



TOWN OF  
**BRECKENRIDGE**

**Town Council Regular Meeting**  
Tuesday, April 26, 2022, 7:00 PM  
Town Hall Council Chambers  
150 Ski Hill Road  
Breckenridge, Colorado

THE TOWN OF BRECKENRIDGE IS HOLDING HYBRID MEETINGS. THIS MEETING WILL BE HELD IN PERSON AT BRECKENRIDGE TOWN HALL. ALL MEMBERS OF THE PUBLIC ARE INVITED TO ATTEND. IN PERSON ATTENDEES MUST NOT ACCESS THE VIRTUAL MEETING WHILE IN COUNCIL CHAMBERS.

This meeting will also be broadcast live over Zoom. Log-in information is available in the calendar section of our website: [www.townofbreckenridge.com](http://www.townofbreckenridge.com). All public comments must be delivered in person in Council Chambers during designated public comment times, by email to [mayor@townofbreckenridge.com](mailto:mayor@townofbreckenridge.com), or by mailed letter, prior to the meeting.

**I. CALL TO ORDER, ROLL CALL**

**II. APPROVAL OF MINUTES**

- A. TOWN COUNCIL MINUTES - APRIL 12, 2022

**III. APPROVAL OF AGENDA**

**IV. COMMUNICATIONS TO COUNCIL**

- A. CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)  
B. BRECKENRIDGE TOURISM OFFICE UPDATE  
C. MENTAL HEALTH AWARENESS MONTH PROCLAMATION

**V. CONTINUED BUSINESS**

- A. SECOND READING OF COUNCIL BILLS, SERIES 2022  
1. *COUNCIL BILL NO. 10, SERIES 2022 - AN ORDINANCE APPROVING A GROUND LEASE WITH THE FAMILY & INTERCULTURAL RESOURCE CENTER*

**VI. NEW BUSINESS**

- A. FIRST READING OF COUNCIL BILLS, SERIES 2022  
1. *COUNCIL BILL NO. 11, SERIES 2022 - AN ORDINANCE CONFORMING THE TOWN CODE TO THE COLORADO CLEAN INDOOR AIR ACT*  
2. *COUNCIL BILL NO. 12, SERIES 2022 - AN ORDINANCE AMENDING AND RELOCATING RETAIL TOBACCO LICENSING*  
3. *COUNCIL BILL NO. 13, SERIES 2022 - AN ORDINANCE REORGANIZING AND RELOCATING ALCOHOLIC BEVERAGES AND MARIJUANA LICENSING REGULATIONS*

4. *COUNCIL BILL NO. 14, SERIES 2022 - AN ORDINANCE AMENDING THE GENERAL OFFENSES OF THE BRECKENRIDGE TOWN CODE PERTAINING TO THE CONDUCT OF A MINOR IN POSSESSION OF TOBACCO*
5. *COUNCIL BILL NO. 15, SERIES 2022 - AN ORDINANCE AUTHORIZING THE TOWN CLERK TO ADMINISTRATIVELY APPROVE FESTIVAL PERMITS*
6. *COUNCIL BILL NO. 16, SERIES 2022 - AN ORDINANCE CONFORMING THE CODE TO THE CHARTER PERTAINING TO MUNICIPAL COURT*
- B. RESOLUTIONS, SERIES 2022
  1. *RESOLUTION NO. 10, SERIES 2022 - A RESOLUTION APPOINTING THE PRESIDING JUDGE AND FIXING THEIR COMPENSATION*
- C. OTHER
  1. *REQUEST TO APPROVE COMPENSATION FOR OUTSIDE COUNSEL*

**VII. PLANNING MATTERS**

- A. PLANNING COMMISSION DECISIONS

**VIII. REPORT OF TOWN MANAGER AND STAFF**

**IX. REPORT OF MAYOR AND COUNCIL MEMBERS**

- A. CAST/MMC
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE
- C. BRECKENRIDGE TOURISM OFFICE
- D. BRECKENRIDGE HISTORY
- E. BRECKENRIDGE CREATIVE ARTS
- F. BRECKENRIDGE EVENTS COMMITTEE
- G. CHILD CARE ADVISORY COMMITTEE
- H. WORKFORCE HOUSING COMMITTEE
- I. SOCIAL EQUITY ADVISORY COMMISSION

**X. OTHER MATTERS**

**XI. SCHEDULED MEETINGS**

- A. SCHEDULED MEETINGS FOR APRIL, MAY AND JUNE

**XII. ADJOURNMENT**

**D) CALL TO ORDER, ROLL CALL**

Mayor Mamula called the meeting of April 12, 2022 to order at 7:00pm. The following members answered roll call: Ms. Saade, Ms. Gigliello, Mr. Carleton, Ms. Owens, Mr. Kuhn, Mr. Bergeron and Mayor Mamula.

**II) APPROVAL OF MINUTES**

**A) TOWN COUNCIL MINUTES – MARCH 22, 2022**

With no changes or corrections to the meeting minutes of March 22, 2022 Mayor Mamula declared they would stand approved as presented.

**III) APPROVAL OF AGENDA**

Mr. Holman stated there were no changes to the agenda.  
Mayor Mamula declared the agenda approved as presented.

**IV) COMMUNICATIONS TO COUNCIL**

**A) CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)**

Mayor Mamula opened Citizen's Comment.

There were no public comments and Citizen's Comment was closed.

**B) BRECKENRIDGE TOURISM OFFICE UPDATE**

There was no BTO update at this meeting.

Mayor Mamula thanked Mr. Kuhn for his time spent on Council. He also thanked Ms. Gigliello for her time spent on Council. He further stated the pandemic was an opportunity for everyone to come together and he appreciated the time they both put in for this community.

**V) CONTINUED BUSINESS**

**A) SECOND READING OF COUNCIL BILLS, SERIES 2022 - PUBLIC HEARINGS**

**B) COUNCIL BILL NO. 9, SERIES 2022 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN AND SYNERGY VENTURES, INC. ("OWNER") AND MARC AND MARILYN HOGAN ("BUYERS")**

Mayor Mamula read the title into the minutes. Mr. Chapin LaChance stated this ordinance would authorize a development agreement in order to convert a Big Sky condominium unit to employee housing. He further stated there was one change from first reading that was to prohibit short-term rental use of the unit.

Mr. Bergeron moved to approve COUNCIL BILL NO. 9, SERIES 2022 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN AND SYNERGY VENTURES, INC. ("OWNER") AND MARC AND MARILYN HOGAN ("BUYERS"). Ms. Saade seconded the motion.

The motion passed 7-0.

**VI) NEW BUSINESS**

**A) FIRST READING OF COUNCIL BILLS, SERIES 2022**

**1) COUNCIL BILL NO. 10, SERIES 2022 - AN ORDINANCE APPROVING A GROUND LEASE WITH THE FAMILY & INTERCULTURAL RESOURCE CENTER**

Mayor Mamula read the title into the minutes. Mr. Holman stated this ordinance would allow the Town to enter into a ground lease with FIRC to build a new flagship center for the non-profit. He further stated the conditions of the lease are noted in the memo in the packet and staff recommends approval.

Ms. Gigliello moved to approve COUNCIL BILL NO. 10, SERIES 2022 - AN ORDINANCE APPROVING A GROUND LEASE WITH THE FAMILY & INTERCULTURAL RESOURCE CENTER. Mr. Kuhn seconded the motion.

The motion passed 7-0.

**B) RESOLUTIONS, SERIES 2022**

C) OTHER

**VII) PLANNING MATTERS**

A) PLANNING COMMISSION DECISIONS

Mayor Mamula declared the Planning Commission Decisions would stand approved as presented.

B) COLORADO MOUNTAIN COLLEGE STUDENT HOUSING DEVELOPMENT HEARING, PL-2022-0064

Mayor Mamula read the project title into record. Ms. Sarah Crump presented the project, including size, design elements and land use guidelines. She stated this project is primarily intended for student housing. She further stated Planning Commission recommends approval, and staff is pleased with the project.

Mayor Mamula opened the public hearing.  
There were no comments and the public hearing was closed.

Mr. Carleton thanked CMC for this project.

Mr. Bergeron moved to approve COLORADO MOUNTAIN COLLEGE STUDENT HOUSING DEVELOPMENT HEARING, PL-2022-0064. Ms. Gigliello seconded the motion.

The motion passed 7-0.

**VIII) REPORT OF TOWN MANAGER AND STAFF**

Mr. Holman stated he and Mayor Mamula met with BGV and Breckenridge Ski Resort about a possible future parking study, and they expressed that they are not looking at doing one at this time but they are open to the idea of a lift that could be built from Peak 7 to the Airport Road parking area. He further stated the SE Group would be a local resource for this kind of study about a lift, and it might not cost as much as a full-blown parking study. Council discussed the merits of a study about a lift to that area. Mayor Mamula stated the Town could partner with the ski resort on this effort to ease traffic congestion in town. Council agreed to explore the option of a lift study.

**IX) REPORT OF MAYOR AND COUNCIL MEMBERS**

A. CAST/MMC

Mayor Mamula stated MMC talked about the elections and the upcoming fire season. He further stated this conversation included a discussion with Frisco about summer fireworks, which they plan to offer this year. Mr. Holman stated there are big CDOT projects planned for this summer.

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE

Ms. Gigliello stated seasonal hires are coming on board, and the committee has been reviewing forest health projects, Breck Create BIFA and Trail Mix proposals and McCain Property options, including bike trail alignment and green space. Mr. Bergeron thanked Ms. Gigliello for her time on BOSAC.

C. BRECKENRIDGE TOURISM OFFICE

No update.

D. BRECKENRIDGE HISTORY

No update.

E. BRECKENRIDGE CREATIVE ARTS

No update.

F. BRECKENRIDGE EVENTS COMMITTEE

No update

G. CHILD CARE ADVISORY COMMITTEE

No update

H. WORKFORCE HOUSING COMMITTEE

No update

I. SOCIAL EQUITY ADVISORY COMMISSION

No update

**X) OTHER MATTERS**

Ms. Owens stated some local restaurants are interested in extending outdoor seating in their parking areas, as they did during COVID. She further stated some experiences are better than others in those spaces. Ms. Gigliello stated the Town will lose parking if they do this, and Ms. Saade stated she would like these businesses work through our code for

modifications like this. Mr. Holman stated the end of May this year all of the COVID modifications need to end. Council generally agreed that if it is within the code these businesses could make outdoor seating changes like this.

Ms. Gigliello stated she feels privileged and grateful to serve this Town over the last 8 years. She further stated the Town is lucky to have this Council and staff working for it. She thanked the Council and staff for their hard work.

Mr. Kuhn thanked Council for what he learned during his time here.

**XI) SCHEDULED MEETINGS**

A) SCHEDULED MEETINGS FOR APRIL, MAY AND JUNE

**XII) ADJOURNMENT**

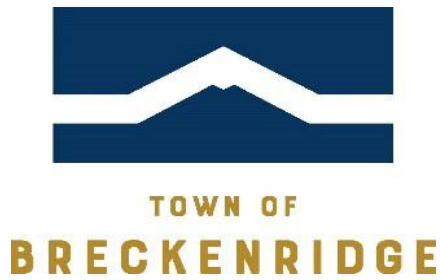
With no further business to discuss, the meeting adjourned at 7:36pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

\_\_\_\_\_  
Helen Cospolich, CMC, Town Clerk

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Eric S. Mamula, Mayor

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**PROCLAMATION  
MENTAL HEALTH AWARENESS MONTH  
MAY 2022**

**WHEREAS**, Every American is affected or impacted by mental health issues either personally or through their friends and family; and

**WHEREAS**, when compared to other Colorado communities, the incidence of substance abuse and mental health indicators is elevated in Summit County and as a result the Town is concerned about the impacts of mental illness on the quality of life for our residents; and

**WHEREAS**, although mental illness impacts all people, many of those in lower-income communities receive less care, poorer quality of care, and often lack access to linguistically and culturally accessible care, thereby resulting in mental health disparities; and

**WHEREAS**, some see negative perceptions about mental health care as a significant factor contributing to limited or nonexistent access to care; and

**WHEREAS**, nearly two-thirds of all people with a diagnosable mental illness do not receive mental health treatment due to stigma, lack of community-based resources, inadequate diagnosis, or no diagnosis; and

**WHEREAS**, there is a need to improve public awareness of mental illness and to strengthen local and national awareness, so that all those with mental illness may have access and receive adequate and appropriate treatment and support; and

**WHEREAS**, the Breckenridge Town Council wishes to enhance public awareness of mental illness.

**NOW, THEREFORE BE IT PROCLAIMED**, by the Mayor and Town Council of the Town of Breckenridge, that the month of May 2022 is Mental Health Awareness in the Town of Breckenridge, Colorado.

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\_\_\_\_\_/s/\_\_\_\_\_

Mayor Eric Mamula

Attest:

\_\_\_\_\_/s/\_\_\_\_\_

Town Clerk



# Memo

To: Town Council  
From: Rick G. Holman, Town Manager  
Date: 4/13/2022  
Subject: Ground Lease with FIRC (Second Reading)

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Attached is the second reading of an ordinance that would allow the Town Council to enter into a 75 year ground lease for a piece of property in the McCain subdivision. This property is approximately one-acre more or less and would house the new “flagship” Family and Intercultural Resource Center (FIRC) building. The building will be for administration and operations of FIRC to include a thrift store and food pantry. The ground lease allows FIRC to sublet portions of the building (with the Town’s approval) to other non-profits providing charitable social services to the community. As part of any sublease, FIRC can only recoup expenses for the building on a square footage percentage. Other key items in this lease include:

- The rent for the 75 year term shall be \$10
- FIRC is responsible for all maintenance and upkeep of the property
- If future development next to this lot results in any shared parking then Landlord (Town) acknowledges and agrees that tenant may participate in cost sharing of any common areas such as parking
- If at any point during the first 50 years of this lease, the tenant desires to voluntarily terminate the lease, landlord agrees to pay the fair market value for the building or the amount paid for the initial construction of the building, whichever is less. Starting at year 51 the amount paid for voluntary termination would be reduced by 10 percent through year 60.
- At the conclusion of the lease, the property is quit claimed to Landlord

This proposed ground lease has been prepared in cooperation with FIRC and they are supportive of the lease as presented. Nothing has changed in this lease since the first reading.



COUNCIL BILL NO.

Series 2022

**AN ORDINANCE APPROVING A GROUND LEASE WITH THE  
FAMILY & INTERCULTURAL RESOURCE CENTER**

WHEREAS, the Town owns the real property located in Tracts 6, 11, and 14 of the McCain Subdivision in the Town of Breckenridge, County of Summit, State of Colorado (the “Property”) that is the subject of this Ground Lease, a copy of which is attached hereto;

WHEREAS, the Family & Intercultural Resource Center (“FIRC”), a Colorado non-profit corporation, has agreed to use the Property as a flagship FIRC building for Tenant’s administration, operations and programs, including, without limitation, a thrift store and food market (pantry), and for additional uses consistent with the provision of charitable and social services operating pursuant to Section 501(c) of the Internal Revenue Code for the benefit of the Town and Summit County, Colorado;

WHEREAS, the Town desires to lease the property to FIRC for this these uses and purposes;

WHEREAS, Section 15.4 of the Breckenridge Town Charter provides: “The council may lease, for such time as council shall determine, any real or personal property to or from any person, firm, corporation, public and private, governmental or otherwise”;

WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate lease entered into by the Town which exceeds one year in length must be approved by ordinance.

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

**Section 1.** The Ground Lease between FIRC and the Town for the Property described in **Exhibit “A”** attached to the Ground Lease is approved; and the Town Manager is authorized, empowered, and directed to execute such Ground Lease for and on behalf of the Town of Breckenridge.

**Section 2.** The Town Council hereby finds, determines, and declares that it has the power to adopt this ordinance pursuant to: (i) Section 1-11-4 of the Breckenridge Town Code; (ii) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (iii) the powers contained in the Breckenridge Town Charter.

**Section 3.** Minor changes to or amendments of the approved Ground Lease may be made by the Town Manager prior to the execution of the approved Ground Lease if the Town Attorney certifies in writing that the proposed changes or amendments do not substantially affect any material provision of the approved Ground Lease.



1  
2 **GROUND LEASE**

3  
4 This Ground Lease (“**Lease**”) recorded on \_\_\_\_\_ under Reception No.  
5 \_\_\_\_\_ of the records of the Clerk and Recorder of Summit County, Colorado will  
6 commence on the Effective Date and is made by the TOWN OF BRECKENRIDGE,  
7 COLORADO, a Colorado municipal corporation (hereinafter referred to as “**Landlord**” or  
8 “**Town**”) and the FAMILY & INTERCULTURAL RESOURCE CENTER, a Colorado non-  
9 profit corporation (“**Tenant**”). Landlord and Tenant are sometimes collectively referred to in this  
10 Lease as the “**Parties**”, and individually as a “**Party**.”

11  
12 For and in consideration of the mutual covenants set forth below and other good and  
13 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord  
14 and Tenant agree to the following terms and conditions.

15  
16 **ARTICLE 1 – GRANT OF LEASE**

17  
18 **1.1. Property.** The real property that will be the subject of the Lease is a certain tract  
19 of real property located in Tracts 6, 11, and 14 of the McCain Subdivision in the Town of  
20 Breckenridge, County of Summit, State of Colorado (the “**Property**”). The general location and  
21 configuration of the Property are shown on the attached **Exhibit “A”**, which is incorporated  
22 herein by reference. Pursuant to Title 1, Chapter 11, the Town Manager is empowered and  
23 authorized to amend this Lease to make any minor modifications or revisions to **Exhibit “A”**  
24 mutually agreed to by the Parties prior to execution of this Lease. The Property consists of  
25 approximately 1.0 acres, more or less, and is currently unsubdivided. The Town will subdivide  
26 the Property before entering into the Lease with Tenant.

27  
28 **1.2 Condition of Property; Tenant Release.** Except as otherwise expressly  
29 provided in this Lease, (i) Landlord is leasing the property as is, where is and with all faults, and  
30 Landlord does not warrant or make any representations, express or implied, relating to the  
31 merchantability, quantity, quality, condition, suitability or fitness for any purpose whatsoever of  
32 the property; and (ii) Landlord has no liability whatsoever to undertake any repairs, alterations,  
33 removal, remedial actions or other work of any kind with respect to any portion of the Property.

34  
35 **1.3 Quiet Enjoyment.** Upon the Commencement Date, Tenant shall have the  
36 peaceable and uninterrupted use and occupancy of the Property during the Term, subject to (i)  
37 Tenant's compliance with its obligations under this Lease, (ii) the rights reserved by Landlord for  
38 access to, and use of, the Property as provided in this Lease, and (iii) the Permitted Exceptions,  
39 but otherwise without hindrance or interruption by Landlord or any other person lawfully or  
40 equitably claiming by, through or under Landlord.

41  
42 **ARTICLE 2 – LEASE TERM**

43  
44 **2.1 Term; Commencement Date.** The commencement date of this Lease (the  
“**Commencement Date**”) shall be the Effective Date. The term (the “**Term**”) of this Lease shall

GROUND LEASE

1 be for a period of seventy-five (75) years, commencing on the Commencement Date. The Term  
2 shall expire at 11:59 p.m. on the day immediately preceding the seventy-fifty (75<sup>th</sup>) anniversary of  
3 the Commencement Date (the “**Expiration Date**”), unless sooner terminated as herein provided.

4  
5 **ARTICLE 3 – RENT AND EXPENSES**  
6

7 **3.1 Rent.** The rent for the Term shall be \$10.  
8

9 **3.2. Taxes.** Although all real property owned by the Town is exempt from taxation,  
10 during the Term of the Lease Tenant’s occupancy and use of the Property pursuant to the Lease  
11 may be deemed to be a taxable possessory interest pursuant to Section 39-1-103(17)(a), C.R.S.  
12 Tenant shall be required to pay any real or personal property taxes levied against the Property;  
13 provided, however, Landlord shall not levy, impose or assess any special or general taxes,  
14 assessments or fees upon the Property, the Improvements or the use of such Property and  
15 Improvements, which are not otherwise uniformly applied by the Town.  
16

17  
18 **ARTICLE 4 – PLANNING, DESIGN AND CONSTRUCTION**  
19

20 **4.3 Improvements Landlord Approvals.** Prior to construction of any improvements  
21 on the Property, including, without limitation, any buildings, driveways, sidewalks or other  
22 improvements on the Property related to Tenant’s intended use of the Property (the “Tenant  
23 Improvements”), Tenant must submit the design details of the Tenant Improvements to the  
24 Landlord for its approval as the owner of the Property acting in its proprietary capacity. The  
25 Landlord’s approval of the Tenant Improvements may be granted, conditionally granted, or  
26 denied in Landlord’s sole discretion. If the Landlord approves of the Tenant Improvements, the  
27 Tenant must apply for and receive approval of a development permit from Landlord acting in its  
28 governmental capacity.  
29

30 **4.4 Timeline for Construction.** Tenant shall begin construction of the Flagship  
31 FIRC building no later than five (5) years from the Effective Date of this Lease. Failure to  
32 begin construction in accordance with this Section 4.4 shall result in termination of this  
33 Agreement; provided, however, the Landlord may, in its sole discretion, waive or extend the  
34 timeline for construction.  
35

36 **4.5 Title to Improvements/Reversion.** Upon completion, Tenant shall be the owner  
37 of all Tenant Improvements. On the Expiration Date or sooner termination of this Lease, whether  
38 by default, eviction, or otherwise, the Tenant Improvements (together with any alterations made  
39 to same from time to time), all fixtures incorporated in the Property owned by Tenant, and  
40 Tenant’s Property located in, on, or at the Property or otherwise constituting part of the Property,  
41 shall be quit claimed to Landlord, in such form and delivery as reasonable requested by  
42 Landlord. Notwithstanding the provisions of this paragraph, the machinery and equipment of  
43 Tenant, other than that which is affixed to the Property so that it cannot be removed without  
44 damage to the Property, shall remain the property of Tenant and may be removed within thirty

1 (30) days after the expiration or sooner termination of this Lease, unless otherwise agreed to by  
2 the Parties in accordance with Section 7.4 below or under terms established by mutual agreement  
3 in writing by the Parties.  
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## 5 **ARTICLE 5 – USE OF PROPERTY**

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### 7 **5.1 Use of Property.**

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9 a. Tenant shall construct and maintain the Tenant Improvements and use the  
10 Property as a “Flagship” FIRC building for Tenant’s administration, operations and programs,  
11 including, without limitation, a thrift store and food market (pantry), or for such other or  
12 additional uses consistent with the provision of charitable and social services operating pursuant  
13 to Section 501(c) of the Internal Revenue Code for the benefit of the Town and Summit County,  
14 Colorado.  
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16 b. Tenant shall have the right to sublet all or any portion or portions of the Property  
17 or Tenant Improvements as hereinafter provided; provided, any subtenant or licensee of the  
18 Property is required to use any subleased property in a manner consistent with the provision of  
19 charitable and social services operating pursuant to Section 501(c) of the Internal Revenue Code  
20 for the benefit of the Town and Summit County, Colorado. Tenant shall give Landlord prior  
21 written notice thereof, together with a term sheet identifying the proposed subtenant, its use of  
22 such portion of the Property or Tenant Improvements, term, the rental rate and other economic  
23 terms (a “**Lease Proposal**”). As part of any sublease, Tenant can only charge a rental fee that  
24 allows Tenant to recoup expenses for common area maintenance and building cost, including,  
25 without limitation, any financing costs, based on a percentage of square footage use. Tenant  
26 shall not profit from subleasing any space. Landlord shall have twenty (20) days after receipt to  
27 approve or disapprove such Lease Proposal, which approval shall not be unreasonably withheld,  
28 conditioned or delayed. If Landlord fails to disapprove the Lease Proposal within such period,  
29 the Lease Proposal shall be deemed approved.  
30

### 31 **5.2 Maintenance of the Property and Related Obligations.**

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33 a. Tenant will keep and maintain the Property and the building(s) to be constructed  
34 on the Property in a good and sanitary condition and state of repair at its cost.  
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36 b. Tenant will provide all required watering, mowing, and maintenance of the  
37 landscaping of the Property.

38 c. Tenant will provide all necessary snow and ice plowing and removal from the  
39 parking lot(s) of the Property, and all sidewalks and walkways of the Property. Landlord  
40 acknowledges and agrees that Tenant may participate in the sharing of performance obligations  
41 and related costs with Landlord or adjacent property owners.

1 d. Tenant will pay for all janitorial and trash removal services required for the  
2 Property. All contracts for required janitorial services for the Property will be placed solely in  
3 Tenant's name.

4 e. Tenant will pay all charges for utilities used or consumed by Tenant and Tenant's  
5 sublessees at the Property, including, without limitation, water, gas, heat, electricity, power,  
6 telephone, cable television, internet service, other communications services, and sewer service  
7 charges. Tenant will place all utility contracts in its sole name.

8 f. Tenant will provide at its cost all security required to protect the health, welfare,  
9 and safety of the users of the Property.

10 g. Tenant may erect on the Property only such signage as may be authorized by sign  
11 permit(s) approved by Landlord, acting in its governmental capacity.

