

ORDINANCE NO. 31

Series 2021

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," AND CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE SUBDIVISION STANDARDS," CONCERNING CALL UP HEARINGS

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

Section 1. Section 9-1-18-1E6 is amended to read as follows:

6. Notice And Council Call Up: The Director shall notify the Council of all Planning Commission decisions on Class A applications at the Council's next regular meeting after the decision. At that meeting, the Council may, by an affirmative vote of the members present call up any decision of the Planning Commission for their own review. The Town Council's call up hearing shall be held in accordance with Section 9-1-18-5A of this Chapter. In lieu of calling up a Planning Commission decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission, or add any condition of approval. All Planning Commission decisions on Class A applications shall stand as presented unless called up or modified by the Town Council.

Section 2. Section 9-1-18-2(E)(6) is amended to read as follows:

6. Notice And Council Call Up: The Director shall notify the Council of all Planning Commission decisions on Class A applications at the Council's next regular meeting after the decision. At that meeting, the Council may, by an affirmative vote of the members present call up any decision of the Planning Commission for their own review. The Town Council's call up hearing shall be held in accordance with Section 9-1-18-5A of this Chapter. In lieu of calling up a Planning Commission decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission, or add any condition of approval. All Planning Commission decisions on Class B applications shall stand as presented unless called up or modified by the Town Council.

Section 3. Section 9-1-18-3C3 of the Breckenridge Town Code is amended to read as follows:

3. The Director shall forward his or her decision to the Planning Commission at its next regularly scheduled meeting. At that meeting the Planning Commission may, by an affirmative vote of the members present, call up any decision of the Director for its own review. If called up, the Planning Commission's call up hearing shall be held in compliance with Section 9-1-18-5B of this Chapter. In lieu of calling up a Director's decision, the Planning Commission may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Director or add any condition of approval.

Section 4. Section 9-1-18-3C4 of the Breckenridge Town Code is amended to read as follows:

4. The Director shall then forward the decision to the Town Council at its next regularly scheduled meeting following the decision having been presented to the Planning Commission if the Director's decision was not called up by the Planning Commission, or the Planning Commission's decision on the application if the Director's decision was called up, whichever is applicable. At that meeting, the Town Council may, by an affirmative vote of the members present, call up any decision for its own review. The Town Council's call up hearing shall be held in accordance with Section 9-1-18-5A of this Chapter. In lieu of calling up the Director's decision or the Planning Commission's decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission or add any condition of approval. If the decision forwarded to the Town Council is not called up or modified, it shall stand as presented.

Section 5. Section 9-1-18-5 of the Breckenridge Town Code is amended to read as follows:

9-1-18-5: CALL UP PROCESS:

A. Town Council Call Up:

1. A call up may be requested by the applicant, a member of the public, the Director, or a member of the Town Council.
2. If the Town Council calls up a final Planning Commission decision on a Class A, Class B, or a Class C development permit application the procedure for the Town Council's call up hearing shall be as follows.
3. The Town Council shall fix a date and time for a call up hearing on a Class A or B development permit application which date shall not be later than one hundred twenty (120) days from the date of the call up unless the applicant consents to a later hearing date. Notice of the Town Council's call up hearing on a Class A or Class B development permit application shall be given in the same manner as for a final hearing on the same class of development permit application held before the Planning Commission.
4. The Town Council shall fix a date and time for a call up hearing on a Class C development permit application which date shall not be later than forty five (45) days from the date of the call up unless the applicant consents to a later hearing date. The call up hearing shall be listed on the Town Council's agenda at the meeting at which the hearing will be held. Written notice of the time and place of a call up hearing on a Class C development permit application shall be mailed by the Director to the applicant by regular mail, postage prepaid, not less than seven (7) days before the date the hearing is to be held. No further notice is required to be given of a call up hearing on a Class C development permit application.
5. The scheduled date of a Town Council call up hearing may be continued for good cause as described in this subsection:
  - (a) For purposes of this section, "good cause" may include, but is not limited to: (i) the unavailability of the applicant, the applicant's attorney, the applicant's architect, or other key person necessary to the proper presentation of the applicant's application before the Town Council; (ii) a showing that more time is necessary to obtain relevant information or analysis related to the applicant's application; or (iii) a showing that more time is legitimately necessary to allow adequate preparation for the hearing. "Good cause" normally shall not include the failure of an attorney or a party to prepare for the hearing.
  - (b) A motion for a continuance by an applicant must be timely made.
  - (c) Before a call up hearing is convened the Mayor or the Director may continue a call up hearing. Once a hearing is convened, only the Town Council may continue a call up hearing.
  - (d) The Director shall notify the applicant if a continuance of the call up hearing is granted outside of a meeting of the Town Council.
6. All Town Council call up hearings shall be conducted as de novo public hearings.
7. At a call up hearing the applicant may appear with or without counsel. If the applicant retains counsel, it shall be at the applicant's cost.
8. At a call up hearing the applicant shall have the right to present such evidence as may be relevant, and to cross examine all witnesses.
9. The strict rules of evidence shall not apply to a call up hearing.
10. The burden of proof in a call up hearing shall be on the applicant.

