

ORDINANCE NO. 35

Series 2022

**A BILL FOR AN ORDINANCE REPEALING POLICY 4A PERTAINING TO  
MASS AND MAKING CONFORMING AMENDMENTS**

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

**Section 1.** That Section 9-1-5, Definitions, of the Breckenridge Development Code shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

9-1-5: DEFINITIONS:

CLASS D DEVELOPMENT: Any development which includes any of the following activities and elements:

Class D – Major:

A. New single-family, duplex structure, or major remodel outside of the historic district, with or without an accessory dwelling unit, including, without limitation, master planned property with multiple single-family and duplex structures, except where the proposed development either:

1. Warrants the assessment of any negative points based upon the director's preliminary assessment at the time the application is initially filed; or
2. Is located on a lot, tract, or parcel without a platted building or disturbance envelope outside of the conservation district as defined in section 9-1-19-3A of this chapter (density).

A Class D – major permit application that meets the conditions described in subsection A(1) or (2) of this definition shall be reclassified as a Class C development permit application.

B. Those wireless communication facilities permit applications described in section 9-1-19-50A(D)(2) of this chapter.

C. Accessory dwelling units except when the permit application meets the conditions described in subsection A(1) or (2) of this definition, in which case the application shall be reclassified as a Class C development permit application.

DENSITY: The computation of units per acre for residential development or floor area ratio for commercial development based on a fully enclosed space within the surrounding exterior walls (including the exterior wall itself) that extend to a roof of a building or portion thereof including dwelling areas of the building, closets, bathrooms, living room, garage space of single family, duplexes, and townhomes, interior hallways, interior common spaces and areas of the building that are unfinished but have a floor to ceiling height of five feet (5') or greater. Building areas that are not fully enclosed and feature portions of open or mesh wall that exceeds 12" vertically and are entirely permeable across at least one façade such as trash dumpster enclosures, parking garages, porches and similar areas shall not be counted as density.

RECREATION AND LEISURE AMENITY CLUB OR AMENITY CLUB: The meaning of Amenity Club depends upon the type of residential property in which the property's amenity components (as defined below) are located:

In a hotel/lodge/inn or a condominium that does not include one or more timeshare estates an Amenity Club:

1. Allows admission to the property's amenity components by a person who is not a registered overnight guest at the property; and
2. Requires payment of a fee, a club membership, or other consideration given by the user of the property's amenity components.

In a condominium that includes one or more timeshare estates an Amenity Club permits admission to the property's amenity components by a person who is not an overnight guest at the property.

No residential property other than a hotel/lodge /inn or a condominium may contain an Amenity Club.

An Amenity Club is classified as a commercial use and requires commercial density.

An Amenity Club may include, but shall not be limited to, the following amenity components:

1. Personal lockers;
2. Boot dryers;
3. Ski storage racks;
4. Ski tuning;
5. Areas for congregation and/or socializing;
6. Restrooms and/or shower facilities;
7. Movie theaters;
8. Game rooms;
9. Clubhouse food amenities;
10. Concierge ski services;
11. Access to an aquatics facility or other recreational facilities; and/or
12. Parking.

**Section 2.** That Section 9-1-19-3A: POLICY 3 (ABSOLUTE) DENSITY//INTENSITY be amended by deleting the language stricken and adding the language underlined to read as follows:

**9-1-19-3A: POLICY 3 (ABSOLUTE) DENSITY//INTENSITY:**

C. General Provisions:

2. Square footage shall be calculated by counting the following floor areas against the density calculations:

Residential:

"Single-family" - the total square footage of the building from the outside of the exterior walls shall constitute the proposed density. This shall include any basement areas (finished or unfinished) entryways, and all unfinished areas that have greater than 5 ft. of ceiling height, including garages but excluding crawl spaces and attics.

Exception: If a deed restricted single-family or duplex structure located within the Wellington, Wellington II or Lincoln Park Subdivisions contains or proposes a garage, the measurement of above ground density defined above in this section applies only to that portion of the garage that exceeds five hundred (500) square feet.

"Townhouses and duplexes" - same as for single-family.

"Multifamily" - the total square footage of the residential portions of the building from the outside of the exterior wall to the outside of the interior wall, if adjacent to a common area, or to the

outside of the other exterior wall if not. Common areas such as lobbies, hallways, and amenity areas shall not be counted against the density.

"Hotels, lodges, etc." - same as for multifamily.

\*In those instances where commercial uses are being proposed within a multifamily building, hotel, etc., the density of those uses shall be counted against the allowed density; and, where the allowed density is calculated in units rather than floor area ratio, the one thousand (1,000) square foot equals one unit calculation shall be utilized.

Exception: Any portion of a basement area of a "Town designated landmark" as defined in chapter 11 of this title, which is: a) located directly underneath the landmark building, and b) completely or partially buried below grade, shall not be counted toward allowed density for such building under this policy so long as the historic USGS floor elevation of the building is maintained. This exception shall not apply to any other provision of this code.