12 h. Tenant will not permit any lien to be filed against the Property including, without  
13 limitation, a lien arising out of any work performed, materials furnished, or obligations incurred  
14 by Tenant. Should mechanics', materialmen's, or other liens be filed against the Property, Tenant  
15 shall cause such liens to be canceled and discharged of record, or shall file a bond in substitution  
16 of such liens, within thirty (30) days of Tenant's receipt of notice of such lien. Notwithstanding  
17 the foregoing, Tenant may contest, in good faith and with reasonable diligence, the validity of  
18 any such lien or claimed lien, provided that Tenant shall give to Landlord such security as  
19 Landlord may reasonably request to ensure the payment of any amounts claimed. If Tenant  
20 contests a lien or claimed lien, then on final determination of the lien or claimed lien, Tenant  
21 shall cause the lien to be released and, in the event of an adverse judgment, satisfy such  
22 judgment. Nothing herein shall preclude Tenant from obtaining a mortgage for the building.

## 23 **ARTICLE 6 – INDEMNITY AND INSURANCE**

24 **6.1. Insurance.** Tenant will provide at its cost the following insurance coverages:

25 **a. Property Damage Insurance During Construction.** During the period of  
26 construction of the Tenant Improvements, Tenant, at its sole cost and expense, shall keep or  
27 require its general contractor to keep, a policy of builder's risk insurance covering loss or  
28 damage to the Tenant Improvements for the full replacement cost of all such construction, which  
29 shall list Landlord as an additional named insured if such coverage is available at reasonable cost  
30 and under reasonable terms and conditions. Otherwise, the policy of builder's risk insurance  
31 shall name Landlord as an additional insured.

32  
33 **b. Completion of Construction of Improvements.** From and after the completion  
34 of the Tenant Improvements, Tenant shall keep in full force and effect a policy of all risk, special  
35 form or equivalent form property insurance covering loss or damage to the Tenant Improvements  
36 in the amount of the full replacement cost of the Tenant Improvements, in an amount at least  
37 equal to the hard costs of construction, with a deductible that is commercially reasonable under  
38 prevailing standards for comparable properties in the vicinity of the Property.  
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1           **c. Commercial General Liability.** During the Term, Tenant shall keep in full force  
2 commercial general liability insurance ("CGL"), with bodily injury and property damage  
3 coverage with respect to the Improvements and business operated by Tenant, which shall list  
4 Landlord as an additional insured. The limits of such CGL policy shall be not less than  
5 \$2,000,000.00 in coverage through primary and/or excess insurance, with a deductible that is  
6 commercially reasonable in light of Tenant's financial strength. Landlord shall be an additional  
7 insured under Tenant's liability insurance policy.

8           **6.2 Indemnification.** Tenant will indemnify the Landlord, its officers, employees,  
9 insurers, and self-insurance pool against all liability, claims, and demands (including attorney's  
10 fees and costs) for injury, loss, or damage, including, without limitation, claims arising from  
11 bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss  
12 of any kind whatsoever, arising out of or are in any manner connected with the Lease, to the  
13 extent that such injury, loss, or damage is caused by Tenant's use or occupancy of the Property  
14 pursuant to the Lease.

15  
16           **ARTICLE 7 - DEFAULT/TERMINATION AND OTHER REMEDIES**  
17

18           **7.1 Events of Tenant's Default.** Any of the following occurrences, conditions or acts  
19 by Tenant shall constitute an "**Event of Default**" under this Lease:  
20

21           a.       **Failure to Pay Rent; Breach.** (i) Tenant's failure to make any payment of money  
22 required by this Lease (subject to Tenant's right of good faith contest with respect to taxes and  
23 assessments), within ten (10) days after the receipt of written notice from Landlord to Tenant that  
24 same is overdue ("**Monetary Default**"); or (ii) Tenant's failure to observe or perform any other  
25 material provision of this Lease within thirty (30) days after receipt of written notice from  
26 Landlord to Tenant specifying such default and demanding that the same be cured ("**Non-**  
27 **Monetary Default**"); provided that, if such default cannot with due diligence be wholly cured  
28 within such thirty (30) day period, Tenant shall have such longer period as is reasonably  
29 necessary to cure the default, including, without limitation, any time period necessary under  
30 Colorado forcible eviction and detainer laws, so long as Tenant proceeds promptly to commence  
31 the cure of same within such thirty (30) day period and diligently prosecutes the cure to  
32 completion.  
33

34           **7.2 Termination.** By giving Tenant written notice, Landlord may terminate this  
35 Lease for Tenant's failure to comply with Section 4.4 or Section 7.1(a) of this Lease as of the  
36 date of Tenant's default beyond any applicable cure period, or as of any later date specified in the  
37 notice and may demand and recover possession of the Property from Tenant. In surrendering  
38 possession, Tenant and its assignees, subtenants, licensees, and invitees, shall be entitled to  
39 remove and retain all of their removable trade fixtures and other personal property located on the  
40 property, so long as the removal is completed within a 10-day period of time or unless a longer  
41 period is stated in the notice of termination.  
42  
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1 delivery (including by means of professional messenger service); (ii) nationally recognized  
2 overnight courier; (iii) registered or certified mail, postage prepaid, return receipt requested; or  
3 (iv) facsimile transmission, electronic mail, or electronic transmission of a PDF document  
4 followed by delivery of a hard copy through one of the methods outlined in (i)-(iii) above, and  
5 shall be deemed received upon the date of receipt (or refusal to accept delivery) thereof. Notice  
6 of change of address shall be given by written notice in the manner detailed in this Section.  
7

8 If to Tenant: FAMILY & INTERCULTURAL RESOURCE CENTER  
9 251 W 4th St, Silverthorne, CO 80498  
10 Attention: Brianne Snow  
11 Executive Director  
12 Office: 970.455.0221 | Mobile: 970.389.4810  
13 www.summitfirc.org | briannes@summitfirc.org  
14

15 If to Landlord:

16  
17 Town of Breckenridge Attention: Rick Holman, Town Manager  
18 P.O. Box 168 150 Ski Hill Road Breckenridge, Colorado 80424  
19 Telephone number: (970) 547-3166  
20

21 With Copies to:  
22 Kirsten J. Crawford, Town Attorney  
23

24 **8.5 Successors and Assigns.** All covenants, promises, conditions, representations,  
25 and agreements in this Lease contained shall be binding upon, apply to, and inure to the benefit  
26 of the Parties hereto and their respective heirs, executors, administrators, successors (including  
27 subtenants), and permitted assigns.  
28

29 **8.6 Governing Law; Waiver of Jury Trial.** This Lease shall be construed under the  
30 laws of the State of Colorado, without giving effect to conflicts of laws principles. Any reference  
31 in this Lease to a state or federal statute or municipal ordinance shall include any successor  
32 statute or ordinance. Both Landlord and Tenant waive the right to a jury trial in any action  
33 pertaining to this lease.  
34

35 **8.7 Venue and Jurisdiction.** The exclusive venue for any dispute between the Parties  
36 relating to or arising out of this Lease shall be the Colorado State district court for Summit  
37 County. The Parties consent to the jurisdiction and venue of any of the above-described courts  
38 and waive any argument that venue in such forums is not proper or convenient.  
39

40 **8.8 Amendment.** No provision of this Lease may be modified except by an  
41 amendment expressly and specifically set forth in a written instrument executed by each Party  
42 with authority to enter into such an amendment.  
43



1  
2 **EXHIBIT "A"**  
3 **LEGAL DESCRIPTION AND MAP OF PROPERTY**  
4

5  
6 **PARCEL DESCRIPTION:**  
7

8 A PARCEL OF LAND BEING A PORTION OF TRACT A-1, MCCAIN SUBDIVISION,  
9 SAID PARCEL BEING LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION  
10 18, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE 6TH P.M., COUNTY OF SUMMIT,  
11 STATE OF COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS  
12 FOLLOWS:  
13

14 THENCE NORTH 87°26'23" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION, A  
15 DISTANCE OF 197.20 FEET TO THE POINT OF BEGINNING;  
16

17 THENCE NORTH 78°10'01" WEST, A DISTANCE OF 285.22 FEET;  
18

19 THENCE ALONG A CURVE HAVING A CENTRAL ANGLE OF 24°55'05", A RADIUS OF  
20 230.00 FEET, AN ARC LENGTH OF 100.03 FEET AND A CHORD THAT BEARS SOUTH  
21 25°50'25" EAST, A DISTANCE OF 99.24 FEET TO A POINT OF TANGENCY;  
22

23 THENCE SOUTH 13°22'52" EAST, A DISTANCE OF 81.30 FEET TO A TANGENT  
24 CURVE;  
25

26 THENCE ALONG A CURVE HAVING A CENTRAL ANGLE OF 9°48'07", A RADIUS OF  
27 230.00 FEET, AN ARC LENGTH OF 39.35 FEET AND A CHORD THAT BEARS SOUTH  
28 08°28'48" EAST, A DISTANCE OF 39.30 FEET TO A TANGENT CURVE;  
29

30 THENCE ALONG A CURVE HAVING A CENTRAL ANGLE OF 84°23'33", A RADIUS OF  
31 12.00 FEET, AN ARC LENGTH OF 17.68 FEET AND A CHORD THAT BEARS SOUTH  
32 45°46'31" EAST, A DISTANCE OF 16.12 FEET TO A TANGENT CURVE;  
33

34  
35 THENCE SOUTH 87°58'17", A DISTANCE OF 36.83 FEET TO A TANGENT CURVE;  
36

37 THENCE ALONG A CURVE HAVING A CENTRAL ANGLE OF 10°04'06", A RADIUS OF  
38 370.07 FEET, AN ARC LENGTH OF 65.03 FEET AND A CHORD THAT BEARS SOUTH  
39 83°04'09" EAST, A DISTANCE OF 64.95 FEET TO A POINT OF TANGENCY;  
40

41 THENCE SOUTH 78°10'01" EAST, A DISTANCE OF 53.68 FEET A TANGENT CURVE;  
42

43 THENCE ALONG A CURVE HAVING A CENTRAL ANGLE OF 90°00'00", A RADIUS OF  
44 8.00 FEET, AN ARC LENGTH OF 12.57 FEET AND A CHORD THAT BEARS NORTH  
45 56°49'59" EAST, A DISTANCE OF 11.31 FEET TO A POINT OF TANGENCY:

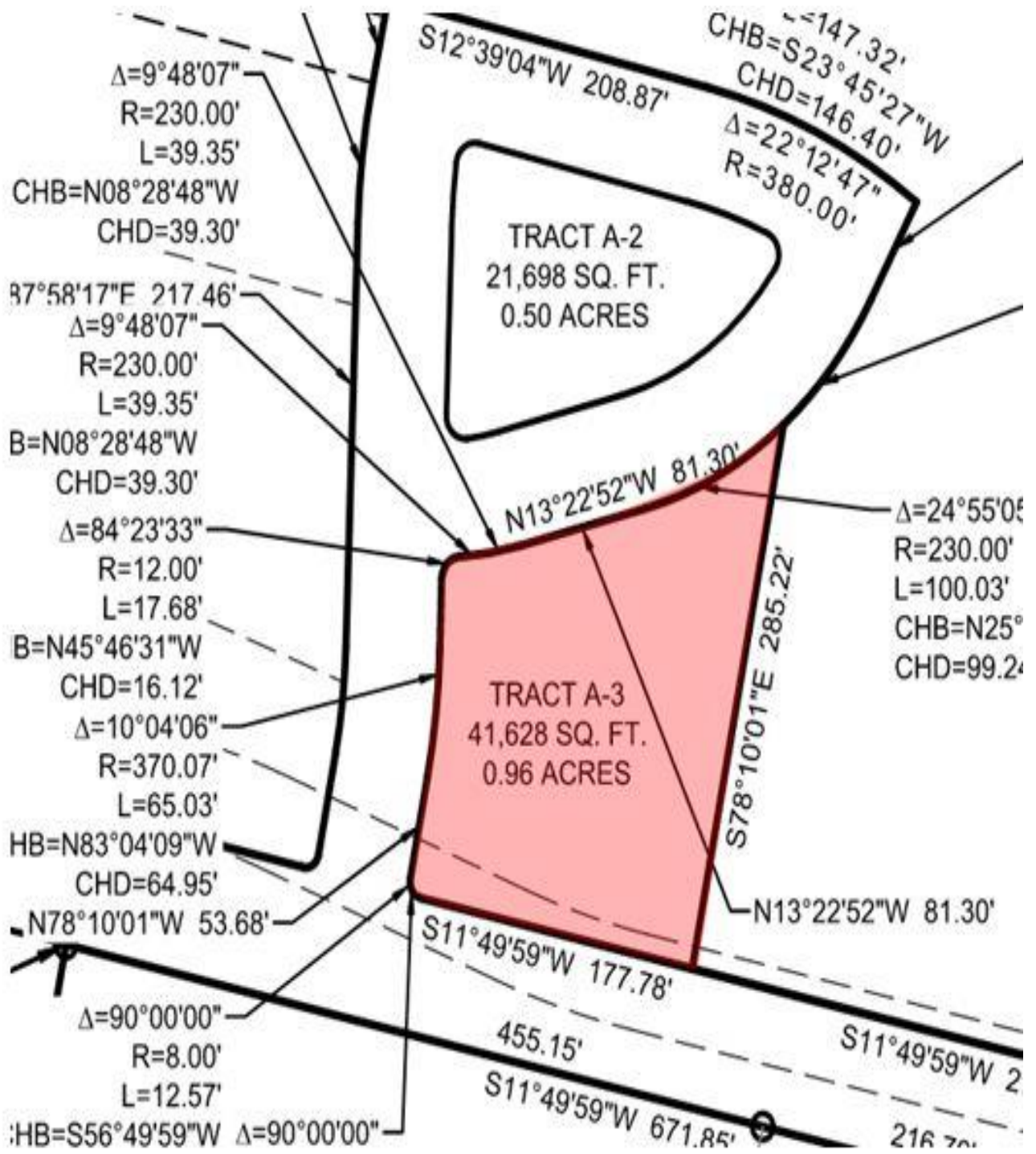
GROUND LEASE

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THENCE NORTH 11°49'59" EAST, A DISTANCE OF 177.78 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 41,628.925 SQUARE FEET OR 0.956 ACRES, MORE OR LESS.

**[INTENTIONAL PAGE BREAK]**



1

GROUND LEASE



Memo

**To:** Town Council  
**From:** Town Attorney  
**Date:** April 8, 2022 (for April 26, 2022 Meeting)  
**Subject:** Amendments to tobacco code to conform to state law and reorganization of title 4.

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Tonight you have the following five Bills for first reading:

1. Amendments to the Town's local counterpart to the Colorado Clean Indoor Air Act.
2. Amendments to the Town's local counterpart to the Colorado Retail Tobacco Licensing law.
3. Reorganization of alcoholic beverages and marijuana licensing and regulations.
4. Amendments to the jurisdiction of the licensing and marijuana authority's jurisdiction over retail tobacco sales licensing.
5. Repeal of the Town's offense for minor in possession of tobacco products.
6. Adoption of the Town local counterpart to state issued festival permits.

As you may know, a local government must comply with these state laws or adopt more stringent regulations. The main objective of these amendments is to bring our code into conformance with state law.

#### **HB 19-076 – updates to state Clean Indoor Air Act**

In 2019, the state amended the Clean Indoor Air Act, in HB 19-076, in a continuing effort to protect the public from the harmful effects of secondhand smoke and emissions from tobacco, marijuana, and electronic smoking devices. The major reforms are as follows:

I. The state law prohibits smoking in most indoor areas and in 2019 the state expanded the specific list of covered entities to include: any place of employment that is not exempted, whether or not open to the public; airports; hotel and motel rooms; assisted living facilities, including nursing facilities as defined in section 25.5-4-103 and assisted living residences as defined in section 25-27-102; and the entryways of all buildings and facilities

II. In 2019, the smoke-free entryway radius was increased from at least 15 feet to at least 25 feet from the entryway, except where existing local regulations permit a smaller radius. Where a local government had in place a shorter radius, as did Breckenridge, the local government is grandfathered from the state law requirement of at least 25 feet.

III. Another major reform in 2019 was to mandate specific signage at entries of businesses that are exempt from the Clean Indoor Air Act (and in other words permitted smoking indoors) to make it clear that minors were not allowed entry.

#### **HB 20-2001 - creating a state licensing scheme for retail tobacco sales**

On March 23, 2020, HB 20-1001 was signed into law.

I. The first major reform of this legislation required that cigarettes and tobacco/nicotine products be sold only to persons who are 21 years of age or older, and all tobacco retailers shall check the identification of anyone under 50 years of age. (Known as the "T21" campaign).

II. The state begins to treat tobacco sales similar to liquor and marijuana by creating a dual licensing scheme. The Department of Revenue's Liquor Enforcement Division was given authorization to establish a tobacco retailer licensing program, conduct compliance check operations, and establish regulations for every tobacco/nicotine retailer to obtain a license by July 1, 2021.

III. The state further decriminalized the possession of tobacco products by minors in an effort to hold owners and operators responsible as opposed to children.

IV. State law permits a licensed retailer to deliver tobacco products under certain conditions. While we are not aware of another jurisdiction that bans delivery of tobacco products, we do propose doing so as the state does authorize local governments to have more restrictive rules. We do not believe that any of the current retailers engage in delivery services.

V. Other changes include: requiring ID check for anyone who appears to be under 50; prohibiting vending machines sales unless in a licensed gaming facility; and strict signage requirements for licensed retail tobacco sales.

### **Clean up and reorganization**

The remainder of the changes in the attached bill drafts essentially reorganize Title 4. These drafts repeal all alcohol, marijuana and tobacco matters to consolidate them into the following: Chapter 3 Alcoholic Beverages, Chapter 4 Marijuana, and Chapter 5, Retail Tobacco Sales. These drafts strike references to Title 12 of state law as the state liquor code was relocated mostly to Title 44.

### **SB 21-082, authorizes festival permits and grants local authority to issue**

Senate Bill 21-082 permits a Colorado liquor license holder to obtain a "festival permit" from the state licensing authority, and sell and serve alcoholic beverages at a location, other than the Licensee's licensed premises. The Bill permits one, or more, licensees to jointly participate in or sponsor a festival, with each participant permitted to sell and serve alcoholic beverages at a location, other than their licensed premises. The Bill granted local authority to create a festival permit. If the Town does not create a local system, the state permits will issue without local input.

### **HB 22-1064 - flavored tobacco ban**

This Bill is under consideration at the state. The Bill as introduced and amended would preempt local jurisdictions from regulating flavored tobacco in a manner inconsistent with this Bill. The Bill has been sent to appropriations, however, it is likely it will see further amendments

or be postponed indefinitely. If it passes, we will need to amend some of these sale code provisions, for example, to include new definitions of flavored tobacco and synthetic nicotine to Section 4-5-4. We would also likely need to adopt a prohibition on sale/advertisement of flavored tobacco. Since the fate of this Bill is unclear, we are unable to include updates now.



**AN ORDINANCE CONFORMING THE TOWN CODE TO THE COLORADO CLEAN INDOOR AIR ACT.**

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

**Section 1.** That Section 5-9-2, entitled "DEFINITIONS:", of the Breckenridge Town Code, shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

5-9-2: DEFINITIONS:

As used in this chapter, unless the context otherwise requires:

AUDITORIUM: The part of a public building where an audience gathers to attend a performance, and includes any corridors, hallways, or lobbies adjacent thereto.

BAR: Any area that is operated and licensed under article 3 of title 44, Colorado Revised Statutes, primarily for the sale and service of alcohol beverages for on premises consumption and where the service of food is secondary to the consumption of such beverages. "Bar" includes, without limitation, any outdoor area operated as part of the licensed premises.

CIGAR-TOBACCO BAR: A bar that, in the calendar year ending December 31, 2005, generated at least five percent or more of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total annual gross income or fifty thousand dollars in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a "cigar-tobacco bar" and shall not thereafter be included in the definition regardless of sales figures.

CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT: has the same meaning as provided in Section 4-5-4 of Title 4 of the Town of Breckenridge Code.

ELECTRONIC SMOKING DEVICE: has the same meaning as in Section 4-5-4 of Title 4 of the Town of Breckenridge Code. Any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine.

1 ~~Electronic smoking device does not include drugs, devices, or combination products authorized~~  
2 ~~for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal~~  
3 ~~Food, Drug, and Cosmetic Act.~~

4 EMPLOYEE: Any person who:

5 A. Performs any type of work for benefit of another in consideration of direct or indirect  
6 wages or profit; or

7 B. Provides uncompensated work or services to a business or nonprofit entity.

8 "Employee" includes every person described above in this definition regardless of whether such  
9 person is referred to as an employee, contractor, independent contractor, or volunteer or by any  
10 other designation or title.

11 EMPLOYER: Any person, partnership, association, corporation, or nonprofit entity that employs  
12 one or more persons. "Employer" includes, without limitation, the legislative, executive, and  
13 judicial branches of state government; any county, city and county, city, or town, or  
14 instrumentality thereof, or any other political subdivision of the state, special district, authority,  
15 commission, or agency; or any other separate corporate instrumentality or unit of state or local  
16 government.

17 ENTRYWAY: The outside of a public doorway leading into a building or facility that is not  
18 exempted from this chapter under section 5-9-4 of this chapter. "Entryway" also includes the  
19 area of public or private property within a ten foot (10') radius outside of the doorway.

20 ENVIRONMENTAL TOBACCO AND MARIJUANA SMOKE: The complex mixture formed from  
21 the escaping smoke of burning tobacco or marijuana, and smoke exhaled by the smoker.  
22 "Environmental tobacco and marijuana smoke" also includes the escaping vapor or aerosol of  
23 an electronic smoking device, also known as "side stream smoke", and vapor or aerosol  
24 exhaled by the smoker.

25 FOOD SERVICE ESTABLISHMENT: Any area or portion thereof in which the principal business  
26 is the sale of food for on premises consumption. The term includes, without limitation,  
27 restaurants, cafeterias, coffee shops, diners, sandwich shops, and short order cafes. "Food  
28 service establishment" includes, without limitation, any outdoor area operated as part of the  
29 business.

30 GONDOLA: An aerial tramway carrier primarily used to convey persons and property to and  
31 from a "ski area" as defined in section 6-3B-18 of this code.

32 INDOOR AREA: Any enclosed area or portion thereof. The opening of windows or doors, or the  
33 temporary removal of wall panels, does not convert an indoor area into an outdoor area.

1 MARIJUANA: Has the same meaning as in section 16(2)(f) of article XVIII of the Colorado  
2 constitution.

3 PLACE OF EMPLOYMENT: Any indoor area or portion thereof under the control of an employer  
4 in which employees of the employer perform services for, or on behalf of, the employer.

5 PUBLIC BUILDING: Any building owned or operated by:

6 A. The state, including the legislative, executive, and judicial branches of state government;  
7 B. Any county, city and county, city, or town, or instrumentality thereof, or any other political  
8 subdivision of the State, a special district, an authority, a commission, or an agency; or  
9 C. Any other separate corporate instrumentality or unit of State or local government.

10 PUBLIC MEETING: Any meeting open to the public pursuant to part 4 of article 6 of title 24,  
11 Colorado Revised Statutes, or any other law of the State or the Town.

12 RETAILER: has the same meaning as provided in Section 4-5-4 of Title 4 of the Town of  
13 Breckenridge Code.

14 SMOKE FREE WORK AREA: An indoor area in a place of employment where smoking is  
15 prohibited under this chapter.

16 SMOKING: A. The burning of a lighted cigarette, cigar, pipe, or any other matter or substance  
17 that contains tobacco or marijuana, or  
18 B. The active use of an electronic smoking device.

19 ~~TOBACCO: Cigarettes, cigars, cheroots, stogies, and periques; granulated, plug cut, crimp cut,~~  
20 ~~ready rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist~~  
21 ~~tobacco; fine cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings, and~~  
22 ~~sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be~~  
23 ~~suitable for chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and~~  
24 ~~smoking. "Tobacco" also includes cloves and any other plant matter or product that is packaged~~  
25 ~~for smoking, and tobacco prepared, treated, or modified in such a manner that it may be~~  
26 ~~ingested through the use of an electronic smoking device.~~

27 TOBACCO BUSINESS: A sole proprietorship, corporation, partnership, or other enterprise  
28 engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or  
29 smoking devices or accessories, including ESDs, either at wholesale or retail, and in which the  
30 sale, manufacture, or promotion of other products is merely incidental.

31 WORK AREA: An area in a place of employment where one or more employees are routinely  
32 assigned and perform services for or on behalf of their employer.