11. An audiotaped record of the call up hearing shall be made. The Town shall retain the original audiotape for not less than one year. A copy of an audiotaped record of a call up hearing shall be made available by the Town to the applicant upon written request and payment of a fee determined by the Town Clerk to be sufficient to reimburse the Town for the cost of providing such copy. The Town shall not be obligated to provide a transcript of a call up hearing unless required by law, and any party desiring such transcript shall obtain and pay the cost thereof. A court reporter may be employed by any party, at the expense of such party, to prepare a verbatim written record of the call up hearing.
  12. The Department of Community Development is not a party to a call up hearing. Therefore, it is not a violation of the rule against ex parte contacts for the applicant or any member of the Town Council to talk to a member of the Department of Community Development concerning the application prior to a call up hearing.
  13. In its decision on a development permit application that has been called up the Town Council shall have the right to approve the application with or without conditions, or deny it because it does not comply with the requirements of this Chapter.
  14. The Town Council shall have thirty (30) days from the date of the call up hearing to make a final decision on a Class C development permit application, and sixty (60) days from the date of the call up hearing to make a final decision on Class A or Class B development permit application.
  15. It is not a ground for disqualification that a Town Council member read or reviewed the minutes of the Planning Commission with respect to the application that is the subject of the call up hearing unless the applicant can prove by a preponderance of the evidence that such member cannot fairly hear and decide the application.
  16. The Town Attorney shall not be involved in the presentation of any evidence at the call up hearing and shall remain available to advise the Town Council with respect to all matters pertaining to the call up hearing.
  17. The Town Council's final decision on an application that has been called up shall be in writing, and the time for an appeal of the Town Council's decision shall not begin to run until the Town Council has issued its written decision on the matter.
  18. The record of a call up hearing held before the Town Council shall consist of: (i) the relevant pages concerning the application from the Town Council's agenda packet for the meeting at which the call up hearing was held; (ii) all documents admitted into evidence by the Town Council; (iii) all documents offered into evidence at the hearing, but not admitted, if any; (iv) copies of the applicable provisions of the Development Code, and other applicable Town ordinances; (v) a transcript of the public hearing; and (vi) such other documents as may properly be included in the record.
  19. The Town Council's decision on a development permit application that has been called up shall be the final decision of the Town on such matter, and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision shall be a waiver of the applicant's right to contest the denial or conditional approval of the application.
  20. The procedures described in this Section 9-1-18-5A shall control over the hearing procedures set forth in Chapter 19 of Title 1 of this Code.
- B. Planning Commission Call Up: If a decision made by the Director on a Class C development permit application is called up by the Planning Commission, the Commission shall then act on the application as follows:
1. Hearing, Notice And Decision: If the applicant is present and ready to proceed the Planning Commission may conduct the call up hearing at the same meeting at which the application was called up. If the applicant is not present or is not

ready to proceed at the meeting at which the application was called up the Planning Commission shall fix a date and time for the call up hearing which date shall not be later than forty five (45) days from the date of the call up unless the applicant consents to a later hearing date. If the call up hearing is to be held at any meeting other than the meeting at which the application was called up, written notice of the time and place of the call up hearing shall be mailed by the Director to the applicant by regular mail, postage prepaid, not less than seven (7) days before the date the hearing is to be held. Additionally, the call up hearing shall be listed on the Planning Commission's agenda for such meeting. Otherwise, no notice of the call up hearing is required.