**Section 3.** That subsection H of section 9-1-19-3A be amended by deleting the language stricken and adding the language underlined to read as follows:

H. Aboveground Density In Historic District:

1. Within the Main Street residential/commercial, south end residential, and South Main Street character areas a maximum of 12.0 units per acre for aboveground density for new construction is allowed. Projects within such areas which contain 12.01 units per acre, or more, of aboveground density shall be deemed to have failed this policy for failing to meet a priority policy.

a. Within the Main Street residential/commercial character area only, density and mass will not be assessed against a project for the construction of a "connector" element which complies with priority policy 80C of the "Handbook of Design Standards for the Historic and Conservation Districts".

2. a. Within the eastside residential, north end residential, and the North Main Street residential character areas, a maximum of 9.0 units per acre for aboveground density for new construction is allowed, except for those developments described in subsection H(2)b of this section. Projects within such areas which contain 9.01 units per acre, or more, of aboveground density shall be deemed to have failed this policy for failing to meet a priority policy.

b. In connection with permit applications for projects which involve "preserving", "restoring", or "rehabilitating" a "landmark structure", "contributing building", or "contributing building with qualifications" (as those terms are defined in the "Handbook of Design Standards for the Historic and Conservation Districts") anywhere within the eastside residential, north end residential, and the North Main Street residential character areas, a maximum of 10.0 units per acre for aboveground density is allowed. Projects of such types which contain 10.01 units per acre, or more, of aboveground density shall be deemed to have failed this policy for failing to meet a priority policy.

3. For the purposes of this chapter, "aboveground density" shall mean that portion of the density of a structure that is above finished grade. If a structure has a foundation wall that is exposed more than two feet (2') above finished grade, a portion of the allowable above grade

density for such structure shall be assessed to the floor which is partially below grade in accordance with priority policy 80B of the "Handbook of Design Standards" adopted by section 9-5-3 of this title.

Within the Historic District a one thousand six hundred (1,600) square foot multiplier is used to calculate the allowed aboveground density for any use. For example, a typical fifty foot by one hundred twenty five foot (50' x 125') aboveground density for any use (0.143 acre x 1,600 x 9 UPA).

If a single-family or duplex structure located within the Historic District contains a historic garage, barn or shed that does not qualify as dwelling area, the measurement of the density may be excluded. All non-historic garage, barn and shed square footage shall count as density.

I. Maximum Above Ground Density Outside of the Historic District:

1. For any development permit application submitted on or after November 11, 2009, the maximum aboveground square footage of a single-family or duplex structure located on a lot, tract or parcel without a platted building or disturbance envelope shall be the lesser of:

Subdivision Or Geographic Area	Floor Area Ratio (FAR)	Maximum Aboveground Square Footage
Breckenridge South	1:5.00	Or 6,000
Brooks Hill	1:5.00	Or 7,000
Christie Heights	1:3.50	Or 6,500
Gold Flake	1:4.50	Or 9,000
Gold King	1:8.50	Or 7,000
Highlands, filing 1	1:8.50	Or 9,000
Highlands, filing 2	1:8.50	Or 9,000
Highlands, filing 3	1:8.50	Or 9,000
Highlands, filing 4	1:8.50	Or 9,000
Peaks	1:1.75	Or 6,500
Penn Lode	1:3.00	Or 6,000

Subdivision Or Geographic Area	Floor Area Ratio (FAR)	Maximum Aboveground Square Footage	
Sunbeam Estates	1:3	Or	7,000
Sunrise Point	1:2.00	Or	6,500
Trafalgar	1:2.00	Or	7,500
Tyra	1:2.00	Or	6,000
Warrior's Mark	1:2.00	Or	4,000
Warrior's Mark West	1:2.00	Or	4,500
Weisshorn	1:4.00	Or	8,000
Yingling & Mickles	1:1.30	Or	5,600

Real property that has a platted building or disturbance envelope, or with a density or mass determined by an active master plan or planned unit development or is within the Conservation District, is not subject to this policy.

The floor area ratio and maximum aboveground square footage of any lot, tract or parcel of land without a platted building or disturbance envelope located outside of the Conservation District that is not listed in the table above shall be determined by the Director. In making such determination, the Director shall consider the applicable floor area ratio and maximum aboveground square footage of adjacent subdivisions or geographic areas, and shall establish the applicable floor area ratio and maximum aboveground square footage so that it will be compatible with the character of the area in which the lot, tract or parcel of land is located.

2. **Damage Or Destruction:** If a single-family or duplex structure that was lawfully constructed before the date described in subsection 1.1 of this section is damaged or destroyed by fire or other calamity it may be rebuilt to the same size that existed immediately prior to the fire or other calamity. However, except as provided in the preceding sentence, the provisions of section 9-1-12 of this chapter shall apply to the repair or reconstruction of such single-family or duplex structure.

3. **Additional Square Footage:** For any single-family or duplex structure existing or for which a development permit has been issued before the date described in subsection 1.1 of this section:

a. An additional five hundred (500) square feet of aboveground square footage is permitted for a single- family or duplex structure if such square footage is not allowed by subsection I.1 of this section; and

b. An interior addition is permitted without violating this policy if the addition does not result in any change to the exterior of the single-family or duplex structure.