1           **Section 2.** That Section 5-9-3, entitled “GENERAL SMOKING RESTRICTIONS:” of the  
2 Breckenridge Town Code, shall be amended by deleting the language stricken and adding the  
3 language underlined, to read as follows:

4 5-9-3: GENERAL SMOKING RESTRICTIONS:

5       A. Except as provided in section 5-9-4 of this chapter, and in order to reduce the levels of  
6 exposure to environmental tobacco and marijuana smoke, smoking shall not be permitted and  
7 no person shall smoke in any indoor area, including, but not limited to:

- 8       1. Public meeting places;
- 9       2. Elevators;
- 10      3. Government owned or operated means of mass transportation, including, but not limited  
11 to, buses, vans, trains, indoor public transit facilities and waiting areas, and transit shelters;
- 12      4. Taxicabs and limousines;
- 13      5. Gondolas;
- 14      6. Grocery stores;
- 15      7. Gymnasiums;
- 16      8. Jury waiting and deliberation rooms;
- 17      9. Courtrooms;
- 18      10. Child daycare facilities;
- 19      11. Healthcare facilities including hospitals, healthcare clinics, doctor's offices, and other  
20 healthcare related facilities;
- 21      12. Retail stores;
- 22      13. Food service establishments;
- 23      14. Bars;
- 24      15. Indoor sports arenas and facilities;
- 25      16. Restrooms, lobbies, hallways, and other common areas in public and private buildings,  
26 condominiums, and other multiple- unit residential facilities;
- 27      17. ~~Restrooms, lobbies, hallways, and other common areas in hotels and motels, and in at~~  
28 least seventy five percent (75%) of the sleeping quarters within a hotel or motel that are rented  
29 to guests;
- 30      18. Bowling alleys;
- 31      19. Billiard or pool halls;
- 32      20. Facilities in which games of chance are conducted;

- 1        21. The common areas of retirement facilities, publicly owned housing facilities, and  
2 nursing homes, but not including any resident's private residential quarters;
- 3        22. Public buildings;
- 4        23. Auditoria;
- 5        24. Theaters;
- 6        25. Museums;
- 7        26. Libraries;
- 8        27. To the extent not otherwise provided in section 25-14-103.5, CRS, public and  
9 nonpublic schools;
- 10       28. Other educational and vocational institutions;
- 11       29. Hotel and motel rooms;
- 12       30. Assisted living facilities, including nursing facilities as defined in 25.5-4-103 CRS and  
13 assisted living residence as defined in 25-27-102 CRS;
- 14       29. Town owned motor vehicles; and
- 15       30. Any place of employment that is not exempted whether or not open to the public and  
16 regardless of the number of employees. In the case of employers who own facilities otherwise  
17 exempted from this chapter, each such employer shall provide a smoke free work area for each  
18 employee requesting not to have to breathe ~~environmental tobacco and marijuana smoke~~  
19 secondhand smoke and emissions from electronic smoking devices. ~~Every employee shall have~~  
20 ~~a right to work in an area free of environmental tobacco and marijuana smoke.~~
- 21       B. In order to reduce the levels of exposure to ~~environmental tobacco and marijuana~~  
22 secondhand smoke, smoking shall not be permitted and no person shall smoke in any of the  
23 following outdoor areas:
- 24       1. The entryways of all buildings and facilities listed in subsection A of this section.
- 25       2. Town owned parks and open space areas;
- 26       3. Town owned outdoor sporting and athletic fields and facilities;
- 27       4. The town of Breckenridge public golf course grounds and buildings, excluding the  
28 course of play;
- 29       5. The paved recreational pathway running generally northerly and southerly within the  
30 town commonly known as the "bike path"; and
- 31       6. Within a ten foot (10') radius of a public transit facility waiting area.
- 32       C. A retail tobacco business:

1 1. Shall prohibit entry by any person under eighteen years of age; and

2 2. Shall display signage in at least one conspicuous place and at least four inches  
3 by six inches in size stating either:

4 (i) "smoking allowed. children under eighteen years of age may not enter."; or

5 (ii) in the case of a retail tobacco business that desires to allow the use of ESDs but not  
6 other forms of smoking on the premises, "vaping allowed. children under eighteen years of age  
7 may not enter."

8 **Section 3.** That Section 5-9-4, entitled "EXCEPTIONS TO SMOKING RESTRICTIONS:"  
9 of the Breckenridge Town Code, shall be amended by deleting the language stricken and  
10 adding the language underlined, to read as follows:

11 5-9-4: EXCEPTIONS TO SMOKING RESTRICTIONS:

12 Except as otherwise expressly provided in this code, this chapter shall not apply to:

13 A. Private homes, private residences, and private automobiles; except that this chapter shall  
14 apply if any such home, residence, or vehicle is being used for childcare or daycare or if a  
15 private vehicle is being used for the public transportation of children or as part of healthcare or  
16 daycare transportation;

17 B. Limousines under private hire;

18 C. ~~A hotel or motel room rented to one or more guests if the total percentage of such hotel or~~  
19 ~~motel rooms in such hotel or motel does not exceed twenty five percent (25%);~~

20 D. The indoor area of any retail tobacco business; except that the requirements of a license  
21 and penalties in Title 4, Chapter 8 apply to a retail tobacco business;

22 E. (Rep. by Ord. 4, Series 2015)

23 F. The outdoor area of any business, except as provided in subsection 5-9-3B of this  
24 chapter;

25 G. ~~A place of employment that is not open to the public and that is under the control of an~~  
26 ~~employer that employs three (3) or fewer employees; provided, however, that this exemption~~  
27 ~~does not apply to the smoking of marijuana;~~

28 H. A private, nonresidential building on a farm or ranch, as defined in section 39-1-102, CRS,  
29 that has annual gross income of less than five hundred thousand dollars (\$500,000.00); or

30 I. The open and public consumption of marijuana in an outdoor area as described in title 6,  
31 chapter 3, article I of this code.



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By: \_\_\_\_\_  
Eric S. Mamula, Mayor

ATTEST:

\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk



**AN ORDINANCE AMENDING AND RELOCATING RETAIL TOBACCO LICENSING.**

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

**Section 1.** That Chapter 5 entitled "TEMPORARY PERMITS" is hereby repealed in its entirety and replaced with a new Chapter 5 entitled "RETAIL TOBACCO LICENSING" to read as follows:

**CHAPTER 5  
RETAIL TOBACCO BUSINESS LICENSING**

**4-5-1: SHORT TITLE:**

This Chapter shall be known and may be cited as the "Town Of Breckenridge Retail Tobacco Business Licensing Ordinance."

**4-5-2: AUTHORITY:**

The Town Council finds, determines, and declares that it has the power to adopt this Chapter pursuant to:

- A. Section 31-17-501, C.R.S. (concerning municipal regulation of businesses);
- B. Section 31-15-401(1)(c), C.R.S. (concerning the power to declare and abate nuisances);
- C. The authority granted to home rule municipalities by Article XX of the Colorado Constitution; and
- D. The powers contained in the Breckenridge Town Charter.

**4-5-3: LEGISLATIVE INTENT:**

The intent and purpose of this Chapter is to regulate the occupation or privilege of selling tobacco products within the Town so as to protect the public health and safety.

**4-5-4: DEFINITIONS:**

1 As used in this Chapter the following words have the following meanings:

2 APPLICANT: A person who has submitted an application for license pursuant to this Chapter.

3 ADULT-ONLY FACILITY: A physical location where each person attempting to enter the  
4 premises is required to present the person's photographic government issued identification  
5 verifying that the person is at least the Minimum Legal Sales Age For Tobacco Products prior to  
6 entry.

7 APPLICATION: An application for license submitted pursuant to this Chapter.

8 CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT A product that contains  
9 nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or  
10 applied to the skin of an individual; or

11 Any device that can be used to deliver tobacco or nicotine to the person inhaling from the  
12 device, including an electronic cigarette, cigar, cigarillo, or pipe. "Cigarette, tobacco product, or  
13 nicotine product" does not mean a product that the food and drug administration of the United  
14 States department of health and human services has approved as a tobacco use cessation  
15 product.

16 DAY: A calendar day, unless otherwise indicated.

17 DISTRIBUTOR: A person who sells or distributes cigarettes, tobacco products, or nicotine  
18 products to licensed retailers in this state. "Distributor" includes a "distributor" or "distributing  
19 subcontractor" as those terms are defined in C.R.S. § 39-28.5-101

20 ELECTRONIC SMOKING DEVICE or "ESD" Any product that contains or delivers nicotine or  
21 any other substance intended for human consumption and that can be used by a person to  
22 enable the inhalation of vapor or aerosol from the product and any similar product or device,  
23 whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-  
24 hookah, or vape pen or under any other product name or descriptor. ESDs do not include:

25 1. A humidifier or similar device that emits only water vapor; or  
26 2. An inhaler, nebulizer, or vaporizer that is approved by the federal food and drug  
27 administration for the delivery of medication.

28 GOOD CAUSE (for the purpose of refusing or denying a license renewal under this Chapter):  
29 Means:

30 1. The licensee has violated, does not meet, or has failed to comply with: (a) any of the  
31 terms, conditions, or provisions of this Chapter; or (b) any rule and regulation promulgated by  
32 the Town Clerk pursuant to this Chapter; or

1 2. The licensee has failed to comply with: (a) any of the terms and conditions of its license  
2 including, but not limited to, any special terms or conditions that were placed on its license at  
3 the time the license was issued or were subsequently modified by the Town Clerk pursuant to  
4 Section 4-5-11B, or (b) any special condition that was placed on its license in prior disciplinary  
5 proceedings or that arose in the context of potential disciplinary proceedings.

6 LICENSED PREMISES: The physical location for which a license is issued pursuant to this  
7 Chapter.

8 LICENSEE: The person to whom a license has been issued pursuant to this Chapter.

9 LOCAL LICENSING AUTHORITY: The Liquor and Marijuana Licensing Authority referred  
10 interchangeably in this Chapter as the "LMLA" or licensing authority.

11 MINOR: A person under twenty-one (21) years of age.

12 NEW RETAIL LOCATION: A retail location at which cigarettes, tobacco products, or nicotine  
13 products were not sold before July 1, 2021 and includes any retail location transferred to a new  
14 owner after the July 1, 2021 the new owner need not comply with distance requirements.

15 PERSON: Has the meaning provided in Section 1-3-2 of this Code.

16 POLICE CHIEF: The Police Chief of the Town, or the Police Chief designee authorized to act  
17 pursuant to Section 1-7-2 of this Code.

18 RETAILER: The owner or operator of a business of any kind at a specific location that sells  
19 cigarettes, tobacco products, or nicotine products.

20 SCHOOL : A public, parochial, or nonpublic school that provides a basic academic education in  
21 compliance with school attendance laws for students in grades one through twelve.

22 STATE LICENSE means a license issued by the Division in accordance with C.R.S. 44-7-104.5.

23 TOWN: Has the meaning provided in Section 1-3-2 of this Code.

24 TOWN CLERK: The Town Clerk of the Town, or the Town Clerk's designee authorized to act  
25 pursuant to Section 1-7-2 of this Code.

26 TOWN MANAGER: The Town Manager of the Town, or the Town Manager's designee  
27 authorized to act pursuant to Section 1-7-2 of this Code.

28 WHOLESALER a person engaged in the wholesale distribution of cigarettes, tobacco products,  
29 or nicotine products and includes a "wholesaler" and "wholesale subcontractor" as those terms  
30 are defined in C.R.S. § 39-28-101.

31 **4-5-5: LICENSE REQUIRED.**

1 A. No person shall conduct or carry on a retail tobacco business within the Town without a  
2 valid license issued by the licensing authority pursuant to this Chapter.

3 B. A separate license is required for each retail location in the Town where any tobacco  
4 product is sold at retail.

5 C. No license shall be issued pursuant to this Chapter to any person under twenty one (21)  
6 years of age at the time of the submission of an application.

7 D. New Retail Locations applying for a license after July 1, 2021 shall not be within 500 feet  
8 of a school. The distance between the new retail location and the school is measured from the  
9 nearest property line of land used for school purposes to the nearest portion of the building  
10 where cigarettes, tobacco products, or nicotine products will be sold, using a route of direct  
11 pedestrian access.

12 **4-5-6: APPLICATION FOR LICENSE:**

13 A. A person seeking to obtain a license pursuant to this Chapter shall file an application with  
14 the Town Clerk. The form of the application shall be provided by the Town Clerk.

15 B. A license issued pursuant to this Chapter does not eliminate the need for the licensee to  
16 obtain other required Town licenses related to the operation of the licensee's business,  
17 including, without limitation:

- 18 1. A Town sales tax license; and
- 19 2. A Town Business and Occupational Tax License.

20 **4-5-7: NONREFUNDABLE APPLICATION FEE:**

21 An applicant shall pay to the Town Clerk a nonrefundable application fee when the application is  
22 filed. The purpose of the fee is to cover the Town's cost of administration of this Chapter,  
23 licensee education, inspections of licensed premises, regular compliance checks,  
24 documentation of violations (database management), and prosecutions of violations of licenses.  
25 The amount of the application fee and the annual license renewal fee shall be fixed by the Town  
26 Council as part of its annual budget process. Once paid, an application fee is non-refundable  
27 except as may be required by law.

28 **4-5-8: TOWN CLERK'S REVIEW OF APPLICATION:**

29 A. Upon receipt of a properly completed application, together with all information required in  
30 connection therewith and the payment of the application fee, the Town Clerk shall transmit  
31 copies of the application to:

- 1        1. The Police Chief; and
- 2        2. Any other person or agency that the Town Clerk determines should properly investigate
- 3 and comment upon the application.

4        B. Within twenty (20) days of receipt of a completed application the Police Chief and those  
5 referral agencies described in subsection A of this Section shall provide the Town Clerk with  
6 comments concerning the application.

7        C. If the Town Clerk requests the applicant to provide additional information that the Town  
8 Clerk reasonably determines to be necessary in connection with the investigation and review of  
9 the application, the applicant shall provide such information within five (5) days of the Town  
10 Clerk's request, unless the Town Clerk agrees to a longer time period.

11 **4-5-9: DECISION BY LICENSING AUTHORITY:**

12        A. The licensing authority shall conditionally approve or deny an application within thirty (30)  
13 days of the receipt of a completed application unless, by written notice to the applicant.

14        B. The licensing authority shall issue a license under this Chapter when, from a  
15 consideration of the application, and such other relevant information as may otherwise be  
16 obtained, the licensing authority determines that:

17        1. The application (including any required attachments and submissions) is complete and  
18 signed by the applicant.

19        2. The applicant has paid the application fee;

20        3. The application does not contain a material falsehood or misrepresentation; and

21        4. The granting of the application will not endanger public health or safety.

22        C. The licensing authority shall deny an application for a license under this Chapter if the  
23 licensing authority determines that:

24        1. Information contained in the application, or supplemental information provided by the  
25 applicant, is found to be false in any material respect;

26        2. The applicant has had a license issued under this Chapter revoked within the two (2)  
27 years immediately preceding the filing of the application, or the applicant owned a fifty percent  
28 (50%) or greater interest in any business entity that has had a license issued under this Chapter  
29 revoked within the two (2) years immediately preceding the filing of the application;

30        3. The applicant is currently indebted to the Town for any lawfully assessed tax or fee; or

31        4. The granting of the application will endanger public health or safety.

1 D. If the application is denied, the licensing authority shall clearly set forth in writing the  
2 grounds for denial.

3 E. If the application is conditionally approved, the licensing authority shall clearly set forth in  
4 writing the conditions of approval.

5 **4-5-10: STANDARD CONDITIONS OF LICENSE:**

6 A. A retailer shall not sell or permit the sale of cigarettes, tobacco products, or  
7 nicotine products to person under 21 years of age; except that it is not a violation if the retailer  
8 establishes that the person selling the cigarette, tobacco product, or nicotine product was  
9 presented with and reasonably relied upon a valid government-issued photographic  
10 identification, that identified the person purchasing the cigarette, tobacco product, or nicotine  
11 product as being twenty one years of age or older.

12 B. A retailer shall not permit a person under eighteen years of age to sell or  
13 participate in the sale of cigarettes, tobacco products, or nicotine products. This subsection  
14 does not prohibit an employee of a retailer who is eighteen years of age or older but under  
15 twenty-one years of age from handling or otherwise having any contact with cigarettes, tobacco  
16 products, or nicotine products that are offered for sale at the retailer's business.

17 C. No retailer shall sell or offer to sell individual cigarettes, or any pack or container  
18 of cigarettes containing fewer than twenty cigarettes, or roll-your-own tobacco in any package  
19 containing less than 0.60 ounces of tobacco.

20 D. A retailer shall not advertise an electronic smoking device product in a manner  
21 that is visible from outside the retail location at which the product is offered for sale.

22 E. A retailer shall not sell or offer to sell any cigarettes, tobacco products, or nicotine  
23 products by use of a vending machine or other coin-operated machine; except that cigarettes  
24 may be sold at retail through vending machines only in an age-restricted area of a licensed  
25 gaming establishment, as defined in section 44-30-103 (18).

26 F. A retailer shall not engage in the delivery of tobacco products.

27 G. A retailer shall require an individual who seeks to purchase cigarettes, tobacco  
28 products, or nicotine products and who appears to be under fifty years of age to present to the  
29 retailer a valid government-issued photographic identification at the time of purchase.

1 H. Any person who sells or offers to sell cigarettes, tobacco products, or nicotine  
2 products shall display the license and the below warning sign in a prominent place in the  
3 building and on any vending or coin-operated machine at all times. Such sign must have a  
4 minimum height of three inches and a width of six inches, and must read as follows:

5 **WARNING**

6 **IT IS ILLEGAL TO SELL CIGARETTES, TOBACCO PRODUCTS, OR**  
7 **NICOTINE PRODUCTS TO ANY PERSON UNDER TWENTY-ONE YEARS OF**  
8 **AGE. STATE LAW REQUIRES THAT, TO PURCHASE CIGARETTES,**  
9 **TOBACCO PRODUCTS, OR NICOTINE PRODUCTS AT THIS RETAIL**  
10 **LOCATION, A PERSON MUST PRESENT A VALID GOVERNMENT-ISSUED**  
11 **PHOTOGRAPHIC IDENTIFICATION AT THE TIME OF PURCHASE IF THE**  
12 **PERSON APPEARS TO BE UNDER FIFTY YEARS OF AGE.**

13 I. Nothing in this section affects federal laws concerning cigarettes, tobacco  
14 products, or nicotine products, as they apply to military bases and Indian reservations within the  
15 state.

16 **4-5-11: AUTHORITY TO IMPOSE ADDITIONAL CONDITIONS ON LICENSE:**

17 A. In addition to the standards terms and conditions set forth in Section 4-5-10, the licensing  
18 authority shall have the authority to impose such additional reasonable terms and conditions on  
19 a license as may be necessary to protect the public health, safety, and welfare, and to obtain  
20 compliance with the requirements of this Chapter and other applicable law.

21 B. For good cause shown, the licensing authority may administratively modify or eliminate or  
22 add any license condition during the term of the license.

23  
24 **4-5-12: CONTENTS OF LICENSE:**

25 A. A license shall contain the following information:

- 26 1. The name of the licensee;
- 27 2. The date of the issuance of the license;
- 28 3. The address at which the licensee is authorized to operate the business; and
- 29 4. The date of the expiration of the license.

30 B. A license must be signed by both the licensee and the Town Clerk to be valid.

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**4-5-13: LICENSE NOT TRANSFERABLE OR ASSIGNABLE:**

A license is non-transferable and non-assignable. Any attempt to transfer or assign a license shall void the license.

**4-5-14: DURATION OF LICENSE:**

Each license issued pursuant to this Chapter shall be valid for one (1) year from the date of issuance.

**4-5-15: RENEWAL OF LICENSE:**

A. A licensee does not have a vested right or a property right in the renewal of a license issued pursuant to this Chapter.

B. Each license issued pursuant to this Chapter may be renewed as provided in this Section; a local license and state license shall have the same renewal date.

C. An application for the renewal of an existing license shall be made to the Town Clerk not less than forty-five (45) days prior to the date of expiration. No application for renewal shall be accepted by the Town Clerk after the date of expiration. The Town Clerk may waive the forty-five (45) days' time requirement set forth in this subsection if the applicant demonstrates an adequate reason.

D. At the time of the filing of an application for the renewal of an existing license the applicant shall pay to the Town a renewal fee in an amount fixed by the Town Council as part of its annual budget process.

E. The timely filing of a renewal application shall extend the current license until a final decision is made on the renewal application by the licensing authority.

F. A license may be renewed or not renewed by the licensing authority for the same reasons and in the same manner as provided in for in the initial application.

**4-5-16: LICENSEE'S SPECIFIC DUTIES AND OBLIGATIONS:**

In addition to the other requirements of this Chapter, it is the duty and obligation of each licensee to comply with the following:

A. All of the terms and conditions of the license, including, without limitation, the standard license conditions described in Section 4-5-10 and any special condition imposed by the licensing authority under Section 4-5-11;

B. All of the requirements of this Chapter; and



1 C. All laws, including federal, state and local Town ordinances pertaining to tobacco products  
2 that are applicable to the licensee's business.

3 **4-5-17: LICENSE DENIALS AND HEARINGS:**

4 A. Applicant bears the burden of proving it meets the requirements of state and local laws  
5 for licensure.

6 B. An application may be denied where the applicant made misstatements, omissions,  
7 misrepresentations, or untruths in the application. Providing misstatements, misrepresentations,  
8 omissions, or untruths may be the basis for administrative action.

9 C. The licensing authority may deny an application, including an initial or renewal  
10 application, only for good cause. Good cause shall include the following:

11 1. During any period in which an applicant is ineligible to apply, or prohibited from  
12 applying, for a license pursuant to a penalty imposed under this Code or C.R.S. § 44-7-106,  
13 C.R.S., and any rules or regulations.

14 2. When an applicant failed to provide all required information or documents, provided  
15 inaccurate, incomplete, or untruthful information or documents, or failed to cooperate with  
16 requests for additional information.

17 3. The applicant has violated, does not meet, or has failed to comply with any of the terms,  
18 conditions, or provisions of this Code, article 7 of title 44 or any rules promulgated thereunder.

19 D. If the licensing authority denies an application, the licensing authority shall inform the  
20 applicant in writing of the reasons for the denial in a notice of denial, personally delivered to the  
21 retailer at the actual retail location or mailed to the retailer at the last-known address as shown  
22 by the records.

23 E. A denied applicant that timely requests a hearing following issuance of a notice of denial  
24 shall be served with a notice of grounds for denial, and shall be entitled to a hearing regarding  
25 the matters addressed therein.

26 F. The licensing authority's decision shall constitute a final agency. Any appeal of the  
27 licensing authority's decision shall be filed with a district court of competent jurisdiction and  
28 venue for purposes of an appeal of a decision is proper in the District Court for Summit County.

29  
30 **4-5-18: FINES, SUSPENSION OR REVOCATION OF LICENSE:**

- 1 A. After investigation and a public hearing before the licensing authority at which a retailer  
2 must be afforded an opportunity to be heard, the licensing authority may impose fines, or  
3 impose suspension or revocation for reasons set forth below.
- 4 B. A license issued by the licensing authority may be suspended or revoked by the  
5 licensing authority for of any of the following reasons:
- 6 1. Violation of the Colorado Retail Tobacco Code;
  - 7 2. Violation of any applicable administrative regulation;
  - 8 3. Violation of this Chapter;
  - 9 4. Violation of the terms and conditions of a license;
  - 10 5. Misrepresentation or omission of any material fact, or false or misleading information, on  
11 the license application or any amendment thereto, or any other information provided by the  
12 licensee to the licensing authority related to the licensee's business;
  - 13 6. Violation of any law which, if it occurred prior to the submittal of the license application  
14 could have been cause for denial of the license application;
  - 15 7. Failure to maintain or to provide to licensing authority upon request any books,  
16 recordings, reports, or other records as required by applicable law;
  - 17 8. Temporary or permanent closure or other sanction of the licensee by the Local  
18 Licensing Authority, the Colorado Department of Public Health and Environment, or other  
19 governmental entity with jurisdiction, for failure of the licensee to comply with applicable  
20 provisions of the Colorado Retail Tobacco Code;
  - 21 9. Revocation or suspension of the state license; or
  - 22 10. The failure of a licensee to timely correct any violation of state or local laws, any  
23 applicable administrative regulation, this Chapter, or the terms and conditions of the licensee's  
24 license within the time stated in a notice or order issued by licensing authority.
- 25 B. The procedure to suspend or revoke a local license shall be as set forth in this Chapter.
- 26 C. In connection with the suspension of a license, the licensing Authority may impose  
27 reasonable conditions.
- 28 D. In deciding whether a license should be suspended or revoked, and in deciding what  
29 conditions to impose in the event of a suspension, if any, the licensing authority shall consider  
30 mitigating and aggravating factors when considering the imposition of a penalty. These factors  
31 may include, but are not limited to:
- 32 1. Any prior violations that the Licensee has admitted to or was found to have engaged in.

1 2. Action taken by the Licensee to prevent the violation (e.g., training provided to  
2 employees).

3 3. Licensee's past history of success or failure with compliance checks.

4 4. Corrective action(s) taken by the Licensee related to the current violation or prior  
5 violations.

6 5. Willfulness and deliberateness of the violation.

7 6. Likelihood of reoccurrence of the violation.

8 7. The Owner or a manager is the violator or has directed an employee or other individual  
9 to violate the law.

10 E. A license issued by the Local Licensing Authority may be revoked if the Local Licensing  
11 Authority determines that the licensed premises have been inactive, without good cause, for at  
12 least one (1) year.

13 F. If the licensing authority suspends or revokes a license the licensee may appeal the  
14 suspension or revocation to the district court pursuant to Rule 106(a)(4) of the Colorado Rules  
15 of Civil Procedure. The licensee's failure to timely appeal the decision is a waiver of the  
16 licensee's right to contest the denial or conditional approval of the application.