2. At the call up hearing the Planning Commission shall approve the application with or without conditions, or deny it because it does not comply with the requirements of this Chapter.
3. The scheduled date of a Planning Commission call up hearing may be continued for good cause as described in this subsection:
  - (a) For purposes of this section, "good cause" may include, but is not limited to:
    - (i) the unavailability of the applicant, the applicant's attorney, the applicant's architect, or other key person necessary to the proper presentation of the applicant's application before the Planning Commission; (ii) a showing that more time is necessary to obtain relevant information or analysis related to the applicant's application; or (iii) a showing that more time is legitimately necessary to allow adequate preparation for the hearing. "Good cause" normally shall not include the failure of an attorney or a party to prepare for the hearing.
    - (b) A motion for a continuance by an applicant must be timely made.
    - (c) Before a call up hearing is convened the Chair of the Planning Commission or the Director may continue a call up hearing. Once a hearing is convened, only the Planning Commission may continue a call up hearing.
    - (d) The Director shall notify the applicant if a continuance of the call up hearing is granted outside of a meeting of the Planning Commission.
4. Except as otherwise provided in this Section 9-1-18-5B, a call up hearing by the Planning Commission shall be conducted in accordance with the requirements of this Chapter and the normal rules and procedures of the Planning Commission.
5. All Planning Commission call up hearings shall be conducted as de novo public hearings.
6. At a call up hearing the applicant may appear with or without counsel. If the applicant retains counsel, it shall be at the applicant's cost.
7. At a call up hearing the applicant shall have the right to present such evidence as may be relevant, and to cross examine all witnesses.
8. The strict rules of evidence shall not apply to a call up hearing.
9. The burden of proof in a call up hearing shall be on the applicant.
10. An audiotaped record of the call up hearing shall be made. The Town shall retain the original audiotape for not less than one year. A copy of an audiotaped record of a call up hearing shall be made available by the Town to the applicant upon written request and payment of a fee determined by the Town Clerk to be sufficient to reimburse the Town for the cost of providing such copy. The Town shall not be obligated to provide a transcript of a call up hearing unless required by law, and any party desiring such transcript shall obtain and pay the cost thereof. A court reporter may be employed by any party, at the expense of such party, to prepare a verbatim written record of the call up hearing.

11. The Department of Community Development is not a party to a call up hearing. Therefore, it is not a violation of the rule against ex parte contacts for the applicant or any member of the Planning Commission to talk to a member of the Department of Community Development concerning the application prior to a call up hearing.
12. The Town Attorney shall not be involved in the presentation of any evidence at the call up hearing and shall remain available to advise the Planning Commission with respect to all matters pertaining to the call up hearing.
13. The record of a call up hearing held before the Planning Commission shall consist of: (i) the relevant pages concerning the application from the Planning Commission's agenda packet for the meeting at which the call up hearing was held; (ii) all documents admitted into evidence by the Planning Commission; (iii) all documents offered into evidence at the hearing, but not admitted, if any; (iv) copies of the applicable provisions of the Development Code, and other applicable Town ordinances; (v) a transcript of the public hearing; and (vi) such other documents as may properly be included in the record.
14. The Planning Commission's decision on an application that has been called up may itself be called up by the Town Council in the manner provided in this Chapter.
15. The procedures described in this Section 9-1-18-5B shall control over the hearing procedures set forth in Chapter 19 of Title 1 of this Code.

Section 6. Section 9-2-3-1D3f of the Breckenridge Town Code is amended to read as follows:

f. Notice And Council Call Up: The Director shall notify the Council of all Planning Commission decisions on Class A subdivision applications at the Council's next regular meeting after the decision. At that meeting, the Council may, by an affirmative vote of a majority of the members present, call up any decision of the Planning Commission for their own review under authority granted in section 9-2-3-4 of this Chapter. The Town Council's call up hearing shall be held in accordance with Section 9-2-3-4 of this Chapter. In lieu of calling up a Planning Commission decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission or add any condition of approval. All Planning Commission decisions on Class A subdivision applications shall stand as made unless called up or modified by the Town Council.

Section 7. Section 9-2-3-2D3f of the Breckenridge Town Code is amended to read as follows:

f. Notice And Council Call Up: The Director shall notify the Council of all Planning Commission decisions on Class B subdivision applications at the Council's next regular meeting after the decision. At that meeting, the Council may, by an affirmative vote of a majority of the members present, call up any decision of the Planning Commission for their own review under authority granted in section 9-2-3-4 of this Chapter. The Town Council's call up hearing shall be held in accordance with Section 9-2-3-4 of this Chapter. In lieu of calling up a Planning Commission decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission or add any condition of approval. All Planning Commission decisions on Class B subdivision applications shall stand as made unless called up or modified by the Town Council.

