



**TOWN OF
BRECKENRIDGE**

Town Council Special Meeting
Friday, April 10, 2020, 4:00 PM
VIRTUAL Council Chambers

This meeting will be broadcast live, but the public will NOT be permitted to attend the meeting in person due to COVID-19 concerns. If you are interested, please monitor the meeting by joining the live broadcast available online. Log in information is available in the calendar section of our website: www.townofbreckenridge.com.

Questions and comments can be submitted prior to the meeting to Mayor@townofbreckenridge.com or during the meeting using the Q&A feature in the Online Webinar.

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF AGENDA

III. NEW BUSINESS

- A. RESOLUTION NO. 12, SERIES 2020 - A RESOLUTION APPROVING AND RATIFYING THE SMALL BUSINESS RENTAL ASSISTANCE GRANT PROGRAM

IV. DISCUSSION ITEMS

- A. Round Two of Business Relief Grants
- B. Fiber9600 2020 Construction Schedule

V. OTHER MATTERS

VI. ADJOURNMENT

MEMO

TO: Town Council

FROM: Town Attorney

RE: Small Business Rent Program Resolution

DATE: April 8, 2020 (for April 10 Special Town Council Meeting)

Article 11, Section 2 of the Colorado Constitution provides, in part, as follows:

Neither the state, nor any county, city, town, township or school district shall make any donation or grant to, or in aid of, . . . any . . . person, company, or corporation, public or private

(my emphasis)

The Colorado Attorney General explained the reason for the inclusion of Article 11, Section 2 in the state constitution as follows:

When the Colorado Constitution was drafted, there was substantial public concern that public funds would be used for speculation in private railroad corporations. This practice [of using public funds to try to entice a railroad to come to a particular town] was viewed as the economic savoir of many Colorado communities but too often resulted in a business failure with loss of public funds. This experience led the drafters of the state constitution to include certain provisions intended to end speculation with public funds in private business ventures.

On its face, Article 11, Section 2 would seem to prohibit the Town from providing monetary grants to the small business owners in connection with the Small Business Rent Program that the Town Council created at the March 26, 2020 special Town Council meeting.

However, in 1955 the Colorado Supreme Court created an exception to the prohibition in Article 11, Section 2 to allow public payments to private companies if the expenditure furthered a “valid public purpose.” Since 1955 this court-made exception to the prohibition in Article 11, Section 2 has been used successfully on a number of occasions to allow state governmental entities, including Colorado municipal governments, to avoid the strict, literal interpretation of Article 11, Section 2. The “public purpose” exception to the restrictions in Article 11, Section 2 of the state constitution has clearly become ingrained in Colorado constitutional law.

Importantly, the courts in Colorado have been extremely deferential to a local government’s finding of a “public purpose.” This strongly suggests that the Town Council

should make a written finding and declaration that the grants provided by the Town in connection with the Small Business Rent Program serve a “public purpose.”

Enclosed with this memo is a proposed resolution to do just that. The key sections of the resolution are Section 2, which list the several “public purposes” that will be served by the Small Business Rent Program, and Section 4, where the Council finds that the Small Business Rent Program will achieve a “public purpose” within the meaning of Article 11, Section 2 of the state constitution.

You will also note that in Section 6 the Town Council ratifies and confirms all action taken by the Town since the program was initiated at the March 26 special Council meeting.

To minimize the possibility of a successful legal challenge to the Town’s Small Business Rent Program based on an alleged violation of Article 11, Section 2 of the state constitution, it is my recommendation that the enclosed resolution be adopted.

I will be happy to discuss this memo and the proposed resolution with you at the special meeting on Friday.

1 **FOR ADOPTION – APRIL 10**

2
3 RESOLUTION NO. ____

4
5 Series 2020

6
7 A RESOLUTION CONCERNING THE TOWN OF BRECKENRIDGE “SMALL BUSINESS
8 RENT ASSISTANCE PROGRAM”; MAKING CERTAIN LEGISLATIVE FINDINGS AND
9 DETERMINATIONS IN CONNECTION THEREWITH; AND RATIFYING ALL PREVIOUS
10 ACTION TAKE WITH RESPECT TO SUCH PROGRAM

11
12 BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
13 COLORADO:

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

16
17 A. On March 10, 2020 Jared Polis, Governor of the State of Colorado, declared a
18 statewide state of emergency in response to the coronavirus (COVID-19) pandemic.