17 G. No fee previously paid by a licensee in connection with the application shall be refunded if  
18 the licensee's license is suspended or revoked.

19 **4-5-19: INJUNCTIVE RELIEF; ABATEMENT AS NUISANCE; OTHER REMEDIES:**

20 A. If a person is required to have a valid license issued pursuant to this Chapter the  
21 operation of such person's business without such license may be enjoined by the Town in an  
22 action brought in the municipal court pursuant to Section 1-8-10 of this Code, or in any other  
23 court of competent jurisdiction.

24 B. The operation of a retail tobacco rental business within the Town without a valid license  
25 issued pursuant to this Chapter is declared to be a public nuisance, and is subject to abatement  
26 as provided by law.

27 C. The remedies provided in this Section are in addition to any other remedy provided by  
28 applicable law.

29 D. In any case in which the Town prevails in a civil action initiated pursuant to this Section,  
30 the Town may recover its reasonable attorney fees plus costs of the proceeding.

31 **4-5-20: COORDINATION WITH STATE; COMPLIANCE CHECKS:**

1           A. Compliance with this Chapter shall be enforced by the Police Department. The  
2 Police Chief may designate additional individuals, departments or groups to assist with the  
3 enforcement of this Chapter as deemed appropriate.

4           B. To the degree it is achievable within the amount of fees collected, the Town will  
5 conduct two compliance checks per retail location, per year.

6           C. When a compliance check is completed by the Police Department, the Police  
7 Department will notify the Division of any outcome, or action taken on the licensee as a result of  
8 the compliance check.

9           D. A database of compliance check results and hearing outcomes shall be  
10 maintained by Police Department.

11 **4-5-21: NO TOWN LIABILITY:**

12 The adoption of this Chapter and the issuance of licenses pursuant to this Chapter shall not  
13 create any duty to any person. No person shall have any civil liability remedy against the Town,  
14 or its officers, employees or agents, for any damage or loss of any kind arising out of or in any  
15 way connected with the issuance of any license pursuant to this Chapter. Nothing in this  
16 Chapter shall be construed to create any liability or to waive any of the immunities, limitations on  
17 liability, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et  
18 seq., C.R.S., or to waive any immunities or limitations on liability otherwise available to the  
19 Town, or its officers, employees or agents.

20 **4-5-22: DESIGNATED USE OF LICENSE FEES:**

21 Immediately upon receipt or collection thereof, all license fees collected by the Town pursuant to  
22 this Chapter shall be deposited into a separate fund. Licensee fees shall be used only for the  
23 purposes described in Section 4-5-7. Monies credited to such fund shall not be available to be  
24 pledged or expended, by interfund transfer or otherwise, for any general purposes of the Town.

25 **4-5-23: RULES AND REGULATIONS:**

26 The Town Clerk shall have the authority from time to time to adopt, amend, alter, and repeal  
27 administrative rules and regulations as may be necessary for the proper administration of this  
28 Chapter. Such regulations shall be adopted in accordance with the procedures established by  
29 Title 1, Chapter 18 of this Code. A violation of such regulations may be enforced in the Town's  
30 Municipal Court.



**AN ORDINANCE REORGANIZING AND RELOCATING ALCOHOLIC BEVERAGES AND MARIJUANA LICENSING REGULATIONS.**

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

**Section 1.** That Chapter 3 entitled "OPTIONAL PREMISES LICENSES" is hereby repealed in its entirety and replaced to read as follows:

**CHAPTER 3 ALCOHOLIC BEVERAGES**

**4-3-1: DEFINITIONS:**

As used in this chapter, unless the context otherwise requires:

APPLICANT: The proposed transferee of a license for the sale of fermented malt beverages or alcoholic beverages and, once issued, the holder of a temporary permit under this chapter.

LICENSE: A grant to a licensee to sell fermented malt beverages, malt, vinous or spirituous liquors pursuant to the Colorado Beer and Liquor Code.

LICENSEE: The holder of a license to sell fermented malt beverages, malt, vinous or spirituous liquors pursuant to the Colorado Beer and Liquor Code.

LIQUOR AND MARIJUANA LICENSING AUTHORITY: The town of Breckenridge liquor and marijuana licensing authority created pursuant to title 2, chapter 5 of this code.

TASTING: The sampling of malt, vinous, or spirituous liquors on the premises of a retail liquor store or liquor licensed drugstore.

TASTINGS LICENSE: A separate license issued by the liquor and marijuana licensing authority pursuant to this chapter authorizing tastings to be conducted by the licensee.

TEMPORARY PERMIT: A permit which authorizes the applicant to conduct business and to continue to sell fermented malt beverages or alcoholic beverages as permitted under the permanent license for a licensed premises during the period in which an application to transfer the ownership of such license to the applicant is pending.

**4-3-2: APPLICATION:**

The application for every license required by and issued under the authority of this chapter shall be made to the clerk. Applications shall be deemed incomplete and will not be accepted if they

1 do not contain the information required for the particular license sought, as specified in this  
2 Code and any regulations promulgated thereto, and any other relevant information required by  
3 the clerk.

4 **4-3-3: SEPARATE LICENSE FOR EACH LOCATION:**

5 A separate license shall be required, where applicable, for each distinct location of a business  
6 licensed under this chapter.

7 **4-3-4: STANDARDS FOR ISSUANCE OR DENIAL:**

8 A. Before granting any license, the licensing authority shall consider, except where  
9 otherwise provided in state law or this code, the reasonable requirements of the neighborhood,  
10 the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and  
11 all other reasonable restrictions that are or may be placed upon the neighborhood by the local  
12 licensing authority. With respect to a second or additional license described in section 44-3-  
13 401(1)(j) to (1)(t), (1)(v), or (1)(w) or 44-3-412(1) or in a financial institution referred to in section  
14 44-3-308(4) for the same licensee, all licensing authorities shall consider the effect on  
15 competition of the granting or disapproving of additional licenses to such licensee and shall not  
16 approve an application for a second or additional license that would have the effect of  
17 restraining competition. The licensing authority may deny the issuance of any new tavern or  
18 retail liquor store license whenever such authority determines that the issuance of the license  
19 would result in or add to an undue concentration of the same class of license and, as a result,  
20 require the use of additional law enforcement resources.

21 B. No license authorized under this Code shall be issued or renewed if:

22 1. The issuance of a license to the applicant or licensee would not comply with any  
23 applicable state or local law, or any rules and regulations adopted pursuant thereto;

24 2. The applicant or licensee has not paid or is in arrears in any administrative or  
25 court fines, assessments, or fees owed Town, including any required application fees, licensing  
26 fees, or bond;

27 3. The proposed licensed premises does not conform to the requirements of the  
28 Land Use Code, Building and Fire Code, the electrical code, or any other state or local law; or

29 4. The applicant or licensee has outstanding warrants for his/her arrest in any  
30 jurisdiction; or

31 5. The application contains fraudulent, misrepresented, or false statement(s) of  
32 material or relevant fact(s).

1 C. In the event that the application is denied, the licensing authority shall furnish the  
2 applicant a copy of the order and the reasons supporting the denial upon the written request of  
3 the applicant.

4 D. The licensing authority may place conditions on a license to ensure that the licensee will  
5 operate lawfully or to incorporate the specific and enforceable provisions of a good neighbor  
6 agreement. All such conditions attached to the license shall continue to apply to renewed or  
7 transferred licenses until the restrictions are removed by the licensing authority.

8 E. The local licensing authority shall approve, deny, or conditionally approve an application  
9 within ninety (90) days of the date of the approval of the applicant's state license

10 **4-3-5: REVOCATION:**

11 A. In addition to any other penalties prescribed by the Code, and after investigation and a  
12 show-cause hearing before the licensing authority at which the licensee shall be afforded an  
13 opportunity to be heard, the licensing authority shall suspend, revoke, fine, fine in lieu of  
14 suspension, or place conditions on any license for any of the following circumstances:

15 1. Any fact or condition exists which would qualify for the denial of the license;

16 2. The licensee has failed either to file the required reports or to furnish such  
17 information as may be reasonably required by the Town under the terms of the provisions  
18 relating to the specific license;

19 3. The licensee, either knowingly or without the exercise of due care to prevent the  
20 same, has violated any of the conditions required for the license as specified in this Code or  
21 rules and regulations adopted pursuant thereto;

22 4. The licensee has failed to maintain the licensed premises in compliance with the  
23 requirements of the Land Use Code, Building and Fire Code, the electrical and/or any rules and  
24 regulations issued by the Town, or any other state or local law; or

25 5. The licensee, or any of the agents, servants or employees of the licensee, have  
26 violated any ordinance of the Town, or any state or federal law or have permitted such a  
27 violation by any other person.

28 B. Notice of suspension or revocation, as well as any required notice of a show-cause  
29 hearing, shall be given by mailing the same in writing to the licensee at the licensee's last  
30 address of record with the clerk.

31 **4-3-6: SUMMARY SUSPENSION:**



1 Where the Town has objective and reasonable grounds to believe and finds, upon a reasonable  
2 ascertainment of the underlying facts, that the licensee has been guilty of deliberate and willful  
3 violation or that the public health, safety, or welfare imperatively requires emergency action and  
4 incorporates the findings in its order, it may summarily suspend the license pending  
5 proceedings for suspension or revocation which shall be promptly instituted and determined as  
6 provided in section 4-3-4.

7 **4-3-7: STANDARDS FOR LICENSE ISSUANCE OF OPTIONAL PREMISES LICENSES:**

8 In addition to applicable requirements of Colorado Revised Statutes and regulations adopted  
9 thereunder, the town, pursuant to the Colorado Beer and Liquor Code hereby adopts the  
10 following standard for issuance of an optional premises license or for optional premises for a  
11 hotel and restaurant license.

12 A. A completed application for an optional premises license or optional premises for a hotel  
13 and restaurant license on forms to be provided by the town clerk together with an application fee  
14 in the amount required by law shall be submitted to the town clerk no later than thirty (30) days  
15 prior to the date for consideration by the liquor and marijuana licensing authority.

16 B. The application shall be accompanied by a map or drawing indicating the location of the  
17 optional premises, a copy of the deed, lease or other instrument by which the applicant has  
18 legal possession of the optional premises and a statement from the applicants stating the need  
19 for the optional premises and demonstrating that the size of the proposed optional premises  
20 justifies the issuance of a separate optional premises license.

21 C. No alcoholic beverages may be served on licensed optional premises without the licensee  
22 having provided written notice to the state and local licensing authorities forty eight (48) hours  
23 prior to serving alcoholic beverages on the optional premises. Such notice shall contain the  
24 specific dates and hours for utilization of the optional premises which dates shall not be more  
25 than one hundred eighty (180) days after the date of the notice.

26 D. All optional premises licenses shall be valid for a period of one year from the date of  
27 issuance, unless revoked or suspended, and must be renewed annually thereafter.

28 **4-3-8: LIMITATION ON ISSUANCE OF OPTIONAL PREMISES LICENSES:**

29 Issuance of an optional premises license or an optional premises license for a hotel and  
30 restaurant license shall be limited to the following outdoor sports and recreational facilities:

31 Country clubs.

32 Golf courses.

1 Performing arts facilities. As used in this section, the term "performing arts facilities" includes,  
2 without limitation, the Riverwalk Center Lawn as defined in section 11-2-1 of this code.

3 Ski areas.

4 Swimming pools.

5 Tennis courts.

6 **4-3-9: FINE IN LIEU OF SUSPENSION:**

7 A. Whenever a decision of the liquor and marijuana licensing authority, suspending a license  
8 or permit becomes final, whether by failure of the licensee to appeal the decision or by  
9 exhaustion of all appeals and judicial review, the licensee may, before the operative date of the  
10 suspension, petition the liquor and marijuana licensing authority for permission to pay a fine in  
11 lieu of the license or permit suspension for all or part of the suspension period. Upon the receipt  
12 of the petition, the liquor and marijuana licensing authority may, in its sole discretion, stay the  
13 proposed suspension and cause any investigation to be made that it deems desirable and may,  
14 in its sole discretion, grant the petition if it is satisfied that:

15 1. Public welfare and morals would not be impaired by permitting the licensee to operate  
16 during the period set for suspension and that the payment of the fine will achieve the desired  
17 disciplinary purposes;

18 2. The books and records of the licensee are kept in such a manner that the loss of sales  
19 of alcoholic beverages which the licensee would have suffered had the suspension gone into  
20 effect can be determined with reasonable accuracy.

21 B. The fine accepted shall be equivalent to twenty percent (20%) of the retail licensee's  
22 estimated gross revenues from sales of alcoholic beverages during the period of the proposed  
23 suspension; except that the fine shall be not less than two hundred dollars (\$200.00) nor more  
24 than five thousand dollars (\$5,000.00).

25 C. Payment of any fine pursuant to the provisions of this section shall be in the form of cash,  
26 certified check or cashier's check made payable to the town clerk and shall be deposited in the  
27 general fund of the town.

28 D. Upon payment of the fine pursuant to this section, the liquor and marijuana licensing  
29 authority shall enter its further order permanently staying the imposition of the suspension.

30 E. In connection with any petition pursuant to this section, the authority of the liquor and  
31 marijuana licensing authority is limited to the granting of such stays as are necessary for it to  
32 complete its investigation and make its findings and, if it makes such findings, to the granting of

1 an order permanently staying the imposition of the entire suspension or that portion of the  
2 suspension not otherwise conditionally stayed.

3 F. If the liquor and marijuana licensing authority does not make the findings required in  
4 subsection A of this section and does not order the suspension permanently stayed, the  
5 suspension shall go into effect on the operative date finally set by the liquor and marijuana  
6 licensing authority.

7 **4-3-10: REQUIREMENTS FOR ISSUANCE OF TEMPORARY PERMIT:**

8 A temporary permit shall not be issued unless or until the town clerk determines that the  
9 following conditions have been satisfied:

10 A. The premises have been previously licensed by the state and the town, and such license  
11 was valid at the time the application for transfer of ownership was filed with the town clerk.

12 B. The applicant has filed with the town clerk a properly completed application for the  
13 transfer of the license, which application shall include, without limitation, the following  
14 information:

15 1. The name and address of the applicant; if the applicant is a partnership, the names and  
16 addresses of all the partners; and, if the applicant is a corporation, association or other  
17 organization, the names and addresses of the president, vice president, secretary, and  
18 managing officer.

19 2. The applicant's financial interest in the proposed transfer.

20 3. The premises for which the temporary permit is sought.

21 4. Such other information as is required to properly complete the application for transfer of  
22 license form required by the department of revenue.

23 **4-3-11: TIME FOR FILING OF APPLICATION FOR TEMPORARY PERMIT:**

24 An application for a temporary permit shall be filed no later than thirty (30) days after the filing of  
25 the application for transfer of ownership with the town clerk.

26 **4-3-12: TEMPORARY PERMIT FEE:**

27 Each application for a temporary permit shall be accompanied by the payment of a fee of one  
28 hundred dollars (\$100.00). Such fee shall be refunded if the temporary permit is not issued, but  
29 once the temporary permit is issued, such fee shall be nonrefundable.

30 **4-3-13: APPLICATION FOR TEMPORARY PERMIT:**

31 An application for the issuance of a temporary permit shall be submitted to the town clerk on  
32 forms provided by the town clerk for such purpose.

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**4-3-14: ISSUANCE OF TEMPORARY PERMIT BY TOWN CLERK:**

The town clerk shall issue a temporary permit to the applicant if they determine that all of the conditions of this chapter have been satisfied. Such permit shall be issued within five (5) working days after the town clerk's receipt of the application for issuance of a temporary permit.

**4-3-15: DURATION OF TEMPORARY PERMIT:**

A temporary permit issued pursuant to this chapter shall be valid only until such time as the application for the license to the applicant is granted or denied or one hundred twenty (120) days, whichever shall first occur; except that if the application to transfer the license has not been granted or denied within the one hundred twenty (120) day period and the applicant demonstrates good cause, the liquor and marijuana licensing authority may, in its discretion, extend the validity of said permit for an additional period not to exceed sixty (60) days.

**4-3-16: OTHER TRANSFERS FOR WHICH A TEMPORARY PERMIT IS AVAILABLE:**

A temporary permit shall also be issued by the town clerk, subject to the requirements of this chapter, in the event of a transfer of possession of a licensed premises by operation of law; or the filing of a petition in bankruptcy pursuant to federal bankruptcy law; by the appointment of a receiver; by a foreclosure action by a secured party; or by a court order dispossessing the prior licensee of all rights of possession pursuant to article 40 of title 13, Colorado Revised Statutes.

**4-3-17: CANCELLATION, REVOCATION, OR SUMMARY SUSPENSION OF TEMPORARY PERMIT:**

A temporary permit may be canceled, revoked or summarily suspended by the liquor and marijuana licensing authority if it determines that there is probable cause to believe that the applicant has violated any provision of the Colorado Beer and Liquor Code whichever statutes govern the license of the licensed premises, or any rule or regulation adopted by the department of revenue pursuant thereto, or any town ordinance governing the operation of licensed premises, or if the applicant has failed to truthfully disclose those matters required pursuant to the application forms required by the department of revenue or the town.

**4-3-18: ALCOHOLIC BEVERAGE TASTINGS LICENSE:**

A retail liquor store or liquor licensed drugstore licensee may conduct tastings only pursuant to a valid tastings license.

**4-3-19: TASTINGS LICENSE APPLICATION:**

1 A retail liquor store or liquor licensed drugstore licensee who wishes to conduct tastings shall  
2 submit an application to the liquor and marijuana licensing authority on forms supplied by the  
3 liquor and marijuana licensing authority. Such application shall be accompanied by a  
4 nonrefundable annual fee of twenty five dollars (\$25.00).

5 **4-3-20: APPROVAL OR DENIAL OF TASTINGS LICENSE:**

6 If the applicant demonstrates that he or she is able to conduct tastings without violating the  
7 provisions of this chapter or the Colorado Beer and Liquor Code, and without creating a public  
8 safety risk to the neighborhood, the application shall be approved and the tastings license  
9 issued. Otherwise, the application shall be denied.

10 **4-3-21: ANNUAL LICENSE:**

11 A tastings license shall be valid for one year, and shall run concurrently with the retail liquor  
12 store or liquor licensed drugstore license of the holder of the tastings license; provided,  
13 however, that the first tastings license issued to a retail liquor store or liquor licensed drugstore  
14 licensee shall be valid only until the expiration of the then current retail liquor store or liquor  
15 licensed drugstore license.

16 **4-3-22: LIMITATIONS ON TASTINGS:**

17 Tastings conducted by the holder of a tastings license shall be subject to the limitations and  
18 requirements set forth in section Colorado Beer and Liquor Code, as amended from time to  
19 time. Compliance with the limitations and requirements set forth in Colorado Beer and Liquor  
20 Code, as shall be amended from time to time, shall be a term and condition of any tastings  
21 license, whether expressly set forth in the tastings license or not.

22 **4-3-23: LICENSEE RESPONSIBLE:**

23 A violation of the provisions of this chapter by a retail liquor store or liquor licensed drugstore  
24 licensee, whether by his or her employees, agents, or otherwise, shall be the responsibility of  
25 the retail liquor store or liquor licensed drugstore licensee who is conducting the tasting.

26 **4-3-24: SUSPENSION OR REVOCATION OF TASTINGS LICENSE:**

27 Any violation of the terms and conditions of a tastings license may result in the suspension or  
28 revocation of the tastings license, as well as the licensee's retail liquor store or liquor licensed

1 drugstore license. The suspension or revocation of the retail liquor store or liquor licensed  
2 drugstore license of the holder of a tastings license shall automatically operate to suspend or  
3 revoke such tastings license.

4 **4-3-25: PROOF OF QUALIFICATIONS OF PERSONS CONDUCTING TASTINGS:**

5 Upon the request of any peace officer, the holder of a tastings license shall provide proof that  
6 tastings are to be conducted only by a person who has completed a server training program that  
7 meets the standards established by the liquor enforcement division in the department of  
8 revenue of the state of Colorado, and who is either the retail liquor store licensee or a liquor  
9 licensed drugstore licensee, or an employee of such licensee.

10 **Section 2.** That Chapter 4 entitled "PAYMENT OF FINE IN LIEU OF SUSPENSION OF  
11 LICENSE TO SELL ALCOHOLIC BEVERAGES" is hereby repealed and that Chapter 14 is  
12 relocated to Chapter 4 to read as follows:

13 **CHAPTER 4**  
14 **MARIJUANA LICENSES AND REGULATIONS**

15  
16 **4-4-1: SHORT TITLE:**

17 This Chapter is to be known and may be cited as the "Town Of Breckenridge 2020 Marijuana  
18 Licensing Ordinance."

19  
20 **4-4-2: FINDINGS:**

21 The Town Council adopts this Chapter based upon the following findings of fact:

22 A. The Colorado Marijuana Code (Article 10, Title 44, C.R.S.) recognizes the power of a  
23 municipality to adopt and enforce its own rules and regulations for the licensing of regulated  
24 marijuana businesses within its jurisdiction. Specifically, the Colorado Marijuana Code  
25 authorizes municipalities to:

26 1. Prohibit the operation of medical marijuana stores, medical marijuana cultivation  
27 facilities, and medical marijuana-infused products facilities manufacturers' licenses within the  
28 municipality (Section 44-10-104(1)(b), C.R.S.);

29 2. Enact ordinances or regulations governing the time, place, manner, and number of retail  
30 marijuana businesses within the boundaries of the municipality, which may include a local  
31 licensing requirement (44-10-104(3), C.R.S.);

- 1       3. Adopt an ordinance containing specific standards for the issuance of local licenses  
2 (Section 44-10-301(2)(a)(I), C.R.S.);
- 3       4. Adopt additional local standards for the issuance of medical marijuana stores, medical  
4 marijuana cultivation facilities, and medical marijuana-infused products manufacturers' licenses,  
5 including, but not limited to, distance restrictions between premises for which licenses are  
6 issued; reasonable restrictions on the size of an applicant's licensed premises; and any other  
7 local requirement necessary to ensure the control of the premises and the ease of enforcement  
8 of the terms and conditions of the license (Section 44-10-301(2)(a)(II), C.R.S.);
- 9       5. Impose additional requirements necessary for the approval of applications under the  
10 Colorado Marijuana Code (Section 44-10-301(2)(c), C.R.S.);
- 11       6. Impose separate local licensing requirements as a part of the municipality's restrictions  
12 on time, place, manner, and number of marijuana businesses within the municipality (Section  
13 44-10-301(3)(b), C.R.S.);
- 14       7. Establish an application fee for a local license (Section 44-10-302(1), C.R.S.)
- 15       8. Enact ordinances or resolutions concerning matters authorized to local governments  
16 (Section 44-10-305(3), C.R.S.);
- 17       9. Enact reasonable regulations or other restrictions applicable to medical marijuana  
18 business licenses based on local government zoning, health, safety and public welfare laws for  
19 the distribution of medical marijuana that are more restrictive than the Colorado Marijuana Code  
20 (Section 44-10-313(1)(a), C.R.S.);
- 21       10. Adopt and enforce regulations for retail marijuana businesses that are at least as  
22 restrictive as the Colorado Marijuana Code and the state administrative regulations (Section 44-  
23 10-313(1)(b), C.R.S.);
- 24       11. Impose reasonable restrictions upon a local license (Section 44-10-313(7), C.R.S.);  
25 and
- 26       12. Adopt and impose operating fees on marijuana businesses located within its jurisdiction  
27 in an amount determined by the municipality (Section 44-10-803(3), C.R.S.).
- 28       B. On November 6, 2012 the voters of the State of Colorado approved Amendment 64.  
29 Amendment 64 added Section 16 of Article XVIII to the Colorado Constitution.
- 30       C. Section 16(5)(f) of Article XVIII of the Colorado Constitution authorizes a municipality to  
31 enact an ordinance or regulation, not in conflict with Section 16 of Article XVIII of the Colorado  
32 Constitution, governing the time, place, manner, and number of marijuana establishments within  
33 the boundaries of the municipality.

1 D. The presence of regulated marijuana businesses within the Town's Downtown Overlay  
2 District may discourage tourism, which is the economic lifeblood of the community. As such,  
3 regulated marijuana businesses should all be located outside of the Downtown Overlay District  
4 in order to protect, defend, and preserve the economic vitality of the Town.

5 E. The Town Council finds, determines, and declares that to the extent the requirements of  
6 this Chapter differ from the requirements of the Colorado Marijuana Code, the requirements of  
7 this Chapter are more restrictive than the Colorado Marijuana Code.

8 F. This Chapter is necessary and proper to provide for the safety, preserve the health,  
9 promote the prosperity, and improve the order, comfort, and convenience of the Town and the  
10 inhabitants thereof.

11 **4-4-3: PURPOSE:**

12 It is the purpose of this Chapter to:

13 A. Require that regulated marijuana businesses that are located within the Town be operated  
14 in a safe manner that do not endanger the public welfare.

15 B. Mitigate potential negative impacts that regulated marijuana businesses that are located  
16 within the Town might cause on surrounding properties and persons.

17 C. Regulate the conduct of persons owning, operating, and using regulated marijuana  
18 businesses that are located within the Town in order to protect the public health, safety, and  
19 welfare.

