



**BRECKENRIDGE TOWN COUNCIL
WORK SESSION
Tuesday, February 9, 2010; 3:00 p.m.**

ESTIMATED TIMES: *The times indicated are intended only as a guide. They are at the discretion of the Mayor, depending on the length of the discussion and are subject to change.*

3:00 – 3:15 p.m.	I. <u>PLANNING COMMISSION DECISIONS</u>	Page 2
3:15 – 4:00 p.m.	II. <u>LEGISLATIVE REVIEW</u> Biased Motivated Crime Trash Ordinance Amendment Town Charter Amendments CDOT Maintenance Agreement Real Estate Transfer Tax Appeal	Page 37 Page 41 Page 64 Page 80 Verbal
4:00 – 4:30 p.m.	III. <u>MANAGERS REPORT</u> Committee Reports Public Projects Update Housing/Childcare Update Financials	Page 10 Page 11 Verbal Page 14
4:30 – 5:15 p.m.	IV. <u>OTHER</u> Sunsetting of Open House Signs Art Fair/Art Gallery Update	Page 24 Page 25
5:15 – 6:00 p.m.	V. <u>PLANNING MATTERS</u> Upper Blue Basin Master Plan	Page 26
	*ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA	Page 31

NOTE: Public hearings are not held during Town Council Work Sessions. The public is invited to attend the Work Session and listen to the Council's discussion. However, the Council is not required to take public comments during Work Sessions. At the discretion of the Council, public comment may be allowed if time permits and, if allowed, public comment may be limited. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item. The public will be excluded from any portion of the Work Session during which an Executive Session is held.

Report of Town Manager; Report of Mayor and Council members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items.

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: February 3, 2010

Re: Town Council Consent Calendar from the Planning Commission Decisions of the February 2, 2010, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF February 2, 2010:

CLASS C APPLICATIONS:

1. Goble Residence, PC#2010003, 296 Gold Run Road
New single family residence with 5 bedrooms, 6 bathrooms, 5,856 sq. ft. of density and 6,687 sq. ft. of mass for a F.A.R. of 1:6.61. Approved.
2. Michaud Residence, PC#2010005, 952 Gold Run Road
New single family residence with 5 bedrooms, 5.5 bathrooms, 5,990 sq. ft. of density and 6,810 sq. ft. of mass for a F.A.R. of 1:7.81. Approved.

PLANNING COMMISSION MEETING

THE MEETING WAS CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Leigh Girvin Michael Bertaux Rodney Allen
Jim Lamb JB Katz Dave Pringle arrived at 7:07pm
Dan Schroder was absent.

APPROVAL OF MINUTES

With no changes, the minutes of the January 19, 2010, Planning Commission meeting were approved unanimously (6-0).

APPROVAL OF AGENDA

Mr. Neubecker requested a short discussion on future joint meetings with the Town Council. With no other changes, the Agenda for the February 2, 2010 Planning Commission meeting was approved unanimously (6-0).

CONSENT CALENDAR:

1. Goble Residence (CK) PC#2010003; 296 Gold Run Road
Mr. Lamb noted that a grammatical correction was needed in the Staff memo concerning the required parking spaces. Mr. Kulick was present and said that he would fix the grammatical error.
2. Michaud Residence (CK) PC#2010005; 952 Gold Run Road

With no requests for call up, the Consent Calendar was approved as presented.

WORKSESSIONS:

1. Transition Area Standards

Mr. Mosher presented a memo only worksession. Planning Staff has begun a detailed review of the Handbook of Design Standards for the Transition Areas of the Conservation District which were created in 1994 and are yet to be adopted.

There are 7 Transitions areas:

- #8 - River Park Corridor Transition Area
- #9 - North Main Transition Area
- #10 - Briar Rose Transition Area
- #11 - North End Residential Transition Area
- #12 - East Side Residential Transition Area
- #13 - South End Residential Transition Area
- #14 - South Main Transition Area

During the review of the standards, Staff uncovered discrepancies in the map as it related to some area's descriptions, changes in the Town character/Land Use Districts/direction since the standards were drafted, and several minor typing corrections. As a result, Staff anticipated some of the reviews with the Commission to be simpler than others and anticipated presenting the review of the standards over several meetings.

Commissioner Questions/Comments:

- Ms. Girvin: These were created in 1994 and not yet adopted? (Mr. Mosher: Yes, we are continuing to coordinate with various issues such as conflicting maps of the boundaries and details regarding the Conservation and Transition area overlaps.)
- Mr. Pringle: Transition Districts are outside the Historic District. There has been reluctance to adopt it over the years because no one wanted to deal with the issue of more strict standards outside the Historic District. (Mr. Mosher: This would potentially lessen the strict requirements outside the Historic District.) (Mr. Neubecker: There needs to be clarification of the Transition District boundaries.) The Historic District boundaries were tightened up, that is why the conservation district was created. The Transition District was outside of that. It was a good exercise to go through. (Mr. Neubecker:

We are currently applying the Historic District standards to the Conservation District; this transition area district would create a clarification between Transition District and Historic District.)

2. Landscape Policy

Ms. Cram presented. Staff combined the Commission's recommended changes to the Absolute and relative policies for Policy 22-Landscaping, and presented the Policy in its entirety.

Staff had a few general questions for the Commission to consider.

- Under the Absolute Policy, Section A2, did the Commission believe that a deposit should be secured to guarantee weed free topsoil? This may be cumbersome for Staff to administer.
- Under the Absolute Policy, Section B4, did the Commission believe that the screening requirements should apply between commercial projects as well as residential?
- Under the Absolute Policy, Section B5, the existing language references required irrigation. Did the Commission believe that irrigation should be mandatory? Former discussions with the Commission were uncertain.

At the last worksession, there was discussion on whether or not negative points should be awarded with the minimum standards proposed in the Absolute Ordinance. Staff understood that the Commission did not think that it was necessary; however, in an attempt to keep the Development Code flexible, Staff would like to discuss the possibility again. In particular, Staff wanted to make sure that the point analyses for single family residences would be meaningful. Some possible proposals that would warrant negative points may include little or no new landscaping efforts, use of exotic species, unscreened views, use of surface irrigation where drip is more appropriate, etc.

Commissioner Questions/Comments:

Ms. Girvin: Is there a way to ensure that landscaping is maintained until it can establish itself? (Ms. Cram: Yes. See number 6, it is an Absolute Policy.) Are "type 2" shrubs defined? (Ms. Cram: It is a common size and type used that will be defined in the landscape guidelines.) If I wanted some landscaping against my house, such as cotoneaster and lilac, does it have to be irrigated? (Ms. Cram: Yes, it should be irrigated.) What about my shrubs, like lavender? Does it need to be cut to 6"? (Ms. Cram: This applies to grasses. I think we should define what "flammable" and "non-flammable" vegetation is.) I think there are some good arguments for negative points for landscaping, especially the use of exotic species.

Mr. Bertaux: On number 7 we need to rewrite the sentence and add the word "establishments" with drive-ins and drive-thrus. I think it is odd that weed-barrier would be required under decks, since they don't get much sun. (Ms. Cram: Some are more elevated and do get sun.)

Mr. Lamb: I think the policy regarding replacement of dead mountain pine beetle trees on a case-by-case basis sounds fair. Regarding irrigation, it sounds like that the town already has it covered with the maintenance policy. You can have drip irrigation and not use it, or you could be watering with a hose. Maybe it should say irrigated planting beds.

Ms. Katz: There isn't always a lot of room between commercial lots for additional landscape screening. I think that the concern is more commercial to residential screening. Is one tree snag per acre enough to provide habitat? (Ms. Cram: I will look into it.) (Ms. Girvin: This is for bird habitat.) (Mr. Lamb: Can they be on the ground?) (Ms. Cram: No.)

Mr. Pringle: I think that A2 should be struck because it is redundant, properties are already required to be kept weed free. It just becomes another element of policing for the Town. (Mr. Lamb: I agree.) (Ms. Girvin: It is a nice goal, but not realistic.) In the general statement, it says "mitigating the adverse affects of climate..."; what does that mean? (Ms. Cram: It means to keep landscape areas open to take advantage of solar gains on the south and west sides of homes, protect the structure from northwest winds, things like that. This is from the original code.) Could we say that? If we are cleaning up the ordinance we need to look at all aspects. (Mr. Lamb: I understood the concept. If someone doesn't understand, they can always ask the Planning Department.) (Ms. Girvin: I think if it was in the original code, we should leave it be. I think it keeps it open for good discussion.) (Ms. Cram: We can put it in the landscape guidelines, with images and text.) Should we remove Mountain Pine Beetle references, and rather just say dead, diseased and infested trees? (Mr. Bertaux: I agree.) (Mr. Allen: What about saying "terminally diseased", versus trees that can be

saved, like those infested with mistletoe?) (Ms. Cram: We can include in the guidelines the different diseases that affect landscape in our area.) I think irrigation should be flexible, and points awarded if it is provided. Is there a minimum run of 2:1 that requires a retaining wall to be built? (Ms. Cram: Landscaping does not take well on slopes greater than 2:1; retaining walls should be used if steeper than 2:1 to create benches for landscaping. This is for new construction, not existing natural areas.) What are “drive-in establishments” that are referenced in number 7? (Ms. Cram: This is existing language. We are referring to drive-through uses such as banks or restaurants and requiring landscaping for these types of uses.) Should it say drive-way? (Ms. Cram: No, but we could change it to drive-through.) (Mr. Bertaux: I think it is fine how it is.) Are we suggesting in Zone 2 that a lot needs to be raked? What if I have a 5 acre lot? (Mr. Neubecker: You might have a fire hazard. It is allowed to be 3” deep before it needs to be raked. Over that it becomes a fire hazard. This is based on fire-wise industry standards.) I think in Zone 1 this is a good idea, but in Zone 3 it is a bit much. (Mr. Lamb: I agree that the Zone 3 requirement can be removed, I think that this reflects the County’s policy.)

Mr. Allen: How often do you get covenants? (Ms. Cram: We get covenants whenever someone gets positive points or when someone has to maintain a snow melt system for perpetuity, etc.) Under the snow storage policy, can plants that can survive under snow storage be allowed? In the first sentence it says they are allowed, but the second sentence says you shouldn’t plant in the area. (Mr. Neubecker: Trees would be tougher, groundcovers will survive.) Maybe reference trees? (Ms. Girvin: It also depends on how it gets plowed.) For a residential unit, could the design be boulders or rocks incorporated into the garden to protect their landscaping from snow plows? (Ms. Cram: Yes, that is why we added the language regarding flexibility in the design.) I am concerned about this policy for residential units. (Ms. Cram: We want to protect the landscaping for which people get positive points.) (Ms. Katz: Maybe we should be specific about protection of trees, rather than all landscaping.) (Mr. Neubecker: Is it specifically the wheel retention devices that you are concerned with? Should we make the language more flexible?) (Ms. Cram: We can say that site plans shall be designed to avoid conflicts with parking areas, driveways and landscaping.) In number 9, is it clear that we aren’t talking about trees that were replaced like we discussed before? Compare with number 6. (Ms. Cram: We will look at it.) Do we need to be clearer on dead and diseased tree removal in each of the zones? Make it consistent? (Ms. Cram: We will look at it.) Are you talking about all existing trees for water features? (Ms. Cram: It relates to trees that provide buffers.) Can they replace the trees? (Ms. Cram: We can require mitigation for the non-specimen trees to provide missing buffers.) I don’t think that you should get negative points if you meet the Absolute minimum requirements. (Ms. Cram: I have a note in the Absolute that properties should apply minimum screening, etc. that would prevent that.)

Mr. Allen opened the hearing to public comment.

Mr. Eric Buck: From an enforcement standpoint, how will the town address landscape maintenance requirements if not all homes in the town are required to follow that ordinance? (Mr. Bertaux: We already have that issue now.) (Ms. Katz: Yes, we do already have those issues now. You are under whatever code or obligation was required at time of site plan.) (Mr. Neubecker: There are already maintenance requirements in the current code that apply to everyone.) (Ms. Cram: Are you saying that all homeowners should be required to follow this landscape maintenance policy?) Maybe. (Mr. Neubecker: This is to say that when new construction occurs, the landscape will be maintained.) (Mr. Pringle: Landscaping has greatly improved the aesthetics of our town. The goal is to continue that.) (Mr. Allen: I think that it could be a good ordinance for landscape maintenance to be required.) In the introduction to the fire wise section, we were in favor of having these requirements for new construction. I am a little concerned about the 10% of existing space standard, lead in paragraph to Section C. I would like you to consider that section and make it more relative to actual exterior disturbances. (Mr. Pringle: What is the square footage of construction amount you can add to your house before you have to bring everything up to building code?) (Mr. Neubecker: That only applies to the area you add to your house, the addition or connections to the house.) (Mr. Bertaux: What is the reference to the “major remodel”? I prefer the quantifiable 10 %.) (Ms. Cram: When we are looking at projects doing more than 10% additional square footage or a major remodel, we are saying that defensible space should be required. There is flexibility to keep existing

landscaping.) (Mr. Allen: Why not just require it for new construction?) (Mr. Neubecker: To make the community safer. Since the person is doing a major project, why not make them follow these requirements?) The issue is that there is no provision for people to keep landscaping that they were required to put in. I agree if it is scrapped, then yes it should be required to apply defensible space. (Mr. Grossheusch: 10% is an existing threshold in the code. Adding a new percentage will cause confusion.) (Mr. Allen: So it should be 10% or we should take it out.) (Mr. Bertaux: 10% language is fine with me.) (Mr. Lamb: I think that we should stick with 10% as the threshold. If it is a basement remodel and you aren't disturbing the site, I think it should apply to 10% "of the footprint" or remodels that don't disturb the site.) What about additions straight up? (Ms. Katz: We could exempt excluding interior square footage remodels.) (Mr. Neubecker: How about additional above ground additions of 10%?) (Mr. Rossi: Would it really add this much confusion to add "above ground" or some other exemption?) (Mr. Grossheusch: We can do it, but it is preferred to not create more nuances in the code.) (Ms. Girvin: 10% seems onerous and it should be something more than that to trigger this.) (Ms. Katz: I am fine with leaving it at 10%.) What would be the incentive for Staff to approve an exemption? (Ms. Katz: It is never an incentive; it is just following policy and making good judgment.) (Mr. Allen: Would it be onerous to have criteria for exemption pertaining to site disturbance? For example, if it is a 10% remodel with no site disturbance, it could be criteria for Staff to consider.) (Ms. Cram: We will look at that.) (Ms. Katz: Is the basement example really that common? And how could you not disturb the site at all putting in a basement? I trust that the Commission could make that decision on a case-by-case basis, as it says now in the proposed policy.) (Ms. Cram: Case-by-case is how we review it.) Maybe Staff and the fire-wise committee can look into this. (Mr. Rossi: My issue is that it doesn't relate to site disturbance. Site disturbance should trigger this requirement.) (Mr. Allen: Is this something that Council can look into?)

There was no more public comment and the hearing was closed.

TOWN COUNCIL REPORT:

Mr. Rossi: There is nothing to report.

OTHER MATTERS:

Town Council and Planning Commission Joint Session

Mr. Neubecker: We need to make sure the scheduling works for the next joint session. We want to make sure that we have time to discuss issues together. Our meeting schedules are demanding, and do we need to meet just to meet? We should meet when there are specific issues to discuss, and we want to have time to have serious discussions of those issues. Staff picked April 27th for the next joint meeting, and Staff thought we would discuss the policy issues (energy code, sustainability, housing, etc.) that we have been working on. Staff will email the Planning Commission with a date for a joint meeting in November.

PRELIMINARY HEARING:

1. Bradley Residence Historic Renovation and Landmarking (MM) PC#2010002; 213 East Washington Avenue
Mr. Mosher presented a proposal to perform a complete exterior restoration of the historic house and include a new full basement beneath the footprint. A new small, historically compliant shed is proposed at the southwest corner of the property. The existing non-historic deck that crosses the west property line would be removed. A small driveway is proposed to allow the required parking on-site rather than in the Town right of way. Locally landmarking the property is also requested.

Changes From the Previous Submittal

- After consulting with the Town Historian, Rebecca Waugh, it has been determined that the current Historic Cultural Inventory Form was in error. The house is actually listed on the National Registry of Historic Places Inventory as "contributing". This has been corrected by Carl McWilliams, of Cultural Resource Historians.
 - With the Owner's permission, the interior finishes of the house were removed exposing the existing structure and fabric.

- Rebecca Waugh visited the property with Staff on January 21st and confirmed that all the existing exterior wall planking and framing in the house and in the shed addition are historic and that the original historic window/door openings are intact and in excellent condition.
- The previous submitted elevations for the worksession have been modified to reflect the existing and rehabilitated original openings of the house as all being preserved.
- Staff noted that all of the historic wall planking/framing, openings and roof structure would be preserved.
- Staff has met with the Town Attorney regarding the landmarking process and Code based criteria.

Per the property file:

- Staff has confirmed that the original house was constructed in 1928 in Old Dillon and based on the Colorado Cultural Resource Survey, Architectural Inventory Form.
- The updated assessment and County Records indicate that an addition was built in 1942. Staff believed that the addition in 1942 was the shed portion of the house.
- The house was moved to Breckenridge with the shed addition in 1961, due to the creation of Dillon Dam.
- The house was briefly placed on Main Street Breckenridge in 1961. The Town historian stated that this was common practice to stage buildings there until provisions we made to move the house to another “permanent” property.
- Shortly thereafter, in the early 60’s (July 6th - no year on application) Town records show that the house was moved to its current location. (Staff noted the application for this move defined the footprint of the house as 24’ x 28’, meaning the shed addition was already in place at the time of that move.) From the application: “Moved from Main St. to Washington St. & French St.”
- The 1984 modification was adding “new” windows and interior work.

The presented plans indicated a proposed restoration that would bring the architecture of the house back to how it might have looked when originally constructed and into compliance with the Town’s Historic Guidelines and in this Character Area. The changes would include:

1. The footprint/perimeter walls would remain the same; no additional density would be added above ground.
2. Maintain the historic exterior walls and historic openings.
3. Raise the plate height of the walls by 6 to 12 inches to allow for window and door headers and to meet building code.
4. Repair the low sloping roof(s) and “sister” new framing on the roof with a steeper 10:12 slope. (Priority Policy 161.)
5. Create a front porch. (Design Standard 162 and 169.)
6. Remove the non-compliant, non-historic windows and replace with vertically orientated double-hung compliant wood windows.
7. Create a full basement/foundation (based on approval of landmarking) for additional living space.
8. Build a new detached shed (outbuilding) for storage. (Design Standard 159 and 167.)
9. Reside the structure with historic compliant horizontal lap siding 4”-4 ½” exposure. (Priority Policy 165.)
10. Re-sheath the roof with historic compliant cut wood shingles.
11. Shift the house slightly on the lot, squaring it up to allow for parking on-site.
12. Substantial permanent electrical, plumbing, and/or mechanical system upgrades to the house.

The report represented a substantial change from the report for the previous worksession. The official historic status/rating of the building has been corrected to “contributing with qualifications” with the possibility of obtaining a higher rating after the restoration; the National Registry of Historic Places Inventory has rated this building as “contributing”; the condition and quantity of existing historic fabric has been physically verified; and the Town Historian supported locally landmarking the building.

The architect/agent for the applicants has worked closely with Staff to accurately restore the historic structure with minimal modifications to the original character.

Staff had 3 questions for the Planning Commission:

1. Did the Commission believe the change in roof angle from less than 3:12 to a 10:12 deters from the original character enough to require a variance from Priority Policy 69?
2. Did the Commission support awarding positive nine (+9) points for the restoration efforts under Policy 24/R?
3. Did the Commission support locally landmarking this property based on the Code based criteria outline in the presented memo from the Town Attorney?

Ms. Sutterley, architect/agent, presented. There were four main points of concern: landmarking, policy 69, architecture and parking. Based on the new evidence found, we have a historic building and we need to save it. Landmarking is very important for this structure, and it is confirmed to be historic. We will get a completely renovated, attractive, historic structure, a livable structure, and it is wonderful that people want to live in smaller houses in the Town core. You don't see any additional density; it will have the same look, just more attractive. Priority Policy 69 (roof pitch) is another big issue. "What if historic isn't right?" was a point made by Commissioner Pringle years ago in a previous meeting about historic structures. I think we are not following this policy completely, but are making the home look right with other historic homes in the neighborhood. It isn't possible to keep the same roof pitch that exists now. Anyway, physically the roof will need to be removed and then replaced to keep the historic window openings intact with new headers. Per code we have to have window headers of a minimum height. In addition, no other historic buildings have a roof pitch this low. Architecturally, I am showing a different approach with a very simple solution first. The site is another point of discussion, especially the potential for a new future sidewalk next to the property line (per Public Works) which isn't currently feasible due to existing retaining wall locations over the property line. The parking encroachment would extend only to the edge of the existing retaining wall. The property was permitted specific mass, allowing a shed, and it doesn't fit without this parking exception. Another problem is that a parking spot has to be 9'x18' and we are going from no parking on-site to two parking spots on the site.

Staff also welcomed any additional Commissioner comments.

Mr. Allen opened the hearing to public comment. There was no public comment, and the hearing was closed.

Commissioner Questions/Comments:

Ms. Girvin: Will this new information keep the Town Council from calling up this issue, as noted in the Town Council report from a previous meeting? (Mr. Mosher: This comment was said prior to any application being filed and reviewed by the Commission. The information that we have now was not available at the time of the worksession, and we think the information regarding the historic status is now more solid.) (Ms. Katz: Could that be a legal problem, for Council to say they will call up the project before it is even submitted for application?) I like the proposed roof. You are keeping two of the trees on site? (Ms Sutterley: Yes.) There is quite a distance between the concrete pan and the actual property line, and quite a bit of real estate designated as permit parking? (Ms. Sutterley: Yes. I was wondering if that spot could be for the site.)

Final Comments: I am thrilled that the house is meeting the required characteristics for landmarking. There needs to be more historic buildings than non-historic buildings in our Town. Additional landmarking items I checked on Mr. Berry's memo are column B6 and B10, social heritage and interconnectedness of the towns in our community. It is important to maintain this building in our community. I like the proposed roof angle. I am between positive six (+6) and positive nine (+9) on points for the restoration, because this doesn't seem to be quite the level of other historic buildings that have received positive nine (+9) points in the past. I like the simplicity of the proposed architecture. If parking could start on the property line to the west, someone will come along and block you in. Someone who has permit parking will not see the parked car and could block you in.

Mr. Bertaux: Will the historic openings be preserved? (Mr. Mosher: Yes, all of them.) Doesn't the property have a crown on the grade/slope? Will the height or elevation of the structure change? (Mr. Mosher: Yes, the property grade falls down. But there will be no elevation change except raising the plate of the roof a few inches to meet Code.) (Ms. Sutterley: The floor elevation stays the same.)

