

COUNCIL BILL NO. 17

Series 2023

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN AND FATHER DYER UNITED METHODIST CHURCH.

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

Section 1. Findings. The Town Council of the Town of Breckenridge finds and determines as follows:

A. Owner owns the following described real property in the Town of Breckenridge, Summit County, Colorado:

Lots 1, Block 1, Weisshorn Subdivision No. 1, also known as 310 Wellington Road, Breckenridge, Colorado 80424 ("Property").

B. Section 9-9-5 of the Breckenridge Town Code states the Town Council has the authority to enter into a Development Agreement. Further, there is no process in the Town's Development Code for approval of a transfer of density to the Historic District. Per Section 9-1-17-12: A of the Breckenridge Town Code, a transfer of density from one lot or parcel within the Town to another lot or parcel within the Town may be approved by the Town Council only in connection with the approval of a Development Agreement and, therefore, a Development Agreement provides a means for such an approval and transfer.

C. As the commitment encouraged to be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, Owner

D. The Town has received a completed application and all required submittals for a Development Agreement, had a preliminary discussion of the application and the term of this proposed Development Agreement, determined that it should commence proceedings for the approval of this Development Agreement.

Section 2. Approval of Development Agreement. The Development Agreement between the Town and Father Dyer United Methodist Church, a Colorado nonprofit corporation is attached to this Ordinance as **Exhibit 1**.

1 **Section 3. Notice of Approval.** The Development Agreement shall contain a notice in
2 the form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in
3 compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code shall be
4 published by the Town Clerk one time in a newspaper of general circulation in the Town within
5 fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of
6 Section 24-68-103, C.R.S.

7
8 **Section 4. Police Power Finding.** The Town Council finds, determines, and declares
9 that this ordinance is necessary and proper to provide for the safety, preserve the health,
10 promote the prosperity, and improve the order, comfort, and convenience of the Town of
11 Breckenridge and the inhabitants thereof.

12
13 **Section 5. Authority.** The Town Council finds, determines, and declares that it has the
14 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by
15 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
16 Charter.

17
18 **Section 6. Effective Date.** This ordinance shall be published and become effective as
19 provided by Section 5.9 of the Breckenridge Town Charter.

20
21 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
22 PUBLISHED IN FULL this 9th day of May, 2023. A Public Hearing shall be held at the regular
23 meeting of the Town Council of the Town of Breckenridge, Colorado on the 23rd day of May,
24 2023, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

1

2 :

TOWN OF BRECKENRIDGE

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6 _____/s/_____ /s/_____

7 Helen Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor

8

9

10 APPROVED IN FORM

11

12 _____/s/_____

13 Town Attorney

APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED PROPERTY
RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED STATUTES, AS
AMENDED

DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is made as of the effective date of this Agreement (“**Effective Date**”) between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the “**Town**”) and FATHER DYER UNITED METHODIST CHURCH, a Colorado nonprofit corporation (the “**Church**”). The Town and the Church are sometimes collectively referred to in this Agreement as the “**Parties**,” and individually by name or as a “**Party**.”

Recitals

A. The Church owns the following described real property in the Town of Breckenridge, Summit County, Colorado:

Lots 1, Block 1, Weisshorn Subdivision No. 1, also known as 310 Wellington Road, Breckenridge, Colorado 80424 (“**Property**”).

B. The Church will be constructing an addition of approximately 2,497 square feet to the non-historic portion of the existing building on the Property, as approved by the Town in Development Permit PL-2021-0373.

C. The Church operates a Food Pantry in the building. The building will be under construction and therefore unavailable for Food Pantry operations until a Certificate of Occupancy for the project is issued by the Town.

D. The Church proposes to operate the Food Pantry from a storage trailer to be located on site in their parking lot while the building is under construction. The operation of the Food Pantry Trailer is referred to in this Agreement as the “**Project**”.

E. A development agreement is necessary in order to authorize the Food Pantry Trailer.

F. Pursuant to Chapter 9 of Title 9 of the Breckenridge Town Code the Town Council has the authority to enter into a development agreement.

G. The Town Council has determined that the commitments, described more fully below, proposed by the Church in connection with this Agreement are adequate. The Church intends to operate a Food Pantry out of a mobile trailer to be located on the church parking lot. At such time that a Certificate of Occupancy is issued for Development Permit PL-2021-0373, the Church will remove the Food Pantry Trailer and resume Food Pantry services inside the Church building.