20 D. Establish a non-discriminatory mechanism by which the Town can control, through  
21 appropriate regulation, the location and operation of regulated marijuana businesses that are  
22 located within the Town.

23 E. Establish requirements and limitations on the location of regulated marijuana businesses  
24 without requiring the immediate closure of any currently licensed business.

25 **4-4-4: AUTHORITY:**

26 The Town Council hereby finds, determines, and declares that it has the power to adopt this  
27 Chapter pursuant to:

28 A. Section 16 of Article XVIII to the Colorado Constitution;

29 B. The Colorado Marijuana Code, Article 10 of Title 44, C.R.S.;

30 C. The applicable administrative regulations;

31 D. The Local Government Land Use Control Enabling Act, Part 1 of Article 20 of Title 29,  
32 C.R.S.;

33 E. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);



- 1 F. Section 31-15-103, C.R.S. (concerning municipal police powers);
- 2 G. Section 31-15-401, C.R.S. (concerning municipal police powers);
- 3 H. Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses);
- 4 I. The authority granted to home rule municipalities by Article XX of the Colorado
- 5 Constitution; and
- 6 J. The powers contained in the Breckenridge Town Charter.

7

8 **4-4-5: DEFINITIONS:**

9 A. The definitions contained in the Colorado Marijuana Code and the applicable  
10 administrative regulations (as defined in Subsection B of this Section), each as amended from  
11 time to time, are incorporated into this Chapter by reference.

12 B. As used in this Chapter the following words have the following meanings, unless the  
13 context clearly requires otherwise:

14 **ADJACENT:** Adjacent to or contiguous with the proposed location of a regulated marijuana  
15 business. Adjacency is to be determined without regard to the existence of a platted or  
16 dedicated public street or alley, and real property that would otherwise be determined to be  
17 adjacent to a proposed regulated marijuana business does not lose its adjacency by virtue of  
18 the existence of a platted or dedicated public street or alley.

19 **APPLICABLE ADMINISTRATIVE REGULATIONS:** Whichever of the state administrative  
20 regulations apply to the application or the license, including, but not limited to the regulations of  
21 the Colorado Department of Revenue, Marijuana Enforcement Division, found at 1 CCR 212.3,  
22 as amended from time to time, as well as any administrative regulations issued by the local  
23 licensing authority pursuant to Section 4-4-33 of this Chapter.

24 **APPLICANT:** A person who has submitted an application for license to the local licensing  
25 authority that has not been approved or denied by the local licensing authority.

26 **APPLICATION:** An application for license submitted to the local licensing authority.

27 **BUILDING OFFICIAL:** The Chief Building Official of the Town, or the Chief Building Official's  
28 designee authorized to act pursuant to Section 1-7-2 of this Code.

29 **COLORADO MARIJUANA CODE:** Article 10 of Title 44, C.R.S., as amended from time to  
30 time.

31 **DAY:** A calendar day, unless otherwise indicated.

32 **DOWNTOWN OVERLAY DISTRICT:** The geographic area of the Town identified as the  
33 Downtown Overlay District in the Town's Land Use Guidelines, as amended from time to time.

1 GOOD CAUSE: For the purpose of denial of an application, the denial of the renewal of a  
2 license, or the imposition of discipline of a licensee, means:

- 3 1. The licensee or the applicant has violated, does not meet, or has failed to comply with any of  
4 the terms, conditions, of provisions of this Chapter, the terms and conditions of any licensed  
5 issued by the local licensing authority pursuant to this Chapter, the Colorado Marijuana Code, or  
6 any applicable administrative regulation;
- 7 2. The licensee or the applicant has failed to comply with any special terms or conditions that  
8 were placed on the license pursuant to an order of the State Licensing Authority or the local  
9 licensing authority; or
- 10 3. The licensee's licensed premises have been operated in a manner that adversely affects the  
11 public health, welfare, or the safety of the immediate neighborhood in which the business is  
12 located.

13 HALFWAY HOUSE: A group care facility for adults or juveniles who have been placed on  
14 probation or parole under applicable law.

15 LAND USE GUIDELINES: Has the meaning provided in Section 9-1-5 of this Code.

16 LICENSE: A license to operate a regulated marijuana business issued by the local licensing  
17 authority pursuant to this Chapter.

18 LICENSED PREMISES: The premises that are the subject of a license.

19 LICENSEE: A person holding a license.

20 LOCAL LICENSING AUTHORITY: The Town Breckenridge Liquor and Marijuana Licensing  
21 Authority created pursuant to Title 2, Chapter 5 of this code.

22 MARIJUANA ACCESSORIES: Has the meaning provided in Section 16(2)(g) of Article  
23 XVIII of the Colorado Constitution.

24 MEDICAL MARIJUANA BUSINESS: Has the meaning provided in the Colorado Marijuana  
25 Code.

26 PERSON: Has the meaning provided in Section 1-3-2 of this Code.

27 PRIMARY CAREGIVER: Has the meaning provided in Section 25-1.5-106(2)(d.5), C.R.S.

28 PRIMARY CAREGIVER PERMIT: A permit issued to a primary caregiver by the local  
29 licensing authority pursuant to Section 4-14-28 of this Chapter.

30 REGULATED MARIJUANA BUSINESS: A medical marijuana businesses and a retail  
31 marijuana businesses.

32 RESIDENTIAL USE: Has the meaning provided in Section 9-1-5 of this code.

1 RETAIL MARIJUANA BUSINESS: Has the meaning provided in the Colorado Marijuana  
2 Code.

3 STATE ADMINISTRATIVE REGULATIONS: The administrative rules and regulations for  
4 regulated marijuana businesses issued by the Colorado Department of Revenue, Marijuana  
5 Enforcement Division, and found at 1 CCR 212.3, as amended from time to time.

6 STATE LICENSING AUTHORITY: Has the meaning provided in the Colorado Marijuana  
7 Code.

8 TOWN: Has the meaning provided in Section 1-3-2 of this Code.

9 **4-4-6: LICENSE REQUIRED:**

10 A. No person may operate a regulated marijuana business within the Town without both a  
11 valid license issued by the local licensing authority and a valid license issued by the State  
12 Licensing Authority.

13 B. A separate license shall be required for each specific business or business entity and for  
14 each geographic location.

15

16 **4-4-7: ADOPTION OF STATE CODES AND ADMINISTRATIVE REGULATIONS:**

17 A. The following laws, rules, and regulations are adopted by reference and made a part of  
18 this Chapter:

- 19 1. The Colorado Marijuana Code;
- 20 2. The state administrative regulations; and
- 21 3. Any administrative regulations issued by the local licensing authority pursuant to Section  
22 4-14-33.

23 B. Except where the provisions of this Chapter are inconsistent with or differ from the laws,  
24 rules, and regulations adopted by reference in Subsection A of this Section, or where, by their  
25 nature, the adopted laws, rules, and regulations cannot apply to the local licensing authority, all  
26 of the provisions of the adopted laws, rules, and regulations apply to all applications received  
27 and licenses issued by the local licensing authority pursuant to this Chapter. Where a provision  
28 of the adopted laws, rules, and regulations are applicable to the local licensing authority the  
29 terms "State Licensing Authority," "Department," and "Division" shall mean the local licensing  
30 authority, unless the context clearly indicates otherwise.

31 C. If there is a conflict between the provisions of this Chapter and the adopted laws, rules,  
32 and regulations the provisions of this Chapter shall control to the fullest extent permitted by  
33 applicable law.

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**4-4-8: APPLICATION FOR LICENSE:**

A. A person seeking to obtain a license from the local licensing authority shall file an application with the Town's Municipal Services Office. The Municipal Services Office is responsible for providing application forms to prospective applicants, and for generally supervising the application process up to the point that a completed application is submitted to the Local licensing authority for a decision. Once an application is determined to be complete, the application and all supporting documentation shall be forwarded to the local licensing authority. The local licensing authority shall make a final decision on the Application in accordance with Section 4-4-12.

B. The local licensing authority is only authorized to issue licenses for the following types of regulated marijuana businesses:

- Retail Marijuana Store;
- Retail Marijuana Cultivation Facility;
- Retail Marijuana Products Manufacturer;
- Type 1 Medical Marijuana Center;
- Type 2 Medical Marijuana Center;
- Type 3 Medical Marijuana Center;
- Optional Premises Cultivation (Medical Marijuana);
- Medical Marijuana Products Manufacturer.

C. The local licensing authority shall not: (i) accept or process an application for a new regulated marijuana business, or (ii) approve and issue any new regulated marijuana business license or permit under this Chapter. However, the local licensing authority may approve a transfer of ownership of an existing local license or a change of location of an existing licensed premises in accordance with the Marijuana Code, the applicable administrative regulations, and the applicable requirements of this Chapter. For the purpose of this Section, a "new regulated marijuana business " means a proposed regulated marijuana business that was not properly licensed by the local licensing authority prior to November 11, 2014.

D. A license issued by the local licensing authority does not eliminate the need for the licensee to obtain other required Town licenses and permits related to the operation of the licensed premises, including, without limitation:

1. A development permit if required by the terms of Chapter 1 of Title 9 of this Code;
2. A Town sales tax license;

- 1        3. A Town Business and Occupational Tax License; and
- 2        4. A building permit, mechanical permit, plumbing permit, or electrical permit if required by
- 3 the terms of the Town's building and technical codes.
- 4        E. Properly completed applications shall be processed by the local licensing authority in
- 5 order of receipt.
- 6        F. At all times during the application process the applicant has the burden of establishing it is
- 7 entitled to the license that is applied for.

8

9 **4-4-9: FEES:**

10        A. An applicant for a new license shall pay to the Town a non-refundable operating fee when

11 the application is filed. The purpose of the fee is to cover the direct and indirect costs to the

12 Town of administering the local licensing mechanism established by this Chapter. Annually at

13 the time of the budget process, the police department, clerk or their designee shall submit for

14 review by Council a report confirming that the fee amount from the prior year is adequately and

15 reasonably covering the direct and indirect costs of the regulatory program. For applications

16 filed in 2022 the operating fees are as follows:

- 17        1. New medical marijuana business license:

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19 Type of License	Local Operating fee
20 Type 1 Medical Marijuana Center	\$2,812.50
21 Type 2 Medical Marijuana Center	\$6,562.50
22 Type 3 Medical Marijuana Center	\$10,500.00
23 Optional Premises Cultivation License	\$2,062.50
24 Medical Marijuana-Infused Products Manufacturers' License	\$2,062.50

- 25
- 26        2. Medical marijuana center applying for retail marijuana store license:

27

28 Type of License	Local Operating fee
29 Medical Marijuana Center 1 Applying For Retail Marijuana Store License	\$2,812.50
30 Medical Marijuana Center 2 Applying For Retail Marijuana Store License	\$6,562.50
31 Medical Marijuana Center 3 Applying For Retail Marijuana Store License	\$10,500.00

- 32
- 33        3. New retail marijuana business license (not an existing medical marijuana business):

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2	Type of License	Local Operating Fee
3	Retail Store	\$2,062.50
4	Retail Marijuana Cultivation Facility	\$2,062.50
5	Retail Marijuana Products Manufacturing	\$2,062.50
6	Retail Marijuana Testing Facility	N/A 1
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8		

9 B. Fees for the annual renewal of any license issued by the Town shall be fifty percent of the  
10 fee for the issuance of a new license as described in Subsection A of this Section.

11 C. The following administrative service/operating fees shall be paid to Town at the time the  
12 service is requested:

13		
14	Service Requested	Fee
15	Transfer of Ownership of Business License or Application	\$250.00
16	Corporation or LLC Structure Change (per person)	\$100.00
17	Change of Location	\$500.00
18	Modification of Premises	\$150.00
19		

20 D. The Town is entitled to receive its share of the license application fees received by the  
21 State Licensing Authority pursuant to Section 16 of Article XVIII of the Colorado Constitution.

22 E. At least annually, the amount of fees charged by the Town pursuant to this Section shall  
23 be reviewed and, if necessary, adjusted as provided in Subsection F to reflect the direct and  
24 indirect costs incurred by the Town in connection with the adoption, administration, and  
25 enforcement of this Chapter.

26 F. Beginning with the fiscal 2021 budget, the amount of the fees charged by the Town  
27 pursuant to this Section shall be fixed by the Town Council as part of its annual budget process.  
28 If, for any reason, such fees are not fixed by the Town Council as part of its annual budget  
29 process, the fees for the preceding year shall continue in full force and effect until changed by  
30 the Town Council.

31  
32 **4-4-10: INVESTIGATION OF APPLICATION:**

1 A. Upon receipt of a properly completed application, together with all information required in  
2 connection therewith, and the payment of the applicable fee as required by Section 4-14-9, the  
3 local licensing authority shall transmit copies of the application to:

- 4 1. The Police Chief;
- 5 2. The Department of Community Development; and
- 6 3. Any other person or agency which the local licensing authority or the Municipal Services  
7 Office determines should properly investigate and comment upon the application.

8 B. Upon receipt of a completed application the Police Department shall promptly obtain and  
9 review a criminal background records search on the applicant.

10 C. Within twenty (20) days of receipt of a completed application those Town departments  
11 and other referral agencies described in Subsection A of this Section shall provide the local  
12 licensing authority with comments concerning the application.

13 D. An applicant shall cooperate with the local licensing authority with respect to the review  
14 and investigation of the application.

15  
16 **4-4-11: AUTHORITY TO IMPOSE CONDITIONS ON LICENSE:**

17 The Local licensing authority may impose such reasonable terms and conditions on a license as  
18 may be necessary to protect the public health, safety, and welfare, and obtain compliance with  
19 the requirements of this Chapter, the Colorado Marijuana Code, the applicable administrative  
20 regulations, and other applicable law.

21  
22 **4-4-12: DECISION BY LOCAL LICENSING AUTHORITY:**

23 A. The local licensing authority shall approve, deny, or conditionally approve an application  
24 within ninety (90) days of the date of the approval of the applicant's state license; provided,  
25 however, the deadline for deciding an application may be extended by the local licensing  
26 authority for up to an additional sixty (60) days if the local licensing authority reasonably  
27 determines that it is necessary for the applicant to submit additional information in order for the  
28 local licensing authority to complete the investigation and review of the application. The  
29 applicant shall provide any additional information requested by the local licensing authority.

30 B. A public hearing is required to be held in connection with an application.

31 C. The local licensing authority shall issue a license under this Chapter when, from a  
32 consideration of the application, the investigation, and such other information as may otherwise  
33 be obtained, the local licensing authority determines that:

1        1. The application (including any required attachments and submissions) is complete and  
2 signed by the applicant, and the applicant has provided any additional information concerning  
3 the application requested by the local licensing authority;

4        2. The applicant has paid the applicable operating fee and any other fees required by  
5 Section 4-14-9;

6        3. The application does not contain a material falsehood or misrepresentation;

7        4. The application complies with all of the requirements of this Chapter, the Colorado  
8 Marijuana Code, and the applicable administrative regulations; and

9        5. The applicant holds a valid state license for the licensed premises of the same class as  
10 has been applied for under this Chapter.

11       D. The local licensing authority shall deny an application for a license under this Chapter if it  
12 determines that:

13       1. The application is incomplete, or the applicant has failed to provide any additional  
14 information about the application requested by the local licensing authority;

15       2. Information contained in the application, or supplemental information requested from the  
16 applicant contains a material falsehood or misrepresentation;

17       3. The application does not comply with all of the requirements of this Chapter, the  
18 Colorado Marijuana Code, and the applicable administrative regulations; or

19       4. The applicant does not hold a valid state license for the licensed premises of the same  
20 class as has been applied for under this Chapter.

21       E. If an application is denied, the licensing authority shall clearly set forth in writing the  
22 grounds for denial.

23       F. If the application is conditionally approved, the licensing authority shall clearly set forth in  
24 writing the conditions of approval.

25       G. If an application is denied the operating fee paid to the Town at the time of the filing of the  
26 application shall not be refunded.

27  
28 **4-4-13: APPEAL OF DENIAL OR CONDITIONAL APPROVAL OF LICENSE:**

29 Any decision made by the licensing authority pursuant to Section 4-14-12 is a final decision and  
30 may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil  
31 Procedure. The applicant's failure to timely appeal the decision is a waiver the applicant's right  
32 to contest the denial or conditional approval of the application.



1 **4-4-14: INSPECTION OF PREMISES:**

2 In addition to the inspection required by the Colorado Marijuana Code or other applicable law,  
3 prior to the issuance of a license the premises proposed to be licensed shall be inspected by the  
4 Building Official to determine compliance with the Town's building and technical Codes. No  
5 license shall be issued if the proposed licensed premises does not comply with the Town's  
6 building and technical codes. Throughout the term of the license the Building Official may  
7 inspect the licensed premises to determine continuing compliance with the Town's building and  
8 technical codes. Access to such premises shall be obtained by the Building Official in  
9 accordance with the applicable provisions of such codes or other applicable law.

10  
11 **4-4-15: TERM OF LICENSE; RENEWAL:**

12 A. Each license issued pursuant to this Chapter shall be valid for one year from the date of  
13 issuance, and may be renewed as provided in the Colorado Marijuana Code, the applicable  
14 administrative regulations, and this Chapter; provided, however, that a license shall not be  
15 renewed if the licensing authority determines that the licensed premises have been inactive,  
16 without good cause, for at least one year.

17 B. The licensing authority may refuse to renew a license for good cause.

18 C. No license for a regulated marijuana business shall be renewed by the licensing  
19 authority until the licensee provides verification that a license was issued and granted by the  
20 State Licensing Authority pursuant to the Colorado Medical Marijuana Code for the previous  
21 license term.

22 D. Notwithstanding anything contained in this Chapter to the contrary, a licensee has no  
23 vested right to the renewal of a license, and no property right in the renewal of a license.

24  
25 **4-4-16: NOTICE OF ISSUANCE OF LICENSE:**

26 Immediately upon the issuance of a license, the licensing authority shall send a copy of the  
27 license to:

28 A. The Police Department;

29 B. The Community Development Department;

30 C. The Town Clerk;

31 D. The Finance Director; and

32 E. Any other person as determined by the licensing authority.

1 **4-4-17: DUTIES OF LICENSEE:**

2 It is the duty and obligation of each licensee to:

- 3 A. Comply with all of the terms and conditions of the license, and any special conditions on  
4 the license imposed by the licensing authority pursuant to Section 4-14-11;
- 5 B. Comply with all of the requirements of this Chapter;
- 6 C. Comply with all other applicable Town ordinances;
- 7 D. Comply with all applicable state laws and administrative regulations pertaining to the  
8 category of business for which the license was issued, including, but not limited to:
- 9 1. The Colorado Marijuana Code;
- 10 2. The applicable administrative regulations;
- 11 3. Sections 18-18-406.3 and 25-1.5-106, C.R.S., to the extent applicable; and
- 12 4. The administrative regulations issued by the Colorado Department of Public Health and  
13 Environment found at 5 CCR 1006-2, to the extent applicable, all as amended from time to time.  
14 Compliance with the requirements of this Section is a standard condition of each license issued  
15 by the licensing authority.
- 16 E. Comply with all applicable federal laws, rules, or regulations.

17

18 **4-4-18: SUSPENSION OR REVOCATION OF LICENSE:**

- 19 A. A license issued by the licensing authority may be suspended or revoked by the licensing  
20 authority for of any of the following reasons:
- 21 1. Violation of the Colorado Marijuana Code;
- 22 2. Violation of any applicable administrative regulation;
- 23 3. Violation of this Chapter;
- 24 4. Violation of the terms and conditions of a license;
- 25 5. Misrepresentation or omission of any material fact, or false or misleading information, on  
26 the license application or any amendment thereto, or any other information provided by the  
27 licensee to the licensing authority related to the licensee's business;
- 28 6. Violation of any law which, if it occurred prior to the submittal of the license application,  
29 could have been cause for denial of the license application;
- 30 7. Failure to maintain or to provide to the local licensing authority upon request any books,  
31 recordings, reports, or other records as required by applicable law;
- 32 8. Failure to timely notify the local licensing authority and to complete any necessary forms  
33 for changes in financial interest, business manager, financier, or agent.

1           9. Temporary or permanent closure or other sanction of the licensee by the local licensing  
2 authority, the Colorado Department of Public Health and Environment, or other governmental  
3 entity with jurisdiction, for failure of the licensee to comply with applicable provisions of the  
4 Colorado Marijuana Code;

5           10. Revocation or suspension of the state or local license of another medical marijuana  
6 business or retail marijuana business owned or controlled by the holder of Town medical  
7 marijuana business or retail marijuana business license; or

8           11. The failure of a licensee to timely correct any violation of the Colorado Marijuana Code,  
9 any applicable administrative regulation, this Chapter, or the terms and conditions of the  
10 license's license within the time stated in a notice or order issued by local licensing authority.

11           B. The procedure to suspend or revoke a local license shall be as set forth in this Chapter.

12           C. In connection with the suspension of a license, the local licensing authority may impose  
13 reasonable conditions.

14           D. In deciding whether a license should be suspended or revoked, and in deciding what  
15 conditions to impose in the event of a suspension, if any, the local licensing authority shall  
16 consider mitigating and aggravating factors when considering the imposition of a penalty. These  
17 factors may include, but are not limited to:

18           1. Any prior violations that the Licensee has admitted to or was found to have engaged in.

19           2. Action taken by the Licensee to prevent the violation (e.g., training provided to  
20 employees).

21           3. Licensee's past history of success or failure with compliance checks.

22           4. Corrective action(s) taken by the Licensee related to the current violation or prior  
23 violations.

24           5. Willfulness and deliberateness of the violation.

25           6. Likelihood of reoccurrence of the violation.

26           7. Circumstances surrounding the violation, which may include, but are not limited to:

27           a. Prior notification letter to the Licensee that an underage compliance check would be  
28 forthcoming.

29           b. The dress or appearance of an underage operative used during an underage  
30 compliance check (e.g., the operative was wearing a high school letter jacket).

31           8. The Owner or a manager is the violator or has directed an employee or other individual  
32 to violate the law.

1 E. Participation in State-approved educational programs related to the operation of a retail  
2 marijuana establishment business, if applicable.

3 F. If an offense is described in the applicable administrative regulations, the local licensing  
4 authority shall follow the provisions of such regulation in deciding the appropriate sanction to be  
5 imposed upon the licensee.

6 G. A license issued by the Local licensing authority may be revoked if the local licensing  
7 authority determines that the licensed premises have been inactive, without good cause, for at  
8 least one (1) year.

9 H. If the local licensing authority suspends or revokes a license the licensee may appeal the  
10 suspension or revocation to the district court pursuant to Rule 106(a)(4) of the Colorado Rules  
11 of Civil Procedure. The licensee's failure to timely appeal the decision is a waiver of the  
12 licensee's right to contest the denial or conditional approval of the application.

13 I. No fee previously paid by a licensee in connection with the application shall be refunded if  
14 the licensee's license is suspended or revoked.

15 J. If the local licensing authority revokes or suspends a license, the licensee may not remove  
16 any marijuana from the licensed premises except under the supervision of the Town's police  
17 department.

18  
19 **4-4-19: TRANSFER OF OWNERSHIP; CHANGE OF LOCATION; MODIFICATION OF**  
20 **PREMISES:**

21 A. Subject to the limitations of Subsections B and C of this Section, the ownership of a  
22 license may be transferred, the permanent location of a licensed premises may be changed,  
23 and the licensed premises may be modified in accordance with the Colorado Marijuana Code,  
24 the applicable administrative regulations, and this Chapter.

25 B. No change of location of a licensed premises shall be approved by the local licensing  
26 authority if the proposed new location of the licensed premises is not a location that is permitted  
27 by this Chapter.

28 C. The permanent location of a licensed premises shall not be changed so as to relocate the  
29 licensed premises into the Downtown Overlay District from a location outside of the Downtown  
30 Overlay District.

31 D. The licensed premises may be modified in accordance with the Colorado Marijuana Code,  
32 the applicable administrative regulations, and this Chapter.

1 **4-4-20: CONSIDERATION OF NUMBER OF EXISTING LICENSES:**

2 Before entering a decision approving or denying an application the local licensing authority shall  
3 consider, among the other relevant factors described in the Colorado Marijuana Codes, the  
4 number, type, and availability of regulated marijuana businesses located in or near the premises  
5 for which the application has been submitted.

6  
7 **4-4-21: LOCATION OF LICENSED PREMISES; CO-LOCATION:**

8 A. No regulated marijuana business shall be located at a location that does not conform to  
9 the requirements of this Section.

10 B. No regulated marijuana business shall be located within the Town except within Land Use  
11 Districts 5, 9, 11, 19, 20, or 31.

12 C. In addition to the restriction imposed by Subsection B of this Section, no regulated  
13 marijuana business shall be located:

14 1. Within 500 feet of a licensed child care facility;

15 2. Within 500 feet of any educational institution or school, college or university, either  
16 public or private;

17 3. Within 500 feet of any halfway house;

18 4. Adjacent to property being used for a residential use; provided, however, this restriction  
19 does not apply to an adjacent mixed use building containing both residential and commercial  
20 units; or

21 5. Within any building or structure that contains a residential unit.