Final Comments: I don't know that you need to process a variance for the change in roof slope. I think you could find that it meets priority policy 69. I think it is more like positive six (+6) points for the restoration. I will support local landmarking. In addition to the three points in the memo from Mr. Barry, there are historic materials being preserved.

- Mr. Lamb: I like the proposed roof slope. The character of the rest of the neighborhood has steeper roofs. We are doing this for a specific purpose, to match the historic character of the historic neighborhood. (Ms. Katz: I agree. The historic character of the neighborhood calls for the roof element to be altered slightly.)
Final Comments: I think positive nine (+9) points is in the ballpark for the restoration efforts. I support landmarking and it will be a great project for the neighborhood. Support items mentioned by Staff and B6, C1 from Mr. Berry's memo regarding landmarking. Need to figure out the parking issue with Staff.
- Ms. Katz: I like the proposed roof. Concerned about the comments about a potential future call-up from Town Council before any review by Planning Commission.
Final Comments: Yes on the roof. Yes on positive nine (+9) points. Yes on landmarking. I think for landmarking we also have the existing materials and historical heritage, and also B5, style except for the existing roof pre-Mr. Berry's memo. Do we know how many buildings are in the Town that were moved from Dillon into Breckenridge? This can be an even more historic structure because there are so few of them in our Town. Also, on Mr. Berry's memo about landmarking, support item number 4, restoring based on what it used to look like; maybe the existing roof was damaged in the move to the town.
- Mr. Pringle: I don't think we necessarily have to go to a variance request for the roof slope. I think there is wiggle room in the priority policy.
Final Comments: Even if the roof angle came in as existing, I think we would recommend that it comply with existing Breckenridge historic architecture. I think the roof change will be a benefit. I would support positive nine (+9) points. I think what you are doing to the house is good architecturally. I would support the landmarking as it contributes to the historic character. In addition, social importance, number 9 could also be added.
- Mr. Allen: How will you address the parking on this plan? (Ms. Sutterley: We will address prior to the next hearing.) What is the height of the shed and can it be higher? (Mr. Mosher: They are mostly concerned with the footprint. Staff will come back at the next hearing with some more details.) Could an encroachment license improve the shed situation? (Mr. Mosher: If Engineering and Public Works supported it.)
Final Comments: I am in favor of the roof angle. I think it deserves positive nine (+9) points. I support landmarking. I had column B5, style associated with the Breckenridge area.

ADJOURNMENT

The meeting was adjourned at 10:05 p.m.

Rodney Allen, Chair

MEMO

TO: Mayor & Town Council

FROM: Tim Gagen

DATE: February 3, 2010

RE: Committee Reports

CAST **Tim Gagen** **January 28, 2010**
Verbal report

CDOT **Tim Gagen**
Verbal report

Other Meetings

CML	Tim Gagen	No Meeting
Summit Leadership Forum	Tim Gagen	No Meeting
SCHA	Laurie Best	No Meeting
Wildfire Council	Matt Thompson	No Meeting
Public Art Commission	Jen Cram	No Meeting
Fire Wise Task Force	Jen Cram	No Meeting
LLA	MJ Loufek	No Meeting
Summit Stage	James Phelps	No Meeting
Police Advisory Committee	Rick Holman	No Meeting



MEMORANDUM

TO: Town Council

FROM: Tom Daugherty, Town Engineer
Scott Reid, Open Space and Trails Planner

DATE: January 19, 2010

SUBJECT: Town Main Street and Bicycle Striping Plan for 2010

In 2009, the Town of Breckenridge was honored as a silver-level Bicycle Friendly Community by the League of American Bicyclists (LAB). This designation is based on the Town's long term, concerted efforts to accommodate and promote bicycling and other forms of alternative transportation.

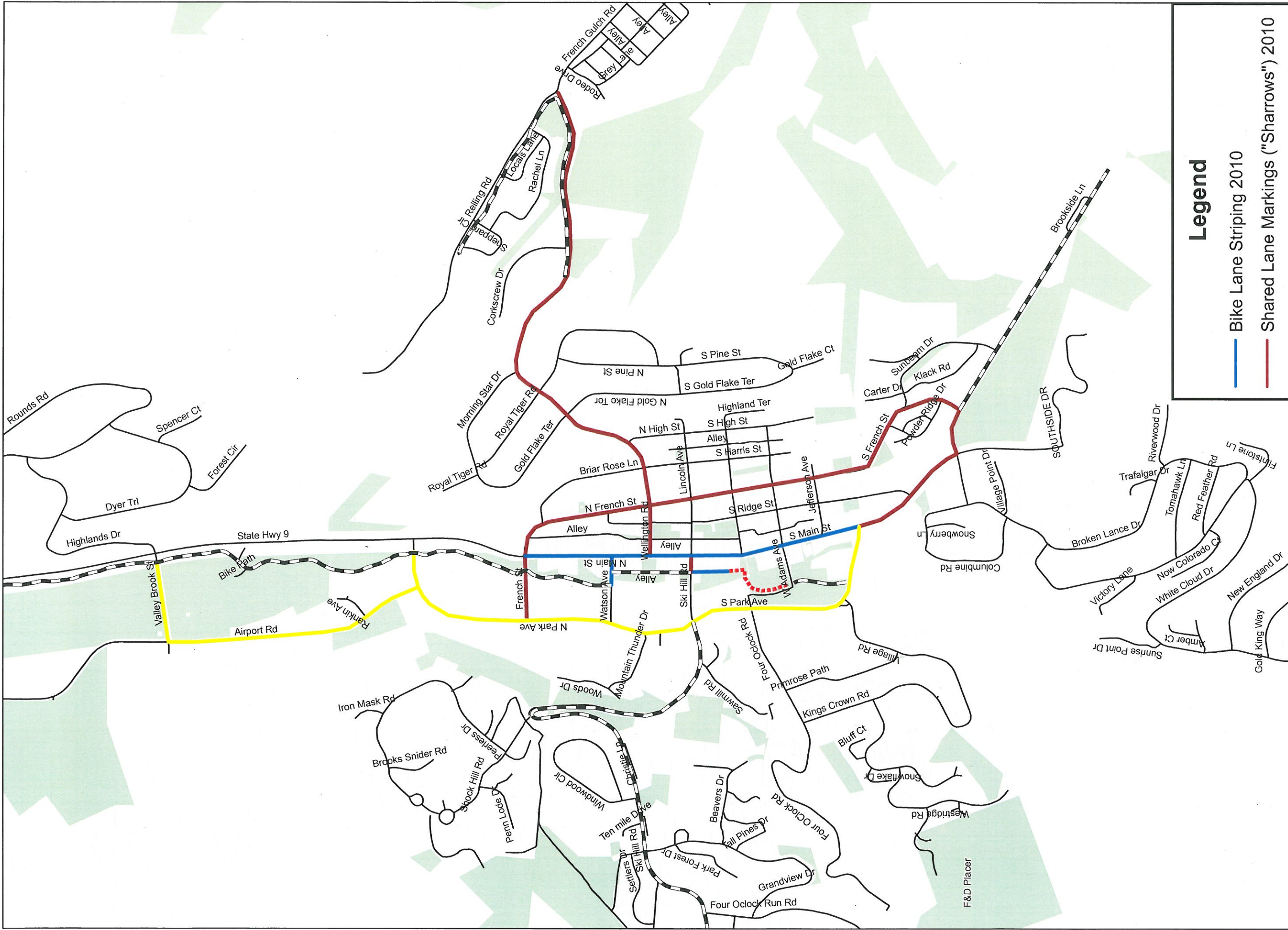
In recognizing the Town as a silver-level community, LAB touted the paved pathway system, singletrack trail network, green commutes and bike to work day education efforts, open space protection efforts, and school-based bicycle training. LAB also provided staff with feedback to help the Town improve as a Bicycle Friendly Community. Suggested improvements included additional signage and striping, and enhanced educational efforts.

Accordingly, staff has developed a bike route striping and signage plan to improve bicyclist wayfinding and safety. Attached is a map outlining the proposal, which includes new bike lane striping, shared lane markings (a.k.a. "sharrows"), and bike route/share the road signs for several primary cycling routes through Town. Funding for this project was partially secured via a \$5,000 grant from the Summit Prevention Alliance, and the current Public Works road striping line item (\$5,000).

Council has also asked staff to evaluate the cost and implementation of a bike path striping for Main Street as well. Staff proposes to combine these efforts to increase efficiencies and economies of scale, and to implement an overall bicycle wayfinding package to improve the Town's bicycle friendly community standing.

The total cost of the striping and signage plan is approximately \$20,000. Staff plans on prioritizing the plan to spend up to the \$10,000 currently available in the budget. The remaining signs and striping can be budgeted in 2011. Keep in mind that these stripes will need to be repainted every year which will add approximately \$10,000 per year to the budget.

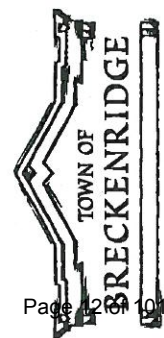
Unless Council has any concerns with this plan staff anticipated this plan being implemented this spring.



Legend

- Bike Lane Striping 2010
- Shared Lane Markings ("Sharrows") 2010
- ⋯ Bike Route dismount marking 2010
- Existing Town Paved Pathways
- Existing Designated Bike Routes
- Town Streets
- Public Open Space

Draft Bike Lane Striping Map 1/6/10



This map is for display purposes only.
Do not use for legal conveyance.
Not necessarily accurate by surveying standards and
does not comply with the National Mapping Accuracy Standards
© 2009 Town of Breckenridge Open Space Division.

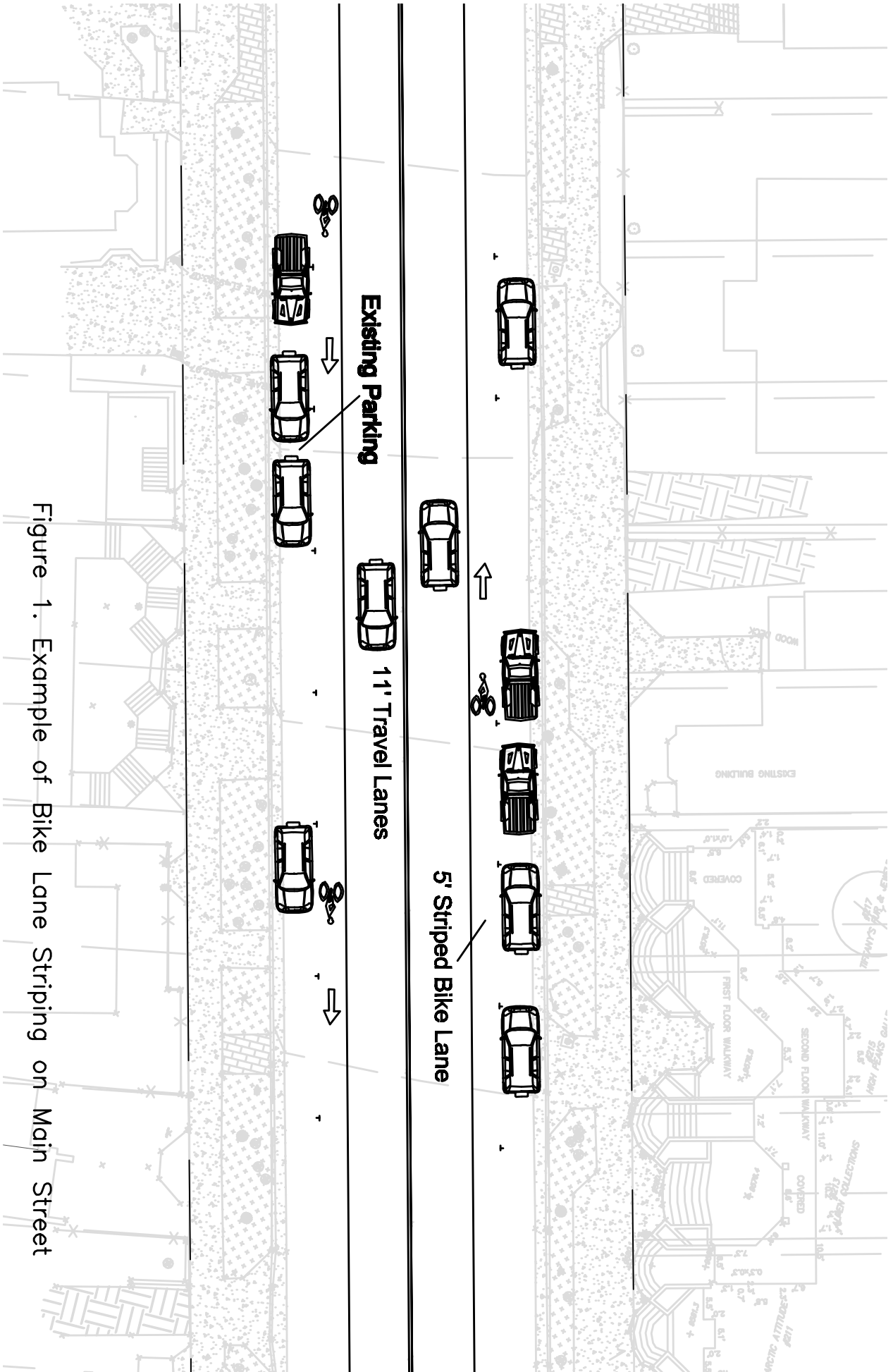


Figure 1. Example of Bike Lane Striping on Main Street

**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

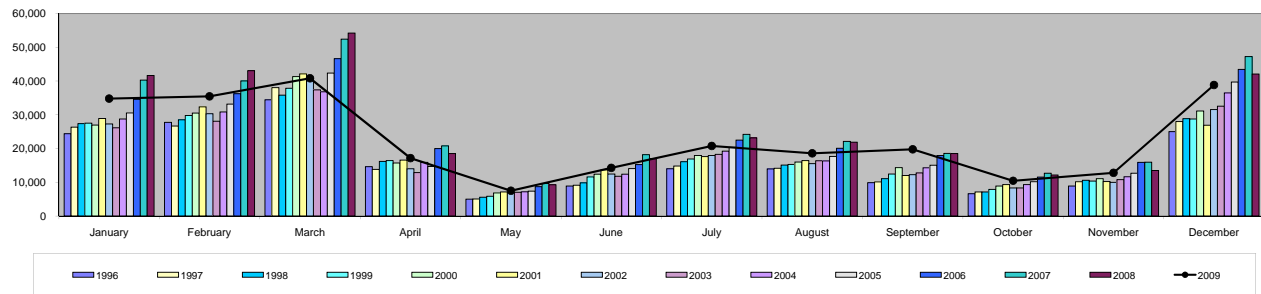
(in Thousands of Dollars)

Total - All Categories*

* excluding Undefined and Utilities categories

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly 08-09	YTD 2008	YTD 2009	YTD % Change 08-09
January	24,356	26,315	27,355	27,490	26,938	28,887	27,264	26,117	28,764	30,549	34,589	40,283	41,665	34,776	-16.5%	41,665	34,776	-16.5%
February	27,767	26,667	28,510	29,777	30,510	32,350	30,295	28,093	30,808	33,171	36,236	40,034	43,052	35,444	-17.7%	84,717	70,220	-17.1%
March	34,438	38,037	35,824	37,843	41,307	42,120	40,962	37,377	36,807	42,370	46,603	52,390	54,237	40,805	-24.8%	138,954	111,025	-20.1%
April	14,619	13,809	16,196	16,407	15,702	16,565	13,982	12,868	15,894	14,635	19,963	20,758	18,483	17,160	-7.2%	157,437	128,185	-18.6%
May	4,994	5,024	5,530	5,822	6,816	7,107	6,914	7,028	7,179	7,355	8,661	9,629	9,251	7,459	-19.4%	166,688	135,644	-18.6%
June	8,856	9,093	9,826	11,561	12,400	13,676	12,426	11,774	12,395	14,043	15,209	18,166	16,988	14,246	-16.1%	183,676	149,890	-18.4%
July	13,979	14,791	16,080	16,899	17,949	17,575	17,909	18,273	19,208	20,366	22,498	24,168	23,160	20,734	-10.5%	206,836	170,624	-17.5%
August	13,940	14,145	15,077	15,253	15,994	16,389	15,508	16,362	16,326	17,625	20,071	22,125	21,845	18,552	-15.1%	228,681	189,176	-17.3%
September	9,865	10,099	11,033	12,427	14,310	12,002	12,224	12,778	14,261	15,020	17,912	18,560	18,481	19,743	6.8%	247,162	208,919	-15.5%
October	6,598	7,120	7,132	7,880	8,876	9,289	8,323	8,311	9,306	10,170	11,544	12,687	12,120	10,434	-13.9%	259,282	219,353	-15.4%
November	8,847	10,173	10,588	10,340	11,069	10,211	9,942	10,780	11,604	12,647	15,877	15,943	13,483	12,775	-5.3%	272,765	232,128	-14.9%
December	24,975	27,965	28,845	28,736	31,107	26,870	31,564	32,525	36,482	39,687	43,431	47,258	42,076	38,809	-7.8%	314,841	270,937	-13.9%
Totals	193,234	203,238	211,996	220,435	232,978	233,041	227,313	222,286	239,034	257,638	292,594	322,001	314,841	270,937				

2009 Monthly Sales Tax Activity (in thousands of dollars)



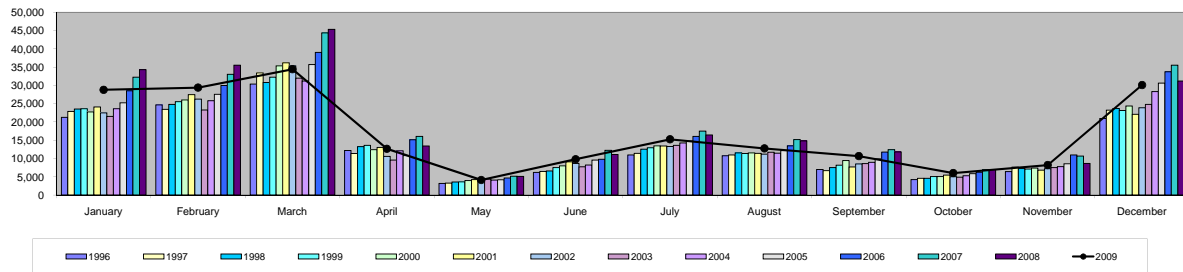
**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail-Restaurant-Lodging Summary

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly 08-09	YTD 2008	YTD 2009	YTD % Change 08-09
January	21,263	22,893	23,523	23,629	22,723	24,118	22,465	21,509	23,620	25,240	28,528	32,258	34,290	28,795	-16.0%	34,290	28,795	-16.0%
February	24,673	23,443	24,805	25,532	26,044	27,464	26,258	23,253	25,826	27,553	29,972	33,039	35,511	29,392	-17.2%	69,801	58,187	-16.6%
March	30,343	33,414	30,809	32,254	35,348	36,196	35,344	31,988	31,209	35,705	39,051	44,390	45,338	34,423	-24.1%	115,139	92,610	-19.6%
April	12,182	11,347	13,256	13,579	12,426	13,029	10,587	9,562	12,102	10,773	15,134	16,025	13,410	12,642	-5.7%	128,549	105,252	-18.1%
May	3,167	3,264	3,565	3,610	3,949	4,203	3,950	4,331	4,095	4,179	4,647	5,146	5,111	4,109	-19.6%	133,660	109,361	-18.2%
June	6,174	6,451	6,588	7,513	8,001	9,058	8,619	7,724	8,217	9,568	9,789	12,225	11,112	9,789	-11.9%	144,772	119,150	-17.7%
July	10,950	11,405	12,527	12,944	13,464	13,406	13,292	13,590	14,248	14,766	16,038	17,499	16,446	15,251	-7.3%	161,218	134,401	-16.6%
August	10,738	10,981	11,517	11,352	11,542	11,407	11,174	11,717	11,429	12,122	13,446	15,167	14,815	12,755	-13.9%	176,033	147,156	-16.4%
September	6,966	6,687	7,492	8,160	9,443	7,666	8,513	8,599	8,940	9,897	11,761	12,418	11,794	10,642	-9.8%	187,827	157,798	-16.0%
October	4,232	4,560	4,578	5,049	5,054	5,425	4,991	4,855	5,257	5,824	6,248	6,934	6,977	6,010	-13.9%	194,804	163,808	-15.9%
November	6,426	7,617	7,255	7,122	7,352	6,816	7,174	7,511	7,771	8,557	10,963	10,650	8,637	8,200	-5.1%	203,441	172,008	-15.5%
December	20,928	23,219	23,650	23,124	24,361	22,090	23,901	24,818	28,314	30,619	33,736	35,517	31,211	30,112	-3.5%	234,652	202,120	-13.9%
Totals	158,042	165,281	169,565	173,868	179,707	180,878	176,268	169,457	181,028	194,803	219,313	241,268	234,652	202,120				

2009 Monthly Sales Tax Activity (in thousands of dollars)



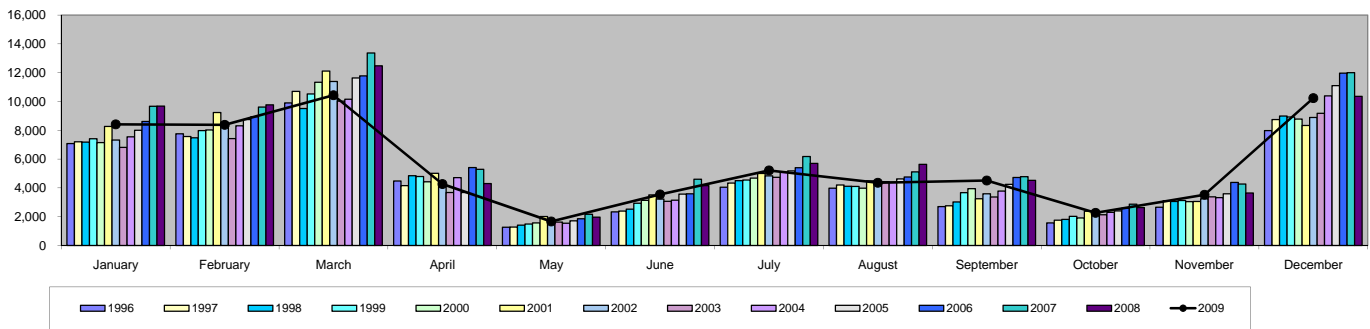
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail Sales