19
20 B. On March 12, 2020 the Town Council adopted Ordinance No. 13, Series 2020,
21 entitled “An Emergency Ordinance Concerning the Coronavirus (COVID-19) Public Health
22 Emergency.” In such ordinance the Town Council formally declared that a public health
23 emergency relating to the coronavirus (COVID-19) exists within the Town. Such public health
24 emergency continues as of the date of the adoption of this resolution.

25
26 C. On March 16, 2020 Amy Wineland, Summit County Public Health Director, issued
27 “Amended and Restated Standing Public Health Order Relating to Public Events; Limitations on
28 the Sale of Food, Beverages, and Retail Goods; and Restrictions on Lodging and Transportation
29 Services.” Among other provisions, such Order: (i) prohibited all large events and gatherings of
30 more than 50 people; (ii) limited the sale of food and beverages, including liquor, beer and wine,
31 to carry-out and delivery only; (iii) required the closure of certain establishments providing retail
32 goods and services, and restricted the operation of others businesses that were permitted to
33 remain open; (iv) limited transpiration services; and (v) limited short-term lodging. Such Order is
34 applicable to the Town of Breckenridge.

35
36 D. On March 17, 2020 Amy Wineland, Summit County Public Health Director, updated
37 and clarified the Order of March 16, 2020.

38
39 E. On March 25, 2020 Governor Polis issued Executive Order D 2020 017 wherein he
40 ordered Coloradoans to stay at home due to the presence of COVID-19 in the state, subject to
41 certain limited exceptions.
42

1 F. Since March 25, 2020 Jill Hunsaker Ryan, Executive Director of the Colorado
2 Department of Public Health and Environment, has issued several Orders directed at the current
3 coronavirus (COVID-19) public health emergency. Included within such Orders are provisions,
4 with certain stated exceptions, requiring that: (i) all individuals currently living with the State of
5 Colorado must stay at home whenever possible; (ii) individuals must comply with social
6 distancing requirements; (iii) all public and private gatherings of any number of people occurring
7 outside of a residence are prohibited; and (iv) travel by automobile or public transit is prohibited,
8 except necessary travel as defined in the Order.
9

10 G. Although some of the governmental orders described above may have been updated
11 since they were issued, the critical substantive provisions of such orders remain in effect as of
12 the date of the adoption of this resolution.
13

14 H. The Town's economy is tourist-based, and it is essential to both the short term and
15 long term economic vitality of the Town that the geographic area commonly known and
16 described as the Town's "Downtown Business Core" be preserved.
17

18 I. Approximately 40% of the Town's general fund revenues come from the Town's
19 sales tax, a substantial portion of which is generated by businesses located in the Town's
20 Downtown Core.
21

22 J. The cumulative effect of governmental orders described above has had a dramatic and
23 potentially devastating effect on the businesses located in the Town's Downtown Business Core.
24

25 K. Many of the businesses located in the Town's Downtown Business Core are small
26 businesses.
27

28 L. As a result of the governmental orders described above, many of the small businesses
29 located in the Town's Downtown Core have either been forced to close temporarily, or to
30 severely restrict their operations, all of which has placed a tremendous and unanticipated
31 financial burden on many of such small businesses.
32

33 M. Many of the businesses located in the Town's Downtown Business Core are operated
34 by tenants who must pay rent to their landlords in order to remain in business.
35

36 N. Although federal loans may be available to small businesses, the loan proceeds (even
37 if the loan is approved) will not be received in sufficient time to allow the business owner to
38 make the rental payments required to avoid defaulting under the business' lease.
39

40 O. At a special meeting held on March 26, 2020 the Town Council discussed and
41 debated appropriate Town's responses to the COVID-19 public health emergency. At such
42 meeting the Town Council unanimously authorized the creation of the Town's "Small Business
43 Rent Assistance Program" ("**Program**"). The stated purpose of the Program was to immediately

1 provide much needed financial assistance to those tenant-owned small businesses located in the
2 Town's Downtown Core. Such assistance was agreed to be in the form of grants to help the
3 affected small business tenants make their rent payments.
4