22 D. The distances described in Subsection C of this Section shall be measured as a straight  
23 line from the nearest property line of the existing land use described in subsections (C)(1),  
24 (C)(2), or (C)(3), above, to the nearest portion of the building for which the license is requested.  
25 This Subsection D shall not affect a license that was in effect on September 14, 2016, and any  
26 such license may be renewed, the ownership of such license may be transferred or changed,  
27 and the premises that are the subject of such license may be modified, all as provided in this  
28 Chapter, notwithstanding the provisions of this Section.

29 E. The distance limitations established by Subsection C of this Section shall control over the  
30 distance limitations set forth in the Colorado Marijuana Code or applicable administrative  
31 regulation.

1 F. Nothing in this Chapter prevents a licensee from physically delivering medical marijuana  
2 to a homebound patient when done in compliance with the Colorado Marijuana Code and the  
3 applicable administrative regulations.

4 G. No licensed premises shall be operated as a "home occupation" as described in Section  
5 9-1-19-38A, "Policy 38 (Absolute) Home Occupations," of this Code.

6 H. A medical marijuana business may be located at the same location as a retail marijuana  
7 business subject to the requirements of the Colorado Marijuana Code and the applicable  
8 administrative regulations.

9

10 **4-4-22: HOURS OF OPERATION:**

11 A licensed premises may open no earlier than 8 A.M. and shall close no later than 10 P.M. the  
12 same day, Monday through Sunday. No marijuana shall be sold or dispensed at a licensed  
13 premises when the licensed premises are required to be closed pursuant to this Section.

14

15 **4-4-23: SIGNAGE:**

16 All signage for a licensed premises shall comply with the requirements of Title 9, Chapter 15 of  
17 this Code; the Colorado Marijuana Code; and the applicable state regulations. In addition, no  
18 licensee shall display a sign for a licensed premises that contains the word "marijuana" or a  
19 graphic/image of any portion of a marijuana plant.

20

21 **4-4-24: MARIJUANA ACCESSORIES:**

22 Marijuana accessories may lawfully be sold at regulated marijuana business, subject to the  
23 requirements of applicable law.

24

25 **4-4-25: ON-SITE CULTIVATION, GROWING AND PROCESSING:**

26 The growing, cultivation, or processing of marijuana on or within a licensed premises is  
27 prohibited unless done pursuant to the appropriate license issued by the state and the local  
28 licensing authority. Any premises licensed for the growing, cultivation, or processing of  
29 marijuana shall be equipped with a proper ventilation system that filters out the odor of  
30 marijuana so that the odor is not capable of being detected by a person with a normal sense of  
31 smell at the exterior of the licensed premises.

32

33 **4-4-26: DISPLAY OF MARIJUANA:**

1 No marijuana shall be displayed within a licensed premises so as to be visible through a glass,  
2 a window, or a door by a person of normal visual acuity standing at the outside perimeter of the  
3 licensed premises.

4

5 **4-4-27: TAXES:**

6 Each licensee shall collect and remit to the appropriate taxing authority all sales and excise  
7 taxes that are lawfully due in accordance with applicable law.

8

9 **4-4-28: DUTIES OF PRIMARY CAREGIVERS:**

10 A. Any primary caregiver cultivating marijuana in a residential structure within the Town shall  
11 provide to the local licensing authority a copy of such primary caregiver's registration with the  
12 State Licensing Authority filed pursuant to pursuant to Section 25-1.5-106(7)(e)(I)(A), C.R.S.

13 B. If not contained in the primary caregiver's registration with the State Licensing Authority  
14 filed pursuant to pursuant to Section 25-1.5-106(7)(e)(I)(A), C.R.S., the primary caregiver shall  
15 provide the following information to the licensing authority:

- 16 1. Location of any medical marijuana cultivation;
- 17 2. The Registry identification number for each patient; and
- 18 3. The number of plants authorized to cultivate for each patient.

19 The caregiver must update the registry within ten (10) days of any changes.

20 C. A primary caregiver shall maintain a list of his or her patients including the registry  
21 identification card number of each patient at all times.

22 D. Upon receipt of a copy of the primary caregiver's state registration, the licensing authority  
23 shall issue a Town of Breckenridge Primary Caregiver Permit to such primary caregiver. Primary  
24 Caregiver Permits shall be for a term of one (1) calendar year, and shall be renewable upon  
25 compliance with all the provisions of this Section. There shall be no fee for the issuance or  
26 renewal of a Primary Caregiver Permit.

27 E. Two or more primary caregivers shall not join together for the purpose of cultivating  
28 medical marijuana.

29 F. A person may not register as a primary caregiver if he or she is licensed as a medical  
30 marijuana business or retail marijuana business.

31 G. A primary caregiver who fails to register with the licensing authority shall do so within ten  
32 (10) days of being informed of the duty to register by law enforcement or any Town official.

1 H. If any person fails to register pursuant to notification, such person shall be prohibited from  
2 ever registering and acting as a primary caregiver within the Town.

3 I. If a primary caregiver is charged with failing to register, a law enforcement agency shall not  
4 be civilly liable for the loss or destruction of the primary caregiver's medical marijuana plants.

5 J. The Town shall share with other law enforcement agencies the minimum necessary  
6 information as allowed by the Federal Health Insurance Portability and Accountability Act of  
7 1996, PL 104-191, and the implementing administrative regulations, such as patient and  
8 caregiver identification numbers, to ensure that a patient does not have more than one primary  
9 caregiver, or have both a caregiver and a medical marijuana center cultivating medical  
10 marijuana on his or her behalf at any given time.

11 K. The information provided to the licensing authority pursuant to this Section shall not be  
12 provided to the public and is confidential. However, upon receiving an address-specific request  
13 for verification, the licensing authority or Town police department shall verify the location of a  
14 primary caregiver cultivation operation and share the information with another law enforcement  
15 or regulatory agency. The location of the cultivation operation must comply with all applicable  
16 local laws, rules, and regulations.

17 L. A primary caregiver for no more than five (5) patients on the medical marijuana program  
18 registry at any time.

19  
20 **4-4-29: WAREHOUSE STORAGE PERMITS:**

21 The licensing authority is authorized to give the Town's consent to the state's issuance of a  
22 warehouse storage permit pursuant to any applicable state administrative regulation.

23  
24 **4-4-30: VIOLATIONS; PENALTIES; INJUNCTIVE RELIEF:**

25 A. It is unlawful and a civil infraction for any person to violate any provision of this Chapter.  
26 Any person found to be in violation of this Chapter, or against whom a default judgment has  
27 been entered for a violation of this Chapter, shall be punished as provided in Section 1-4-1-1 of  
28 this Code.

29 B. It is unlawful and a misdemeanor offense for any person to violate any of the  
30 misdemeanor offenses described in Part 9 of the Colorado Marijuana Code. Any person  
31 convicted of any of the misdemeanor offenses described in Part 9 of the Colorado Marijuana  
32 Code shall be punished as provided in Section 1-4-1 this Code.



1 C. It is unlawful and a misdemeanor offense for any person to violate the following provisions  
2 of the state administrative regulations. Any person convicted of having violated any of the  
3 following provisions of the state administrative regulations shall be punished as provided in  
4 Section 1-4-1 of this code:

5 Regulation 3-220 - Security Alarm and Lock Standards;

6 Regulation 3-225 - Video Surveillance;

7 Regulation 3-230 - Waste Disposal;

8 Regulation 3-310 - General Safety Requirements

9 Regulation 3-905 - Business Records Required; and

10 Regulation 8-810 - Requirement for Inspections and Investigations, Searches, Administrative  
11 Holds, and Such Additional Activities as May Become Necessary From Time to Time

12 D. The operation of a regulated marijuana business in violation of this Chapter, the Colorado  
13 Marijuana Code, or the applicable administrative regulations, may be enjoined by the Town in  
14 an action brought in a court of competent jurisdiction.

15 E. If any action is brought in a court of law by any person concerning the enforcement,  
16 interpretation, or construction of this Chapter, or any license issued by the licensing authority,  
17 the Town shall recover its reasonable attorney fees, expert witness fees, and court costs if it is  
18 the prevailing party.

19 F. The remedies provided in this Section are in addition to any other remedy provided by  
20 applicable law.

21  
22 **4-4-31: NO TOWN LIABILITY:**

23 By operating a business pursuant to a license issued by the licensing authority a licensee  
24 releases the Town, its officers, elected officials, employees, attorneys, and agents from any  
25 liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution  
26 of the licensee, or the licensee's owners, operators, employees, clients, or customers, for a  
27 violation of any state or federal law, rule or regulation related to retail marijuana or medical  
28 marijuana, or from the forced closure of the licensed premises because the Colorado Marijuana  
29 Code, any applicable administrative regulation, and/or this Chapter, are found to be invalid  
30 under any superior law.

31  
32 **4-4-32: OTHER LAWS REMAIN APPLICABLE:**

1 Before issuing a license the licensing authority shall obtain written confirmation from the  
2 licensee that the licensee understands and agrees to the following:

3 A. Neither this Chapter, nor the act of obtaining a license from the licensing authority,  
4 protects licensees, or the owners, operators, employees, customers, and clients of a licensed  
5 premises, from criminal prosecution pursuant to any superior law that prohibits the cultivation,  
6 sale, use, or possession of controlled substances, including, but not limited to, medical  
7 marijuana and retail marijuana.

8 B. As of the date of the adoption of this Chapter the cultivation, sale, possession, distribution,  
9 and use of marijuana remains a violation of federal law, and this Chapter affords licensees, and  
10 licensee's owners, operators, employees, customers, and clients, with no protection from  
11 criminal prosecution under such law. Licensees, and their owners, operators, employees,  
12 customers, and clients assume any and all risk and liability arising or resulting from the  
13 operation of the licensed premises under federal law.

14 C. The Town has no liability to a licensee or any other person for injuries, damages, or  
15 liabilities of any kind, under any legal theory of liability, arising from the forced closure of the  
16 licensed premises if the Colorado Marijuana Code, the applicable administrative regulations,  
17 and/or this Chapter are found to be invalid or illegal under any superior law.

18 D. To the greatest extent permitted by law, any action taken under the provisions of this  
19 Chapter by any public officer or officers, elected or appointed officials, employees, attorneys,  
20 and agents of the Town of Breckenridge, is not a personal liability of such person or of the  
21 Town.

22

23 **4-4-33: RULES AND REGULATIONS:**

24 The licensing authority may from time to time adopt, amend, alter, and repeal administrative  
25 rules and regulations as may be necessary for the proper administration of this Chapter. Such  
26 regulations shall be adopted in accordance with the procedures established by Chapter 18, Title  
27 1 of this Code.



1 Town Clerk  
2

**AN ORDINANCE AMENDING THE GENERAL OFFENSES OF THE BRECKENRIDGE TOWN CODE PERTAINING TO THE CONDUCT OF A MINOR IN POSSESSION OF TOBACCO.**

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

**Section 1.** That Section 6-3F-1 entitled "DEFINITIONS:" be amended by adding the language underlined and placed in alphabetical order in the list as follows:

CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT: has the same meaning as provided in Section 4-5-4 of Title 4 of the Town of Breckenridge Code.

**Section 2.** That Section 6-3F-12 entitled "FURNISHING TOBACCO PRODUCTS TO MINORS PROHIBITED:" be amended by adding the language underlined and deleting the language stricken as follows:

6-3F-12: FURNISHING CIGARETTE, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO MINORS PROHIBITED:

A. ~~1. As used in this section, "tobacco product" means:~~

~~— a. Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;~~

~~— b. Any electronic smoking device as defined in section 5-9-2, and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or~~

~~— c. Any component, part, or accessory of subsection (a) or (b), whether or not these items contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.~~

~~2. Notwithstanding any provision of subsection A1 of this section to the contrary, "tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.~~

1 ~~B. 4.~~ A person shall not give, sell, distribute, dispense, or offer for sale a cigarette, tobacco  
2 product, or nicotine product ~~tobacco product~~ to any person who is under twenty one (21) years  
3 of age.

4 2. Before giving, selling, distributing, dispensing, or offering to sell to any individual any  
5 tobacco product a person shall request from the individual and examine a government issued  
6 photographic identification that establishes that the individual is twenty one (21) years of age or  
7 older; ~~except that, in face to face transactions, this requirement is waived if the individual~~  
8 ~~appears older than thirty (30) years of age.~~

9 ~~3B.~~ A person who violates ~~subsection B1 or B2~~ of this section commits an infraction and,  
10 upon an entry of judgment for such violation, shall be punished by a fine of two hundred dollars  
11 (\$200.00).

12 ~~4.~~ It is an affirmative defense to a prosecution under ~~subsection B1~~ of this section that the  
13 person furnishing the tobacco product was presented with and reasonably relied upon a  
14 document that identified the individual receiving the tobacco product as being twenty one (21)  
15 years of age or older.

16 ~~C. 1.~~ A person who is under twenty one (21) years of age and who purchases or attempts  
17 to purchase any tobacco product commits an infraction and, upon entry of judgment for such  
18 violation, shall be punished by a fine of one hundred dollars (\$100.00). For a first offense under  
19 this subsection ~~C1~~ the municipal court, in lieu of a fine, may sentence the person to participate  
20 in a tobacco education program.

21 ~~2C.~~ It is ~~not an offense~~ affirmative defense to a prosecution under this section if the person  
22 furnishing the cigarette, tobacco product, or nicotine product was presented with and reasonably  
23 relied upon a government-issued photographic identification that identified the individual  
24 receiving the cigarette, tobacco product, or nicotine product as being twenty-one years of age or  
25 older. ~~under twenty one (21) years of age was acting at the direction of an employee of a~~  
26 ~~governmental agency authorized to enforce or ensure compliance with laws relating to the~~  
27 ~~prohibition of the sale of tobacco products to minors.~~

28 **Section 3.** That Section 6-3F-13 entitled "POSSESSION OF TOBACCO PRODUCT BY  
29 MINORS PROHIBITED:" is hereby repealed.

30 **Section 4.** The Town Council hereby finds, determines and declares that this ordinance  
31 is necessary and proper to provide for the safety, preserve the health, promote the prosperity,

1 and improve the order, comfort and convenience of the Town of Breckenridge and the  
2 inhabitants thereof.

3 **Section 5.** The Town Council hereby finds, determines and declares that it has the  
4 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by  
5 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town  
6 Charter.

7 **Section 6.** This ordinance shall be published and become effective as provided by  
8 Section 5.9 of the Breckenridge Town Charter.

9

10 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
11 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2022. A Public Hearing shall be held at the  
12 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
13 \_\_\_\_\_, 2022, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
14 Town.

15

16 TOWN OF BRECKENRIDGE, a Colorado  
17 municipal corporation

18

19

20

21 By: \_\_\_\_\_

22 Eric S. Mamula, Mayor

23

24 ATTEST:

25

26

27 \_\_\_\_\_

28 Helen Cospolich, CMC,

29 Town Clerk

30

Series 2022

**AN ORDINANCE AUTHORIZING THE TOWN CLERK TO ADMINISTRATIVELY APPROVE FESTIVAL PERMITS.**

**WHEREAS**, the Colorado General Assembly recently enacted SB 21-082 authorizing certain liquor licensees, including bars and restaurants, to apply for festival permits allowing them to hold up to nine festivals in a twelve-month period; and

**WHEREAS**, SB 21-082 allows the Town to create a local permit system for festivals; and

**WHEREAS**, if the Town decides not to implement a permit system, the licensee need only obtain a state permit to hold the festival; and

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

**Section 1.** That a new section 4-3-26 be added to Title 4, Chapter 3, entitled "Festival Permits."

**4-3-26: FESTIVAL PERMITS:**

- A. For the purpose of regulating the sale of alcohol beverages, the Town Clerk, upon application made to it in the prescribed form, may issue and grant to the applicant those licenses to sell alcohol beverages that the local licensing authority is authorized to issue pursuant to title 44, as they currently exist or may hereafter be amended, to issue a festival permit.
- B. A separate local festival permit is required for each festival. No more than nine permits may be issued to a single licensee during a twelve-month period.
- C. The Town Clerk may impose reasonable conditions upon a festival permit.
- D. If a licensee is applying for both a special event permit under title 4, chapter 13, and a festival permit under this section of the Code, the licensee does not need a separate festival permit from the Town Clerk.
- E. The Town Clerk may deny a festival permit application including for: A documented history of violations; The filing of an incomplete or late application; A finding that the application, if granted, would result in violation of state or local laws, rules, or regulations.
- F. An applicant may appeal the denial to the Town Manager for a final decision, which is then subject to appeal in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

**Section 2.** 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 3.** 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



1 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town  
2 Charter.

3  
4 **Section 4.** This ordinance shall be published and become effective as provided by  
5 Section 5.9 of the Breckenridge Town Charter.

6  
7 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
8 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2022. A Public Hearing shall be held at the  
9 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
10 \_\_\_\_\_, 2022, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
11 Town.

12  
13 TOWN OF BRECKENRIDGE, a Colorado  
14 municipal corporation

15  
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17  
18 By: \_\_\_\_\_  
19 Eric S. Mamula, Mayor

20  
21 ATTEST:

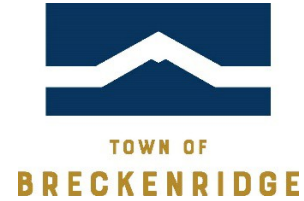
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25 \_\_\_\_\_  
26 Helen Cospolich, CMC,  
27 Town Clerk

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29 TOWN OF BRECKENRIDGE, a Colorado  
30 municipal corporation

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34 By: \_\_\_\_\_  
35 Eric S. Mamula, Mayor

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39 APPROVED IN FORM

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43 \_\_\_\_\_  
44 Town Attorney



Memo

**To:** Town Council  
**From:** Town Attorney  
**Date:** April 12, 2022 (for April 26, 2022 Meeting)  
**Subject:** Municipal court code

---

This code provision is in the nature of “clean up” and to bring the code into compliance with the charter pertaining to municipal court. The change will not have any impact on the current court structure or operations. It is my recommendation that we bring clean up bills as time permits on the agenda and as the opportunity arises. Thus, council is being asked to approve this bill on first reading tonight. The bill clarifies the following:

- Per the charter, the presiding judge must be appointed for a two-year term, during which they may not be removed (unless for cause), nor shall their salary be increased.
- Replaces gender specific terms.
- Revises the oath and bond requirements bringing them in line with current law/practice.
- Repeals the appropriation provision which pre-dates the Taxpayer Bill of Rights, article X, section 20, which generally prohibits multi-fiscal year obligations.

## Article VIII: Legal And Judiciary

### Section 8.2 JUDICIARY:

(a) Presiding Municipal Judge. There shall be a municipal court vested with jurisdiction of all cases arising under the ordinances of the town and as may be conferred by law. The municipal court shall be presided over and its functions exercised by a judge, appointed by the **council for a specified term of two (2) years**. The council may, when his appointment for term of office expires, re-appoint the municipal judge. Any vacancy in the office of municipal judge shall be filled by appointment by the council for the remainder of the unexpired term. (Ord. 8, Series 2006, Election 4-4-2006)

(b) Deputy Judges. Council may appoint one or more deputy judges as it deems necessary. The deputy municipal judges shall all have the powers of the municipal judge when called upon to act by the municipal judge or council. In the event that more than one municipal judge is appointed, the council shall designate a presiding municipal judge, who shall serve in this capacity during the term for which he was appointed. The deputy municipal judges shall serve at the pleasure of the council.

(c) Compensation. The municipal judge shall receive a fixed salary or compensation set by the council, **which shall not be increased or decreased during his term of office**. The deputy municipal judges may receive such compensation for services rendered as council may determine.

(d) Removal. **Any municipal judge may be removed during his term of office only for cause**. A judge may be removed by a majority vote of the council for cause if:

1. He is found guilty of a felony or any other crime involving moral turpitude;  
or
2. He has willfully or persistently failed to perform his duties; or
3. He has a disability which interferes with the performance of his duties which is, or is likely to become, of permanent character.

COUNCIL BILL NO. \_\_\_\_

Series 2022

**AN ORDINANCE CONFORMING THE CODE TO THE CHARTER PERTAINING TO MUNICIPAL COURT.**

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

**Section 1.** That section 1-8-3 of the municipal code, entitled "MUNICIPAL JUDGE", shall be amended by deleting the language stricken and adding the language underlined, to read as follows:

1-8-3: MUNICIPAL JUDGE :

A. Appointment: The court shall be presided over by a presiding Municipal Judge appointed by the Council for a ~~term of not less than~~ specified term of two (2) years. ~~The Municipal Judge~~ The presiding judge may be removed during the term ~~from~~ of their office by the Council only for cause as set forth in the charter, § 8.2. The Municipal Judge shall perform no other duties during the hours when court is in session except as may be approved by the Council. The Council may appoint additional Judges from time to time as may be needed to transact the business of the court or to preside in the absence of the presiding Judge. Deputy municipal judges shall serve at the pleasure of the Council.

B. Duties: The presiding Judge shall supervise and direct the court's operation.

C. Qualifications: Any person appointed ~~to the Office of Municipal Judge~~ as a municipal judge shall have been admitted to and shall be at the time of ~~his~~ their appointment and during ~~his~~ their tenure of office, licensed in the practice of law in the State.

D. Oath: Before entering upon the duties of ~~his~~ their office, ~~the a Mmunicipal Jjudge~~ shall ~~make oath and subscribe, before a Judge of a court of record, and file with the council,~~ an oath of affirmation that ~~he~~ they will support the constitution of the United States, the constitution and laws of the state and the ordinances of the town, and will faithfully perform the duties of ~~his~~ their office.

E. Bond: ~~The municipal judge shall give bond to the town in the amount of five hundred dollars (\$500.00) which shall be approved by the council and which shall be surety for his faithful performance of the duties of his office and for his faithful accounting of the payment of all monies coming into his hands by virtue of said office.~~ The bonds required by CRS 13-10-109, as amended from time to time, are hereby waived by the Town.

1 F. Compensation: The presiding municipal judge shall receive a fixed annual salary or  
2 compensation established by the town council, ~~as part of its approval of the annual town budget.~~  
3 ~~Such annual salary shall be payable in twelve (12) equal monthly installments. The~~  
4 ~~compensation of the municipal judge~~ which shall not be increased or decreased during the  
5 judge's two year-term of office. ~~The deputy municipal judge~~ Any substitute judges shall be  
6 compensated for services rendered as the town council may determine.

7

8 **Section 2.** That section 1-8-3 of the municipal code, entitled "APPROPRIATIONS", is  
9 hereby repealed:

10 ~~1-8-9: APPROPRIATIONS:~~

11 ~~The town council shall annually appropriate an amount sufficient to pay salaries and expenses~~  
12 ~~incurred in connection with carrying out the provisions of this chapter.~~

13 **Section 3.** Except as specifically amended hereby, the Breckenridge Town Code, and  
14 the various secondary codes adopted by reference therein, shall continue in full force and effect.

15 **Section 4.** The Town Council hereby finds, determines and declares that it has the  
16 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by  
17 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town  
18 Charter.

19 **Section 5.** This ordinance shall be published and become effective as provided by  
20 Section 5.9 of the Breckenridge Town Charter.

21 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
22 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2022. A Public Hearing shall be held at the  
23 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
24 \_\_\_\_\_, 2022, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
25 Town.

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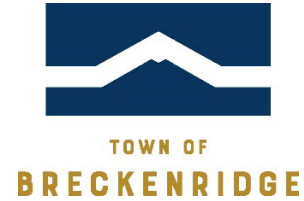
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TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By: \_\_\_\_\_  
Eric S. Mamula, Mayor

ATTEST:

\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk



Memo

**To:** Town Council  
**From:** Town Attorney  
**Date:** April 12, 2022 (for April 26, 2022 Meeting)  
**Subject:** Resolution approving the reappointment and employment agreement of the presiding municipal judge

---

The Council has the exclusive authority to approve the appointment of the presiding judge and to fix their salary. Per the Charter, the presiding judge shall serve a two-year term during which time their salary shall not be increased or decreased. Historically, the Town has not appointed the presiding judge by resolution approving an agreement. It is my recommendation that the Council adopt this approach, which will make the process for appointment of the judge, manager, and attorney consistent for all three council appointees. This is a best practice for elected official personnel.

We have consulted with Judge Allen and he is supportive of the change. The terms and structure of his appointment will remain the same, though we are recommending a nominal increase in his salary. While Judge Allen has not requested an increase, he has not had one in quite some time. The proposed increase for Judge Allen is 4%, which is in the range of other Town employees and the percentage increase recently approved for the Town prosecutor.

## Article VIII: Legal And Judiciary

### Section 8.2 JUDICIARY:

(a) Presiding Municipal Judge. There shall be a municipal court vested with jurisdiction of all cases arising under the ordinances of the town and as may be conferred by law. The municipal court shall be presided over and its functions exercised by a judge, appointed by the **council for a specified term of two (2) years**. The council may, when his appointment for term of office expires, re-appoint the municipal judge. Any vacancy in the office of municipal judge shall be filled by appointment by the council for the remainder of the unexpired term. (Ord. 8, Series 2006, Election 4-4-2006)

(b) Deputy Judges. Council may appoint one or more deputy judges as it deems necessary. The deputy municipal judges shall all have the powers of the municipal judge when called upon to act by the municipal judge or council. In the event that more than one municipal judge is appointed, the council shall designate a presiding municipal judge, who shall serve in this capacity during the term for which he was appointed. The deputy municipal judges shall serve at the pleasure of the council.