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	7,079	7,205	7,173	7,411	7,149	8,271	7,320	6,807	7,545	8,001	8,607	9,665	9,684	8,407	-13.2%	9,684	8,407	-13.2%
February	7,753	7,568	7,474	7,983	8,024	9,231	8,549	7,418	8,312	8,744	8,942	9,607	9,763	8,383	-14.1%	19,447	16,790	-13.7%
March	9,902	10,702	9,507	10,525	11,337	12,116	11,390	10,028	10,162	11,632	11,774	13,373	12,479	10,435	-16.4%	31,926	27,225	-14.7%
April	4,481	4,156	4,841	4,789	4,423	5,008	4,105	3,679	4,714	3,678	5,406	5,287	4,301	4,262	-0.9%	36,227	31,487	-13.1%
May	1,263	1,272	1,408	1,492	1,569	2,014	1,583	1,626	1,549	1,708	1,858	2,165	1,965	1,667	-15.2%	38,192	33,154	-13.2%
June	2,335	2,391	2,521	2,931	3,135	3,514	3,227	3,062	3,140	3,565	3,589	4,597	4,153	3,549	-14.5%	42,345	36,703	-13.3%
July	4,040	4,336	4,499	4,543	4,678	4,998	4,838	4,732	5,087	5,174	5,403	6,176	5,700	5,216	-8.5%	48,045	41,919	-12.8%
August	3,981	4,199	4,109	4,100	3,973	4,492	4,269	4,429	4,397	4,620	4,757	5,110	5,631	4,352	-22.7%	53,676	46,271	-13.8%
September	2,698	2,753	3,021	3,671	3,944	3,242	3,587	3,370	3,781	4,249	4,726	4,783	4,527	4,516	-0.2%	58,203	50,787	-12.7%
October	1,563	1,759	1,815	2,024	1,908	2,374	2,132	2,127	2,298	2,404	2,591	2,866	2,635	2,265	-14.0%	60,838	53,052	-12.8%
November	2,650	3,108	3,060	3,124	3,041	3,057	3,249	3,378	3,326	3,586	4,376	4,267	3,641	3,524	-3.2%	64,479	56,576	-12.3%
December	7,978	8,746	8,985	8,919	8,782	8,338	8,893	9,184	10,388	11,099	11,971	12,000	10,358	10,233	-1.2%	74,837	66,809	-10.7%
Totals	55,723	58,195	58,413	61,512	61,963	66,655	63,142	59,840	64,699	68,460	74,000	79,896	74,837	66,809				

2009 Monthly Sales Tax Activity (in thousands of dollars)



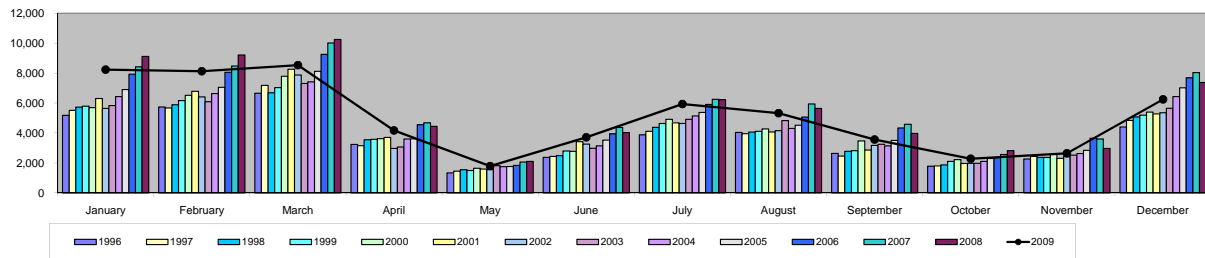
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Restaurants/Bars

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	5,180	5,515	5,723	5,784	5,697	6,300	5,644	5,835	6,425	6,897	7,924	8,414	9,117	8,229	-9.7%	9,117	8,229	-9.7%
February	5,735	5,667	5,880	6,162	6,519	6,783	6,412	6,092	6,637	7,047	8,058	8,467	9,208	8,127	-11.7%	18,325	16,356	-10.7%
March	6,651	7,180	6,688	7,031	7,792	8,258	7,870	7,307	7,413	8,117	9,256	10,015	10,240	8,527	-16.7%	28,565	24,883	-12.9%
April	3,238	3,149	3,548	3,576	3,624	3,706	2,967	3,068	3,595	3,609	4,552	4,678	4,440	4,173	-6.0%	33,005	29,056	-12.0%
May	1,329	1,454	1,541	1,492	1,641	1,590	1,561	1,808	1,746	1,760	1,832	2,058	2,107	1,783	-15.4%	35,112	30,839	-12.2%
June	2,364	2,437	2,488	2,796	2,779	3,413	3,257	2,982	3,136	3,525	3,938	4,370	4,030	3,712	-7.9%	39,142	34,551	-11.7%
July	3,877	4,113	4,380	4,639	4,910	4,675	4,632	4,913	5,138	5,375	5,905	6,249	6,218	5,931	-4.6%	45,360	40,482	-10.8%
August	4,032	3,953	4,056	4,106	4,270	4,068	4,156	4,832	4,302	4,521	5,067	5,933	5,639	5,319	-5.7%	50,999	45,801	-10.2%
September	2,641	2,452	2,770	2,814	3,468	2,860	3,169	3,249	3,138	3,498	4,340	4,585	3,971	3,563	-10.3%	54,970	49,364	-10.2%
October	1,779	1,807	1,870	2,097	2,220	1,959	1,977	1,978	2,100	2,290	2,352	2,564	2,818	2,279	-19.1%	57,788	51,643	-10.6%
November	2,261	2,428	2,364	2,367	2,558	2,307	2,425	2,520	2,624	2,841	3,651	3,593	2,972	2,641	-11.1%	60,760	54,284	-10.7%
December	4,402	4,834	5,076	5,191	5,393	5,275	5,354	5,646	6,428	7,017	7,681	8,028	7,371	6,243	-15.3%	68,131	60,527	-11.2%
Totals	43,489	44,989	46,384	48,055	50,871	51,194	49,424	50,230	52,682	56,497	64,556	68,954	68,131	60,527				

2009 Monthly Sales Tax Activity (in thousands of dollars)



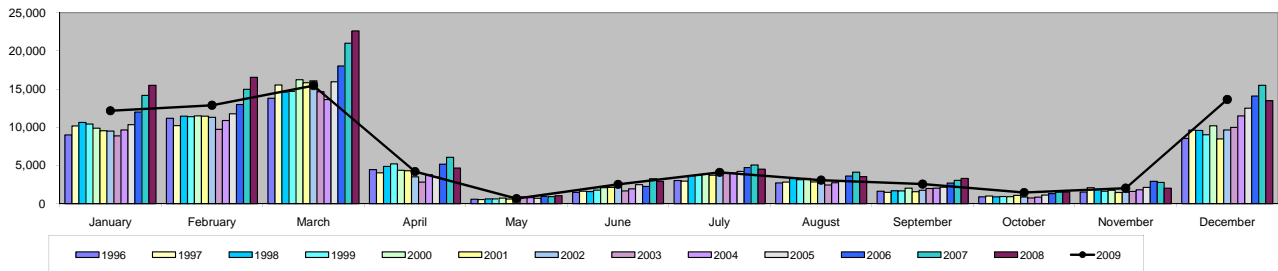
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Short-Term Lodging

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	9,004	10,173	10,627	10,434	9,877	9,547	9,501	8,867	9,650	10,342	11,997	14,179	15,489	12,159	-21.5%	15,489	12,159	-21.5%
February	11,185	10,208	11,451	11,387	11,501	11,450	11,297	9,743	10,877	11,762	12,972	14,965	16,540	12,882	-22.1%	32,029	25,041	-21.8%
March	13,790	15,532	14,614	14,698	16,219	15,822	16,084	14,653	13,634	15,956	18,021	21,002	22,619	15,461	-31.6%	54,648	40,502	-25.9%
April	4,463	4,042	4,867	5,214	4,379	4,315	3,515	2,815	3,793	3,486	5,176	6,060	4,669	4,207	-9.9%	59,317	44,709	-24.6%
May	575	538	616	626	739	599	806	897	800	711	957	923	1,039	659	-36.6%	60,356	45,368	-24.8%
June	1,475	1,623	1,579	1,786	2,087	2,131	2,135	1,680	1,941	2,478	2,262	3,258	2,929	2,528	-13.7%	63,285	47,896	-24.3%
July	3,033	2,956	3,648	3,762	3,876	3,733	3,822	3,945	4,023	4,217	4,730	5,074	4,528	4,104	-9.4%	67,813	52,000	-23.3%
August	2,725	2,829	3,352	3,146	3,299	2,847	2,749	2,456	2,730	2,981	3,622	4,124	3,545	3,084	-13.0%	71,358	55,084	-22.8%
September	1,627	1,482	1,701	1,675	2,031	1,564	1,757	1,980	2,021	2,150	2,695	3,050	3,296	2,563	-22.2%	74,654	57,647	-22.8%
October	890	994	893	928	926	1,092	882	750	859	1,130	1,305	1,504	1,524	1,466	-3.8%	76,178	59,113	-22.4%
November	1,515	2,081	1,831	1,631	1,753	1,452	1,500	1,613	1,821	2,130	2,936	2,790	2,024	2,035	0.5%	78,202	61,148	-21.8%
December	8,548	9,639	9,589	9,014	10,186	8,477	9,654	9,988	11,498	12,503	14,084	15,489	13,482	13,636	1.1%	91,684	74,784	-18.4%
Totals	58,830	62,097	64,768	64,301	66,873	63,029	63,702	59,387	63,647	69,846	80,757	92,418	91,684	74,784				

2009 Monthly Sales Tax Activity (in thousands of dollars)



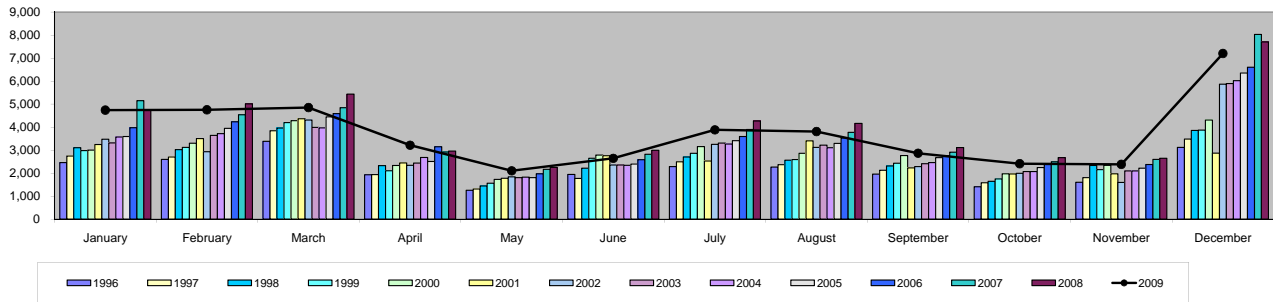
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Grocery/Liquor Stores

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	2,458	2,746	3,104	2,977	2,999	3,242	3,472	3,314	3,570	3,589	3,977	5,149	4,744	4,741	-0.1%	4,744	4,741	-0.1%
February	2,595	2,702	3,020	3,119	3,296	3,501	2,931	3,643	3,714	3,949	4,233	4,536	5,009	4,755	-5.1%	9,753	9,496	-2.6%
March	3,383	3,839	3,960	4,199	4,282	4,366	4,311	3,988	3,968	4,449	4,585	4,844	5,436	4,852	-10.7%	15,189	14,348	-5.5%
April	1,928	1,937	2,325	2,105	2,330	2,441	2,336	2,437	2,682	2,503	3,149	2,920	2,959	3,213	8.6%	18,148	17,561	-3.2%
May	1,256	1,309	1,440	1,558	1,728	1,779	1,836	1,801	1,823	1,806	1,969	2,169	2,246	2,100	-6.5%	20,394	19,661	-3.6%
June	1,940	1,772	2,214	2,648	2,784	2,760	2,352	2,354	2,341	2,392	2,584	2,822	2,990	2,643	-11.6%	23,384	22,304	-4.6%
July	2,283	2,494	2,701	2,862	3,152	2,527	3,253	3,303	3,266	3,414	3,588	3,899	4,264	3,881	-9.0%	27,648	26,185	-5.3%
August	2,266	2,364	2,559	2,587	2,861	3,404	3,117	3,216	3,103	3,292	3,529	3,771	4,161	3,807	-8.5%	31,809	29,992	-5.7%
September	1,959	2,122	2,311	2,430	2,765	2,231	2,284	2,409	2,456	2,671	2,757	2,908	3,113	2,864	-8.0%	34,922	32,856	-5.9%
October	1,407	1,584	1,644	1,748	1,969	1,965	1,990	2,066	2,069	2,239	2,372	2,494	2,673	2,408	-9.9%	37,595	35,264	-6.2%
November	1,602	1,804	2,330	2,152	2,339	1,970	1,597	2,096	2,096	2,214	2,377	2,600	2,647	2,379	-10.1%	40,242	37,643	-6.5%
December	3,115	3,477	3,858	3,869	4,305	2,865	5,868	5,897	6,017	6,356	6,604	8,028	7,705	7,203	-6.5%	47,947	44,846	-6.5%
Totals	26,192	28,150	31,466	32,254	34,810	33,051	35,347	36,524	37,105	38,874	41,724	46,140	47,947	44,846				

2009 Monthly Sales Tax Activity (in thousands of dollars)



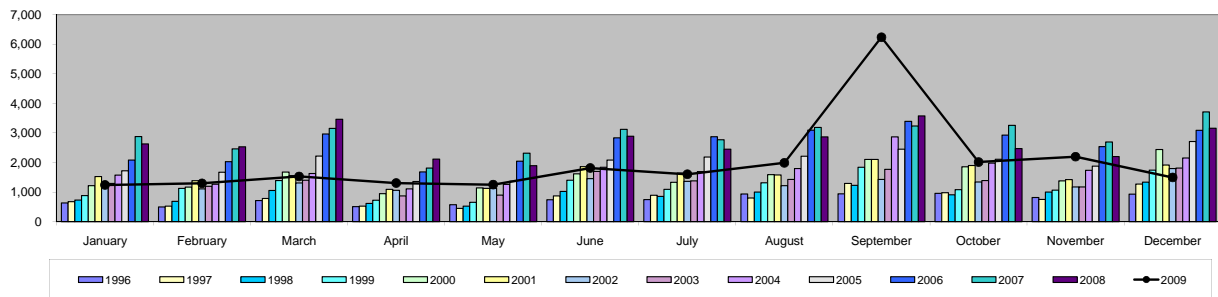
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Supplies

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	635	676	728	884	1,216	1,527	1,327	1,294	1,574	1,720	2,084	2,876	2,631	1,240	-52.9%	2,631	1,240	-52.9%
February	499	522	685	1,126	1,170	1,385	1,106	1,197	1,268	1,669	2,031	2,459	2,532	1,297	-48.8%	5,163	2,537	-50.9%
March	712	784	1,055	1,390	1,677	1,558	1,307	1,401	1,630	2,216	2,967	3,156	3,463	1,530	-55.8%	8,626	4,067	-52.9%
April	509	525	615	723	946	1,095	1,059	869	1,110	1,359	1,680	1,813	2,114	1,305	-38.3%	10,740	5,372	-50.0%
May	571	451	525	654	1,139	1,125	1,128	896	1,261	1,370	2,045	2,314	1,894	1,250	-34.0%	12,634	6,622	-47.6%
June	742	870	1,024	1,400	1,615	1,858	1,455	1,696	1,837	2,083	2,836	3,119	2,886	1,814	-37.1%	15,520	8,436	-45.6%
July	746	892	852	1,093	1,333	1,642	1,364	1,380	1,694	2,186	2,872	2,770	2,450	1,602	-34.6%	17,970	10,038	-44.1%
August	936	800	1,001	1,314	1,591	1,578	1,217	1,429	1,794	2,211	3,096	3,187	2,869	1,990	-30.6%	20,839	12,028	-42.3%
September	940	1,290	1,230	1,837	2,102	2,105	1,427	1,770	2,865	2,452	3,394	3,234	3,574	6,237	74.5%	24,413	18,265	-25.2%
October	959	976	910	1,083	1,853	1,899	1,342	1,390	1,980	2,107	2,924	3,259	2,470	2,016	-18.4%	26,883	20,281	-24.6%
November	819	752	1,003	1,066	1,378	1,425	1,171	1,173	1,737	1,876	2,537	2,693	2,199	2,196	-0.1%	29,082	22,477	-22.7%
December	932	1,269	1,337	1,743	2,441	1,915	1,795	1,810	2,151	2,712	3,091	3,713	3,160	1,494	-52.7%	32,242	23,971	-25.7%
Totals	9,000	9,807	10,965	14,313	18,461	19,112	15,698	16,305	20,901	23,961	31,557	34,593	32,242	23,971				

2009 Monthly Sales Tax Activity (in thousands of dollars)



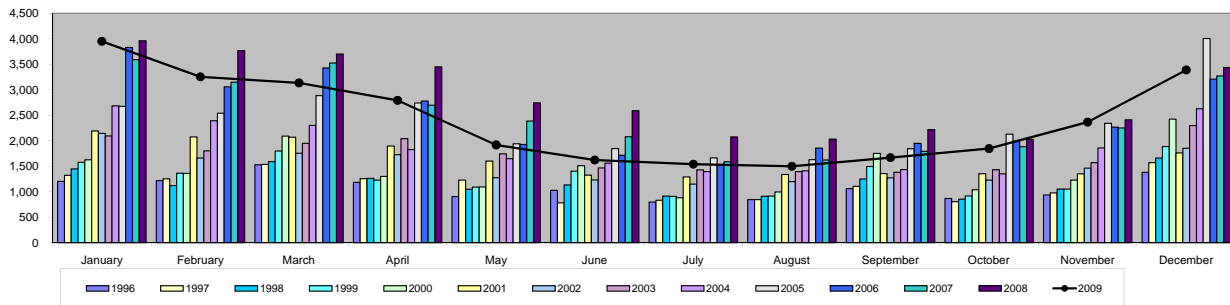
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Utilities

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	1,201	1,320	1,446	1,575	1,625	2,191	2,144	2,093	2,684	2,675	3,829	3,591	3,961	3,950	-0.3%	3,961	3,950	-0.3%
February	1,218	1,250	1,121	1,360	1,359	2,075	1,659	1,800	2,391	2,540	3,056	3,149	3,765	3,253	-13.6%	7,726	7,203	-6.8%
March	1,529	1,533	1,591	1,799	2,090	2,067	1,754	1,947	2,299	2,883	3,428	3,525	3,699	3,134	-15.3%	11,425	10,337	-9.5%
April	1,181	1,255	1,262	1,227	1,299	1,894	1,724	2,040	1,827	2,741	2,778	2,694	3,448	2,792	-19.0%	14,873	13,129	-11.7%
May	904	1,226	1,047	1,089	1,091	1,599	1,272	1,740	1,647	1,939	1,926	2,386	2,742	1,917	-30.1%	17,615	15,046	-14.6%
June	1,027	780	1,133	1,402	1,510	1,325	1,228	1,466	1,558	1,846	1,713	2,078	2,588	1,620	-37.4%	20,203	16,666	-17.5%
July	796	830	913	907	880	1,289	1,147	1,427	1,394	1,663	1,529	1,588	2,075	1,539	-25.8%	22,278	18,205	-18.3%
August	844	844	910	913	994	1,336	1,198	1,393	1,408	1,629	1,854	1,621	2,031	1,497	-26.3%	24,309	19,702	-19.0%
September	1,059	1,103	1,249	1,494	1,752	1,354	1,271	1,381	1,435	1,843	1,949	1,792	2,219	1,667	-24.9%	26,528	21,369	-19.4%
October	866	804	854	917	1,039	1,353	1,227	1,429	1,348	2,127	1,987	1,883	2,026	1,845	-8.9%	28,554	23,214	-18.7%
November	935	974	1,049	1,052	1,225	1,348	1,461	1,569	1,856	2,340	2,264	2,251	2,411	2,364	-1.9%	30,965	25,578	-17.4%
December	1,381	1,570	1,661	1,885	2,423	1,760	1,852	2,297	2,627	4,005	3,206	3,271	3,435	3,388	-1.4%	34,400	28,966	-15.8%
Totals	12,941	13,489	14,236	15,620	17,287	19,591	17,937	20,582	22,474	28,231	29,519	29,829	34,400	28,966				

2009 Monthly Sales Tax Activity (in thousands of dollars)



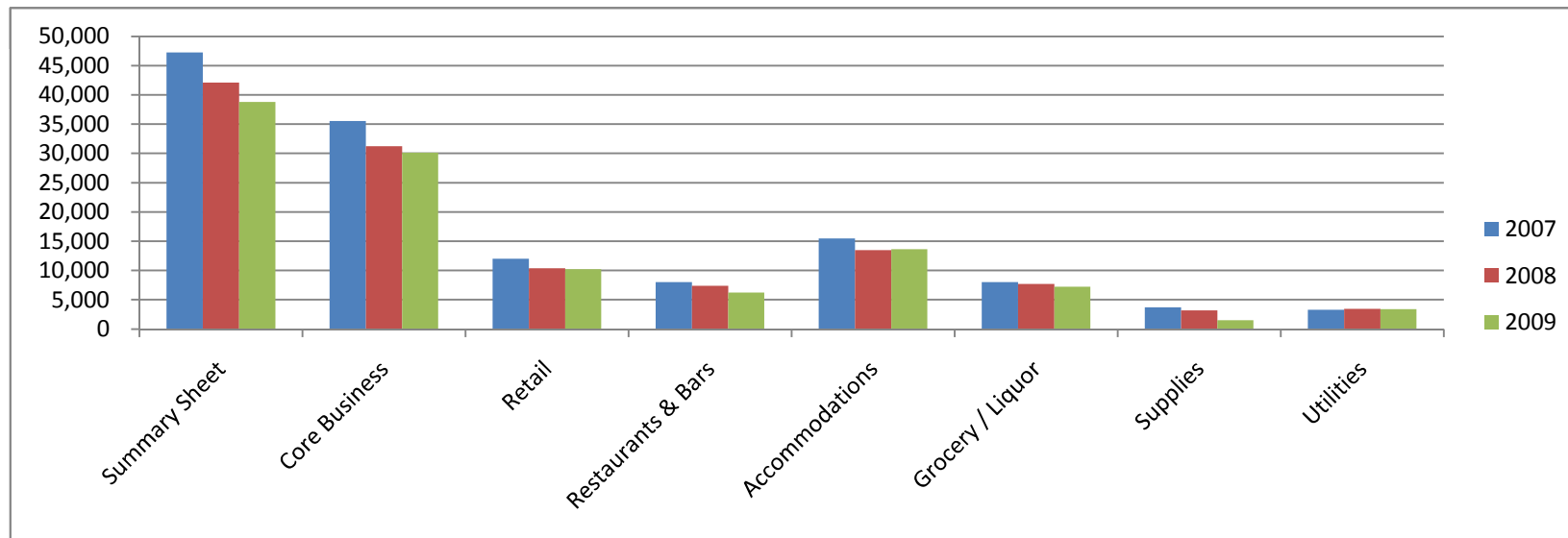
Town of Breckenridge

Taxable Sales Analysis By Business Sector

2007/2009 Comparison

(in Thousands of Dollars)