H. The Town Council has received a completed application and all required submittals for a development agreement; had a preliminary discussion of such application and submittals; determined that it should commence proceedings for the approval of this Agreement; and, in accordance with the procedures set forth in Section 9-9-10(C) of the Breckenridge Town Code, approves the Agreement by ordinance.

Agreement

Subject to the provisions of this Agreement, the Town’s Department of Community Development is hereby authorized to review and approve the Church’s Development Permit Application for the Project (“**Development Permit Application**”), subject to compliance with all other applicable development policies of the Town.

1. So long as the Development Permit Application is not materially amended prior to the Community Development Department’s final decision, the following provisions of the Town’s land use regulations shall not be applied to the Development Permit Application:

Development Code¹

- A. 09-1-19-5R POLICY 5 (RELATIVE) ARCHITECTURAL COMPATIBILITY
 - B. 9-1-19-36A POLICY 36 (ABSOLUTE) TEMPORARY STRUCTURES
2. The Church intends to operate the Food Pantry Trailer. At such time that a Certificate of Occupancy is issued for the Development Permit, the Church will remove the Food Pantry Trailer and resume Food Pantry services inside the Church building. The Food Pantry Trailer may be removed at an earlier date if the Church has secured another facility to host their Food Pantry services. If another facility is used, the trailer will be removed from the Church property.
 3. If noise from refrigeration or mechanical systems associated with the Food Pantry Trailer exceed the levels permissible under Title 5, Chapter 8 of the Breckenridge Town Code, then the Church will take steps to relocate the trailer, provide additional noise attenuation, or other actions to the satisfaction of the Town. Failure to address potential noise issues to the Town’s satisfaction will be considered a breach of this Agreement.
 4. The term of this Agreement shall commence on the Effective Date and shall end, subject to earlier termination in the event of a breach of this Agreement, two years and six months from the Effective Date.
 5. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for herein, the execution of this Agreement shall not preclude the current or future Development Permit Application of municipal, state, or federal ordinances, laws, rules, or regulations to the Property (collectively, “**laws**”), including, but not limited to, building, fire, plumbing, engineering, electrical, and mechanical codes, and the Town’s Development Code, Subdivision Standards, and other land use laws, as the same may be in effect or amended from time to time throughout the term of this Agreement. Except to the extent the Town otherwise specifically agrees, any development of the Property shall be done in compliance with the then-current laws of the Town.
 6. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of the Town to adopt or amend any Town law, including, but not limited to the Town’s: (i) Development Code, (ii) Comprehensive Plan, (iii) Land Use Guidelines, and (iv) Subdivision Standards.
 7. This Agreement shall run with the title to the Property and be binding upon the Church and its successors and assigns.
 8. Prior to any action against The Town for breach of this Agreement, the Church shall give the

¹ Chapter 1 Title 9 of the Breckenridge Town Code

Town a sixty (60) day written notice of any claim of a breach or default by the Town, and the Town shall have the opportunity to cure such alleged default within such time period.

9. The Town shall not be responsible for, and the Church shall have any remedy against the Town, if the Project is prevented or delayed for reasons beyond the control of the Town.
10. Actual development of the real property which is the subject of the development agreement shall require the issuance of such other and further permits and approval by the town as may be required from time to time by applicable town ordinances.
11. No official or employee of the Town shall be personally responsible for any actual or alleged breach of this Agreement by the Town.
12. The Church agrees to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or intentional act or omission of the Church; any subcontractor of the Church, or any officer, employee, representative, or agent of the Church or of any subcontractor of the Church, or which arise out of any worker's compensation claim of any employee of the Church, or of any employee of any subcontractor of the Church; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of the Town, its officers, employees, or agents. The Church agrees to investigate, handle, respond to, and provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Church. The Church also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.
13. If any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall not affect or impair the validity, legality or enforceability of the remaining provisions of the Agreement.
14. In connection with the application for a development permit to develop real property that is the subject of a development agreement the application shall not receive an award of positive points under the Development Code for any commitment offered to the town by the applicant pursuant to section 9-9-4, or any other obligation or requirement of the applicant under the development agreement.
15. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended.
16. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver, unless expressly provided for by a written amendment to this Agreement signed by the Parties; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type.
17. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado.
18. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign immunity

Rick G. Holman, Town Manager

ATTEST:

Helen Cospolich, CMC, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2023 by Rick G. Holman, as the Town Manager, and Helen Cospolich, CMC, as the Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

FATHER DYER UNITED METHODIST
CHURCH, a Colorado nonprofit corporation

By:

Name:

Title:

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____,
2023, by _____, as _____ of
Father Dyer United Methodist Church, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public