4. Alternative Allocation Of Additional Square Footage: For any duplex structure that is subject to the provisions of subsection 3 (a) of this section, if each duplex unit has the same aboveground square footage each duplex unit shall be allocated an additional two hundred fifty (250) square feet of allowed aboveground square footage. If either of the duplex units has a greater amount of aboveground square footage than the other duplex unit, the smaller duplex unit shall receive so much of the additional aboveground square footage as is required to make it equal to the aboveground square footage of the larger duplex unit, and the remaining additional aboveground square footage shall be divided equally between the two (2) duplex units. If both duplex owners agree to an alternative allocation of the duplex's additional five hundred (500) square feet of allowed aboveground square footage, the town may approve such alternative allocation if both owners submit an agreement in a form acceptable to the town attorney prior to the submission of any application for a development permit that involves the use of any of the duplex's additional five hundred (500) square feet of aboveground square footage. The duplex owners' agreement for an alternative allocation of the additional aboveground square footage must be recorded in the real property records of the Clerk and Recorder of Summit County prior to the issuance of a development permit for the use of such additional square footage, and must run with the land and be binding upon all subsequent owners of the two (2) duplex units.

5. Density Allowance For On Site Renewable Energy Mechanical System In Multifamily And Commercial Uses: The goal of this subsection is to encourage renewable energy production in existing multifamily and commercial structures. This subsection is not applicable to new construction. This subsection seeks to improve energy efficiency by permitting existing nonconforming structures to install appropriate on site renewable energy mechanical systems to help protect the health, safety, and welfare of the community.

A. Additional Square Footage: Any existing multifamily residential or commercial structure constructed pursuant to a development permit issued prior to May 8, 2012, may be permitted additional aboveground density square footage for the installation of a renewable energy mechanical system, even if the structure already exceeds applicable density limitations. The additional square footage shall be the lesser of the following:

- i. The space necessary for an efficiently designed mechanical room; or
- ii. Three hundred fifty (350) square feet, or two percent (2%) of the existing density square footage, whichever is less.

B. Design Standards:

i. An on site renewable energy mechanical system shall be located based upon the following order of preference. Preference 1 is the highest and most preferred; preference 4 is the lowest and least preferred. An on site renewable energy mechanical system shall be located as follows: 1) within the existing building footprint; 2) out of view from the public right-of- way

and adjacent properties and screened; 3) partly visible from the public right-of-way or adjacent property and screened; and 4) highly visible from the public right- of-way or adjacent properties. An application for a system to be located in a least preferred location must adequately demonstrate why the system cannot be located in a more preferred location.

ii. Any structural modifications or additions made for a renewable energy mechanical system shall meet the intent of policy 5 (absolute) architectural compatibility and policy 5 (relative) architectural compatibility, in addition to all other applicable policies of this code.

**Section 4.** That section 9-1-19-4A: POLICY 4 (ABSOLUTE) MASS is hereby repealed.

**Section 5.** That section 9-1-19-4R: POLICY 4 (RELATIVE) MASS is hereby repealed.

**Section 6.** That subsection A of section 9-1-19-24A: POLICY 24 (ABSOLUTE) THE SOCIAL COMMUNITY is hereby stricken and that section 9-1-19-24A is renumbered accordingly.

**Section 7.** That subsection D of section 9-1-19-24R entitled "POLICY 24 (RELATIVE) SOCIAL COMMUNITY" is hereby repealed and replaced with the following language underlined to read as follows:

D. Meeting and Conference Rooms, and Amenity Space: The provision of legally guaranteed meeting and conference facilities in condominium/hotels, hotels, lodges, and inns, over and above the ratio of one square foot of meeting area for every thirty five (35) square feet of gross dwelling area is strongly encouraged. The conversion of space that had previously received positive points as meeting and conference facilities or recreational and leisure amenities is strongly discouraged.

The square footage of any portion of previously approved Recreation and Leisure Amenity space that is proposed to be converted into an Amenity Club shall be treated as commercial density.

**Section 8.** That section 9-1-19-51A entitled "POLICY 51 (ABSOLUTE) ACCESSORY DWELLING UNIT" be amended by adding the language underlined to read as follows:

An accessory dwelling unit shall meet each of the following criteria:

A. Be no greater in size than the lesser of:

1. One-third (1/3) of the total density of the primary unit; or
2. One thousand two hundred (1,200) square feet;

B. Conform with sections 9-1-19-3A, Policy 3 (absolute) density/intensity of this chapter;

**Section 9.** 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 8th day of November, 2022.

This ordinance was published in full on the Town of Breckenridge website on November 11, November 12, November 13, November 14 and November 15, 2022.

A public hearing on this ordinance was held on November 22, 2022.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 22nd day of November, 2022. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE



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Helen Cospolich, CMC, Town Clerk



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Eric S. Mamula, Mayor

APPROVED IN FORM



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Town Attorney

11.28.22  
Date

This Ordinance was published on the Town of Breckenridge website on November 23, November 24, November 25, November 26 and November 27, 2022. This ordinance shall become effective on December 27, 2022.