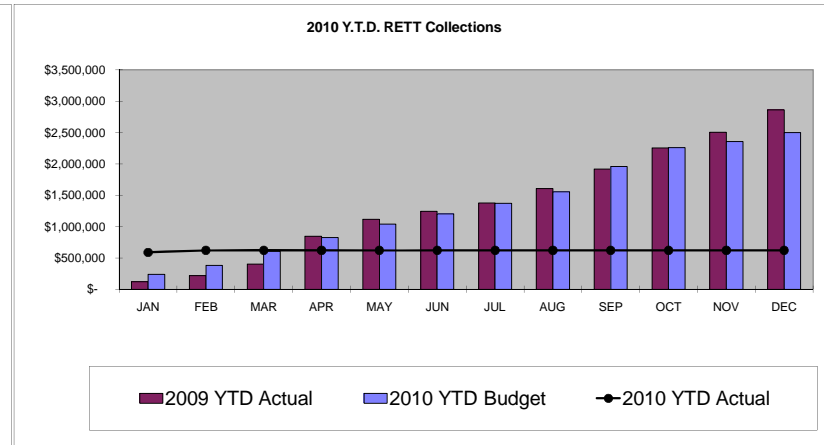
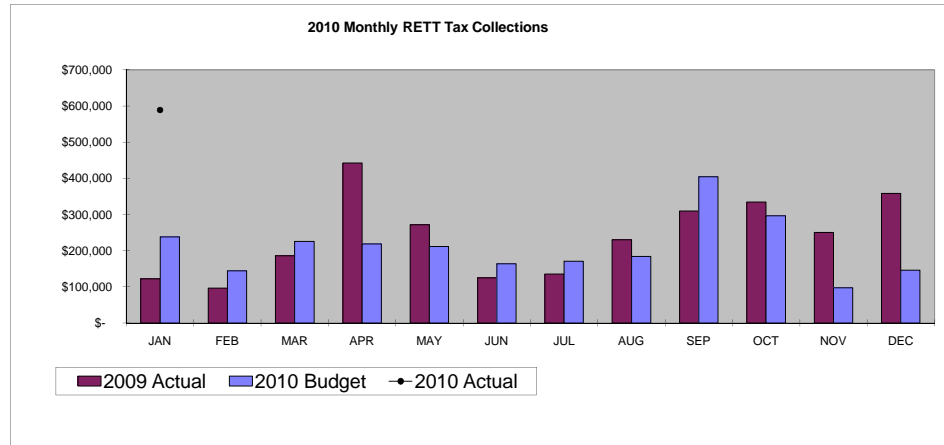
	Actual 2007	Actual 2008	Actual 2009	Monthly 07-09	Monthly 08-09	YTD 2007	YTD 2008	YTD 2009	YTD % Change 07-09	YTD % Change 08-09
Summary Sheet	47,258	42,076	38,809	-17.9%	-7.8%	322,001	314,841	270,937	-15.9%	-13.9%
Core Business	35,517	31,211	30,112	-15.2%	-3.5%	241,268	234,652	202,120	-16.2%	-13.9%
Retail	12,000	10,358	10,233	-14.7%	-1.2%	79,896	74,836	66,810	-16.4%	-10.7%
Restaurants & Bars	8,028	7,371	6,243	-22.2%	-15.3%	68,954	68,131	60,528	-12.2%	-11.2%
Accommodations	15,489	13,482	13,636	-12.0%	1.1%	92,418	91,684	74,784	-19.1%	-18.4%
Grocery / Liquor	8,028	7,705	7,203	-10.3%	-6.5%	46,140	47,947	44,844	-2.8%	-6.5%
Supplies	3,713	3,160	1,494	-59.8%	-52.7%	34,593	32,211	23,956	-30.7%	-25.6%
Utilities	3,271	3,435	3,388	3.6%	-1.4%	29,829	34,400	28,967	-2.9%	-15.8%



**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2007 Collections			2009 Collections			2010 Budget			2010 Monthly				2010 Year to Date			
	Tax Collected	Year To Date	Percent of Total	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% of Budget	% Change from 2007	% Change from 2008	Actual	% of Budget	% Change from 2007	% Change from 2009
JAN	\$ 352,958	\$ 352,958	6.2%	\$ 122,238	\$ 122,238	4.3%	\$ 237,814	\$ 237,814	9.51%	\$ 588,874	247.6%	66.8%	381.7%	\$ 588,874	23.6%	66.8%	381.7%
FEB	342,995	695,953	12.3%	96,379	218,617	7.6%	144,335	382,149	15.29%	32,914	22.8%	-90.4%	-65.8%	621,788	24.9%	-10.7%	184.4%
MAR	271,817	967,770	17.1%	185,714	404,331	14.1%	225,613	607,762	24.31%	-	0.0%	n/a	n/a	621,788	24.9%	-35.8%	53.8%
APR	564,624	1,532,394	27.0%	442,039	846,370	29.6%	218,626	826,388	33.06%	-	0.0%	n/a	n/a	621,788	24.9%	-59.4%	-26.5%
MAY	533,680	2,066,074	36.4%	271,393	1,117,763	39.1%	211,243	1,037,631	41.51%	-	0.0%	n/a	n/a	621,788	24.9%	-69.9%	-44.4%
JUN	522,999	2,589,073	45.6%	124,822	1,242,585	43.4%	163,352	1,200,983	48.04%	-	0.0%	n/a	n/a	621,788	24.9%	-76.0%	-50.0%
JUL	343,610	2,932,683	51.7%	135,393	1,377,977	48.2%	170,942	1,371,925	54.88%	-	0.0%	n/a	n/a	621,788	24.9%	-78.8%	-54.9%
AUG	594,349	3,527,032	62.1%	230,014	1,607,991	56.2%	183,756	1,555,681	62.23%	-	0.0%	n/a	n/a	621,788	24.9%	-82.4%	-61.3%
SEP	711,996	4,239,028	74.7%	309,701	1,917,692	67.0%	404,440	1,960,121	78.40%	-	0.0%	n/a	n/a	621,788	24.9%	-85.3%	-67.6%
OCT	392,752	4,631,779	81.6%	334,899	2,252,591	78.7%	296,502	2,256,623	90.26%	-	0.0%	n/a	n/a	621,788	24.9%	-86.6%	-72.4%
NOV	459,147	5,090,926	89.7%	250,106	2,502,697	87.5%	97,454	2,354,077	94.16%	-	0.0%	n/a	n/a	621,788	24.9%	-87.8%	-75.2%
DEC	\$ 584,308	\$ 5,675,235	100.0%	\$ 358,422	\$ 2,861,119	100.0%	\$ 145,922	2,500,000	100.00%	\$ -	0.0%	n/a	n/a	\$ 621,788	24.9%	-89.0%	-78.3%

February #s are as of 2/2/10



**MEMORANDUM
(Memo Only)**

TO: Town Council

FROM: Matt Thompson, AICP

DATE: February 1, 2010 (For the 2/9/10 Town Council Meeting)

SUBJECT: Ordinance No. 9, Series 2009. Open House Signs.

On December 9, 2008 the Town Council directed the Department of Community Development to prepare amendments to Chapter 2 of Title 8 of the Breckenridge Town Code, known as the “Breckenridge Sign Ordinance”, to update the Town’s regulations concerning open house signs. The Council adopted the updated Ordinance on March 24, 2009, with a one-year sunset provision written into the Ordinance. Per Section 8, of Ordinance No. 9, 2009, this ordinance is repealed effective April 1, 2010.

The primary changes to the Sign Ordinance as adopted include:

- The Ordinance now allows up to three (3) off-premise open house signs outside of the Conservation District.
- Allowing the off-site open house signs in the Town right-of-way.
- Prohibiting open house signs in the rights-of-way for Main Street, Park Avenue and Highway 9.
- Establishing time limits for the display of off-site open house signs.
- Establishing a standard design, including color and logos, for all off-site directional open house signs.

The Planning Department Staff believes the Ordinance has been a success and has worked well. I would like to thank the Realtor community for doing a good job of self policing. I only have had a handful of complaints and issues, and most of those were in the first month or two after the Ordinance passed.

The Summit Association of Realtors has requested that the Town Council consider extending the Ordinance or making the Ordinance a permanent revision to the Sign Code. Sarah Thorsteinson, the Government Affairs Director of the Summit Association of Realtors, will be at the meeting and would like to address the Town Council during the public comment period.

Staff will be available at the meeting to answer questions.



To: Mayor and Town Council Members
From: Jennifer Cram, Planner III and Kim DiLallo, Director of Communications
Date: February 3, 2010 (*for 2.9.10 meeting*)
RE: Meeting with Galleries regarding the Art Fair/Arts District Celebration July 4th weekend

At Council's request, Town staff and "Friends of the Arts District" representatives hosted the local galleries at the Fuqua Livery Stable on January 21, 2010. The purpose was to remind the galleries on the vision for the Arts District and to review the myriad of activities.

Staff and the "Friends" also shared the new business model that they are working on to make the Arts District sustainable. Another stated goal was to encourage better communication and collaboration between the Arts District and the local galleries. All agreed that the successful Second Saturday Art walks are just one of the many ways that the Arts District and galleries can work together to make Breckenridge a destination for the arts.

All galleries were invited. There were seven galleries represented at the meeting including, Altitude Gallery, Art on a Whim, Arts Alive, Breckenridge Gallery, Fox Ridge Gallery, Ben Gordon Studios and Teal Gallery.

All galleries were supportive of the vision for the Arts District. They recognized the importance of having this additional layer of activity for locals and visitors, and the potential that the Arts District has to draw visitors to Breckenridge that are savvy in the arts as these are the visitors that shop in their galleries. The galleries also understood the budget challenges that the Town is facing and the need to develop new ideas for making the Arts District sustainable.

Janis Bunchman presented on behalf of the "Friends" and shared the fund raising ideas that have been completed and proposed for the Arts District, including the opportunity presented by the Mountain Art Festivals. Kim DiLallo went into further detail about the opportunity to raise significant funding as well as getting visitors to the Arts District by moving the July 4th art fair to Ridge and Washington streets, thus allowing the Arts District Grand Celebration to expand.

The majority of the galleries were supportive of the idea. One gallery expressed concern over the idea, but agreed that it was worth experimenting. One gallery was adamantly opposed to the idea and was not open to any suggestions for compromise or collaboration.

Staff offered to allow the galleries to set up exhibits in the Arts District facilities during the Arts District celebration, and also noted that there would be signage directing patrons to visit businesses in town. In addition, Kim DiLallo noted that the Mountain Art Festival offered the galleries a booth within the Art Fair.

The idea of bringing back the annual "Kingdom Art Walk" was also discussed. Having up-to-date website information was also mentioned. Staff is currently working on a Second Saturday page for the Town's website under the Arts District. The galleries asked that the Town emphasize the art element of our community to the BRC to focus a portion of the marketing efforts. Staff, along with other arts nonprofits, is meeting with the BRC in the near future.

Overall, the meeting was productive, and a variety of collaborative ideas were generated, which staff will present to Council in the near future.

Staff will be available during the work session if the Council has any questions and to reconfirm moving forward with hosting the July 4th art fair in the Arts District as outlined in December 2009.

MEMORANDUM

TO: Town Council

FROM: Mark Truckey, Assistant Director of Community Development

DATE: February 2 for February 9 Meeting

SUBJECT: Upper Blue Master Plan

Summit County is currently undertaking an amendment to their Upper Blue Master Plan (UBMP). The UBMP (not to be mistaken with the Joint Upper Blue Master Plan) provides land use guidance for development in all unincorporated areas of the Upper Blue Basin. The focus of the UBMP is a set of land use maps. The amendment is primarily being undertaken because of a recent District Court ruling. The Upper Blue Planning Commission is scheduled to have a final hearing and take action on the master plan at its February 25 meeting. Staff is seeking Council input on the proposed plan to include in our formal comments to the County. Attached is a draft comment letter to Summit County.

District Court Ruling

Recent land use litigation involved the County and a property owner in the Upper Blue Basin (i.e. Polanski) wanting to re-subdivide a property in Silver Shekel, which had previously had its lot lines vacated. The plaintiff Polanski challenged the County's approval of this resubdivision, which included a condition that three TDRs be purchased in order to reinstate three lots. The Summit County District Court ruled in favor of the plaintiff. In doing so, the Court made some conclusions that questioned the County's ability to impose master plan policies that conflict with the underlying zoning for a property.

In response to this decision, the County is amending all of their master plans to include more language that clarifies the roles of master plans in relation to zoning and development approvals. The County is suggesting language clarifying that developments must be in "general conformance" with master plan policies, and that the reviewing authority (e.g., planning commission, BOCC) has the discretion to use the master plan policies when reviewing development proposals. The suggested language notes that the master plans may be used to limit density to less than that allowed by zoning. Staff is supportive of this language and believes it will enhance the County's ability to limit density in a number of areas with inappropriate zoning.

Platted Residential Designation and Proposed New Land Use Designations

One of the Court's issues with the County's use of the UBMP was the Platted Residential land use designation in the current Plan. The Platted Residential designation was applied to some 31 subdivisions in the unincorporated area. The designation applies mainly to

older subdivisions (e.g., Silver Shekel, Ten Mile Vista) that are nearing buildout. Some of the lots in these subdivisions are large enough, per zoning, to be further subdivided. The Platted Residential designation is written to dissuade any further subdivisions of lots. In response to the District Court decision, the County is proposing to eliminate the Platted Residential designation and come up with other master plan designations for these subdivisions.

The Upper Blue Planning Commission, the body responsible for updating the master plan, has reviewed each of these 31 subdivisions to determine an appropriate alternate master plan land use designation. The new proposed designations are for the most part in keeping with the surrounding densities in the respective subdivisions. Although the existing zoning may allow for further subdivision in these areas, the master plan designation is typically more restrictive and the County could use the master plan designation and associated criteria to deny or limit future subdivision potential.

An analysis prepared by Summit County regarding the 31 “Platted Residential” subdivisions and the proposed master plan designations indicates that a maximum of 133 new lots could be created based on the proposed master plan designations. However, 88 out of these 133 lots (about 2/3 of the total) could be created in one subdivision: 39 Degrees North. Town staff feels that the designation for 39 Degrees North is inappropriate. The amount of further subdivision that could occur within 39 Degrees North (potentially up to 6 units/acre) is out of character with surrounding land uses in this area south of the Town of Blue River. Surrounding densities are typically one or two units/per acre. Many of the lots in the subdivision also contain wetlands and riparian areas. The Joint Upper Blue Master Plan encourages a reduction of density in the basin, and staff feels a lower density master plan designation for this area would be in keeping with the Joint Upper Blue.

The Western Sky PUD area on Gibson Hill has been given a land use designation that reflects the existing proposed density for the property. However, the developer (Danny Middleton) requested land use changes for two parcels associated with the PUD. Lot 15, the lowest lot on the western hillside of Western Sky, was requested to be redesignated to allow for three home sites instead of the current one site. The applicant also proposes that he would transfer density to the site from property he holds on the north side of Gibson Hill in the backcountry (e.g., Hulse claims), which are valued by the Town/County for their open space and trails resources. Town staff believes that the property is visible from Town and although forested could be more highly visible if lodgepole in the area succumb to the pine beetle infestation. Thus, we would recommend not increasing density on this lot.

The other Gibson Hill property proposed for change is the Schwaigart parcel adjacent to the Western Sky PUD on the east. The applicant has proposed changing the land use designation so that two units could be developed on the 27 acre lot as opposed to the one unit entitled by the existing A-1 zoning. The terrain on this lot is generally more gently graded and it is located primarily on the eastern side of Gibson Hill, so it may be possible to locate two homesites there that would not be visible from Town.

Selected Rezoning

The master plan proposes that the County more aggressively pursue initiating rezoning for a few subdivisions that have zoning that is out of character with surrounding properties and site constraints. Staff supports this master plan provision and suggests that it would also be appropriate to add 39 Degrees North as a priority candidate for selected rezonings.

Transferable Development Rights Map

The master plan includes a new proposed TDR map. The TDR map identifies locations in the unincorporated County designated as TDR sending sites, TDR receiving sites, and TDR neutral sites. The “neutral sites” are a new evolution of the TDR map, as they identify areas that are neither appropriate as being a sending or receiving area. Most of the neutral sites are located in the existing subdivisions (most formerly part of the Platted Residential designation). The proposed TDR map identifies only a few TDR receiving sites, and most of these would be limited by the underlying master plan and zoning designations to small increases in density.

Overall, the changes to the TDR map appear appropriate to staff. TDR sending sites are limited to rural and backcountry parcels and TDR receiving sites no longer include existing subdivisions in areas north and south of Town. Staff has only a couple concerns with the proposed TDR map changes. One concern we have is the proposed TDR receiving area designations for two parcels in the Western Sky PUD vicinity. The second concern is the requests the Upper Blue Planning Commission has received from property owners in the 39 Degrees North subdivision to have their properties designated as TDR sending areas.

Regarding the Western Sky vicinity, staff believes it is inappropriate to designate any of the area as TDR receiving sites. The Town generally wants to reduce density and avoid visual impacts on the hillside. Regarding new TDR sending areas at 39 Degrees North, staff believes this is contrary to the primary goals of the TDR program to protect the backcountry. A TDR sending area designation in this area will further dilute the pool of sending sites available in the TDR program and we believe that the Town will not be interested in accepting TDRs that essentially remove density from County parcels with antiquated zoning.

Council Comments

Staff looks for Council feedback on the issues discussed above, and particularly on the attached draft letter to the Upper Blue Planning Commission regarding the Upper Blue Master Plan update.



February 9, 2010

Upper Blue Planning Commission
c/o John Roberts
Summit County Planning Department
PO Box 5660
Frisco, CO 80443

Dear Planning Commissioners:

Thank you for the opportunity to comment on the proposed revisions to the Upper Blue Master Plan that you are currently undertaking. The Town of Breckenridge appreciates the challenges you are faced with in light of the recent District Court decision and applaud you for taking pro-active steps to maintain and bolster the role of master plans in development review. In reviewing the draft Upper Blue Master Plan revisions, we particularly wanted to indicate our support for the following new provisions:

- Clarifying language that re-emphasizes the County's ability to use the policies of the master plan in development review and to provide the reviewing authority (e.g., BOCC, Upper Blue Planning Commission) with the discretion to determine whether a development proposal is in conformity with the master plan.
- Specific language that allows the County to further reduce the density on a development parcel beyond that which is entitled by zoning.
- Language that emphasizes the need for any subdivision proposal within existing subdivisions to be in character with surrounding densities and to consider environmental constraints, etc.
- New criteria for reviewing proposed re-establishment of lot lines (where the lot lines had been previously vacated) and the ability to require TDRs as a form of mitigation when it is deemed acceptable to reinstate a lot line.
- Identification of subdivisions where selected rezoning efforts should be initiated to lower densities allowed.
- Reinforcement of the ability to use TDRs.

Given some of the antiquated zoning that remains on some properties and subdivisions in the Upper Blue, your approach seems a responsible way of incorporating more current master planning criteria into development review. There are a few revisions in the master plan that the Town would like to comment on, as discussed below:

New Land Use Designations

- We respectfully request that the land use designations on Gibson Hill and the Western Sky property be maintained at their current density levels. Particularly, allowing three lots on Lot 15 in Western Sky PUD would increase density in a location directly visible from Town. The Town does not

support the location of any further density in this location.

- We believe you have done a commendable job of identifying new land use designations for the former “Platted Residential” subdivisions and that they will help limit further subdivision potential. We believe there is one exception to this. Regarding the western portion of the 39 Degrees North subdivision, we believe the proposed R-6 land use designation is entirely out-of-character with existing and surround densities in the area. Many of the parcels in this area also contain environmental constraints such as wetlands and riparian areas. As such, we suggest an R-1 land use designation for this area. Making this revision would most closely comply with the Joint Upper Blue Master Plan goals of reducing density in the basin and protecting sensitive environmental resources. To further emphasize this concern, according to the further subdivision potential within the 31 subdivisions formerly designated as “Platted Residential”, Summit County Planning Department identifies that 88 of the 133 new lots that could be created would be in the 39 Degrees North subdivision. Thus, 39 Degrees North alone accounts for two-thirds of all additional subdivision potential.

Selected Rezonings

- We support the identification in the master plan of subdivisions that should be rezoned to lower densities. We believe one additional subdivision should be added to your list of high priority rezonings: the western portion of 39 Degrees North (see our comments above).

Transferable Development Rights Map

- We agree with the redesignation of former TDR receiving areas in the valley as TDR “neutral areas”, as these areas are not appropriate for receiving additional density.
- We suggest that backcountry parcels that are identified as “neutral areas” should instead be labeled “TDR Sending Areas (density extinguished)”, or some similar wording.
- For reasons stated above related to the land use designations, we request that none of the parcels on Gibson Hill and in the Western Sky development should be designated as TDR receiving sites. A neutral or TDR sending area designation is more appropriate.
- We support the Upper Blue Planning Commission’s designation of “neutral” for the 39 Degrees North subdivision. Designating the property as a TDR sending area would increase the number of TDR sending areas in the basin and potentially have significant negative impacts on our ability to preserve backcountry lands through the TDR program. The TDR program was originally established with one primary purpose to protect backcountry. We believe that this should continue to be the primary goal of the TDR program. The Town will not entertain receiving density for the purpose of extinguishing density on properties in subdivisions such as 39 Degrees North.

We once again would like to thank you for the opportunity to comment on this important planning project. We look forward to working further with you later this year as we embark on an amendment to the Joint Upper Blue Master Plan.

Sincerely,

John Warner, Mayor

Cc: BOCC, Breckenridge Town Council, Breckenridge Planning Commission



TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA
Tuesday, February 9, 2010 (Regular Meeting); 7:30 p.m.