(c) Compensation. The municipal judge shall receive a fixed salary or compensation set by the council, **which shall not be increased or decreased during his term of office**. The deputy municipal judges may receive such compensation for services rendered as council may determine.

(d) Removal. **Any municipal judge may be removed during his term of office only for cause**. A judge may be removed by a majority vote of the council for cause if:

1. He is found guilty of a felony or any other crime involving moral turpitude;  
or
2. He has willfully or persistently failed to perform his duties; or
3. He has a disability which interferes with the performance of his duties which is, or is likely to become, of permanent character.



2725 Bald Mountain Rd

Vail, CO 81657

March 15, 2022

Honorable Mayor Mamula and Members of the Breckenridge Town Council

Town of Breckenridge

150 Ski Hill Road

P.O. Box 168

Breckenridge, CO 80424

RE: Municipal Judge

Honorable Mayor Mamula and Council Members:

I would like to express my strong desire to continue as Municipal Judge for the Town of Breckenridge. I thoroughly enjoy working for the town and I look forward to continuing as Judge for years to come. I appreciate the first-class staff of Breckenridge and I value our working relationship.

I would be happy to answer any questions you may have. My office phone is 970-479-2131 and my cell phone is 970-376-4103. Thank you for your consideration.

Yours truly,



Buck Allen

1 RESOLUTION NO. \_\_

2  
3 SERIES 2022

4  
5  
6 **A RESOLUTION APPOINTING THE PRESIDING JUDGE AND FIXING THEIR**  
7 **COMPENSATION.**  
8

9  
10 WHEREAS, the Town charter, article VIII, entitled Legal and Judiciary, Section 8.2,  
11 provides, among other things, that the presiding judge shall be appointed by the council for a  
12 specified term of two (2) years; and,  
13

14 WHEREAS, the Town charter further states that the presiding judge shall receive a fixed  
15 salary or compensation set by the council, which shall not be increased or decreased during his  
16 term of office; and,  
17

18 WHEREAS, the Presiding Judge, Buck Allen, has successfully supervised Municipal Court  
19 and served as the Presiding Judge for many years; and,  
20

21 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF  
22 BRECKENRIDGE, COLORADO:  
23

24 Section 1. The Town Council hereby provides for a presiding judge under the  
25 terms of conditions established by the Town Charter.  
26

27 Section 2. The Town Council hereby establishes the annual salary of the presiding  
28 judge at \$29,952.00.  
29  
30

31  
32 RESOLUTION ADOPTED AND APPROVED this 26th day of April, 2022.  
33

34  
35 ATTEST:

TOWN OF BRECKENRIDGE

36  
37  
38 \_\_\_\_\_  
39 Helen J. Cospolich, CMC, Town Clerk

\_\_\_\_\_   
Eric S. Mamula, Mayor

40  
41  
42 APPROVED IN FORM  
43

44  
45 \_\_\_\_\_  
46 Town Attorney

Date

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made this 26<sup>th</sup> day of April, 2022, by and between the TOWN OF BRECKENRIDGE (the "Town"), a home-rule municipal corporation organized pursuant to Article XX of the Colorado Constitution and the Town's Home Rule Charter and Buck Allen (hereinafter "Employee" or "presiding judge") (collectively, the "Parties").

In consideration of the mutual undertakings contained in this Agreement, the Town and Employee agree as follows:

A. **Job Responsibilities.** The Employee shall be employed as the presiding municipal court judge of the Town of Breckenridge to perform the functions and duties of the charter and code pertaining to the municipal court and to perform such other duties, functions and obligations as are legally permissible and proper for the office of the municipal court judge.

B. **Term.** The term of this Agreement shall be for a period of two (2) years, commencing on April 26, 2022, and ending on April 26, 2024.

C. **Compensation.** As a base annual salary, the Town agrees to pay the Employee for the services herein described the sum of \$29,952.00, payable in near-equal installments at the same time and by the same method as other management employees of the Town are paid, less necessary or agreed upon withholding for state and federal taxes, and other deductions, as applicable. During the term of this Agreement, should Employee resign voluntarily or otherwise be removed in accordance with G below, the amount of the annual salary will be pro-rated based on the number of months worked.

D. **Duties.** The presiding judge shall supervise and preside over all functions of the municipal court which is vested with jurisdiction of all cases arising under the ordinances of the town and as may be conferred by law.

E. **Other Employment.** Employment as the presiding judge is not considered as Employee's sole and exclusive employment. Employee may engage in outside employment that does not create a conflict with Employee's position as the presiding judge of the municipal court.

F. **Removal.** The presiding judge may be removed during their term of office only for cause per section 8.2(d) of the charter. The presiding judge may be removed by a majority vote of the council for cause if:

1. He is found guilty of a felony or any other crime involving moral turpitude; or
2. He has willfully or persistently failed to perform their duties; or
3. He has a disability which interferes with the performance of their duties which is, or is likely to become, of permanent character.

G. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties and a complete merger of prior negotiations and agreements. If any court of competent jurisdiction declares any provision of this Agreement invalid or unenforceable, the remainder of the Agreement shall remain fully enforceable. The court shall also have the authority to reform such unenforceable or void provision, so as to render the provision enforceable.

H. **Governing Law.** This Agreement shall be governed by the laws of the State of Colorado.

I. **Annual Appropriation.** Financial obligations of the Town under this Agreement payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by the Town Council of the Town of Breckenridge, Colorado. If sufficient funds shall not be made available, this Agreement may be terminated by either party without penalty; provided, however, that in the event of termination of this Agreement pursuant to this Section the Town will pay Employee all sums due for services performed prior to the date of termination. The Town's obligations hereunder shall not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

IN WITNESS WHEREOF, this Agreement shall be binding upon the Parties upon execution.

ATTEST:

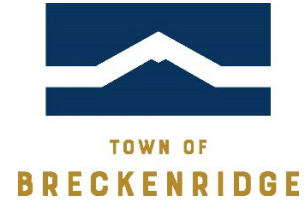
TOWN OF BRECKENRIDGE

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Eric S. Mamula, Mayor

Buck Allen

\_\_\_\_\_  
By: Buck Allen



Memo

**To:** Town Council  
**From:** Town Attorney  
**Date:** April 8, 2022 (for April 26, 2022 Meeting)  
**Subject:** Special Counsel Rates

---

Per the Town of Breckenridge Charter, Article VIII, Section 8.1, the Council has the authority to approve the compensation of special counsel. Attached you will find the rates for the Town's telecommunications and utilities attorneys, Kissinger and Fellman. We request approval of the proposed rates. While there is no immediate need, the Town practice has been to retain special counsel in advance so we can tap into their expertise as the need arises. We will keep you apprised of any significant matters.

# KISSINGER & FELLMAN, P.C.

ATTORNEYS AT LAW  
PTARMIGAN PLACE, SUITE 900  
3773 CHERRY CREEK NORTH DRIVE  
DENVER, COLORADO 80209  
TELEPHONE: (303) 320-6100  
FAX: (303) 327-8601  
[www.kandf.com](http://www.kandf.com)

RICHARD P. KISSINGER  
KENNETH S. FELLMAN  
JONATHAN M. ABRAMSON  
BRANDON M. DITTMAN

BOBBY G. RILEY  
JULIE NIKOLAEVSKAYA  
COLLEEN MCCROSKEY  
PAUL D. GODEC, SPECIAL COUNSEL

## REPRESENTATION AGREEMENT

The Town of Breckenridge ("Client"), hereby employs the law firm of Kissinger & Fellman, P.C., ("the Firm") to provide legal counsel, advice and assistance in connection with broadband matters and any related issues as may be directed by the Town. Legal fees and costs will be billed in accordance with the Billing Policies of the Firm set forth on this Representation Agreement which are part of this agreement. It is understood and agreed that the Firm's hourly rates may increase in the future.

The Firm's policy is to require from time to time an advance fee deposit/retainer for services and fees from each client prior to beginning any new or additional work on the client's matters. In this particular situation, an initial fee deposit/retainer of \$0.00 has been agreed upon. This deposit/retainer will be placed in the Firm's trust account and applicable disbursements will be made from the trust account to the Firm each month at the time of billing, to cover fees earned and expenses accrued. Client agrees to promptly make such subsequent deposits/retainers as the Firm may require from time to time.

## BILLING POLICIES

Our regular hourly charges for professional services of each attorney in the firm are as follows:

Jonathan M. Abramson	\$350 per hour	Colleen McCroskey	\$175 per hour
Brandon M. Dittman	\$225 per hour	Julie Nikolaevskaya	\$220 per hour
Kenneth S. Fellman	\$305 per hour	Bobby G. Riley	\$225 per hour
Paul D. Godec	\$275 per hour	Paralegal/Law Clerk	\$ 90 per hour
Richard P. Kissinger	\$400 per hour		

*\* BMD rate reduced from \$260; KSF rate reduced from \$405; PDG rate reduced from \$350; CEM rate reduced from \$185; and BGR rate reduced from \$280.*

Adjustments in the Firm's rates and charges do occur from time to time, and we endeavor to notify all our then active clients of any changes at the time they are to take place. Nonetheless we still encourage all client inquiries concerning the rates in effect at the beginning of each project and will provide an updated copy of these Billing Policies upon every request.

If there are services which can be performed by our paralegals or law clerks, this time will be charged at \$90 per hour. Billing will reflect all time expended on clients' matters, such as: office conferences, legal research, telephone calls, correspondence, travel time, drafting, court or hearing preparation and appearances, etc. Direct costs or expenses relating to clients' work (i.e., photocopies, postage, long distance telephone calls, mileage, parking, etc.) will be billed in addition to our hourly charges for professional services rendered.

Billing will normally be on a monthly basis. On matters which are not ongoing, a final billing may be made at the conclusion of the matter.

Our terms are payment in full within 30 days of the date of billing. If payment is not received timely, services and expense advances may be discontinued by the firm until satisfactory arrangements can be made to reinstate any past due account. **Interest** shall accrue at the rate of 1.5% per month on all amounts


overdue and unpaid. If collection efforts become necessary on any unpaid amounts, the client shall be responsible for costs and legal fees related thereto.

**DOCUMENT/FILE RETENTION POLICY**

When our engagement in this matter ends, at your written request, all materials/property you provided to us during the course of the representation will be returned to you. You agree that we have the right to make copies of all documents generated or received by us from any source during the course of our representation of you. When you request information from your file, the cost of transmitting original documents to you and/or the cost of providing you with copies of other documents will be charged to you. It is your responsibility to secure the return of any documents or property in the file. Following the conclusion of the matter, the client file may be converted to electronic format for storage. During the course of the representation, we may generate certain documents related to the matter (such as drafts, notes, internal memoranda, legal research, factual research, including investigative reports prepared by or for the internal use of lawyers on the case or in the firm, and administrative records) that will be retained by us (as opposed to being sent to you) or destroyed. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials that belong to the law firm within a reasonable time after our final bill for the matter is sent to you.

KISSINGER & FELLMAN, P.C.

Attorneys at Law

By:   
Kenneth S. Fellman  
President

By: \_\_\_\_\_  
Kirsten J. Crawford  
Title: Town Attorney  
Date: \_\_\_\_\_

Address: P.O. Box 168  
Breckenridge, CO 80424  
Telephone: 970-547-3117  
Email: [kirstenc@thetownofbreckenridge.com](mailto:kirstenc@thetownofbreckenridge.com)



# Memo

To: Breckenridge Town Council Members  
From: Mark Truckey, Director of Community Development  
Date: April 20, 2022  
Subject: Planning Commission Decisions of the April 19, 2022 Meeting

---

## ***DECISIONS FROM THE PLANNING COMMISSION MEETING, April 19, 2022:***

**CLASS A APPLICATIONS:** None.

**CLASS B APPLICATIONS:** None.

### **CLASS C APPLICATIONS:**

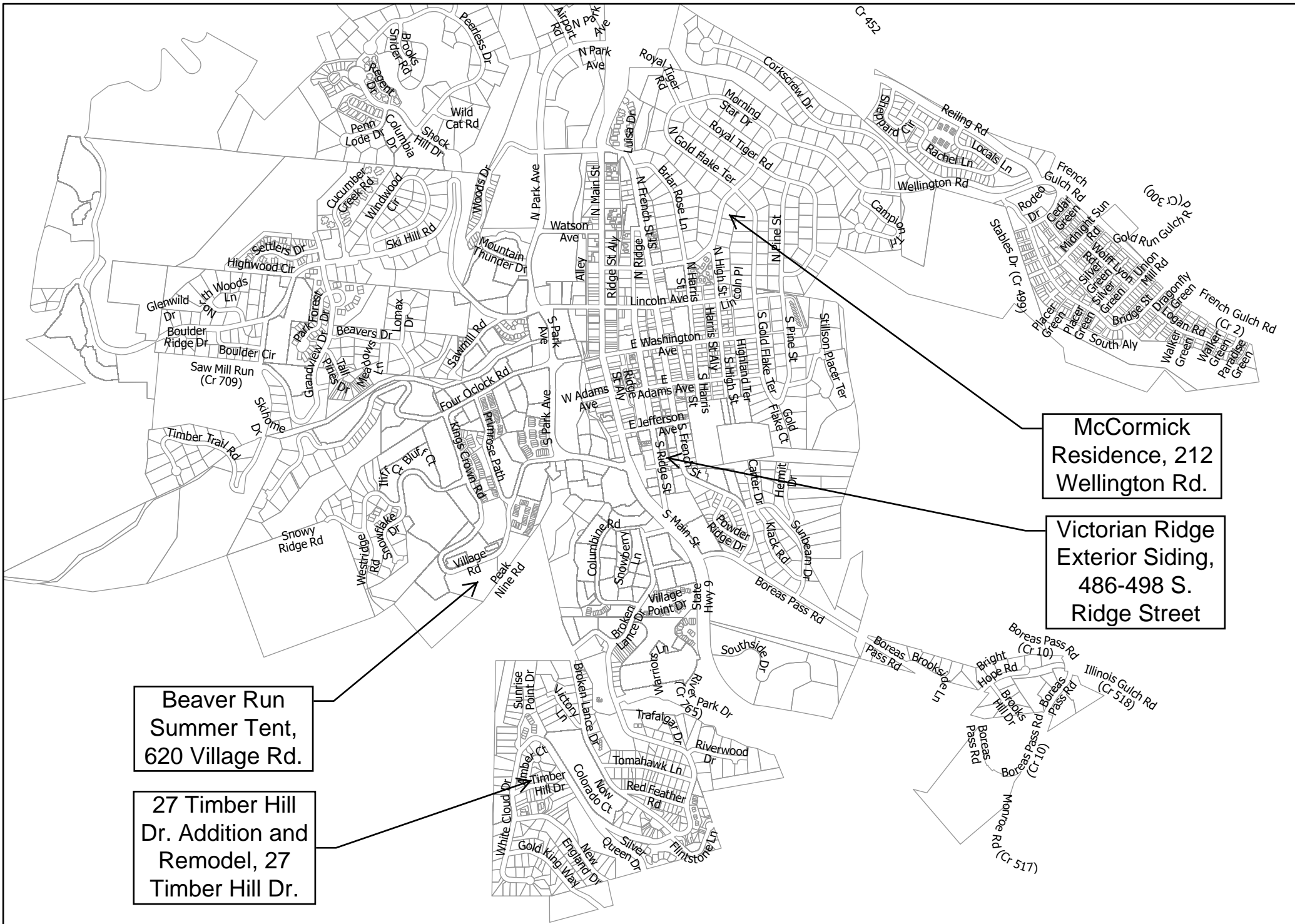
1. Victorian Ridge Exterior Siding, 486-498 S. Ridge Street, PL-2022-0080:  
A proposal to install new exterior siding with a new paint scheme, and new exterior lighting fixtures on three non-historic condo buildings. *Called up and approved with an additional condition regarding the size of the siding.*
2. 27 Timber Hill Addition and Remodel, 27 Timber Hill Drive, PL-2022-0075:  
A proposal to add a 556 sq. ft. addition to an existing 1,992 sq. ft. single family residence, along with an interior remodel. *Approved.*
3. McCormick Residence, 212 Wellington Rd., PL-2022-0089:  
A proposal to demolish an existing single family residence and construct a new 5,230 sq. ft. single family residence with 5 bedrooms and 5.5 bathrooms. *Called up and approved with a modified point analysis and additional condition requiring 2 EVSE charging stations.*
4. Beaver Run Summer Tent, 620 Village Rd., PL-2022-0106  
A proposal to install a 4,000 sq. ft. main tent along with associated kitchen/entry/walkway tents to use for conferences and functions, during the summer only. The tents have been used in the same design and location for many years. *Approved.*

**TOWN PROJECT HEARINGS:** None.

### **OTHER:**

Tanya Delahoz was appointed as Planning Commission Chair, and Allen Frechter was appointed Vice Chair.



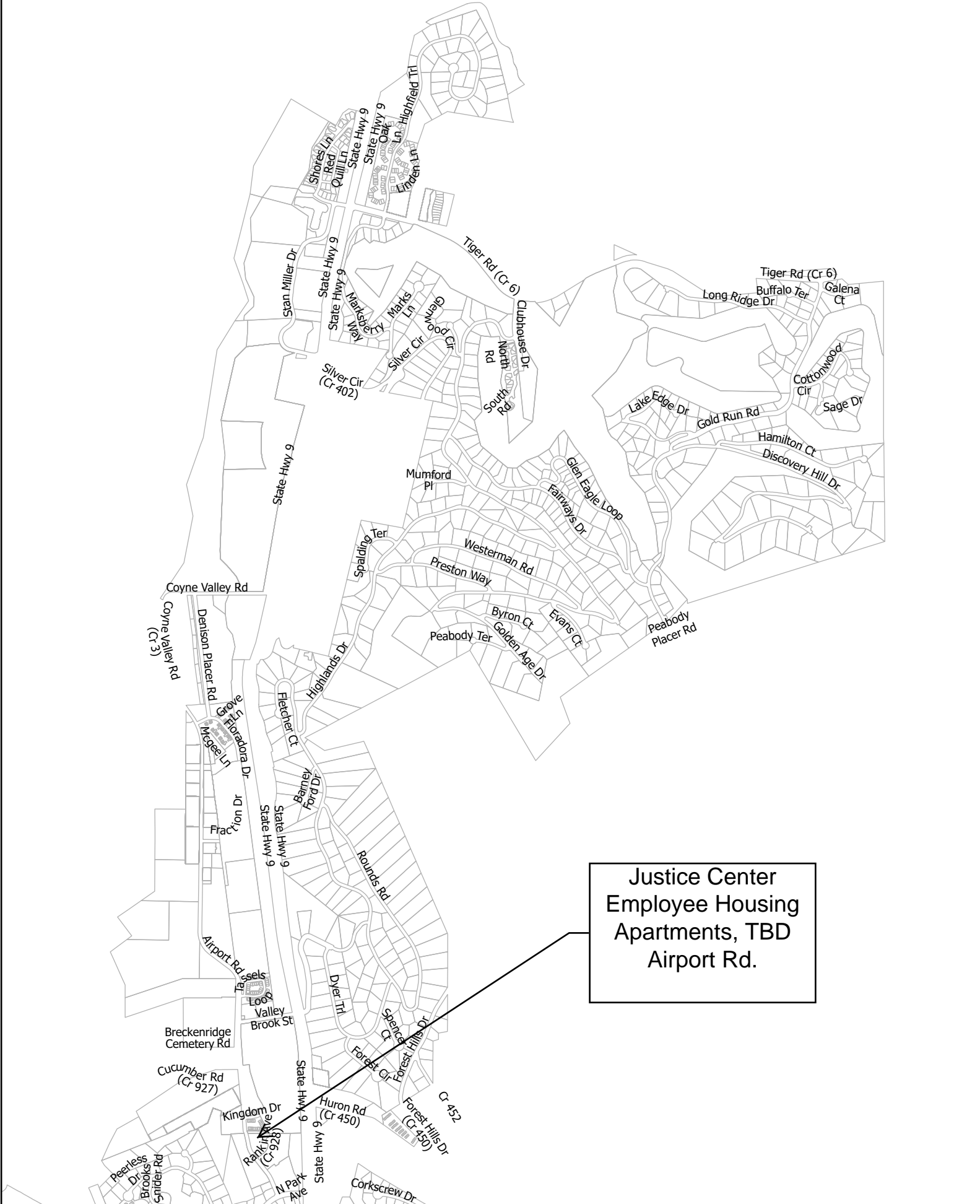


**Beaver Run  
Summer Tent,  
620 Village Rd.**

**27 Timber Hill  
Dr. Addition and  
Remodel, 27  
Timber Hill Dr.**

**McCormick  
Residence, 212  
Wellington Rd.**

**Victorian Ridge  
Exterior Siding,  
486-498 S.  
Ridge Street**



Justice Center  
Employee Housing  
Apartments, TBD  
Airport Rd.

## PLANNING COMMISSION MEETING

The meeting was called to order at 5:30 p.m. by Vice Chair Delahoz.

### ROLL CALL

Mike Giller	Mark Leas	George Swintz - <b>absent</b>
Tanya Delahoz	Steve Gerard	Allen Frechter

### APPROVAL OF MINUTES

The April 5, 2022 Planning Commission Minutes were approved, with the following correction:

Mr. Gerard: Page 6 Commissioner comments #2, “you have to go around the corner to see **the perpendicular axis**”.

### PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- None.

### CONSENT CALENDAR:

1. Victorian Ridge Exterior Siding (SVC) 486-498 S. Ridge Street, PL-2022-0080

Upon staff request, Mr. Gerard made a motion to call up the Victorian Ridge Exterior Siding project, seconded by Mr. Giller. The motion passed 5 to 0 and the project was called up.

Ms. Crump presented an overview of the proposal to install new siding, paint, and exterior lighting fixtures. The Commission was asked if the proposed seven (7) inch reveal siding conforms with Priority Design Standards 266 and 272a.

#### *Commissioner Questions / Comments:*

Mr. Leas: No questions.

Mr. Frechter: No questions.

Mr. Leas: No questions.

Mr. Giller: Could you speak to the overall architectural style? (Ms. Crump: Modeled in Victorian style but with modern features such as the garages on the main level. In the South Main Transition character area it maintains the appearance of a single family residence and these appear as such even though they are condominium units). I see spindle railings and posts with a ball on top, a turret, the style is Victorian, would you say it's neo-Victorian style? (Ms. Crump: Yes).

Ms. Delahoz: None

Mr. Frechter: The Community Development department is asking us on what we think about the 7 inch reveal versus 4 on the siding. Is a four-inch hardie board available? (Applicant, David Frans, Platte Capital Projects: No, it's very difficult to get ahold of. We have ordered material, but I don't know how long the 4 inch would be. Five inch might be easier to obtain. We have the 7 inch already.)

#### *Applicant questions:*

Mr. Giller: Are you saying you ordered before approval? (Mr. Frans: Yes, we have a variety of residential projects in the metro area and in Summit, Eagle, and Grand County. We anticipated the situation of limited supply, so our most widely used siding is the 7 inch. The 4 or 5 is difficult to get. We have seven inch in the warehouse.)

Ms. Delahoz: Timeline on 4.5 or 5 inch? (Mr. Frans: When you place an order it could be anywhere between 4 months to a year). We're speculating? Have you placed an order recently? (Mr.

Frans: No, we have been in contact with a supplier, but until you place the order, the supplier will not reveal the timeframe of delivery).

Mr. Leas: Have you looked into the availability of the Hardie artisan which comes in the smaller dimension? (Mr. Frans: We have not.) You might want to take a look at that.

**Public Comment:**

Tony Caldwell, Platte Capital Projects, Applicant: I wanted to address the siding availability. The prevalent material is the 7 inch. There are potentially others, artisan series or color plus is out there it's just because of the pandemic and increase in demand and decrease in availability they aren't producing at the same volume. The availability of 7 inch, we didn't preorder but we have it stocked up anticipating a shortage which here has been for 8-12 months.

*Commissioner Comments:*

Mr. Leas: For these standards that stipulate 4.5 inch reveal, we can't approve the larger size simply because they can't get the alternate product. This is going to be on that street for a long time for everyone to look at. If they need to go the artisan or wait that's something they have to do.

Mr. Frechter: I'm stuck on the "greater variety of materials" phrase. I see this more as types of material not dimensions. If you look at the Atrium precedent, negative points weren't assigned because it was different materials. I'd hate to set precedent only because of the timing of a project.

Mr. Gerard: I was on the Commission for the Billingham project and they really wanted the wider siding, but it was a limited amount in a limited space. We even had two hearings. We reached a unanimous decision to not allow it even in a smaller amount. Priority Design Standard 266 sets out a clear example of something we shouldn't be allowing to happen. Sarah did a good job calling it out but I don't think we can approve with 7 inch lap siding.

Mr. Giller: I agree, I wish David and Tony success on the project but the 7 inch is more common in contemporary buildings and this is really neo-vernacular Victorian style and wouldn't be appropriate.