5 P. As part of the Town Council's decision to create the Program the Town Council
6 explicitly acknowledged the critical role in the Town's overall economic health and well being
7 played by the tenant-owned small businesses located in the Town's Downtown Core.
8

9 Q. At the special meeting held on March 26, 2020 the Town Council established the
10 general parameters of the Program, and directed the Town Manager and his staff to immediately
11 take such actions as were necessary to finalize the details of the Program, and to implement and
12 administer the Program.
13

14 R. At the special meeting on March 26, 2020 the Town Council also authorized the
15 expenditure of \$1,000,000 from the Town's General Fund to initially fund the Program.
16

17 S. Acting pursuant to the Town Council's instructions, the Town Manager and his staff
18 have established and administered the Program as directed by the Town Council.
19

20 T. It is necessary and appropriate for the Town Council to adopt this resolution
21 memorializing and confirming in all respects the creation of the Program, and ratifying and
22 confirming all actions taken by the Town Manager and his staff in implementing and
23 administering the Program as directed by the Town Council.
24

25 Section 2. The Town Council finds, determines, and declares that the Program has
26 served and will continue to serve the following public purposes:
27

28 A. Providing immediate critical financial resources to the tenant-owned businesses
29 located in the Town's Downtown Core.
30

31 B. Attempting to preserve the Town's sales tax revenues generated by the tenant-owned
32 businesses in the Town's Downtown Core.
33

34 C. Enhancing the likelihood that the impacted tenant-owned businesses in the Town's
35 Downtown Core will be able to survive the current COVID-19 public health emergency, thereby
36 protecting and preserving the short term and long term economic vitality of the Downtown
37 Business Core specifically, as well as the Town as a whole.
38

39 Section 3. The Town Council further finds, determines, and declares that the public
40 benefits to be derived from the Program are both significant and substantial, and justify the
41 expenditure of the public funds necessary to establish and administer the Program. The Town
42 Council further finds, determines, and declares that the Town will receive adequate consideration
43 for its financial contribution to the Program in the form of the significant and substantial public

1 benefits described above.

2
3 Section 4. For the reasons set forth above, the Town Council finds, determines, and
4 declares that Program will provide a public benefit and further a public purpose within the
5 meaning of Article 11, Section 2 of the Colorado Constitution.

6
7 Section 5. The Town Manager, and all other officers, employees, and agents of the Town
8 shall take all action necessary or reasonably required to continue the administration of the
9 Program in all respects.

10
11 Section 6. All actions heretofore taken by the Town Manager, and the other officers,
12 employees, and agents of the Town in connection with the establishment and administration of
13 the Program are hereby ratified, approved, and confirmed in all respects.

14
15 Section 7. The Town Council hereby finds, determines and declares that it has the power
16 to adopt this resolution, and to create and administer the Program described in this resolution,
17 pursuant to the authority granted to home rule municipalities by Article XX of the Colorado
18 Constitution, and the powers contained in the Breckenridge Town Charter.

19
20 Section 8. This resolution is effective upon adoption.

21
22 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2020.

23
24 TOWN OF BRECKENRIDGE, a Colorado municipal
25 corporation

26
27
28
29 By: _____
30 Eric S. Mamula, Mayor

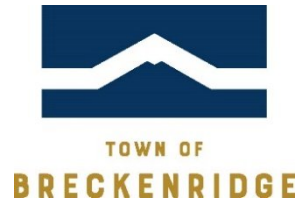
31
32 ATTEST:

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36 _____
37 Helen Cospolich, CMC,
38 Town Clerk

1 APPROVED IN FORM

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Town Attorney Date



Memo

To: Mayor and Town Council
From: Rick Holman, Town Manager
Date: 4/9/2020
Subject: Discussion on "Round 2" Funding for Small Business Rent Assistance Grant Program

As a reminder, Town Council recently approved spending up to \$1 million dollars on a rental assistance program for small businesses located inside Breckenridge. At that time, Council provided initial direction to staff along with two Council representatives, Wendy and Gary, to move forward with designing and implementing the program. As designed, the program focuses on those businesses involved in lodging, restaurant, and retail. Staff and Council representatives worked with a representative from each of these business types to design the program, which was presented to the Town Council at the March 26th Special Meeting.