I	CALL TO ORDER and ROLL CALL	
II	APPROVAL OF MINUTES – January 26, 2010	Page 32
III	APPROVAL OF AGENDA	
IV	COMMUNICATIONS TO COUNCIL	
	A. Citizen’s Comment - (Non-Agenda Items ONLY; 3 minute limit please)	
	B. Boy Scouts of America 100 years – Proclamation	Page 36
	C. Breckenridge Resort Chamber	
V	CONTINUED BUSINESS	
	A. SECOND READING OF COUNCIL BILL, SERIES 2010 - PUBLIC HEARINGS	
	1. Council Bill No. 2, Series 2010- AN ORDINANCE ADOPTING SECTION 6-3A-5 OF THE <u>BRECKENRIDGE TOWN CODE</u> CONCERNING BIAS-MOTIVATED MUNICIPAL OFFENSES	Page 37
VI	NEW BUSINESS	
	A. FIRST READING OF COUNCIL BILL, SERIES 2010	
	1. Council Bill No 3, Series 2010- AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 2 OF TITLE 5 OF THE <u>BRECKENRIDGE TOWN CODE</u> CONCERNING SOLID WASTE AND WEEDS; AND MAKING CONFORMING AMENDMENTS TO THE <u>BRECKENRIDGE TOWN CODE</u>	Page 41
	2. Council Bill No 4, Series 2010 – AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF BRECKENRIDGE, AT THE REGULAR TOWN ELECTION TO BE HELD APRIL 6, 2010, PROPOSED AMENDMENTS TO THE BRECKENRIDGE TOWN CHARTER SETTING FORTH THE BALLOT TITLE; AND PROVIDING OTHER DETAILS IN CONNECTION WITH THE SUBMISSION OF THE QUESTIONS TO THE ELECTORS	Page 64
	B. RESOLUTIONS, SERIES 2010	
	1. A RESOLUTION APPROVING A CONTRACT FOR THE MAINTENANCE OF COLORADO HIGHWAY 9 WITH THE STATE OF COLORADO, DEPARTMENT OF TRANSPORTATION	Page 80
	C. OTHER	
	1. Real Estate Transfer Tax Appeal	
VII	PLANNING MATTERS	
	A. Planning Commission Decisions of February 2, 2010	Page 2
	B. Town Council Representative Report (Mr. Rossi)	
VIII	REPORT OF TOWN MANAGER AND STAFF*	
IX	REPORT OF MAYOR AND COUNCILMEMBERS*	
	A. CAST/MMC (Mayor Warner)	
	B. Breckenridge Open Space Advisory Commission (Mr. Joyce)	
	C. BRC (Ms. McAtamney)	
	D. Summit Combined Housing Authority (Mr. Millisor)	
	E. Breckenridge Heritage Alliance (Mr. Bergeron)	
	F. Sustainability Committee (Mr. Millisor)	
X	OTHER MATTERS	
XI	SCHEDULED MEETINGS	Page 101
XII	ADJOURNMENT	

*Report of Town Manager; Report of Mayor and Council Members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item

CALL TO ORDER and ROLL CALL

Mayor Warner called the January 26, 2010 Town Council Meeting to order at 7:32 p.m. The following members answered roll call: Ms. McAtamney, Mr. Joyce, Mr. Millisor, Mr. Bergeron, Mr. Rossi, Mr. Mamula and Mayor Warner.

APPROVAL OF MINUTES – January 12, 2010 Regular Meeting

Mayor Warner requested corrections to Mr. Carleton's comment about Dew Tour support and to the CAST Report to reflect that the Mayor submitted a report via email the day before. With those changes made, Mayor Warner declared the minutes were approved.

APPROVAL OF AGENDA

Mayor Warner requested the addition of two items under Other Matters: Housing Policy and additional Marketing Fund discussion. With those additions, the agenda was approved.

COMMUNICATIONS TO COUNCIL

- A. Citizen's Comments - (Non-Agenda Items ONLY; 3 minute limit please) – None

CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILL, SERIES 2010 - PUBLIC HEARINGS**

1. Council Bill No. 1, Series, 2010- AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH B & D LIMITED PARTNERSHIP (Redevelopment of Old BBC Site)

Town Attorney Tim Berry explained that this ordinance authorizes the Town Manager to sign a development agreement relating to the proposed redevelopment of old Breckenridge Building Center site. The agreement allows the Planning Commission to consider a new master plan under the terms and conditions of the development agreement. The only changes proposed to the ordinance from first reading are some formatting issues in the legal description contained in both the ordinance and development agreement. Mr. Berry understands that some property owners have expressed concern and suggested the appropriate forum to be heard should be when the Planning Commission considers the master plan application. The Town Council will have an opportunity to review the master plan decision.

Mayor Warner opened the public hearing. Mr. Paul Olson informed that he and his wife are building a home on Royal Tiger. He wanted to emphasize his concern about the possibility of ridgeline development, and the importance of maintaining town aesthetics and protecting scenic backgrounds. Mayor Warner clarified that the time to discuss this matter will be at the Planning Commission meeting, when staff applies the development code to the application. He shared Mr. Olson's concern that ridgeline development is important to the Town Council and explained that it was not being approved as part of this process. There were no further comments and the public hearing was closed.

Ms. McAtamney moved to approve Council Bill No. 1, Series 2010 in the form included in the agenda packet. Mr. Millisor seconded the motion. Other Council members recognized the concerns expressed and concurred that the Planning Commission meeting was the appropriate place for the discussion. The motion passed 7-0.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILL, SERIES 2010

1. Council Bill No. 2, Series 2010- AN ORDINANCE ADOPTING SECTION 6-3A-5 OF THE BRECKENRIDGE TOWN CODE CONCERNING BIAS-MOTIVATED MUNICIPAL OFFENSES

Mr. Berry explained that the Municipal Judge, as part of his annual report to the Council, recommended that the Town consider adoption of an ordinance based on the State's bias-motivated crime statute. This ordinance takes the state statute and makes it a town offense to intimidate or harass an individual based on a person's race, color, religion, ancestry, national origin, physical or mental disability or sexual orientation. He noted that the Council feels strongly that Breckenridge send a message that this type of conduct will not be tolerated in Town.

Mr. Berry then reviewed modifications to the ordinance from first reading, including: the charge cannot be dismissed or plea bargained unless the case cannot be proven; elimination of mandatory penalties for a first offense to give the Judge discretion on first convictions; and mandatory minimum fines and jail time for a second and/or subsequent offense.

Mayor Warner questioned and Mr. Berry confirmed that municipal court moves with more speed than the county court, that having this offense on the books sends a stronger message, and that the municipal judge will use his discretion based on the facts of the particular case to assess an appropriate penalty. Mr. Berry added that this is similar to other recent ordinances that have been added to the municipal code.

Mr. Bergeron moved to approve Council Bill No. 2, Series 2010. Mr. Rossi seconded the motion. The motion passed 7-0.

B. RESOLUTIONS, SERIES 2010

1. A RESOLUTION APPROVING THE "THIRD AMENDMENT AND SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VISTA POINT"

Planner Laurie Best explained that this resolution will approve a modification to the Vista Point housing covenant provision concerning capital improvements beyond the initial five years and that it was consistent with other deed-restricted projects. The resolution also ratifies previous amendments made to the covenant concerning FHA approval and which lots are deed-restricted.

Mayor Warner noted that Ms. McAtamney and Mr. Bergeron live in deed-restricted housing in Vista Point and questioned the other Council members if they felt it was appropriate for them to abstain from this decision. They felt that abstaining was appropriate and Ms. McAtamney and Mr. Bergeron left the room.

Mr. Millisor moved to approve a Resolution Approving the “Third Amendment and Supplement to Declaration of Covenants, Conditions, Restrictions, and Easements for Vista Point.” Mr. Mamula seconded the motion. The motion passed 5-0, with Mr. Bergeron and Ms. McAtamney abstaining.

C. OTHER

None.

PLANNING MATTERS

A. Planning Commission Decisions of January 19, 2010

The Planning Commission decisions were approved as presented.

B. Report of Planning Commission Liaison

Mr. Rossi reported that the commission was split on negative points regardless of whether or not the gondola building needed to be a brick structure. He also updated on the Bradley Residence and concerns about “needle threading” to achieve landmark status.

Mr. Mamula brought up the energy policy and commented that he felt better about the topic knowing there were several ways it could be shaped – either as an incentive, penalty or credit. He would like to know about other communities’ experience and whether it has had the intended community benefit of lowering energy use.

C. Gondola Master Plan Call Up Decisions

Mr. Berry explained that at the conclusion of the hearing two weeks ago, the Council directed the Town Attorney to prepare a written form of the decision with respect to the Council’s decision on the application.

Mr. Bergeron made a motion that the written Decision prepared by the Town Attorney regarding the Town Council’s call up hearing on Application No. PC2009010, the Class A Development Permit application submitted by Vail Summit Resorts, Inc. for a master plan for the Gondola Lots at 320 North Park Avenue, as set forth in tonight’s agenda packet on pages 91 to 100, inclusive, be adopted as the final decision of the Town Council with respect to such application. Mr. Mamula seconded the motion. The motion passed 7-0.

REPORT OF TOWN MANAGER AND STAFF

Mr. Gagen had nothing further to report.

REPORT OF MAYOR AND COUNCILMEMBERS

A. CAST/MMC (Mayor Warner) – Mayor Warner reported that he and Mr. Gagen would be attending the CAST meeting in Crested Butte this week. Some of the topics he plans to discuss include: Hidden Gems, sales tax, and the lift ticket tax in Vail. Other Council members suggested: relationships between Towns and separate ski area operators-metrics, reservations, competitive nature between private lodging companies and ski area properties; Forest Service decision on ski area expansion; and restrictions on short-term rentals by homeowners associations.

B. Breckenridge Open Space Advisory Commission (Mr. Joyce) – Mr. Joyce reported on Monday’s meeting. Topic included the Hidden Gems, an update on the Gold Run Nordic Center, and the possibility of putting out an RFP for a private contractor to run the facility now so they can come in and see how it actually operates during the winter. There was discussion about the pro forma for open space acquisition and the impact on the budget if certain developments do not occur as planned.

Mr. Bergeron suggested the addition of a dog waste station at the Bomber trailhead and other trailhead parking areas.

C. Breckenridge Resort Chamber (Ms. McAtamney) – There was no meeting. Ms. McAtamney updated that the Dew Tour will enter into a contract for next year.

D. Summit Combined Housing Authority (Mr. Millisor) – The next meeting is tomorrow morning.

E. Breckenridge Heritage Alliance (Mr. Bergeron) – Mr. Bergeron reported on negotiations with the Colorado Historical Society negotiations to sell Engine No. 111 to CHS with the proceeds going to construction of a shelter for Engine No. 9. The Board voted that the Alliance should not be the lead organization for an annual August Town birthday event, however they will support it if it does become an annual event.

F. Sustainability (Mr. Millisor) – Mr. Millisor reported on two meetings where second home ownership and the positive and negative impacts were discussed. Other topics included vacation

rentals by owner, how to get second homeowners involved in the community and to feel more like locals. Mayor Warner pointed out a great memo put together by staff member Laurie Best outlining what the Town has done to facilitate childcare. It was suggested that additional education about all the Town child care programs be provided to the Little Red Schoolhouse board members.

OTHER MATTERS

A. Housing Policy

Housing discussion – Planner Laurie Best introduced this discussion of Development Code Housing Policy 24R whereby a developer can earn 10 positive points for providing affordable housing. The concern is that this can be enough to mitigate bad design or excessive site disturbance particularly in the instance where a developer receives “free” density through an annexation or development agreement. Recent cases seem to show that +10 points may not be necessary, and in fact may be perceived as “double dipping.” One suggestion is to create separate matrixes for projects, providing point incentives based on the amount of free density versus natural density and projects that hit lower price points.

There was discussion about getting to a per-square-foot cost to drive lower AMI; making sure there is not a double benefit; do not disincentivize getting affordable housing projects; like the matrix idea – if 30 percent of the housing is at 80 percent AMI, can incentivize; want affordable housing, but want it to be quality; Planning Commission should not be concerned if a developer makes a lot of money; don’t make it so restrictive that no developers come in with affordable housing projects; agree, probably giving too many points; deed restriction covenant needs to be enforced – cannot be occupied just by a family member.

The Mayor summarized the issues: matrix idea, 80 percent AMI, code is the code, employee housing in existing residences, and occupancy.

B. Marketing

Mayor Warner started off the discussion noting that there is a connection between the accommodation tax and successful marketing; however, the accommodation tax alone does not generate the amount of money needed. He suggested memorializing the accommodation tax to fund marketing and filling in the town revenues through an amusement and/or ski lift ticket tax. He suggested the Council determine the number, do the math, and figure out how much tax there should be. He would like to solve the problem for the future.

Mr. Gagen agreed that the accommodation tax does not meet the Blue Ribbon committee’s recommendation of \$2.2 million for marketing. Some ideas being discussed include dealing with the ski area to merge the transit systems and to consider the gondola lot business plans needs. Mr. Gagen felt it may be better to come up with a plan together than for the Town to impose something. He then explained how the ski area arrives at the lift ticket tax number in Vail. He encouraged the Council to broaden their view and not only think about solving the marketing problem, particularly in light of the Town’s current budget situation.

Council concerns expressed included: gondola lot development may be 10 years away; who will operate what; would like the ski area to bring the proposal to us; if we use the lift ticket tax to run the system, can shift the cost to another revenue stream; Vail covers the operation cost of the parking structure; lodging has a good nexus to marketing; does not solve the dilemma that it may not be enough; think about solving more than just the marketing problem; cannot take money from the fund balance forever; want to be ahead of an amusement or lift ticket tax; want to work this out so it works well for the community; repercussions of imposing a tax; don’t want a fractured relationship with the ski area – they are still our biggest marketer; don’t want to impact bottom line; Town’s commitment to the BRC increased 16 percent and ski area marketing stayed flat; we have a problem with the marketing fund that could jeopardize the community; consider the economic well-being of the community; there is some momentum today; marketing money we spend generates more money; if we dedicate the 2.4 percent accommodation tax to marketing we have a revenue stream, but then we need additional revenue; an amusement tax solves the marketing issue and enhances transit; and a half percent sales tax does not enhance marketing.

There was a variety of opinions about if or when to take this matter to an election, including April 2010, November 2010, November 2011 or April 2012. Other comments included: need to find a way to memorialize a marketing stream going forward into the future; sales tax versus a ski lift ticket tax; don’t go for a sales tax now and another tax in November as it weakens our position; would like more information to make an informed decision; get the numbers, get the facts; we need a partner to work with; a unified transportation system would enhance the customer service experience; how do parking and Riverwalk improvements fit in; would rather be the master of our own future; let’s share our vision with the ski area; work collaboratively; stay ahead of this issue or someone else will take it on; supplement out of real estate transfer tax if it comes back; and what is the amount of sales tax the ski area pays.

Mr. Gagen will get additional numbers and bring this matter back most likely at the second meeting in February.

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JANUARY 26, 2010
PAGE 4**

On another matter, Mr. Mamula mentioned a problem with trash and litter along Wellington Road.

SCHEDULED MEETINGS

ADJOURNMENT

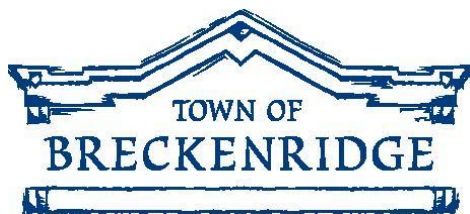
With no further business to discuss, the meeting adjourned at 9:47 p.m.

Submitted by Mary Jean Loufek, Town Clerk.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor



**BOY SCOUTS OF AMERICA
PROCLAMATION**

WHEREAS, the Boy Scouts of America has been at the forefront of instilling timeless values in youth since its founding in 1910; and

WHEREAS, this national youth movement has made serving others through its values-based program its mission; and

WHEREAS, the Boy Scouts of America is committed to helping millions of youth succeed by providing the support, friendship, and mentoring necessary to live a happy and fulfilling life; and

WHEREAS, The Boy Scouts of America is a national non-profit organization with the stated mission being to prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law, and

WHEREAS, The Boy Scouts of America has the vision to prepare every eligible youth in America to become a responsible, participating citizen and leader who is guided by the Scout Oath and Law, and

WHEREAS, Cub Scout Pack 187 and Boy Scout Troop 187 of Breckenridge along with the Western Colorado Council is celebrating Scouting's 100th anniversary, and

WHEREAS, Troop 187 began serving the Breckenridge community 25 years ago on March 28, 1985.

NOW, THEREFORE, BE IT RESOLVED THAT, that I, Mayor John Warner, designate February 7–13, 2010, as Scouting Anniversary Week in the Town of Breckenridge, and express the appreciation of our citizens to Pack and Troop 187, the Western Colorado Council and the Boy Scouts of America for their interest in and dedication to America's youth.

Adopted this _____ day of _____, 2010.

Mayor John Warner

Town Clerk Mary Jean Loufek

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 2 (Bias-Motivated Crimes Ordinance)
DATE: February 2, 2010 (for February 9th meeting)

The second reading of the Bias-Motivated Crimes Ordinance is scheduled for your meeting on February 9th. There are no changes proposed to ordinance from first reading.

I will be happy to discuss this matter with you on Tuesday.

1 **FOR WORKSESSION/SECOND READING – FEB. 9**

2
3 **NO CHANGES FROM FIRST READING**

4
5 COUNCIL BILL NO. 2

6
7 Series 2010

8
9 AN ORDINANCE ADOPTING SECTION 6-3A-5 OF THE BRECKENRIDGE TOWN CODE
10 CONCERNING BIAS-MOTIVATED MUNICIPAL OFFENSES

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

14
15 Section 1. The Breckenridge Town Code is amended by the addition of a new Section 6-
16 3A-5, to be entitled “Bias-Motivated Municipal Offenses”, which shall read in its entirety as
17 follows:

18 6-3A-5: BIAS-MOTIVATED MUNICIPAL OFFENSES:

19
20 A. The Town Council hereby finds and declares that it is the right of every
21 person, regardless of race, color, ancestry, religion, national origin, physical or
22 mental disability, or sexual orientation to be secure and protected from fear,
23 intimidation, harassment, and physical harm caused by the activities of
24 individuals and groups. The Town Council further finds that the advocacy of
25 unlawful acts against persons or groups because of a person's or group's race,
26 color, ancestry, religion, national origin, physical or mental disability, or sexual
27 orientation for the purposes described in this section poses a threat to public order
28 and safety and should be subject to appropriate sanctions as provided in this
29 section.

30
31 B. A person commits a bias-motivated municipal offense if, with the intent to
32 intimidate or harass another person because of that person's actual or perceived
33 race, color, religion, ancestry, national origin, physical or mental disability, or
34 sexual orientation, he or she:

35
36 (1) by words or conduct, knowingly places another person in fear of imminent
37 lawless action directed at that person or that person's property and such words or
38 conduct are likely to produce bodily injury to that person or damage to that
39 person's property; or

40
41 (2) knowingly causes damage to or destruction of the property of another person.

42
43 C. The criminal penalty provided in this section for the commission of a bias-
44 motivated municipal offense is not intended to and shall not be construed as

1 precluding the victim of such action from seeking any other remedies otherwise
2 available under law.

3
4 D. For purposes of this section:

5
6 (1) “physical or mental disability” refers to a disability as used in the definition of
7 the term “person with a disability” in Section 18-6.5-102(3), C.R.S.

8
9 (2) “sexual orientation” means a person’s actual or perceived orientation toward
10 heterosexuality, homosexuality, bisexuality, or transgender status.

11
12 E. No charge brought under this section shall be dismissed, and a defendant
13 charged with a violation of this section shall not be permitted to plead guilty or
14 nolo contendere to an offense that is not a violation of this section, unless the
15 prosecuting attorney makes a good faith representation to the Municipal Judge on
16 the record that such attorney would not be able to establish a prima facie case that
17 the defendant violated this section if the defendant was brought to trial on the
18 original charge of having violated this section.

19
20 F. It shall be a misdemeanor offense for any person to violate this section. Any
21 person convicted of having violated this section shall be punished as set forth in
22 Chapter 4 of Title 1 of this Code; provided, however, that for a second and each
23 subsequent conviction for violating this section occurring at any time after the
24 date of the previous violation the Municipal Judge shall impose upon such person
25 a fine of \$999 and a minimum sentence of five days imprisonment in the Summit
26 County jail.

27
28 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
29 various secondary codes adopted by reference therein, shall continue in full force and effect.

30 Section 3. The Town Council hereby finds, determines and declares that this ordinance is
31 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
32 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
33 thereof.

34 Section 4. The Town Council hereby finds, determines and declares that it has the power
35 to adopt this ordinance pursuant to: (i) Section 31-15-103, C.R.S. (concerning municipal police
36 powers); (ii) Section 31-15-401, C.R.S.(concerning municipal police powers); (iii) the authority
37 granted to home rule municipalities by Article XX of the Colorado Constitution; and (iv) the
38 powers contained in the Breckenridge Town Charter.

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

41 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
42 PUBLISHED IN FULL this ____ day of _____, 2010. A Public Hearing shall be held at the
43 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of

1 _____, 2010, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
2 Town.

3
4 TOWN OF BRECKENRIDGE, a Colorado
5 municipal corporation
6

7
8
9 By _____
10 John G. Warner, Mayor

11
12 ATTEST:
13

14
15
16 _____
17 Mary Jean Loufek, CMC,
18 Town Clerk
19

MEMO

TO: Town Council

FROM: Town Attorney

RE: 2010 Trash Ordinance

DATE: February 2, 2010 (for February 9th meeting)

Last month the Police Chief and I began working on a revision to the Town's Trash Receptacle Ordinance to make it clear that paper and plastic bags cannot be placed at the curbside, and to try to tighten up the ordinance to prevent trash being scattered by birds and other animals.

In the process of working on the revision to the Trash Receptacle Ordinance I noticed that the Town has multiple trash-related ordinances, and that they are scattered throughout the Town Code. Part of the trash provisions are found in the Town's "police ordinances" (the Town's criminal code). Others are found in a separate chapter of the Town Code entitled "Garbage and Refuse", in the part of the Town Code dealing with mobile home parks, and in the Town's Street Standards.

Since I was working on a trash-related ordinance anyway, it seemed like a good time to clean up the Town Code by putting all of the Town's trash ordinances in one place. I thought that doing this would make the Code clearer and easier to use. It also gave the Chief and me a chance to look at all of the trash-related ordinances side-by-side; to eliminate duplication; and to try to make the ordinances more consistent.

Enclosed is the proposed new Trash Ordinance that we have drafted for your consideration. If adopted, it would centralize all of the Town's trash-related ordinances into one chapter of the Town Code.

As you will notice, I have marked the entire Section 1 of the ordinance as being new to the Town Code; in fact, much of Section 1 merely relocates or consolidates other portions of the Code into the new ordinance. However, in the process of preparing this ordinance I did make a number of editorial revisions to the various trash-related ordinances. As a result, I thought blacklining the ordinance as I normally do would be confusing, and that it would be best to simply show the entire new chapter 2 as being new to the Town Code. At the risk of making the ordinance too long for you to review easily, however, I have appended to the proposed ordinance all of the current Town trash-related provisions so that you can see the text of the current Town Code provisions if you want to. Footnoted references to the current ordinance provisions are also included to help you find the current ordinance language and compare it with the proposed new ordinance.

