Such notice shall be sent to the Town Council of the Town of Breckenridge by certified mail, return receipt

requested, at P.O. Box 168, Breckenridge, Colorado 80424, and shall set forth: (i) the name and address of the claimant and the claimant's attorney, if any; and (ii) a concise statement of the factual and legal basis for the claimant's challenge to the this chapter, or the application of this chapter to the claimant's property. To the extent that the provisions of this section conflict with the notification requirements of section 24-10-109, C.R.S., or any other applicable law the provisions of such statute or other applicable law shall control.

5-12-20: NO LIABILITY: The creation of defensible space pursuant to this chapter does not assure the landowner that losses or damages will not be sustained in the event of a wildfire. The adoption of this chapter does not create any duty on the part of the Town, its officers, employees or agents, to any person with regard to the enforcement or nonenforcement of this chapter. No person shall have any civil liability remedy against the Town or its officers, employees or agents, for any loss or damage suffered, caused by, or arising from the adoption, enforcement or nonenforcement of this chapter under any legal theory. Nothing in this chapter shall be construed or interpreted as creating any liability on the part of the Town or its officers, employees or agents, 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 any other immunity, protection, defense or limitation on liability otherwise available to the Town, or its officers, employees or agents.

5-12-21 APPLICABILITY: The provisions of this chapter shall apply to all public and private lands within the corporate limits of the Town.

5-12-22: RULES AND REGULATIONS: The Director has the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as 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.

5-12-23: TOWN-APPROVED TREE REMOVAL CONTRACTORS: For the purpose of attempting to make certain that tree removal contractors working within the Town are familiar with the goals of this chapter, but not to regulate the means, methods, training, equipment, or business practices of tree removal contractors, the Director shall maintain a list of Town-approved tree removal contractors. The Town makes no guarantees or representations whatsoever concerning the qualifications, experience, ability, competence, or business practices of any Town-approved tree removal contractor. The Town has no liability to any person with respect to the work or business practices of a Town-approved tree removal contractor, and no action at law or in equity shall lie against the Town as a result of a person being placed on or removed from the Director's list of Town-approved tree removal contractors. The Director may provide in his rules and regulations for the removal of a contractor from the list of Town-approved contractors.

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 26th day of May, 2009. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 9th day of June, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE

Mary Jean Loufek, CMC, Town Clerk

John G. Warner, Mayor

The public hearing on this ordinance was held on June 9, 2009.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL this 9th day of June, 2009. This ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

Mary Jean Loufek, CMC, Town Clerk

John G. Warner, Mayor

APPROVED IN FORM

Town Attorney

Date

This ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on June 19, 2009.