

ORDINANCE NO. 15

Series 2005

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE", BY ADOPTING PROVISIONS FOR THE REGULATION OF "HOME CHILD CARE BUSINESSES"

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

Section 1. The definition of "Class B—Minor Development" set forth in Section 9-1-5 of the Breckenridge Town Code is hereby amended by the inclusion of the following additional item:

-Operation of a home child care business

Section 2. Section 9-1-5 of the Breckenridge Town Code is hereby amended by the inclusion of the following additional definition:

HOME CHILD CARE BUSINESS: A commercial business or activity conducted upon real property of a primarily residential character which involves the owner of the residential real property providing, for a fee, child care services for one or more minor children under the age of 12 years. A person who provides child care services only for their children in their own home is not engaged in a home child care business.

Section 3. There is hereby added to Section 9-1-19 of the Breckenridge Town Code a new policy 38.5 (Absolute), to be entitled "Home Child Care Businesses", which shall read in its entirety as follows:

38.5 (ABSOLUTE) HOME CHILD CARE BUSINESSES: A home child care business may be operated within the Town only when authorized by a Class B minor development permit. The following provisions shall govern the issuance, renewal and revocation of such development permit:

A. Purpose. The purpose of this policy is to allow the operation of home child care businesses within the Town so long as such businesses are operated in compliance with the requirements of this policy, and the terms and conditions of the development permit issued by the Town pursuant to this code.

B. Application. An application for a development permit to operate a home child care business shall be filed and processed pursuant to Section 9-1-18-2 of this Chapter. Notwithstanding any fee schedule adopted pursuant to Section 9-10-4, the fee for such application shall be twenty five dollars (\$25.00).

C. Approval Criteria. No application for a development permit to operate a home child care business shall be granted unless the applicant and the application satisfy each of the following:

1. The applicant shall possess a current state home child care license sufficient to authorize the operation of the proposed home child care business under applicable state law and regulations;

2. The applicant shall confirm in writing as part of the application that the proposed home child care business will always be limited to the care of a maximum of twelve (12) children;

3. In addition to the normal requirements for a Class B minor development permit application, the applicant shall submit a site plan demonstrating compliance with the applicable parking requirement of this Code for the existing residential use of the property where the home child care business is proposed to be operated. There shall be no additional parking requirement imposed for a home child care business in excess of the parking required for the existing residential use where the home child care business is proposed to be operated. The site plan shall also describe where outdoor activities will be conducted in connection with the operation of the home child care business;

4. The applicant shall confirm in writing as part of the application that there will never be more than one employee working in the home child care business who is not related by blood or

marriage to the owner of the home child care business. Such person shall always work under the direct supervision of the owner of the home child care business; and

5. The location and operation of the proposed home child care business shall found to be compatible with adjacent properties and land uses. As used in this paragraph, the term "adjacent properties and land uses" shall have the following meanings: (i) if the site of the proposed home child care business is located in an apartment, condominium or other multiunit residential structure, adjacent properties and land uses shall mean all of the units located in that apartment, condominium or multiunit residential structure; and (ii) if the site of the proposed home child care business is located in any other type of residential structure, adjacent properties and land uses shall mean those units, lots and parcels located within a radius of one hundred feet from the site of the proposed home child care businesses, disregarding intervening public streets and alleys.

D. Compliance With Building and Technical Codes. There shall be submitted with an application for a development permit to operate a home child care business a written statement from the Building Official indicating whether the premises upon which the home child care business is proposed to be operated complies with the provisions of the Town's building and other technical codes which govern home child care businesses. If such statement discloses that the premises are not in compliance with the applicable provisions of the Town's building and other technical codes such premises shall be brought into compliance and a Certificate of Compliance issued prior to the use of the premises as a home child care business. The Building Official shall have the authority to conduct periodic inspections of the home child care business in order to determine continuing compliance with such codes.

E. Permit Conditions. In addition to such other conditions as may be imposed by the Planning Commission, a development permit to operate a home child care business shall include the following conditions, compliance with which is a condition of such development permit for so long as such development permit exists:

1. Operation of the Home Child Care Business.

a. The holder of the development permit to operate the home child care business shall continuously possess a current state home child care license sufficient to authorize the operation of the home child care business under applicable state law and regulations;

b. The home child care business shall be operated at all times in accordance with the terms and conditions of the development permit, and the applicable state law and regulations which govern the applicant's state home child care license;

c. The number of children who may be cared for pursuant to the development permit shall not exceed twelve (12) children at any one time;

d. The parking and outdoor activities for the home child care business shall operated be in accordance with the site approved site plan;

e. There shall never be more than one employee working in the home child care business who is not related by blood or marriage to the owner of the home child care business. Additional employees not related by blood or marriage to the owner may be allowed if found to be compatible with adjacent properties and land uses as described in subparagraph (C)(5) of this policy; and

f. Any employee working in the home child care business who is not related by blood or marriage to the owner of the child care business shall work under the direct supervision of the owner of the home child care business. However, substitute caregivers shall be permitted if they comply with applicable state regulations.

2. Compliance With BOLT Requirements. The holder of a development permit to operate a home child care business shall: (i) obtain a license for such business as required by the Town's Business and Occupational Tax Ordinance (Chapter 1 of Title 4 of this Code), and (ii) maintain such license in full force and effect throughout the duration of the development permit. If, at the time when a development permit to operate a home child care business would otherwise be issued or renewed, the holder or proposed holder of such development permit does not have the required license under the Town's Business and Occupational Tax Ordinance, it shall be a condition of the Town's issuance or renewal of such development permit that the required license be obtained before the premises are used as a home child care business.