To assist you in reviewing the proposed ordinance, here is a brief explanation of each section:

1. **Section 5-2-1; Definitions**¹: The major changes to this section are the addition of new definitions of “indoor garbage receptacle”, “outdoor garbage receptacle”, and the collective term “receptacle.” The primary intent was to create definitions of those receptacles that are approved to be placed outdoors. I also added a better definition of the term “weeds.”
2. **Section 5-2-2; Garbage Receptacles; Placement of Receptacles At Curbside**²: This is the section we started working on initially. Section A creates the basic rule that, with stated exceptions, all garbage that is placed outdoors must be kept in an “outdoor garbage receptacle.” Section B allows placement of garbage at the curbside on trash collection days. The main change to this section is that all garbage placed at the curbside must be fully contained within a “receptacle” (either an indoor garbage receptacle or an outdoor garbage receptacle). No bag, paper or plastic, may be placed at the curbside. Any receptacle placed at the curbside must be kept closed and secured with no gap between the container and the lid until the container has been emptied and moved back to its normal location. Section D is new. It makes clear that a property owner is equally responsible with any other person (such as a tenant or short-term guest) who violates this section.
3. **5-2-3: Littering of Public or Private Property**³: This section updates very slightly the Town’s current littering ordinance. The new language is based on the current state littering statute, but I have modified the definition of “public or private property” to more clearly describe the types of property that are subject to the littering ordinance. Please note the fine and sentencing provisions in Sections D and E. These two provisions are taken straight from the state law. As you will notice, the new littering section is very broadly worded. I think this section can be successfully used to address a number of trash-related violations that occur within the Town.
4. **5-2-4: Construction Materials Removed From Construction Sites and Prevented From Being Scattered**⁴: This section was completely reworked by Council in 2009. I did not make any substantive changes to this section; it was simply relocated within the new Trash chapter.
5. **5-2-5: Prohibited Accumulations**⁵: This section has been rewritten to address unlawful “accumulations” of rubbish, weeds, and manure. Note the distinction between merely “littering” in Section 5-2-3 and “accumulating” rubbish, weeds, and manure in this section. In the process of preparing this ordinance I discovered that the Town currently has two identical manure ordinances on the books. Recall that we had a similar problem with construction materials that was remedied in the rewritten Construction Materials Ordinance last year. The new Trash Ordinance gets rid of the second manure-related provision.

¹ See current section 5-2-2.

² See current sections 5-2-3 and 5-2-3-1.

³ See current section 6-3C-7.

⁴ See current section 5-2-4

⁵ See current section 5-2-5 and 6-3C-9(G).

6. **5-2-6: Polluting Streams and Waters**⁶: This section is a revision to the current Town Code section dealing with unlawfully depositing debris in streams and waters. I have clarified and refocused the ordinance by addition a definition of “pollutant.”
7. **5-2-7: Misuse of Trash Dumpster Enclosure**⁷: This section is carried forward from the current Town Code. There are no substantive changes to the current code provision.
8. **5-2-8: Procedure To Compel Removal of Weeds, Rubbish or Garbage**⁸: The current Town Code section deals only with the procedure by which the Town can require a landowner to remove weeds on his or her property. I have amended this section by making it applicable also to the accumulation of rubbish and garbage. This change will allow the Town to have a formal procedure to compel a landowner to remove both weeds and rubbish and garbage that has accumulated on the property. To my knowledge, the Town has not used the current weed removal procedure before. However, I think it is important for the Town to have a procedure in place to deal with the situation where a landowner allows an unlawful accumulation of rubbish, litter, or weeds to occur on the property, and refuses the Town’s request to voluntarily remedy the situation.
9. **5-2-9: Strict Liability**: This is a completely new section. Most crimes require proof of a “criminal intent” on the part of the perpetrator. You will see reference in many criminal ordinances and statutes to an act committed by the defendant “intentionally”, “knowingly” or “recklessly.” These words define the required criminal intent that must be proven in order to sustain a conviction. However, not all crimes require proof of a criminal intent; in some instances it is sufficient to simply show that the act occurred without proving that the person intended to violate the law. This category of offense is referred to as “strict liability.” The most common example is speeding. To support a conviction of speeding the Town does not have to show the person intended to speed. It is sufficient to show that the person operated the vehicle at a speed in excess of the lawful speed limit. This new section is included in the ordinance to indicate that proof of criminal intent is not required to support a conviction for any violation of the offenses contained in the new chapter. For example, to support a conviction for the offense of littering it is sufficient for the Town to prove that the person “deposited, threw, or left any litter on any public or private property or waters.” It is not necessary to show that the person had a criminal intent to violate the littering ordinance. The fact that none of the offenses in this chapter specifically requires proof of an intentional, knowing, or reckless intent by the defendant may imply that they are strict liability offenses. This proposed section, however, makes it clear.
10. **5-2-10: Nuisance**⁹: The Town Code has an extensive nuisance enforcement provision. The list of enumerated nuisances includes a accumulation of garbage, refuse and rubbish. This section allows the Town to pursue a nuisance remedy against any violation of this chapter. However, it is intended to create only an alternative method of enforcement. Because of the lengthy nuisance enforcement procedures I expect almost all violations to be handled outside of the nuisance provisions of the Code.

⁶ See current section 6-3C-8.

⁷ See current section 6-3D-13.

⁸ See current sections 5-2-8 through 5-2-13.

⁹ See current section 5-2-7.

11. **5-2-11- Penalty**¹⁰: This section makes any violation of the provisions of this chapter an “infraction.” Recall that Town offenses are either “misdemeanors” (punishable by fine and imprisonment), or “infractions” (punishable only by a fine). Because of the relatively minor nature of the offenses described in this chapter I’ve suggested that any violation be treated as an infraction. Except for the littering violation that has its own built-in range of fines (as noted above), any violation of this chapter would be subject to a fine not to exceed \$500 as set by the municipal judge. Note that each day that an infraction occurs constitutes a separate offense. You should also be aware that the current ordinances make a violation of a trash-related offense a misdemeanor, so my proposal represents a change to current Town law.

You will also note that Section 2 of the proposed ordinance repeals a number of Town Code sections. These are the various sections in the current Code that have been either superseded or completely eliminated by the provisions of the new ordinance.

On balance, I think this new ordinance is a substantial improvement over the current Town trash provisions. I look forward to discussing this ordinance with you on Tuesday.

¹⁰ See current section 5-2-14.

1 *FOR WORKSESSION/FIRST READING – FEB. 2*

2
3 Additions To The Current Breckenridge Town Code Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. 3

7
8 Series 2010

9
10 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 2 OF
11 TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING SOLID WASTE AND
12 WEEDS; AND MAKING CONFORMING AMENDMENTS TO THE BRECKENRIDGE
13 TOWN CODE

14
15 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
16 COLORADO:

17
18 Section 1. Chapter 2 of Title 5 of the Breckenridge Town Code is repealed and readopted
19 with changes so as to as to read in its entirety as follows:

20 **CHAPTER 2**

21 **SOLID WASTE AND WEEDS**

22
23
24 **Section:**

25
26 **5-2-1: Definitions**

27 **5-2-2: Garbage Receptacles; Placement of Receptacles At Curbside**

28 **5-2-3: Littering of Public or Private Property**

29 **5-2-4: Construction Materials Removed From Construction Sites And Prevented From**
30 **Being Scattered**

31 **5-2-5: Prohibited Accumulations**

32 **5-2-6: Polluting Streams and Waters**

33 **5-2-7: Misuse of Trash Dumpster Enclosure**

34 **5-2-8: Procedure to Compel Removal of Weeds, Rubbish, Or Garbage**

35 **5-2-9: Strict Liability**

36 **5-2-10:Nuisance**

37 **5-2-11:Penalty**

38
39 **5-2-1: DEFINITIONS: As used in this Chapter the following words have the**
40 **following meanings, unless the context clearly requires otherwise:**

41 **DIRECTOR:**

The Director of the Department of
Community Development, or his or her

designee acting pursuant to Section 1-7-2 of this Code.

GARBAGE:

All putrescible animal or vegetable matter resulting from the processing, preparation, cooking, serving, sale or storage of meats, fowl, fish, fruits or vegetables.

INDOOR GARBAGE RECEPTACLE:

A water-tight and fire-resistant galvanized metal or non-absorbent container equipped with a tightly fitting galvanized metal or nonabsorbent cover or lid.

OUTDOOR GARBAGE RECEPTACLE:

A water-tight and fire-resistant galvanized metal or non-absorbent container equipped with both a tightly fitting galvanized metal or nonabsorbent cover or lid and a latching mechanism that keeps the lid tightly closed against the receptacle and prevents access to the contents of the receptacle by wildlife.

PERSON IN CHARGE OF REAL PROPERTY:

Any person owning or being entitled to the possession, use, or control of any residential, commercial, or mixed-use real property within the Town.

RECEPTACLE:

Includes only indoor garbage receptacles and outdoor garbage receptacles as defined in this Section.

RUBBISH:

All nonputrescent solid wastes, consisting of both combustible and noncombustible wastes, including, but not limited to, paper, ashes, cardboard, metal cans, yard clippings, sod, dirt, wood, glass, rags, discarded clothes or wearing apparel of any kind, abandoned or unsafe household furnishings or appliances, discarded or waste construction materials as defined in Section 5-2-4, discarded tires, and any other discarded or waste object or item of every form, size, kind, and description that does not meet the definition of "garbage."

WEEDS:

A plant not less than twelve inches (12") in

height that tends to grown thickly where it is not wanted and to choke out my desirable plants.

1
2 **5-2-2: GARBAGE RECEPTACLES; PLACEMENT OF RECEPTACLES**
3 **AT CURBSIDE:**
4

5 A. **Except when placed for curbside pickup in accordance with**
6 **Subsection B of this Section, all garbage that is placed, stored, or kept**
7 **outside of a building, structure, or an approved trash dumpster**
8 **enclosure as defined in Section 5-6-3 of this Code shall be kept in an**
9 **outdoor garbage receptacle.**

10
11 B. **Garbage may be placed at the curbside for pickup by a trash collector**
12 **only in accordance with the following regulations:**
13

14 **1. Garbage may be placed at the curbside for pickup only when**
15 **fully contained within a receptacle. No garbage may be placed**
16 **at the curbside in a paper or plastic bag, or other container**
17 **that is not a receptacle.**

18
19 **2. Any receptacle placed for curbside pickup shall be kept closed**
20 **and secured with no gap between the container and the lid**
21 **until it has been emptied by the trash contractor and moved**
22 **back to its normal location.**

23
24 **3. Receptacles may be placed at the curbside only after 6 A.M. on**
25 **the day of pickup. After pickup, each receptacle must be**
26 **moved back to its normal location by 10 P.M. of the same day.**

27
28 C. **The provisions of this Section shall not apply to a receptacle**
29 **maintained by a business that is: (i) primarily intended as a**
30 **convenience for use by the customers of the business (and not the**
31 **business itself); (ii) designed in such a manner as to discourage**
32 **wildlife from getting into the receptacle; and (iii) emptied on a daily**
33 **basis.**

34
35 D. **The owner of real property and any other person who causes the**
36 **accumulation of garbage at the owner's property are both**
37 **individually responsible for any garbage placed, stored, or kept at**
38 **such property in violation of this Section.**

39
40 **5-2-3: LITTERING OF PUBLIC OR PRIVATE PROPERTY:**
41

1
2
3

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

A. As used in this Section the following terms have the following meanings, unless the context clearly requires otherwise:

LITTER: All rubbish as defined in Section 5-2-1, all garbage as defined in Section 5-2-1, and all waste material, refuse, debris, or other foreign substances, solid or liquid, of every form, size, kind, and description.

PUBLIC OR PRIVATE PROPERTY: Includes, but is not limited to: (i) the right-of-way of any public street or highway, any publicly owned lot, tract, parcel, or building, any public park, playground, recreational trail, any publicly owned conservation, open space, or recreation area, and (ii) any privately owned real property or building.

WATERS: Any river, creek, or other body of water or watercourse, including frozen areas or the shores thereof

B. Any person who deposits, throws, or leaves any litter on any public or private property or in any waters commits the offense of littering.

C. It shall be an affirmative defense that:

(1) Such property is an area designated by law for the disposal of such material and the person is authorized by the proper public authority to so use the property;

(2) The litter is placed in a receptacle or container installed on such property for that purpose, regardless of whether the receptacle or container meets the definition of receptacle in Section 5-2-1; or

(3) Such person is the owner or tenant in lawful possession of such property, or has first obtained written consent of the owner or tenant in lawful possession, or the act is done under the personal direction of said owner or tenant.

D. Littering is an infraction punishable by a mandatory fine of not less than twenty dollars nor more than five hundred dollars upon a first conviction; by a mandatory fine of not less than fifty dollars nor more

1 than one thousand dollars upon a second conviction; and by a
2 mandatory fine of not less than one hundred dollars nor more than
3 one thousand dollars upon a third or subsequent conviction.

4
5 E. In the discretion of the municipal court, all or any portion of a fine
6 imposed in excess of the mandatory minimum fine may be suspended
7 upon the condition that the defendant gather and remove from
8 specified public property or specified private property, with prior
9 permission of the owner or tenant in lawful possession thereof, any
10 litter found thereon, or upon the condition that the defendant pick up
11 litter at a time prescribed by and at a specified place or places within
12 the Town for not less than eight hours upon a first conviction or for
13 not less than sixteen hours upon a second or subsequent conviction.

14
15 F. Whenever litter is thrown, deposited, dropped, or dumped from any
16 motor vehicle in violation of this Section, the operator of said motor
17 vehicle is presumed to have caused or permitted the litter to be so
18 thrown, deposited, dropped, or dumped therefrom.

19
20 5-2-4: CONSTRUCTION MATERIALS REMOVED FROM CONSTRUCTION
21 SITES AND PREVENTED FROM BEING SCATTERED:
22

23 A. As used in this Section the following terms have the following
24 meanings, unless the context clearly requires otherwise:
25

COMPLETION OF A
CONSTRUCTION PROJECT:

The first to occur of either:

1. The completion of a construction project
and the issuance by the Town of a final
certificate of occupancy or final certificate
of completion, whichever is applicable; or

2. The suspension or revocation of the
building permit for such construction
project.

CONSTRUCTION MATERIALS:

Includes, without limitation, all plaster,
broken concrete, bricks, cinder blocks,
stones, wood, roofing material, wire or
metal binding, wrapping, plastic sheeting,
paper, sacks, or loose, and discarded or
unused material of every form, size, kind,
and description used in connection with or
resulting from the demolition, construction
or reconstruction of a building, structure,

wall, fence, sidewalk or any portion thereof.

CONSTRUCTION SITE:

The site of the demolition, construction, or reconstruction of a building, structure, wall, fence, sidewalk or any portion thereof, and the site of storage of materials and equipment to be used in connection therewith.

PERSON RESPONSIBLE FOR THE CONSTRUCTION WORK:

The person to whom the Town has issued a building permit authorizing such work, or if no permit has been issued, the owner of the property upon which the construction work was performed.

- 1
2
3
4
5
6
7
8
9
10
11
- A. **Prior to the completion of a construction project the person responsible for the construction work shall secure all construction materials located on the construction site and prevent them from being scattered off of the construction site by the wind or other cause.**
 - B. **Not later than the completion of a construction project the person responsible for the construction work shall remove all construction materials from the construction site and properly discard such materials away from the construction site.**

12
13

5-2-5: PROHIBITED ACCUMULATIONS:

- 14
15
16
17
18
19
20
21
22
23
24
25
26
- A. **No person in charge of real property shall permit or allow the accumulation of rubbish upon such property.**
 - B. **No person in charge of real property shall fail to remove weeds growing upon such property, from the sidewalks in front of such property, or from any alley in the rear of such property.**
 - C. **Other than a spread not exceeding an average of one inch (1") of manure which may be applied on lawns or gardens for fertilizing purposes, manure shall not be kept on any property for any purpose, or kept in any place for later use, but shall be either plowed under or removed by the person in charge of such real property.**

27
28

5-2-6: POLLUTING STREAMS AND WATERS:

- 29
30
31
- A. **As used in this Section, the following words have the following meanings, unless the context clearly requires otherwise:**

POLLUTANT:

Includes dredged spoil dirt, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage as defined in Section 5-2-1, rubbish as defined in Section 5-2-1, chemical waste, biological nutrient, biological material, radioactive material, wrecked or discarded equipment, rock, sand, animal carcass, or any industrial, municipal or agricultural waste of every form, size, kind, and description.

1
2 B. **No person shall throw or deposit, or cause or permit to be thrown or**
3 **deposited, any pollutant in any river, stream, storm or sanitary**
4 **sewer, ditch, pond, well, cistern, trough or other body of water,**
5 **whether artificially or naturally created.**
6

7 **5-2-7: MISUSE OF TRASH DUMPSTER ENCLOSURE:**

8
9 A. **As used in this Section, the following words have the following**
10 **meanings, unless the context clearly requires otherwise:**
11

RECYCLABLE MATERIALS:

Includes only discarded glass, cardboard, aluminum, tin, newspaper and office paper products that are separated from other refuse for the purpose of recycling.

REFUSE:

All forms of solid waste, including, but not limited to, garbage as defined in Section 5-2-1, rubbish as defined in Section 5-2-1, and recyclable materials.

TRASH COMPACTOR:

A device that compresses refuse into small bundles for easy disposal. Where a trash compactor is installed, it is a part of a trash dumpster enclosure.

TRASH DUMPSTER:

A metal refuse container that is designed to be emptied on site by a specifically equipped refuse collection truck.

**TRASH DUMPSTER
ENCLOSURE:**

A structure that is designed and used to: (i) house a trash dumpster and/or a trash compactor, (ii) screen a trash dumpster and/or trash compactor from view, and (iii) keep the refuse which is deposited in such enclosure from being scattered.

1 **B. Any person who does any of the following acts commits the offense of**
2 **misuse of a trash dumpster enclosure:**

- 3
- 4 **1. Deposits, throws, or leaves any refuse anywhere within a trash**
5 **dumpster enclosure, except within the trash dumpster itself;**
- 6
- 7 **2. Deposits, throws, or leaves any refuse within ten feet (10') of**
8 **the exterior wall of a trash dumpster enclosure; or**
- 9
- 10 **3. Places any recyclable material in a recycling container within a**
11 **trash dumpster enclosure that is clearly indicated by signage**
12 **or labeling as being intended to contain only other types of**
13 **recyclable materials.**
- 14

15 **C. An employer is legally accountable under this Section for the conduct**
16 **of his or her employees that that violates the provisions of this Section**
17 **if such conduct occurs in the course and scope of such employment. It**
18 **shall be presumed that such conduct was caused to be done,**
19 **requested, commanded, or authorized by the employer as part of the**
20 **employee's duties.**

21

22 **5-2-8: PROCEDURE TO COMPEL REMOVAL OF WEEDS, RUBBISH,**
23 **OR GARBAGE**

24

25 **A. In addition to any other remedy provided by law, the Director may**
26 **give written notice by certified or registered mail, return receipt**
27 **requested, to any person in charge of real property directing the**
28 **removal of weeds, or the removal of an accumulation of rubbish,**
29 **garbage, or both rubbish and garbage. A true copy of such notice**
30 **shall at the same time be mailed by registered or certified mail, return**
31 **receipt requested, to the owner of such property as shown upon the**
32 **tax rolls of the Summit County, at the address of such owner as**
33 **therein shown. Such notice shall state that if such weeds are not**
34 **removed, or if such accumulation of rubbish, garbage, or both**
35 **rubbish and garbage, is not removed within the time stated in the**
36 **notice (which shall not be less than ten (10) nor more than twenty (20)**

1 days from the date of the notice), the costs of such removal may be
2 assessed against the property (describing same) pursuant to the terms
3 of this Section, together with an additional five percent (5%) for
4 inspection and incidental costs and an additional ten percent (10%)
5 penalty for cost of collection, and collected in the same manner as real
6 estate taxes against the property.

7
8 B. If such weeds are not removed, or such accumulation of rubbish or
9 garbage, or both rubbish and garbage, as required in the notice
10 within the time described therein, the Director is authorized and
11 empowered to cause such weeds to be removed in such manner as the
12 director may determine, or such rubbish and garbage, or both
13 rubbish and garbage, to be removed.

14
15 C. After causing such weeds to be removed or the rubbish, garbage, or
16 both rubbish and garbage, to be removed, the Director shall certify to
17 the Town Clerk the street address and legal description of the real
18 property upon which such work was done, together with the name of
19 the owner thereof as shown by the tax rolls of Summit County,
20 together with a statement of the work performed, the date of
21 performance, and the actual cost thereof.

22
23 D. Upon receipt of a statement from the Director as described in
24 Subsection C, the Town Clerk shall mail a notice to the owner of the
25 real property as shown by the tax rolls, at the address shown upon the
26 tax rolls, by first class mail, postage prepaid, notifying such owner
27 that work has been performed pursuant to this Section, stating the
28 date of performance of the work, the nature of the work and
29 demanding payment of the actual cost thereof (as certified by the
30 Director), together with five percent (5%) for inspection and other
31 incidental costs in connection therewith. Such notice shall state that if
32 the full amount is not paid within ten (10) days of mailing the notice, it
33 shall become an assessment on and a lien against the owner's property
34 where the work was done, and will be certified as an assessment
35 against such property, together with a ten percent (10%) penalty for
36 collection in the same manner as the real estate taxes upon the
37 property.

38
39 E. If the Town Clerk does not receive full payment within ten (10) days
40 following the mailing of the notice described in Subsection D, the
41 Town Clerk shall inform the Town Council of such fact, and the Town
42 Council shall thereupon enact an ordinance assessing the whole cost
43 of such work, including five percent (5%) for inspection and other
44 incidental costs in connection therewith, upon the lots and tracts of
45 land from which the weeds, garbage, rubbish, or both garbage and

1 rubbish, has been removed, together with a ten percent (10%) penalty
2 for cost of collection.

3
4 F. Following adoption passage of the ordinance described in Subsection
5 E, the Town Clerk shall certify the same to the Summit County
6 Treasurer, who shall collect the assessment pursuant to Section 31-20-
7 105, C.R.S., including the ten percent (10%) penalty for cost of
8 collection, in the same manner as other real property taxes are
9 collected. Each such assessment shall be a lien against the lot, tract or
10 parcel of land where the work was done by the Town until fully paid,
11 and shall have priority over all other liens except general taxes and
12 prior special assessments.

13
14 5-2-9: STRICT LIABILITY: Each municipal offense established by this Chapter is
15 a strict liability offense and does not require proof of specific criminal intent. Proof
16 of performance by a person of conduct that includes a voluntary act or the omission
17 to perform an act which he is capable of performing is sufficient to establish a
18 violation of any municipal offense established by this Chapter.

19
20 5-2-10: NUISANCE: Any violation of this Chapter is declared to be a nuisance and,
21 in the discretion of the Director, may be abated in accordance with the provisions of
22 Chapter 1 of this Title. Nothing in this Chapter, however, requires abatement of a
23 violation of this Chapter by use of the nuisance provisions of Chapter 1 of this Title,
24 and the Town may elect to use any remedy available to by law it in order to enforce
25 the provisions of this Chapter.

26
27 5-2-11: PENALTY: Any person who violates any provision of this Chapter is guilty of an
28 infraction. Except as provided in Section 5-2-3, any person found to be in violation of, or
29 against whom a default judgment has been entered for a violation of this Section, shall be
30 punished by a fine as provided in Section 1-4-1 of this Code.

31 Section 2. The following Sections and Subsections of the of the Breckenridge Town
32 Code are repealed:

- 33 A. Section 5-1-7(L);
34 B. The definition of “litter” set forth in Section 6-3-5;
35 C. Section 6-3C-7;
36 D. Section 6-3C-8;
37 E. Section 6-3C-9;
38 F. Section 6-3D-13;
39 G. Section 8-3-9; and
40 H. Section 10-1-17(A)

41
42 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
43 various secondary codes adopted by reference therein, shall continue in full force and effect.