The following message was sent to the Town Council on Wednesday March 25, 2020 from Wendy Wolfe in preparation for that Special Meeting:

The purpose of this program is to provide some immediate rent support for the Town's entrepreneurial small businesses. It is intended to be a bridge grant allowing the business tenant to get through the next 30 days while other relief options are pursued. The ultimate goal of the program is to help keep small businesses in a position to re-open as soon as the COVID-19 crisis passes.

In order to qualify for the relief grant, the small business must:

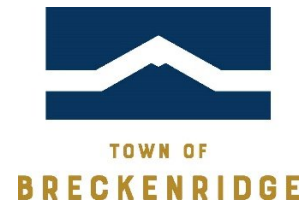
- 1. Currently be closed by Summit County Order and unable to operate the business from home (limited take-out and/or mail order excluded).*
- 2. Have a physical location in the Town of Breckenridge with a monthly rent payment due to a landlord to whom they have no ownership interest. If the tenant has multiple locations, only one of the locations will be considered for a grant.*
- 3. Be open all year to qualify (no seasonal businesses).*
- 4. Employ 16 or fewer FTEs as of March 1, 2020.*
- 5. Provide evidence of sustainability such as:*
 - o statement of reserve funds*
 - o application to refinance business operation*
 - o SBA loan application in process*
 - o other state or federal program relief application*
- 6. Demonstrate by a letter from the landlord that there will be either a rent reduction, deferment or a combination for at least one month. The landlord must also agree not to evict the tenant for failure to pay rent for at least 60 additional days after receiving the grant for rent from the Town.*

The application and administration of this rental assistance program has now been in place for almost two weeks. We have awarded well over 100 grants and there are at least another 80 or so in process. The average grant has been around \$2,800 and we expect to grant approximately \$500,000 before applications from eligible businesses begin to taper off.

Staff would like to discuss with Town Council a proposed second round of funding in order to expend the full \$1 million dollars earmarked for this program. As you prepare for this discussion, I would ask you to consider the following:

- Maintain the original program intent. Staff could provide additional dollars to each grantee from Round 1 to assist with an additional half month of rent. This would cost approximately \$250k. The application process could also be opened up to businesses with up to 35 employees, making them eligible for 1 ½ months rental assistance. If the program is opened to these additional businesses staff estimates there would be about 25 additional businesses that could apply. This would likely expend any remaining funds.
- Another option is to “expand the field” and allow more service type businesses to apply in Round 2. We have heard from some businesses such as law firms, real estate offices, and interior design studios that while they may have the ability to continue to work, the work has dramatically dropped off creating a big reduction in their revenues.
- Council could also consider some hybrid of the two options listed above. With this option the remaining dollars will likely go quickly. It will need to be clear that funding will be on a first come, first served basis as we will undoubtedly run out of funds before everyone can be approved.

Hopefully this memo provides you with some ideas to consider for our conversation at the Special Meeting on April 10th. At that meeting, we will provide you with a verbal update of where we are with our numbers for Round 1 funding.



Memo

To: Breckenridge Town Council Members
From: Shannon Haynes, Assistant Town Manager
Date: 4/8/2020
Subject: Fiber9600 2020 Construction Schedule

Prior to the COVID-19 crisis, the Fiber9600 construction was scheduled to begin on Monday, April 27th. As result of the current crisis, the mechanism for funding the project (with a reduced budget), is currently being evaluated. As we work to determine the appropriate funding option, staff would like to move forward on the planned construction start date. The current contract with Peak Communications allows the Town to terminate the contract with seven (7) days' notice and payment for services completed.

Beginning construction in April will incur expenses that may need to be funded out of Town reserves. Staff estimates \$2.65M for materials and infrastructure work through May. Initial work is planned for the downtown core and funding includes budget for 200 drops (2019 areas and the limited 2020 work).

Starting construction on April 27th will also allow the Fiber9600 build to begin without the time constraints encountered in 2019. Further, this project will employ a local contractor, Columbine Hills, and will help to support the local workforce.

I will be available at the special meeting on Friday, April 10th to answer questions.