3. No Conflict With State Requirements. No condition of approval imposed on a development permit for the operation of a home child care business shall conflict with a state licensing regulation which is applicable to the home child care business.

F. Signage. No signage shall be permitted for a home child care business.

G. Term of Permit. The initial term of the development permit for the operation of a home child care business shall be twelve months, and may be renewed for like terms.

H. Renewal of Permit. The renewal of a development permit to operate a home child care business shall be processed as a Class D development permit application. Notwithstanding any fee schedule adopted pursuant to Section 9-10-4, there shall be no fee for the renewal of a home child care business development permit. The criteria for the renewal of a development permit for the operation of a home child care business center shall be the same as for the issuance of a new development permit to operate a home child care business; provided, however, that an applicant for renewal of an existing development permit to operate a home child care business shall not be required to demonstrate compatibility of the home child care business with adjacent properties and land uses.

I. Nontransferability of Permit. A development permit for the operation of a home child care business is not transferable or assignable. A development permit for the operation of a home child care business does not run with the land.

J. Revocation of Permit. A development permit for the operation of a home child care business may be revoked by the Planning Commission following a hearing. Such development permit may be revoked for non-compliance with the terms and conditions of the development permit which authorizes the operation of the home child care business, the terms and conditions of this Policy, or a violation of other applicable state or local rules, regulations, statutes and ordinances. Notice of the hearing on the proposed revocation shall be given in writing to the holder of the development permit at the address for the development permit holder shown on the development permit, or such other address as may have been provided to the Town by the development permit holder. Such notice shall set forth the grounds for the proposed revocation and the time and place of the hearing. Such notice shall be mailed to the development permit holder, postage prepaid, at least ten days prior to the date set for the hearing. At the hearing the development permit holder may appear with or without counsel and present such evidence as may be relevant. The decision of the Planning Commission with respect to a proposed revocation of a development permit for the operation of a home child care business shall be subject to the call-up process applicable to a Class B minor application as set forth in Section 9-1-18-2 of this Chapter, except that notice of the call-up hearing before the Town Council shall be given to the development permit holder in the manner provided above.

K. Special Variance Provision. The Planning Commission or Town Council may grant a variance from any provision of this Policy upon the written request of an applicant. A variance shall be granted under this paragraph K only upon a finding that: (i) the strict application of the requirements of this Policy would present a hardship; (ii) the hardship from which the applicant seeks to be relieved is not self-imposed; and (iii) the purposes of this Policy will be adequately served by the granting of the variance. No variance shall have the effect of nullifying the intent and purpose of this Policy. Section 9-1-11 of this Code is not applicable to the granting of a variance under this Policy.

L. Relationship to Other Code Sections. The provisions of this Policy shall govern the processing of an application for a development permit to operate a home child care business. No other provision of this Code shall apply to such application.

Section 4. There is hereby added to Policy 38(Absolute)(Home Occupations) of Section 9-1-19 of the Breckenridge Town Code a new Paragraph B, which shall read in its entirety as follows:

B. Application To Home Child Care Business Permits: The provisions of this Policy shall not apply to an application for a development permit to operate a home child care business. An application for a development permit to operate a home child care business shall be governed by the provisions of Policy 38.5 (Absolute) (Home Child Care Businesses) of Section 9-1-19 of this Chapter.

Section 5. 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 6. 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 7. The Town Council hereby 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 8. In recognition of the importance of child care to the community of Breckenridge, and in further recognition of the fact that Barbara J.M. Theis brought to the attention of the Town Council through her variance application the need for the Town to adopt a comprehensive ordinance to regulate the land use aspects of home child care businesses, the Finance Director is directed to refund the application fee of \$985.00 paid by Barbara J.M. Theis in connection with Development Permit application number 2005005. The refund authorized by this Section 8 shall be made notwithstanding the provisions of Section 9-10-7 of the Breckenridge Town Code.

Section 9. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter; provided, however, that any person who is lawfully operating a home child care business pursuant to a valid state child care license as of the effective date of this ordinance shall have thirty days after such effective date to submit to the Director of the Department of Community Development of the Town an application for a development permit to operate such home child care business pursuant to this ordinance. If such an application is not submitted with thirty days after the effective date of this ordinance, such person shall cease operating the home child care business. If a complete application for a development permit to operate a home child care business is timely submitted as required by this Section 5, the applicant may continue to operate the hold child care business until the Town makes a final decision on such application.


INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 26th day of April, 2005. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 10th day of May, 2005, 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



Ernie Blake, Mayor

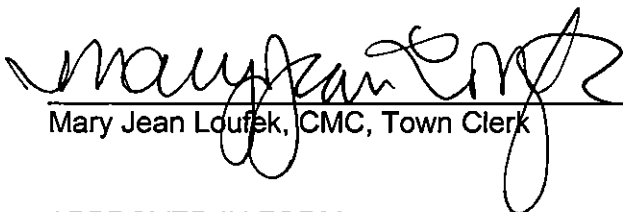
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on May 6, 2005.

The public hearing on this ordinance was held on May 10, 2005.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY, this 10th day of May, 2005. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE



Mary Jean Loufek, CMC, Town Clerk



Ernie Blake, Mayor

APPROVED IN FORM



Town Attorney

5/19/05

Date

This ordinance was published by title with changes in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on May 20, 2005.