1 Section 4. The Town Council hereby finds, determines and declares that this ordinance is
2 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
3 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
4 thereof.

5 Section 5. The Town Council hereby finds, determines and declares that it has the power
6 to adopt this ordinance pursuant to: (i) Section 31-15-103, C.R.S. (concerning municipal police
7 powers); (ii) Section 31-15-401, C.R.S.(concerning municipal police powers); (iii) the authority
8 granted to home rule municipalities by Article XX of the Colorado Constitution; and (iv) the
9 powers contained in the Breckenridge Town Charter.

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

12 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
13 PUBLISHED IN FULL this ____ day of _____, 2010. A Public Hearing shall be held at the
14 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
15 _____, 2010, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
16 Town.

17
18 TOWN OF BRECKENRIDGE, a Colorado
19 municipal corporation
20

21
22
23 By _____
24 John G. Warner, Mayor
25

26 ATTEST:
27
28
29

30 _____
31 Mary Jean Loufek, CMC,
32 Town Clerk
33
34
35
36
37
38
39
40
41
42
43
44

CURRENT TOWN TRASH-RELATED ORDINANCES

CHAPTER 2

GARBAGE AND REFUSE

SECTION:

- 5-2--1: Legislative Declaration
- 5-2--2: Definitions
- 5-2--3: Receptacles Required
- 5-2--3-1: Placement And Removal Of Garbage Cans And Receptacles
- 5-2--4: Building Materials Removed From Construction Sites; Prevented From Being Scattered
- 5-2--5: Prohibited Accumulations
- 5-2--6: Burning Of Garbage And Waste Materials (Rep. by Ord. 21, Series 1994)
- 5-2--7: Nuisance Declared
- 5-2--8: Notice To Abate
- 5-2--9: Noncompliance With Notice
- 5-2-10: Removal Of Accumulations; Certification
- 5-2-11: Notification Of Work Done; Fees
- 5-2-12: Failure To Pay
- 5-2-13: Collection Of Assessment
- 5-2-14: Penalties

5-2-1: LEGISLATIVE DECLARATION:

The town council hereby declares that the prohibitions against accumulation of garbage, rubbish and weeds, as hereinafter set forth, are necessary for the public health, safety and welfare of the inhabitants of the town.

5-2-2: DEFINITIONS:

The following definitions shall be applicable to this chapter unless otherwise provided:

!DEF! GARBAGE: All putrescible animal or vegetable matter resulting from the processing, preparation, cooking, serving, sale or storage of meats, fowl, fish, fruits or vegetables.

PERSON: Any natural person, or any partnership, corporation or other association acting as a unit as well as individuals.

PERSON IN CHARGE OF REAL PROPERTY: Any person owning or having or being entitled to the possession or control of any real estate, leasehold, residence, building or premises within the town, or any part thereof, including the agent or agents of such person.

RUBBISH: All wastes, garbage, refuse and litter, whether putrescible or nonputrescible, combustible or noncombustible, and including, but not limited to, grass clippings, leaves, hay,

straw, manure, shavings, excelsior, paper, ashes, containers, boxes, glass, cans, bottles, wrappings, cigarettes, cardboard, branches, wood, bedding, crockery, rags, abandoned or unsafe household furnishings, carcasses of dead animals, discarded or waste building materials including, but not limited to, plaster, concrete pieces, bricks, cinder blocks, stone, wood, roofing materials, wire or metal binding, sacks and any and all other materials commonly known as rubbish or refuse.

WEEDS: Construed in their ordinary, usual, customary and accepted sense and shall include weeds, brush or grass in excess of twelve inches (12") in height.

5-2-3: RECEPTACLES REQUIRED:

It shall be the duty of all persons in charge of real property, and all other persons producing or having garbage, to provide and keep watertight garbage cans of galvanized metal or other nonabsorbent material in which all garbage shall be kept. All garbage shall be placed and kept in such cans until it is hauled away, unless disposed of in a garbage disposal unit properly connected to water and sewer lines.

5-2-3-1: PLACEMENT AND REMOVAL OF GARBAGE CANS AND RECEPTACLES:

A. Except as provided in subsections B and C of this section, all garbage cans and similar refuse receptacles that do not have a latching mechanism which keeps the lid tightly closed against the can or receptacle and prevents access to the contents of the can or receptacle by wildlife shall be stored inside a home, garage, building, shed, or an approved "trash dumpster enclosure" as defined in section 5-6-3 of this title.

B. Residents, tenants, renters, lessors, or occupiers of property within the town with curbside garbage pick up shall place their garbage cans and similar refuse receptacles at the curb only after six o'clock (6:00) A.M. on the day of pick up. After pick up, the garbage cans and similar refuse receptacles must be resecured in accordance with subsection A of this section, by ten o'clock (10:00) P.M.

C. The provisions of subsection A of this section shall not apply to an outdoor refuse receptacle maintained by a business that is: 1) primarily intended as a convenience for use by the customers of the business (and not the business itself); 2) designed in such a manner as to discourage wildlife from getting into the receptacle; and 3) emptied on a daily basis.

5-2-4: BUILDING MATERIALS REMOVED FROM CONSTRUCTION SITES; PREVENTED FROM BEING SCATTERED:

A. As used in this section the following terms have the following meanings:

COMPLETION OF A CONSTRUCTION PROJECT: The first to occur of either:

1. The completion of a construction project and the issuance by the town of a final certificate of occupancy or final certificate of completion, whichever is applicable; or

2. The suspension or revocation of the building permit for such construction project.

CONSTRUCTION MATERIALS: Includes, without limitation, all plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, wrapping, plastic sheeting, paper, sacks, or loose, discarded or unused material of any kind used in connection with or resulting from the demolition, construction or reconstruction of a building, structure, wall, fence, sidewalk or any portion thereof.

CONSTRUCTION SITE: The site of the demolition, construction, or reconstruction of a building, structure, wall, fence, sidewalk or any portion thereof, and the site of storage of materials and equipment to be used in connection therewith.

PERSON RESPONSIBLE FOR THE CONSTRUCTION WORK: The person to whom the town has issued a building permit authorizing such work, or if no permit has been issued, the owner of the property upon which the construction work was performed. !DEFEND!

B. Prior to the completion of a construction project the person responsible for the construction work shall secure all construction materials located on the construction site and prevent them from being scattered off of the construction site by the wind or other cause. This offense shall be a strict liability offense and shall not require proof of intent.

C. Not later than the completion of a construction project the person responsible for the construction work shall remove all construction materials from the construction site and properly discard such materials away from the construction site. This offense shall be a strict liability offense and shall not require proof of intent.

5-2-5: PROHIBITED ACCUMULATIONS:

A. Manure: Other than a light spread of manure which may be applied on lawns or gardens for fertilizing purposes, it is unlawful for any person to keep manure on any property for any purpose, or keep manure in any place for later use, and such manure shall be either plowed under or removed by the person in charge of the real property.

B. Rubbish And Weeds: It is unlawful for any person to throw, scatter, deposit, sweep or otherwise place any rubbish or weeds on any street, sidewalk, gutter, sewer, intake, alley, vacant lot or other property.

C. Unlawful Accumulations: It is unlawful for any person in charge of any real property to permit or allow the accumulation of rubbish or the growth of weeds in or upon such premises, or part thereof, or upon the sidewalks in front thereof, or the alleys in the rear thereof; and it is unlawful for any such person having charge of any such real property to fail to remove any such accumulation of rubbish in or upon the premises or upon the sidewalk in front thereof or the alleys in the rear thereof, or to fail to remove such weeds growing upon such premises or part thereof or sidewalks in front thereof or alleys in the rear thereof.

5-2-6: BURNING OF GARBAGE AND WASTE MATERIALS:

(Rep. by Ord. 21, Series 1994)

5-2-7: NUISANCE DECLARED:

A violation of either section 5-2-4 or 5-2-5 of this chapter is declared to be a nuisance. The provisions of chapter 1 of this title shall apply to the abatement of such nuisance.

5-2-8: NOTICE TO ABATE:

In addition to any other remedy provided by law, the director of the department of community development, or his designated agent, may give written notice to the person in charge of any such premises within the town by certified or registered mail, return receipt requested, directing the removal of weeds, or the removal of an accumulation of rubbish, or both, and true copy of such notice shall at the same time be mailed by registered or certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of the county of Summit, at the address of such owner as therein shown. Such notice shall state if such weeds are not removed, or if such accumulation of rubbish is not removed within the time stated in the notice (which shall not be less than 10 nor more than 20 days from the date of the notice), the costs of such removal may be assessed against the property (describing same) pursuant to the terms of this chapter, together with an additional five percent (5%) for inspection and incidental costs and an additional ten percent (10%) penalty for cost of collection, and collected in the same manner as real estate taxes against the property.

5-2-9: NONCOMPLIANCE WITH NOTICE:

If such weeds are not removed, or such accumulation of rubbish removed, or both, as required in the notice, within the time stipulated therein, the director of the department of community development is authorized and empowered to cause such weeds to be removed in such manner as the director may determine, or such rubbish to be removed, or both.

5-2-10: REMOVAL OF ACCUMULATIONS; CERTIFICATION:

After causing such weeds to be removed or rubbish to be removed, or both, the director of the department of community development shall certify to the town clerk the legal description of the property upon which such work was done, together with the name of the owner thereof as shown by the tax rolls of Summit County, together with a statement of the work performed, the date of performance and the cost thereof.

5-2-11: NOTIFICATION OF WORK DONE; FEES:

Upon receipt of such a statement from the director, the town clerk shall mail a notice to the owner of the premises as shown by the tax rolls, at the address shown upon the tax rolls, by first class mail, postage prepaid, notifying such owner that work has been performed pursuant to this

chapter, stating the date of performance of the work, the nature of the work and demanding payment of the cost thereof (as certified by the director), together with five percent (5%) for inspection and other incidental costs in connection therewith. Such notice shall state that if the amount is not paid within ten (10) days of mailing the notice, it shall become an assessment on and a lien against the property of the owner, describing the same, and will be certified as an assessment against such property, together with a ten percent (10%) penalty for collection in the same manner as the real estate taxes upon the property.

5-2-12: FAILURE TO PAY:

If the clerk does not receive payment within the period of ten (10) days following the mailing of such notice, the clerk shall inform the town council of such fact, and the council shall thereupon enact an ordinance assessing the whole cost of such work, including five percent (5%) for inspection and other incidental costs in connection therewith upon the lots and tracts of land from which the weeds, brush or rubbish has been removed, and together with a ten percent (10%) penalty for cost of collection.

5-2-13: COLLECTION OF ASSESSMENT:

Following passage of such ordinance upon second reading, the clerk shall certify the same to the county treasurer, who shall collect the assessment, including the ten percent (10%) penalty for cost of collection, in the same manner as other taxes are collected. Each such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.

5-2-14: PENALTIES:

Every person convicted of a violation of any provision of this chapter shall be punished as provided in section 1-4-1 of this code.

POLICE REGULATIONS

6-3C-7: LITTERING OF PUBLIC AND PRIVATE PROPERTY:

A. Any person who deposits, throws or leaves any litter on any public place or private property or in any waters commits littering.

B. It shall be an affirmative defense to a charge of littering that:

1. Such property is an area designated by law for the disposal of such material and the person is authorized by the proper public authority to so use the property; or
2. The litter is placed in a receptacle or container installed on such property for that purpose; or

3. Such person is the owner or tenant in lawful possession of such property, or has first obtained written consent of the owner or tenant in lawful possession, or the act is done under the personal direction of said owner or tenant.

C. It is in the discretion of the court, upon the conviction of any person and the imposition of a fine under this section, to suspend the fine upon the condition that the convicted person gather and remove from specified public property or specified private property, with prior permission of the owner or tenant in lawful possession thereof, any litter found thereon.

D. Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle in violation of this section, the operator of said motor vehicle in violation is presumed to have caused or permitted the litter to be so thrown, deposited, dropped or dumped therefrom.

6-3C-8: DEPOSITING DEBRIS IN STREAMS AND WATERS:

It is unlawful for any person to throw or deposit or cause or permit to be thrown or deposited in any stream, storm or sanitary sewer, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created, or so near thereto as to be liable to pollute the water, any waste products composed of animal or vegetable substance or both, any dead animal, sewage, excrement or garbage, trash or debris, any fuel, oil or other petroleum based products, paint, chemicals, whether liquid or solid, scrap, construction materials, any refuse or any other materials that may reasonably cause the water to become contaminated.

6-3C-9: TRASH ACCUMULATION AND REMOVAL:

A. Accumulation Of Refuse; Prohibited And Declared Nuisance: Any accumulation of refuse except in containers expressly designed, intended for, and of sufficient construction to contain such accumulation on any premises, improved or unimproved, in the town is prohibited and hereby declared to be a nuisance. Such accumulation as is approved in this subsection shall be deemed a nuisance if not disposed of as required by this section within seven (7) days of its initial disposal in said approved container.

B. Abatement: Abatement of any nuisance declared by this chapter shall be in accordance with the procedures established in title 5, chapter 1 of this code.

C. Accumulation And Deposit Of Garbage Prohibited: (Rep. by Ord. 22, Series 1993)

D. Refuse Not To Be Thrown In Street, Vacant Lot: No hay, straw, shavings, excelsior, paper or other combustible materials, sod, lawn mowings, leaves, weeds, ashes, glass, bottles, broken glass, nails, tacks, wire, cans, rocks, stones, snow or waste material of any kind or nature whatsoever or any other refuse shall be thrown or swept into any street, sidewalk, gutter, sewer intake, alley, vacant lot or other real property.

E. Building Materials To Be Removed From Construction Sites: (Rep. by Ord. 19, Series 2009)

F. Removal Of Refuse From Business Required: Discarded automobile parts, stoves, furniture, wool, hides, junkyard refuse and packinghouse or slaughterhouse refuse shall be removed periodically from such respective establishments by the proprietor so that the premises are clear of such material at all times. Silt and similar deposits from vehicle and equipment wash establishments or racks shall be removed to an approved disposal site by the establishment creating such deposit. Any accumulation of refuse that is highly explosive or inflammable which might endanger life or property shall be removed to such place as is approved by the town or the chief of the fire department or their designees; such removal is to be effected by the proprietors responsible therefor.

G. Accumulation And Use Of Manure: Other than a spread not exceeding an average of one inch (1") of manure which may be applied on lawns or gardens for fertilizing purposes, manure shall not be kept on any property for any purpose, or kept in any place for later use, but shall be either plowed under or removed by the owner, occupant or agent of the owner or occupant of said property.

6-3D-13: MISUSE OF TRASH DUMPSTER ENCLOSURE:

A. As used in this Section, unless the context clearly requires otherwise:

!DEF! RECYCLABLE MATERIALS: Only discarded glass, cardboard, aluminum, tin, newspaper and office paper products which are separated from other refuse for the purpose of recycling.

REFUSE: All forms of solid waste, including garbage, rubbish, trash, recyclable materials, and similar material.

TRASH COMPACTOR: A device that compresses refuse into small bundles for easy disposal. Where a trash compactor is installed, it is a part of a trash dumpster enclosure.

TRASH DUMPSTER: A metal refuse container which is designed to be emptied on site by a specifically equipped refuse collection truck.

TRASH DUMPSTER ENCLOSURE: A structure which is designed and used to: 1) house a trash dumpster and/or a trash compactor, 2) screen a trash dumpster and/or trash compactor from view, and 3) keep the refuse which is deposited in such enclosure from being scattered.

B. It shall be unlawful for any person to misuse a trash dumpster enclosure. A person commits the offense of misuse of trash dumpster enclosure if such person:

1. Deposits, throws or leaves any refuse anywhere within a trash dumpster enclosure, except within the trash dumpster itself;

2. Deposits, throws or leaves any refuse within ten feet (10') of the exterior wall of a trash dumpster enclosure; or

3. Places any recyclable material in a recycling container within a trash dumpster enclosure which is clearly indicated by signage or labeling as being intended to contain other types of recyclable materials.

C. Misuse of trash dumpster enclosure is a strict liability offense.

D. An employer is legally accountable for the conduct of such person's employees which occurs in the course and scope of such employment and which violates the provisions of this Section. It shall be conclusively presumed that such conduct was caused to be done, requested, commanded or authorized by the employer as part of the employee's duties.

MOBILE HOME PARK REGULATIONS

8-3-9: GARBAGE AND TRASH RECEPTACLES:

Suitable garbage containers with tight-fitting covers shall be provided in quantities adequate to permit disposal of all garbage and rubbish. Garbage and/or trash containers shall be stored in the service building provided for each mobile home space. The containers shall be kept in a sanitary condition at all times. Garbage and rubbish shall be collected and disposed of as frequently as may be necessary to insure that the containers shall not overflow. The cans shall be kept in sanitary condition at all times.

STREET STANDARDS

10-1-17: PROHIBITED ACTS AND CONDITIONS:

A. Depositing Litter In Streets: It shall be unlawful to deposit or litter any street with ashes, sod, earth, grass clippings, sand or gravel, rubbish, wastepaper, garbage or any other waste material whatsoever.

MEMO

TO: Town Council
FROM: Town Attorney
RE: Charter Amendments Ordinance
DATE: February 3, 2010 (for February 9th meeting)

Enclosed is the proposed ordinance referring several Charter amendments to the voters at the upcoming Town regular election on April 6th.

There are a series of proposed changes to the version of the ordinance that you reviewed at your January 26th meeting. They are blacklined in the enclosed ordinance. Here is an explanation of the changes:

1. Initiative and Referendum Amendment – At the last meeting the Council indicated that instead of simply adopting the state municipal initiative and referendum statutes by reference in the Charter you would prefer to see the full text of the current state laws written into the Charter. By doing that you could see the exact language that was being put into the Charter, and you would also freeze the current state law and not automatically be forced to accept any future amendments to the state initiative and referendum laws that the legislature might make.

The current state law is lengthy, and putting it into the Charter would make the initiative and referendum section of the Charter extremely wordy. As an alternative to writing the full text of the current state law into the Charter it has been suggested that instead we simply preserve the fundamental right to initiative and referendum in the Charter, including the signature requirements provided in the current Charter (15% for initiative and 10% for referendum, as compared to 5% for both initiative and referendum under the state statutes), and direct in the Charter that the procedures for exercising the rights of initiative and referendum will be set forth in a separate ordinance. I believe this approach complies with the statutory requirement that “(e)ach home rule charter . . . contain procedures for the initiative and referendum.”

The benefits of this approach are that the Council could adopt an Initiative and Referendum Procedures Ordinance based on the current state municipal initiative and referendum statutes, but retain the ability to amend that ordinance in the future if changes to the ordinance are deemed necessary, whether as a result of amendments to the state initiative and referendum laws or for other reasons. As you know, it is much easier (and faster) to amend an existing ordinance than to amend the Town Charter. By setting forth the procedures for exercising the rights of initiative and referendum in ordinance rather than embedding them in the Charter itself the Council would retain the maximum amount of flexibility. In addition, the current state initiative and referendum statutes contain criminal penalties for bad conduct

occurring during the initiative and referendum process.¹ I can see a benefit to the Town of adopting the criminal penalties as part of Town law. However, I do not think it is appropriate to have criminal penalties written into the text of the Charter. Another benefit of having a separate Initiative and Referendum Ordinance is that the criminal penalties of the current state statutes could be written into a new Initiative and Referendum Procedures Ordinance.

The enclosed version of the Charter Amendment Ordinance assumes that the Council agrees with the approach of memorializing in the Charter the fundamental rights of initiative and referendum; preserving the signature requirements of the current Charter provision; and directing in the Charter that the procedures for exercising the rights of initiative and referendum be established by separate ordinance. It would be easy to prepare the Initiative and Referendum Procedures Ordinance if that is the approach adopted by the Council, and there is no reason the ordinance could not be adopted by the time of the April election if that is Council's desire. That way, the voters would have a clear idea of what would be in the new Initiative and Referendum Procedures Ordinance when they vote on the proposed Charter amendment.

As background information for you I have prepared a copy of the full statutory text of the current state initiative and referendum statutes. It is enclosed with this memo and follows the proposed ordinance. By reading the statutes you can see the general process that would be included in an Initiative and Referendum Procedures Ordinance. Recall, however, that there will need to be certain amendments made to the state law to address local issues, including preserving the number of required signatures for initiative and referendum, and eliminating the reference in the state statutes to the mayoral veto.

Of course, if the Council would prefer to see the full text of the current state statutes written into the Charter, the ordinance can easily be amended to do that.

2. Ballot Questions – Based on the approach described above, the proposed initiative and referendum ballot question (Question "A") has been revised to provide that the procedures for exercising the rights of initiative and referendum will be set forth in a separate ordinance.

You will recall that because the state initiative and referendum laws provide that a non-emergency ordinance does not become effective until 30 days after final passage and publication, it was necessary to amend the Charter provision dealing with an ordinance's effective date to accommodate the adoption of the state initiative and referendum laws. Under the suggested new approach to initiative and referendum the 30 day effective date provision of the current state law would not automatically be incorporated into the Charter. As a result, I do not believe that the question of when a Town ordinance becomes effective necessarily needs to be part of the initiative and referendum question; it can be its own separate ballot question. If the voters do not approve the change to the Charter concerning an ordinance's effective date, the current Charter provision (providing that an ordinance becomes effective five days after publication following second reading) can simply be carried over and included in the new Initiative and Referendum

¹ See Sections 31-11-114 and 31-11-115 in the attached compilation of the current state initiative and referendum statutes.

Procedures Ordinance, although such as approach creates some practical problems². As you will see, I've proposed that the question of when a Town ordinance becomes effective be separated from the initiative and referendum question, and separately submitted to the voters (see new Question "B").

Finally, I've revised the ballot question amending the definition of "elector" (now Question "C") to incorporate into the question the provision requiring an elector's signature to match the voter registration records of the County and the Secretary of State. I concluded that including this language in the ballot question was necessary to properly inform the voters of the practical effect of the proposed ballot question.

There are also a few other minor changes to the proposed ordinance as you will notice (see Section B on page 3; and Sections 5, 6, and 7 on page 5). However, these changes are not really substantive, and primarily reflect the change in the number of ballot questions proposed to be submitted to the voters.

For timing reasons this ordinance has been scheduled for both worksession and first reading on Tuesday. If the Council wants to go forward with the ordinance but wants changes to the enclosed version of the ordinance, I would suggest that the ordinance be approved on first reading next Tuesday and that the necessary changes be made at the time of second reading on February 23rd.

I look forward to discussing this ordinance with you on Tuesday.

² Note that this would create a problem because the ordinance would technically become effective before the 30-day period to gather referendum signatures would end. This could create issues with people who have acquired certain rights under the adopted ordinance only to have the ordinance subjected to the referendum process.