Ms. Delahoz: I am in agreement. The variety, we are talking about one material here and the design standard says that the size of the material is 4.5 inches and if we do the entire project in 7 inch reveal I don't feel comfortable so it does not conform. (Mr. Truckey: The applicant can accept with a condition to change it to a 4.5 inch reveal or request a continuance.) (Mr. Frans, There's a variety of nearby projects that have 5 inch. Mr. Caldwell, I think 4 inch is more readily available so I would agree to that condition for the project).

Mr. Gerard made a motion to approve the Victorian Ridge Exterior Siding project, with the additional Condition that the exterior hardie board siding be no greater than 4.5 inch reveal siding, seconded by Mr. Giller. The motion passed 5 to 0.

2. 27 Timber Hill Addition and Remodel (CK), 27 Timber Hill Dr., PL-2022-0075

3. McCormick Residence (CK), 212 Wellington Rd., PL-2022-0089

Mr. Gerard made a motion to call up the McCormick Residence, seconded by Mr. Frechter. The motion passed unanimously and the project was called up.

Ms. Szrek gave an overview of the proposal to demo the existing residence and build a new 5,250 sq. ft. single-family residence with 5 bedrooms and 5.5 bathrooms.

Mr. Gerard: The reason I wanted to call this up is in regards to the driveway. There are some significant trees near the existing driveway, and the way I'm reading the site plan is that they are

relocating the driveway and would be taking out most of those trees, and I don't understand why. (Ms. Szrek: You're correct that there are some significant trees there. The applicant should be available to answer why they are relocating the driveway.) I'm in favor of the project and the applicant did a nice job with avoiding additional disturbance. (Ms. Szrek: Engineering looked at it as well, and required change to the driveway to comply with current codes.)

Brett Confer, Applicant:

You're correct, the reason we had to re-orient the drive was because the existing drive didn't meet engineering standards. We did our best trying to preserve as many trees as possible and the landscaping.

Mr. Gerard: Is the new driveway completely outside of the disturbance envelope? (Ms. Szrek: There's no envelope in the Weisshorn neighborhood, those lines are setback lines.)

*Commissioner Questions / Comments:*

Mr. Leas: No questions. No problems with the application.

Mr. Frechter: No questions. No comments.

Mr. Gerard: I don't see the driveway proposed will be any less steep than it is right now, they could have done more effort in not removing a significant number of mature trees. I think this is excessive site disturbance. I suggest to change the point analysis to at least a minimum of -2 points.

Mr. Giller: I think the project complies. It's unfortunate that the driveway removes trees. Engineering standards are valid reasons to correct the driveway, I do respect Steve's insights.

Mr. Gerard: Is there a report from the engineer that validates this? (Ms. Szrek: No, but since it's a scrape they have to come into full compliance with engineering standards.) (Mr. LaChance: Engineering is required as a sign-off when the building permit application is submitted.)

Mr. Leas: Are they using the existing curb cut? (Ms. Szrek: The cut is the same, Mr. Confer can chime in. They can't keep the existing driveway since they're scraping the house.)

Mr. Gerard: That should be documented by Engineering.

Ms. Delahoz: No questions.

Mr. Frechter: I was trying to find new footprint and old footprint, it looks like the house extends to where the current driveway goes, is it a chicken and the egg situation.

Mr. Confer:

When I look at a site layout, I design to meet Planning and Engineering standards. The curb cut stays the same which is most important. Currently the driveway is too steep, so we lengthened it to comply.

Mr. Gerard made a motion to add negative two (-2) points for excessive site disturbance, seconded by Mr. Frechter. The motion passed 4 to 1.

Mr. Gerard made a motion to approve McCormick Residence (CK), 212 Wellington Rd., PL-2022-0089 with the additional condition of approval that prior to issuance of building permit, the design plans submitted reflect two (2) EVSE charging stations installed in the garage area. Seconded by Mr. Giller. This motion passes 5 to 0.

4. Beaver Run Summer Tent (SVC), 620 Village Rd., PL-2022-0106

27 Timber Hill Addition & Remodel and the Beaver Run Summer Tent were not called up and were approved as presented.

**WORK SESSIONS:**

1. Justice Center Employee Housing Apartments (CL), TBD Airport Rd., PL-2022-0069

Mr. LaChance presented a proposal to construct 2 pre-fabricated employee housing apartment buildings with 14 studios, 28 one-bedroom, and 10 two-bedroom apartments totaling 51,686 sq. ft. The entirety of the project will be deed-restricted employee housing. The proposal would combine the vacant Lot 4, Parkway Center Subdivision, and a portion of the remainder of Government Lot 47 property to the north. The following specific questions were asked of the Commission:

1. Does the Commission support the recommended positive points under Policy 24/R for employee housing and council goals?
2. Does the Commission support the proposed architecture?
3. Does the Commission agree with the remainder of the preliminary point analysis?
4. Does Commission have any other comments in regard to the project prior to the formal submittal?

*Commissioner Questions / Comments:*

- Mr. Giller: Good site tour, good presentation. Will there be energy conservation efforts? There's no points here nor attempt. (Mr. LaChance: EV Studio is on Zoom and can jump in but they are working on including as much solar as possible here; they're also planning on using the carports. Roof mounted is part of this but we don't have final numbers. No positive points yet there). Do you anticipate site furnishing, rec spaces, amenities? (Mr. LaChance: we have weekly meetings, but at this point I don't recall discussing it, the design team can respond). Rankin Ave is a public utility easement, there's no concerns here? (Mr. LaChance: It's a low volume use, so the county could come in with additional use that could intensify that but for now it's low volume. The cul de sac has been used by the Summit County Rescue as a helicopter landing but they won't use that anymore).
- Mr. Leas: Do they have another site? (Mr. LaChance: They're working on that by the time construction starts they'll have an alternate site for the rescue helicopter to land.)
- Mr. Gerard: Is this going to be all electric or will there be gas? (Housing: All electric.) With the issue on parking is there any way there could be a transfer arranged that moves the property line to get all off-street parking onto the same lot? (Mr. LaChance: It's possible; Rankin as a ROW would likely go away because there would be a property line down the middle, and we would have to take away from density from parcel BR (Summit County justice campus), but this isn't part of the current proposal). Doesn't seem critical.
- Mr. Frechter: There was a comment from Carol Rockne attached, that comment said that there's only 10 UPAs per acre so we are exceeding it 3 times? Master Plan says 24.5 SFEs, could you explain how that works? (Mr. LaChance: Carol's letter came before plan revisions and the site has also expanded and includes lot 47 so that adds density, and the letter doesn't factor in the density bonuses.) (Mr. Truckey: The Master Plan supersedes the land use district regarding density.)
- Mr. Leas: Thank you Chapin. My first question you've addressed, but with the trees and the landscape, we are in agreement that most, if not, all of those trees will be lost. They will have to survive the crane setting the units. Is there a prescription that looks at the formula for the caliper for aspens and evergreens? Is it square footage? (Mr. LaChance: Policy 22 says that projects getting +2 must have minimum of 2.5 inch caliper for deciduous and 8 ft tall for evergreen and increasing for more points. Additional requirements for +4 includes items like water conservation and larger trees but it comes straight from the code) When you approved my home and it ended with eight 12-14 foot spruce and 25 aspens and my lot is a lot smaller.
- Ms. Delahoz: On the NE top part, that is the rec lot? (Mr. LaChance: Yes.) We are using a little of it? (Mr. LaChance: Yes the site includes a LU district that includes a recreation use). What will that top be eventually? (Mr. LaChance: The area in red is in an un-platted government lot, I'm not aware of anything). I know we have the minimum parking, it seems low. I know the numbers work and we are trying to have people not have cars but I'd love to see

more parking. (Mr. LaChance: We are evaluating based on code which they meet, so we aren't tasked with anything further. The traffic memo from an engineer evaluated it and identified that there is an expectation that the occupants of this site would use cars less than other multi-family developments). I agree.

Mr. Leas: I brought up to the applicant, that initially, could they have a shared parking agreement allowing tenants to do overnight parking on the government lot? They could park 6-8 am.

Ms. Delahoz: They do already use the lot for safe shelter. When you turn left there is a street light right in the line of sight. It was distracting when I was trying to turn out, so something to put on the radar. I found it distracting and in my line of sight. I would love to see storage in the carports like at Block 11. In the trash area, is there going to be compost? (Mr. LaChance: nothing specified for that yet.)

Dan Osborne, Applicant: We have Laurie Best and Melanie Leas and EV Studio on Zoom. Thank you to Chapin and staff we were a million points behind when we started, this is new for the County to be in development. Employee housing wasn't a core government issue until the last few years so this is new to us but we are in this together. Last fall the County owned this property, we worked through the IGA to address County and Town needs. We worked with the Council and County Commissioners on important things reflected in this plan and what we want to have on this site. When we started out, we had a standard building with peaked roofs and went through iterations and point process, and how that works with town and county goals, we had conversations and met with Town Council and they gave feedback. We really lowered the mass, moved the roofs down, centrally located, and we went with flat roofs so we could get solar. Yes, this will be all electric. Along with that, how do we maximize solar, the gable roofs were high and didn't give us max amount of solar area. We know we won't get to net zero, but we do think we can get close to there and generate 60-80% of needed electricity. That is part of why you see the architectural changes. From where we started to -6 where we are at is a testament to collaboration. We agree and accept the recommendations and to get storage and snow storage sorted out and open space. We marked trees we want to save what we can but for grading and development that is the outfall, there are unfortunately those trade-offs. We will add 60 trees to the site and we will be thoughtful where we put them. We got feedback from neighbors and Commission today. We will put them in locations that make sense. The additional lot 74 gives us room. We made space between Kingdom Park and that gives us space for landscaping and to add the crusher fine rec path and fencing along the parking lot. Not sure yet where that's going but will after final civil drawings. At the next hearing we hope to be at a passing score of zero or on the positive side. We have come a long way. EV Studio is also available.

Mr. Giller: Could you speak to the decision process or path for choosing modular? (Mr. Osborne: Cost to build is so high. The private sector is having trouble and can't deliver affordable housing. Fading West is in BV [Buena Vista] and they have this concept. It gives them economies of scale, they build these boxes the same once we get the design, 72 boxes. Each box is more or less the same from a template in a factory. With their own supply chain. We need innovation on the construction side. It will bring the prices down and make the units more affordable.) Thank you.

Mr. Gerard: Would you wire some EV stations? (Mr. Osborne: Yes, we are contemplating this it just hasn't made it into the plans yet.)

Mr. Frechter: None.

Mr. Leas: Thank you Dan. I have done modular so I have questions. Have you had a chance to look at Fading West and Symmetry construction? (Mr. Osborne: We visited the Farms which is the existing community in BV. We would have been the first apartments out of the factory, but now we will be #2 so we will watch them build apartments in BV. EV Studio has done a lot of these types of projects. We are confident. Same with symmetry, they did the new Search and Rescue building so we've worked with them as a GC [General Contractor]. They'll bring another company on that does site stitch. It's a sub that sets the modular units and

hooks them together, and symmetry will do the finish work). You haven't walked an apartment complex? (Mr. Osborne: we have been in their homes and townhouses, which use modular boxes) I understand but an apartment is more complex (Mr. Osborne: No we haven't walked an apartment.) Symmetry will be the GC and will Summit County have a contract with the sub what is the hierarchy? (Yes, they will work on behalf of the town and the county.) What is the hierarchy? (Mr. Osborne: We aren't there yet and don't have the contracts in place, Symmetry is our agent acting on behalf of the Town and County, then Symmetry, then contracts on the bottom. Now we want land use but we don't have final contracts and those pieces aren't in place yet. (Laurie Best: Mainly all under Symmetry.) I am concerned the Town can get themselves a product that is less than expected. (Mr. Osborne: We appreciate that.) (Mr. LaChance: It is different than stick built because there aren't subs on site early so the timeline is pushed out.) (Mr. Osborne: The timing is very different than regular construction. We are learning working through this and hope to make a template for the timeline, ordering, etc. we are confident we are able to deliver and thank you for the concerns, offline as well). My perception is that the town will be guinea pig on this. In normal construction the town or county would have their employees doing inspections, and then you have modules being made in the factory. So before the close of drywall, you have electrical, plumbing, life safety, fire alarms, sprinklers, all interconnected, who makes the inspections? If they are making it in the factory? Once it gets to site? How does that work? How are we assured? (Mr. Osborne: Couple layers, we share some of those concerns. Summit County will do inspections for any work in their jurisdiction-utilities and foundations. We won't go to BV because that falls to the State. We have talked to Fading West and the state inspectors on that process. Our contractor Symmetry will inspect for all state certifications checked that it has been signed off on, then they bring on site and we do inspections there. The pieces are connected locally. County inspects on behalf of the Town). Are the windows up to Alpine environment standards? (Mr. Osborne: Of course, we don't have the final spec sheets yet, we have Melanie on board as the construction manager and we will be doing that review with our building department, and we have the conversations there as well. They have to meet building codes in the end so that's written into any contract to ensure they meet requirements). Since these stack, it is important that the utility penetrations coming up from the slab match what is being manufactured. Because all you need to do is be off 1/2 inch and you have a problem. Is it your plan to go on site and have symmetry mark out the modular locations on the concrete slabs so you can ensure the penetrations are in the right place? (Mr. Osborne: I can't speak to that at this point; we will outline the procedure for the set and stitch but that's something we will rely on our building department to look at plans to make sure those things line up-work with our GC to do those and we will rely on them to do that for us.)

Mr. Leas: Last question, for the carports, wood framed carports have 8x8 posts, how that will hold up in the winter environment and cars pulling in and out? Wood is problematic. (Mr. Osborne: This is as far as we've gotten, we can look how to protect that and we can talk to the design team). For the flat roofs, we can give incline to the roofs that can give interest and give more solar gain (Mr. Osborne: We have low angle slope, we have a design team looking at best slopes.)

Jake Laureska, EV Studio, applicant:

Thanks Dan for addressing these. This building is not slab on grade this is over a crawl space. EV Studio along with other experts we have a long history with modular. Our design process leaves tolerance for factory to site so using a crawlspace helps give and take. It's a key element. Fading West stocks a standard window, Sierra Pacific products, which are well within compliance and are good quality. Renderings are schematic, what you see is not how it will be ultimately, those wood posts would be treated and embedded in concrete



we are thinking about those things. I want to add to Dan that there tends to be a stigma with modular and I want to reiterate that these are well built in pristine conditions, engineered, and are in full compliance with modern building codes. The boxes will be shipped with weather and air barrier and siding and stone will be field applied. It will look like site built at the end of the day.

Ms. Delahoz: Does Fading West have a good track record? He mentioned Telluride and Leadville. (Mr. Osborne: Their main projects are in BV, I live in Leadville and I know they are looking to make a footprint there). (Mr. LaChance: They are building their own in BV at the Farm Community so they're building multi-family housing there for their employees.)

Public Comment:

Neil Rubinstein, 852 Kingdom Drive:

How did they come up with the bedroom counts? We need more housing. Someone with a one bedroom could be more transient; we need more 2 or 3 bedroom units. I have no issue with modular, what I would like to see is less 1 bedrooms, and more 2 beds and 3 bed family units so what's next door to us is a community like Kingdom Park has been. You mentioned cars; I want to see less parking. We want to be sustainable and we are encouraging cars. We live here because you can walk anywhere. My other concern is looking at where the cars are parked. Those are going to shine into our building so something needs to be done to prevent that. Thank you for the comment and for the work you are doing.

Scott Hornafius, 858 Kingdom Drive:

I am on the Kingdom Park homeowner's board and I am here to express the board's concern with the proposed plans. This was expressed in our letter. The first concern is that 52 units, the zoning is guideline 9.2 is there should only be 10 units per acre. I was surprised Chapin said this complies. That's a lot of units for a 2 acre lot; the board needs to understand better how that's possible. Echoing Neil, we are concerned by studio and 1 bedrooms, 2-3 bedrooms are more compatible for a family than single people which are more transient. The other thing, the 3 story plan the table shows required, allowed, and provided and the height is shown as allowed which is 2 stories, whereas the plan is 3 stories. We are concerned about height of the building. Concern for parking there will be an issue with overflow. The final issue is there isn't sufficient landscaping and no visual barrier between this and Airport Road and Kingdom Park townhomes. We hope to get more of a visual barrier for the people whose backyard faces this development. I encourage you to take Kingdom Parks concerns into your final approval.

Dan Osborne, Applicant:

We have heard these concerns on the unit type, we are open to having more 2-3 bedroom but we need to see what happens to the cost. Maybe we can drop unit count but we can certainly take a look, same with landscaping. We understand the concerns and we have some work to do for some screening. Happy to look at it. For parking, we have technically met the code, which is most important. We are unique so we do have the opportunity to pursue shared parking. If parking is a problem we have additional space as the landowner next door. Potential for an extended license agreement, for overflow at night. There are 14 studios, 28 1-bedroom, 10 2-bedroom. We will look at this unit count internally.

Mr. LaChance: There's a lot going on with the density so I want to clarify this. Lot 4 has underlying zoning, that is in LUD 9.2 which is 10 UPA. The density is superseded by a Master Plan. It allocated SFEs [single family equivalents] 1,200 sf x 25.4 . There is 2,000 sf of density which comes from the un-platted lot. The majority of the density comes from the Parkway Center Master plan. For employee housing as an incentive the town provides bonuses, 15% bonus on the allowance and then a 10% exclusion bonus.

Jake Laureska:

I was going to follow up, we are happy to continue exploring headlights glaring into Kingdom Park we will

looking into solutions for light pollution.

- Mr. Leas: The issue was brought up by Scott that by the time the fill comes in it will be 50 ft. high. Building height is not restricted? I remember going through this with BGV is that not part of Parkway center. (Mr. LaChance: For Parkway there are covenants that are recorded for subdivisions, but the height regulations in this case is coming from the Land Use guidelines and not the Master Plan or covenants. Per Code, the building height is regulated by a relative policy allocating negative points if not meeting that. Private dedications versus a restrictive covenant so this one doesn't have that). What's the difference between BGV and the height restriction there versus here, it's all Parkway Center. It should be consistent and would have the same restrictions. (Mr. Truckey: Height was based on the LUGs for BGV, which is the same as with this project).
- Mr. Leas: Height is not an absolute, it's relative. So in this case there are negative points assigned because it's exceeding the relative policy.
- Mr. Giller: Are you counting the fill? I thought you said it was 35 on a 6 foot fill? (Mr. Osborne: We measured existing grade, then fill, then top of parapet. Standing on existing grade then it would feel high but as perceived, it will be lower, 38 ft. at the highest point) (Mr. LaChance: Yes, 38 ft. includes the fill from existing grade)

*Commissioner Answers to Questions / Comments:*

- Mr. Leas: 1. Yes 2. No, I recommend additional negative points. I have issues with 5A, 6R is fine, 7R is fine, 7R we need additional negative points as many possible. You need 5x as many trees as prescribed to make a dent in loss of trees and for privacy. 22R landscaping, no points should be assigned, 3. No 4. I made all my comments already.
- Mr. Frechter: 1. Yes 2. I support 3. I feel more landscaping is required overall on the site and as more of a buffer. There should be a better buffer between Kingdom Park Townhomes and the project. I expect positive points from adding solar. 4. The buffer zone between Kingdom Park and these units, more buffering like fencing.
- Mr. Gerard: 1. I support 24 R points and the Council goal. 2. I support 3. I agree, 2R, 6R, 7R. I was for creating the benched building pads where I think there is little precedent for these kind of projects having negative points so I wouldn't give negative points here. It's not like Alta Verde. I support 0 points here. 13R and 14R will be fixed. The open space negative 3 might also go away. For the positive points, I support all except +2 for landscaping I think we need more for what are losing 4. I am excited about this modular plan. This may be the future for keeping cost down and am excited to see how this turns out. Well advised to go all electric power. The berm between the sites will go a long way to softening the impacts. The unit count is fine I don't think this is a place for family housing. Kingdom Park is 50% short term rental (Corrected by public member that they are 30% short term rental). Glad we partnered with the county.
- Mr. Giller: Good project. 1. I do. 2. Yes, I support. Interesting to see good quality pre fab 3. Yes, I expect landscaping should be zero. I encourage site amenities. The open space is the courtyard between carports and there is an opportunity for recreation here. 4. Gable roof on dumpster is not compatible. Good project; nice work.
- Ms. Delahoz: 1. Yes, I support 2. I support 3. Landscaping needs to be stepped up. Courtyard could be used more appropriately for amenities, bike racks, benches, and a more community feel. We'll see additional positive points after solar and EV, I'm not sure on negative points under 7R, I am unclear on it. No comment there. I don't think +2 for landscaping should be there 4. I thought there were more units, so I correct my earlier comments and am okay on the parking now. 71 spots for 52 units is enough. I withdraw my previous comments about needing more parking. I am ok with the mix of the units, this is a really good project. I am excited to see this construction. I would like to see the factory.

**OTHER MATTERS:**

1. Town Council Summary
2. Class D Majors Q1 2022 (Memo Only)
3. Class C Subdivisions Q1 2022 (Memo Only)
4. Chair and Vice Chair Appointments

Mr. Frechter made a motion to appoint Ms. Delahoz as the Planning Commission Chair, seconded by Mr. Gerard. The motion passed 4 to 0.

Mr. Gerard made a motion to appoint Mr. Frechter as the Planning Commission Vice Chair, seconded by Ms. Delahoz. The motion passed 4 to 0.

**ADJOURNMENT:**

The meeting was adjourned at 8:39 pm.

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Tanya Delahoz, Chair



## Scheduled Meetings

**Shading indicates Council required attendance – others are optional**

*The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.*

### April 2022

<b>Tuesday, April 26th, 2022</b>	<b>Council Chambers</b>	<b>Second Meeting of the Month</b>	<b>3:00 pm / 7:00 pm</b>
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### May 2022

<b>Tuesday, May 10th, 2022</b>	<b>Council Chambers</b>	<b>First Meeting of the Month</b>	<b>3:00 pm / 7:00 pm</b>
Saturday, May 21st, 2022	Riverwalk Center	Town Clean Up	9:00am - 2:00pm
Wednesday, May 25th, 2022	Main Street	High School Graduates Parade	3:30pm - 4:30pm
<b>Tuesday, May 24th, 2022</b>	<b>Council Chambers</b>	<b>Second Meeting of the Month</b>	<b>3:00 pm / 7:00 pm</b>

### June 2022

<b>Tuesday, June 14th, 2022</b>	<b>Council Chambers</b>	<b>First Meeting of the Month</b>	<b>3:00 pm / 7:00 pm</b>
June 21st - 24th, 2022	Beaver Run	100th Annual CML Conference	All Day
<b>Tuesday, June 28th, 2022</b>	<b>Council Chambers</b>	<b>Second Meeting of the Month</b>	<b>3:00 pm / 7:00 pm</b>

### Other Meetings

April 25th, 2022	Open Space & Trails Meeting	5:30pm
April 26th, 2022	Board of County Commissioners Meeting	9:00am / 1:30pm
April 28th, 2022	Summit Stage Transit Board Meeting	8:15am
	Breckenridge Tourism Office Board Meeting	8:30am
	RW&B Board Meeting	3:00pm
May 3rd, 2022	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
May 4th, 2022	Police Advisory Committee	7:30am
	Breckenridge Events Committee	9:00am
	Childcare Advisory Committee	10:00am
May 5th, 2022	Breckenridge Creative Arts	2:00pm
May 10th, 2022	Board of County Commissioners Meeting	9:00am / 1:30pm
	Workforce Housing Committee	10:30am
May 11th, 2022	Breckenridge Heritage Alliance	Noon
May 12th, 2022	Upper Blue Sanitation District	5:30pm
May 16th, 2022	Social Equity Advisory Commission	9:00am
May 17th, 2022	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm
May 18th, 2022	Summit Combined Housing Authority	9:00am



## Scheduled Meetings

**Shading indicates Council required attendance – others are optional**

*The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.*

May 23rd, 2022	Open Space & Trails Meeting	5:30pm
May 25th, 2022	Transit Advisory Council Meeting	8:10am
May 24th, 2022	Board of County Commissioners Meeting	9:00am / 1:30pm
May 26th, 2022	Summit Stage Transit Board Meeting	8:15am
	Breckenridge Tourism Office Board Meeting	8:30am
	Northwest CO Council of Governments	10:00am
	RW&B Board Meeting	3:00pm
June 1st, 2022	Breckenridge Events Committee	9:00am
	Childcare Advisory Committee	3:00pm
June 7th, 2022	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
June 8th, 2022	Breckenridge Heritage Alliance	Noon
June 9th, 2022	Upper Blue Sanitation District	5:30pm
June 14th, 2022	Board of County Commissioners Meeting	9:00am / 1:30pm
	Workforce Housing Committee	10:30am
June 16th, 2022	Transit Advisory Council Meeting	8:00am
	QQ - Quality and Quantity - Water District	1:15pm
June 17th, 2022	Breckenridge Creative Arts	1:00pm
June 20th, 2022	Social Equity Advisory Commission	9:00am
June 21st, 2022	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm
July 14th, 2022	I-70 Coalition	1:00pm
July 28th, 2022	Breckenridge Creative Arts	1:00pm
TBD	Water Task Force Meeting	10:00am
	Tourism Overlay District Advisory Committee Meeting	10:30am