Section 8. Section 9-2-3-4 of the Breckenridge Town Code is amended to read as follows:

9-2-3-4: CALL UP PROCESS:

- A. Town Council Call Up: If the Town Council calls up a Planning Commission decision on a Class A or Class B subdivision permit application, the procedure for the Town Council's call up hearing shall be as follows:

1. A call up may be requested by the applicant, a member of the public, the Director, or a member of the Town Council.
2. The Town Council shall fix a date and time for a call up hearing on a Class A or B subdivision permit application which date shall not be later than one hundred twenty (120) days from the date of the call up unless the applicant consents to a later hearing date.. Notice of the Town Council's call up hearing on a Class A or Class B subdivision permit application shall be given in the same manner as for a final hearing on the same class of subdivision permit application held before the Planning Commission.
3. The scheduled date of a Town Council call up hearing may be continued for good cause as described in this subsection:
  - (a) For purposes of this section, "good cause" may include, but is not limited to: (a) the unavailability of the applicant, the applicant's attorney, the applicant's architect, or other key person necessary to the proper presentation of the applicant's application before the Town Council; (b) a showing that more time is necessary to obtain relevant information or analysis related to the applicant's application; or (c) a showing that more time is legitimately necessary to allow adequate preparation for the hearing. "Good cause" normally shall not include the failure of an attorney or a party to prepare for the hearing.
  - (b) A motion for a continuance by an applicant must be timely made.
  - (c) Before a call up hearing is convened the Mayor or the Director may continue a call up hearing. Once a hearing is convened, only the Town Council may continue a hearing.
  - (d) The Director shall notify the applicant if a continuance of the call up hearing granted outside of a meeting of the Town Council.
4. All Town Council call up hearings shall be conducted as de novo public hearings.
5. At a call up hearing the applicant may appear with or without counsel. If the applicant retains counsel, it shall be at the applicant's cost.
6. At a call up hearing the applicant shall have the right to present such evidence as may be relevant, and to cross examine all witnesses.
7. The strict rules of evidence shall not apply to a call up hearing.
8. The burden of proof in a call up hearing on a subdivision permit application shall be on the applicant.
9. An audiotaped record of the call up hearing shall be made. The Town shall retain the original audiotape for not less than one year. A copy of an audiotaped record of a call up hearing shall be made available by the Town to the applicant upon written request and payment of a fee determined by the Town Clerk to be sufficient to reimburse the Town for the cost of providing such copy. The Town shall not be obligated to provide a transcript of a call up hearing unless required by law, and any party desiring such transcript shall obtain and pay the cost thereof. A court reporter may be employed by any party, at the expense of such party, to prepare a verbatim written record of the call up hearing.
10. The Department of Community Development is not a party to a call up hearing. Therefore, it is not a violation of the rule against ex parte contacts for the applicant or any member of the Town Council to talk to a member of the Department of Community Development prior to a call up hearing.
11. In its decision on a subdivision application that has been called up the Town Council shall have the right to approve the application with or without conditions, or deny it because it does not comply with the requirements of this Chapter.

12. The Town Council shall have sixty (60) days from the date of the call up hearing to make a final decision on Class A or Class B subdivision permit application.
13. It is not a ground for disqualification that a Town Council member read or reviewed the minutes of the Planning Commission with respect to the application that is the subject of the call up hearing unless the applicant can prove by a preponderance of the evidence that such member cannot fairly hear and decide the application.
14. The Town Attorney shall not be involved in the presentation of any evidence in at the call up hearing and shall remain available to advise the Town Council with respect to all matters pertaining to the call up hearing.
15. The Town Council's final decision on an application that has been called up shall be in writing, and time for an appeal of the Town Council's decision shall not begin to run until the Town Council has issued its written decision on the matter.
16. The record of a call up hearing held before the Town Council shall consist of: (i) the relevant pages concerning the application from the Town Council's agenda packet for the meeting at which the call up hearing was held; (ii) all documents admitted into evidence by the Council; (iii) all documents offered into evidence at the hearing, but not admitted, if any; (iv) copies of the applicable provisions of the Development Code, and other applicable Town ordinances; (v) a transcript of the public hearing; and (vi) such other documents as may properly be included in the record.
17. The Town Council's decision on an application that has been called up shall be the final decision of the Town on such matter, and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision shall be a waiver of the applicant's right to contest the denial or conditional approval of the application.
18. The procedures described in this Section 9-2-3-4 shall control over the hearing procedures set forth in Chapter 19 of Title 1 of this Code.

Section 9. 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 10. 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 11. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S. (concerning municipal police powers); (v) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers contained in the Breckenridge Town Charter.

Section 12. 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 October, 2021.

This ordinance was published in full on the Town of Breckenridge website on October 13, October 14, October 15, October 16 and October 17, 2021.

A public hearing on this ordinance was held on October 26, 2021.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 26th day of October, 2021. 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



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

11-2-21

Date

This Ordinance was published on the Town of Breckenridge website on October 27, October 28, October 29, October 30 and October 31, 2021. This ordinance shall become effective on November 30, 2021.