1 ***FOR WORKSESSION/FIRST READING – FEB. 9***

2
3 Additions To The Ordinance As Reviewed on January 26, 2010 Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. ____

7
8 Series 2010

9
10 AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF
11 THE TOWN OF BRECKENRIDGE, AT THE REGULAR TOWN ELECTION
12 TO BE HELD APRIL 6, 2010, PROPOSED AMENDMENTS TO THE
13 BRECKENRIDGE TOWN CHARTER; SETTING FORTH THE BALLOT
14 TITLE; AND PROVIDING OTHER DETAILS IN CONNECTION WITH THE
15 SUBMISSION OF THE QUESTIONS TO THE ELECTORS

16
17 WHEREAS, the Charter of the Town of Breckenridge, Colorado (the “Charter”) was
18 approved by the electors of the Town on April 1, 1980; and

19
20 WHEREAS, Section 15.10 of the Charter provides that it may be amended at any time in
21 the manner provided by the Colorado Constitution; and

22
23 WHEREAS, Article XX, Section 9, of the Colorado Constitution provides that the
24 General Assembly is to establish procedures for amending home rule charters; and

25
26 WHEREAS, §31-2-210, C.R.S., which is part of “The Municipal Home Rule Act of
27 1971”, provides that proceedings to amend a municipal home rule charter may be initiated by the
28 adoption of an ordinance by the governing body of the municipality submitting the proposed
29 amendment to a vote of the registered electors of the municipality; and

30
31 WHEREAS, Article XX, Section 9, of the Colorado Constitution further provides that no
32 amendment to a home rule charter shall become effective until approved by a majority of the
33 registered electors of such municipality voting thereon; and

34
35 WHEREAS, the Town Council finds and determines that ballot questions concerning
36 proposed amendments to the Charter should be submitted to the registered electors of the Town
37 at the regular Town election to be held on April 6, 2010, all as more fully set forth hereafter.

38
39 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
40 BRECKENRIDGE, COLORADO:

41
42 Section 1. At the regular Town election to be held on April 6, 2010 there shall be
43 submitted to the vote of the registered electors of the Town of Breckenridge the question of
44 whether Article VI of the Breckenridge Town Charter, entitled “Initiative and Referendum”, and

1 Section 5.9 of the Breckenridge Town Charter, entitled “Forms of Ordinance”, shall be amended
2 so as to read in their entirety as follows:

3 A. Proposed amendment to Article VI of the Breckenridge Town Charter, entitled
4 “Initiative and Referendum”:

5
6 **ARTICLE VI**
7 **INITIATIVE AND REFERENDUM**
8

9 Section 6.1 GENERAL AUTHORITY:

10
11 (a) Initiative. The electors of the Town shall have the power to propose any
12 legislative matter to the Council. Initiative petitions must be signed by registered electors
13 equal in number to at least fifteen (15) percent of the total number of electors registered to
14 vote at the last regular municipal election.
15

16 (b) Referendum. The electors of the Town shall have the power to require
17 reconsideration by the Council of any ordinance and, if the Council fails to repeal an ordinance
18 so reconsidered, to approve or reject it at a Town election, in accordance with the provisions of
19 this Article. However, this power of referendum shall not extend to ordinances appropriating
20 any revenues or calling a special election, emergency ordinances described in Section 5.11, or
21 ordinances that authorize any municipal borrowing requiring an election pursuant to Article XI
22 of this Charter. Referendum petitions must be signed by registered electors of the Town
23 equal in number to at least ten (10) percent of the total number of electors registered to
24 vote at the last municipal election.
25

26 Section 6.2 INITIATIVE AND REFERENDUM PROCEDURE: ~~Except as provided in Section~~
27 ~~6.3, the~~ procedures for exercising the initiative and referendum powers reserved to the Town’s
28 electors in Section 6.1(a) and Section 6.1(b) shall be as set forth in ~~Article 11 of Title 31, C.R.S.,~~
29 ~~as amended from time to time~~ an ordinance adopted by the Town Council.
30

31 ~~Section 6.3 AMENDMENTS TO STATE INITIATIVE AND REFERENDUM STATUTES:~~
32 ~~Article 11 of Title 31, C.R.S., as adopted in Section 6.2, is hereby amended as follows:~~
33

34 ~~A. Section 31-11-103, C.R.S., is amended by the inclusion of the following additional~~
35 ~~definition:~~
36

37 ~~(3.5) “Registered elector” has the meaning provided in Uniform Election Code of~~
38 ~~1992, as amended from time to time.~~
39

40 ~~B. Section 31-11-104(1), C.R.S., is amended so as to read in its entirety as follows:~~
41

42 ~~(1) Any proposed ordinance may be submitted to the Council by filing written~~
43 ~~notice of the proposed ordinance with the Town Clerk and, within one hundred~~
44 ~~eighty days after approval of the petition pursuant to Section 31-11-106(1), by~~
45 ~~filing a petition signed by at least fifteen percent of the registered electors of the~~
46 ~~Town on the date of such notice. The proposed ordinance may be adopted without~~

1 alteration by the Council within twenty days following the final determination of
2 petition sufficiency. If the proposed ordinance is not adopted by the Council, the
3 Council shall forthwith publish the proposed ordinance as other ordinances are
4 published and shall refer the proposed ordinance, in the form petitioned for, to the
5 registered electors of the Town at a regular or special election held not less than
6 sixty days and not more than one hundred fifty days after the final determination
7 of petition sufficiency, unless otherwise required by the state constitution. The
8 ordinance shall not take effect unless a majority of the registered electors voting
9 on the measure at the election vote in favor of the measure.

10
11 ~~C. Section 31-11-105(1), C.R.S., is amended so as to read in its entirety as follows:~~

12
13 ~~(1) No ordinance passed by the Council shall take effect before thirty days after~~
14 ~~its final passage and publication, except as provided in Section 6.1(b) of this~~
15 ~~Charter.~~

16
17 ~~D. Section 31-11-105(2), C.R.S., is amended so as to read in its entirety as follows:~~

18
19 ~~(2) Within thirty days after final publication of the ordinance, a referendum~~
20 ~~petition protesting against the effect of the ordinance or any part thereof may be~~
21 ~~filed with the Town Clerk. The petition must be signed during the thirty-day~~
22 ~~period by at least ten percent of the registered electors of the municipality~~
23 ~~registered on the date of final publication.~~

24
25 B. Proposed amendment to Article V, Section 5.9 of the Breckenridge Town Charter:

26
27 Section 5.9 FORMS OF ORDINANCE:

28
29 Every ordinance shall be introduced in written or printed form. The enacting
30 clause of all ordinances shall be: *BE IT ORDAINED BY THE TOWN COUNCIL*
31 *OF THE TOWN OF BRECKENRIDGE, COLORADO.* Except as otherwise
32 provided in this article, all ordinance shall take effective thirty days after final
33 publication. Every ordinance introduced shall be deemed to contain a severability
34 clause, whether stated therein or not.

35
36 Section 2. At the regular Town election to be held on April 6, 2010 there shall be
37 submitted to the vote of the registered electors of the Town of Breckenridge the question of
38 whether the definition of "elector" set forth in Section 15.12 of the Breckenridge Town Charter
39 shall be amended so as to read in its entirety as follows:

40 (d) Elector or Registered Elector. A person who has complied with the
41 registration provisions of the Uniform Election Code of 1992 and who resides
42 within the Town. If any provision of this Charter or the ordinances of the Town
43 require the signing of any document by an elector, the person making the
44 signature shall be deemed to be an elector if the person's name and address at the
45 time of signing the document matches the name and address for the person on the

1 registration document at the Summit County Clerk and Recorder's office, and as it
2 appears on the master elector list on file with the Colorado Secretary of State.
3

4 Section 3. At the regular Town election to be held on April 6, 2010 there shall be
5 submitted to the vote of the registered electors of the Town of Breckenridge the question of
6 whether the definition of "publication" set forth in Section 15.12 of the Breckenridge Town
7 Charter shall be amended effective so as to read in its entirety as follows:

8 (m) Publication. Posting on the Town's official website, unless a different
9 method of publication is required by applicable law. The Council shall adopt an
10 ordinance setting forth the requirements for publication by posting on the Town's
11 official website.
12

13 Section 4. At the regular Town election to be held on April 6, 2010 the official ballot,
14 including absentee ballots, shall state the substance of the questions to be voted upon and, as so
15 stated, shall constitute the ballot title (including both the title and submission clause), and each
16 registered elector voting at the election shall indicate his or her choice on the questions
17 submitted, which shall be in the following form:

18 Question "A"
19

20 Effective April 6, 2010, shall Article VI of the Breckenridge Town Charter,
21 entitled "Initiative and Referendum", be amended to provide that the procedure
22 for exercising the Town electors' reserved rights of initiative and referendum
23 shall be as provided by ~~Article 11 of Title 31, C.R.S.~~ ordinance adopted by the
24 Town Council, except that the following provisions of the current Breckenridge
25 Town Charter shall be ~~maintained~~ preserved in such ordinance:
26

- 27 1. A petition signed by at least fifteen percent of the registered electors of the
28 Town shall be required to initiate a legislative matter; and
29 2. A petition signed by at least ten percent of the registered electors of the Town
30 shall be required to require a referendum on a Town ordinance;?
31

32 ~~and shall Section 5.9 of the Breckenridge Town Charter be amended to provide~~
33 ~~that non-emergency Town ordinances take effect thirty days after final passage~~
34 ~~and publication?~~
35

36
37 Yes _____ No _____
38

39 Question "B"
40

41 Shall Section 5.9 of the Breckenridge Town Charter be amended to provide
42 that non-emergency Town ordinances take effect thirty days after final
43 passage and publication?
44

1 Question "BC"

2
3 Effective April 6, 2010, shall the definition of "elector" set forth in Section
4 15.12 (d) of the Breckenridge Town Charter be amended to provide that an elector
5 is a person: (i) who has complied with the registration provisions of the Uniform
6 Election Code of 1992; (ii) and who resides within the Town, and (iii) whose
7 name and address at the time of signing a petition or other official Town
8 document matches the name and address for the person on the registration
9 document at the Summit County Clerk and Recorder's office, and as it
10 appears on the master elector list on file with the Colorado Secretary of
11 State?

12
13
14 Yes _____ No _____

15 Question "CD"

16
17
18 Effective July 1, 2010, shall the definition of "publication" set forth in Section
19 15.12(m) of the Breckenridge Town Charter be amended to allow publication of
20 Town laws and notices to be made by posting on the Town's official website,
21 unless a different method of publication is required by applicable law?

22
23
24 Yes _____ No _____

25
26 Section 5. The Town Council finds and determines that each of the ballot questions set
27 forth in Sections 1, 2, 3, and 34, above, fairly and accurately summarizes the proposed
28 amendments to the Breckenridge Town Charter set forth in such Sections.

29 Section 6. If a majority of all votes cast at the election shall be for a particular question,
30 that particular question shall be deemed passed, and the Breckenridge Town Charter shall be
31 amended accordingly. If a majority of all the votes cast at the election shall be against a
32 particular question, that particular question shall be deemed to have been defeated.

33 Section 7. If ~~either~~ Question "A", Question "B", Question "C", or ~~both "Question A"~~
34 ~~and "Question B"~~ any of such questions, as set forth in Section 4 of this ordinance shall pass at
35 the election, the effective date of the applicable amendment to the Breckenridge Town Charter
36 shall be April 6, 2010.

37 Section 8. If Question "CD" as set forth in Section 4 of this ordinance shall pass at the
38 election, the effective date of such amendment to the Breckenridge Town Charter shall be ~~July 1~~
39 September 1, 2010.

40 Section 9. Within thirty days of the date of the adoption of this ordinance, the Town
41 Clerk shall cause to be published notice of the election upon the proposed amendments to the
42 Breckenridge Town Charter in accordance with the requirements of §31-2-210(4), C.R.S.

**CURRENT TEXT OF STATE MUNICIPAL INITIATIVE AND REFERENDUM
STATUTES
(Article 11 of Title 31, C.R.S.)**

31-11-101. Legislative declaration

It is the intention of the general assembly to set forth in this article the procedures for exercising the initiative and referendum powers reserved to the municipal electors in subsection (9) of section 1 of article V of the state constitution. It is not the intention of the general assembly to limit or abridge in any manner these powers but rather to properly safeguard, protect, and preserve inviolate for municipal electors these modern instrumentalities of democratic government.

→ § 31-11-102. Applicability of article

This article shall apply to municipal initiatives, referenda, and referred measures unless alternative procedures are provided by charter, ordinance, or resolution.

→ § 31-11-103. Definitions

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

(1) “Ballot title” means the language that is printed on the ballot that is comprised of the submission clause and the title.

(2) “Final determination of petition sufficiency” means the date following passage of the period of time within which a protest must be filed pursuant to section 31-11-110 or the date on which any protest filed pursuant to section 31-11-110 results in a finding of sufficiency, whichever is later.

(3) “Petition section” means the stapled or otherwise bound package of documents described in section 31-11-106.

(4) “Submission clause” means the language that is attached to the title to form a question that can be answered by “yes” or “no”.

(5) “Title” means a brief statement that fairly and accurately represents the true intent and meaning of the proposed initiative, referendum, or referred measure.

→ § 31-11-103.5. Computation of time

Except as otherwise provided in this article, calendar days shall be used in all computations of time made under the provisions of this article. In computing time for any act to be done before any municipal election, the first day shall be included, and the last or election day shall be excluded. Except when computing business days, Saturdays, Sundays, and legal holidays shall be included, but, if the time for any act to be done or the last day of any period is a Saturday, Sunday, or a legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday. If the time for an act to be done under this article is referred to in business days, the time shall be computed by excluding Saturdays, Sundays, and legal holidays.

→ § 31-11-104. Ordinances--initiative--conflicting measures

(1) Any proposed ordinance may be submitted to the legislative body of any municipality by filing written notice of the proposed ordinance with the clerk and, within one hundred eighty days after approval of the petition pursuant to section 31-11-106(1), by filing a petition signed by at least five percent of the registered electors of the city or town on the date of such notice. The proposed ordinance may be adopted without alteration by the legislative body within

twenty days following the final determination of petition sufficiency. If vetoed by the mayor, the proposed ordinance may be passed over the mayor's veto within ten days after the veto. If the proposed ordinance is not adopted by the legislative body, the legislative body shall forthwith publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance, in the form petitioned for, to the registered electors of the municipality at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

(2) Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

→ § 31-11-105. Ordinances--when effective--referendum

(1) No ordinance passed by the legislative body of any municipality shall take effect before thirty days after its final passage and publication, except an ordinance calling for a special election or necessary to the immediate preservation of the public peace, health, or safety, and not then unless the ordinance states in a separate section the reasons why it is necessary and unless it receives the affirmative vote of three-fourths of all the members elected to the legislative body taken by ayes and noes.

(2) Within thirty days after final publication of the ordinance, a referendum petition protesting against the effect of the ordinance or any part thereof may be filed with the clerk. The petition must be signed during the thirty-day period by at least five percent of the registered electors of the municipality registered on the date of final publication.

(3) If a referendum petition is filed, the ordinance or part thereof protested against shall not take effect, and, upon a final determination of petition sufficiency, the legislative body shall promptly reconsider the ordinance. If the petition is declared not sufficient by the clerk or found not sufficient in a protest, the ordinance shall forthwith take effect, unless otherwise provided therein.

(4) If, upon reconsideration, the ordinance or part thereof protested is not repealed, the legislative body shall submit the measure to a vote of the registered electors at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance or part thereof shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

→ § 31-11-106. Form of petition sections

(1) Each petition section shall be printed in a form consistent with the requirements of this article. No petition section shall be printed or circulated unless the form and the first printer's proof of the petition section have first been approved by the clerk. The clerk shall approve or reject the form and the first printer's proof of the petition no later than five business days following the date on which the clerk received such material. The clerk shall assure that the petition section contains only those elements required by this article and contains no extraneous material. The clerk may reject a petition or a section of a petition on the grounds that the petition or a section of the petition does not propose municipal legislation pursuant to section 1(9) of article V of the state constitution.

(2) Each petition section shall designate by name and mailing address two persons who shall represent the proponents thereof in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

(3)(a) At the top of each page of every initiative or referendum petition section, the following shall be printed, in a form as prescribed by the clerk:

“WARNING:

IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A

**REGISTERED ELECTOR
AND ELIGIBLE TO VOTE ON THIS MEASURE.**

TO BE A REGISTERED ELECTOR,

**YOU MUST BE A CITIZEN OF COLORADO
AND REGISTERED TO VOTE.**

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.”

(b) A summary of the proposed initiative or ordinance that is the subject of a referendum petition shall be printed following the warning on each page of a petition section. The summary shall be true and impartial and shall not be an argument, or likely to create prejudice, either for or against the measure. The summary shall be prepared by the clerk.

(c) The full text of the proposed initiated measure or ordinance that is the subject of a referendum petition shall be printed following the summary on the first page or pages of the petition section that precede the signature page. Notwithstanding the requirement of paragraph (a) of this subsection (3), if the text of the proposed initiated measure or ordinance requires more than one page of a petition section, the warning and summary need not appear at the top of other than the initial text page.

(d) The signature pages shall consist of the warning and the summary, followed by ruled lines numbered consecutively for registered electors' signatures. If a petition section contains multiple signature pages, all signature lines shall be numbered consecutively, from the first signature page through the last. The signature pages shall follow the page or pages on which the full text of the proposed initiated measure or ordinance that is the subject of the referendum petition is printed.

(e)(I) Following the signature pages of each petition section, there shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include the following:

(A) The affiant's printed name, the address at which the affiant resides, including the street name and number, the municipality, the county, and the date the affiant signed the affidavit;

(B) That the affiant has read and understands the laws governing the circulation of petition;

(C) That the affiant was eighteen years of age or older at the time the section of the petition was circulated and signed by the listed electors;

(D) That the affiant circulated the section of the petition;

(E) That each signature thereon was affixed in the affiant's presence;

(F) That each signature thereon is the signature of the person whose name it purports to be;

(G) That, to the best of the affiant's knowledge and belief, each of the persons signing the petition section was, at the time of signing, a registered elector; and

(H) That the affiant has not paid or will not in the future pay and that the affiant believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition.

(II) The clerk shall not accept for filing any section of a petition that does not have attached thereto the notarized affidavit required by subparagraph (I) of this paragraph (e). Any disassembly of a section of the petition that has the effect of separating the affidavit from the signature page or pages shall render that section of the petition invalid and of no force and effect.

(III) Any signature added to a section of a petition after the affidavit has been executed shall be invalid.

(4) All sections of any petition shall be prenumbered serially.

(5) Any petition section that fails to conform to the requirements of this article or that is circulated in a manner other than that permitted by this article shall be invalid.

→ § 31-11-107. Circulators--requirements

The circulation of any petition section other than personally by a circulator is prohibited. No section of a petition for any initiative or referendum measure shall be circulated by any person who is not at least eighteen years of age at the time the section is circulated.

→ § 31-11-108. Signatures

Any initiative or referendum petition shall be signed only by registered electors who are eligible to vote on the measure. Each registered elector shall sign his or her own signature and shall print his or her name, the address at which he or she resides, including the street number and name, the city or town, the county, and the date of signing. Each registered elector signing a petition shall be encouraged by the circulator of the petition to sign the petition in ink. In the event a registered elector is physically disabled or is illiterate and wishes to sign the petition, the elector shall sign or make his or her mark in the space so provided. Any person, but not a circulator, may assist the disabled or illiterate elector in completing the remaining information required by this section. The person providing assistance shall sign his or her name and address and shall state that such assistance was given to the disabled or illiterate elector.

→ § 31-11-109. Signature verification--statement of sufficiency

(1) The clerk shall inspect timely filed initiative or referendum petitions and the attached affidavits, and may do so by examining the information on signature lines for patent defects, by comparing the information on signature lines against a list of registered electors provided by the county, or by other reasonable means.

(2) After examining the petition, the clerk shall issue a statement as to whether a sufficient number of valid signatures have been submitted. A copy of the statement shall be mailed to the persons designated as representing the petition proponents pursuant to section 31-11-106(2).

(3) The statement of sufficiency or insufficiency shall be issued no later than thirty calendar days after the petition has been filed. If the clerk fails to issue a statement within thirty calendar days, the petition shall be deemed sufficient.

→ § 31-11-110. Protest

(1) Within forty days after an initiative or referendum petition is filed, a protest in writing under oath may be filed in the office of the clerk by any registered elector who resides in the municipality, setting forth specifically the grounds for such protest. The grounds for protest may include, but shall not be limited to, the failure of any portion of a petition or circulator affidavit to meet the requirements of this article. No signature may be challenged that is not identified in the protest by section and line number. The clerk shall forthwith mail a copy of such protest to the persons designated as representing the petition proponents pursuant to section 31-11-106(2) and to the protester, together with a notice fixing a time for hearing such protest that is not less than five or more than ten days after such notice is mailed.

(2) The county clerk shall furnish a requesting protester with a list of the registered electors in the municipality and shall charge a fee to cover the cost of furnishing the list.

(3) Every hearing shall be held before the clerk with whom such protest is filed. The clerk shall serve as hearing officer unless some other person is designated by the legislative body as the hearing officer, and the testimony in every such hearing shall be under oath. The hearing officer shall have the power to issue subpoenas and compel the attendance of witnesses. The hearing shall be summary and not subject to delay and shall be concluded within sixty days after the petition is filed. No later than five days after the conclusion of the hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient. If the hearing officer determines that a petition is not sufficient, the officer shall identify those portions of the petition that are not sufficient and the reasons therefor. The result of the hearing shall be forthwith certified to the protester and to the persons designated as representing the petition proponents pursuant to section 31-11-106(2). The determination as to petition sufficiency may be reviewed by the district court for the county in which such municipality or portion thereof is located upon application of the protester, the persons designated as representing the petition proponents pursuant to section 31-11-106(2), or the municipality, but such review shall be had and determined forthwith.

→ § 31-11-111. Initiatives, referenda, and referred measures--ballot titles

(1) After an election has been ordered pursuant to section 31-11-104 or 31-11-105, the legislative body of the municipality or its designee shall promptly fix a ballot title for each initiative or referendum.

(2) The legislative body of any municipality may, without receipt of any petition, submit any proposed or adopted ordinance or resolution or any question to a vote of the registered electors of the municipality. The legislative body of the municipality or its designee shall fix a ballot title for the referred measure.

(3) In fixing the ballot title, the legislative body or its designee shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a “yes” or “no” vote would be unclear. The ballot title shall not conflict with those titles selected for any other measure that will appear on the municipal ballot in the same election. The ballot title shall correctly and fairly express the true intent and meaning of the measure.

(4) Any protest concerning a ballot title shall be conducted as provided by local charter, ordinance, or resolution.

→ § 31-11-112. Petitions--not election materials--no bilingual requirement

The general assembly hereby determines that initiative and referendum petitions are not election materials or information covered by the federal “Voting Rights Act of 1965”, and are therefore not required to be printed in any language other than English in order to be circulated in any municipality in Colorado.

→ § 31-11-113. Receiving money to circulate petitions--filing

The proponents of the petition shall file with the clerk a report disclosing the amount paid per signature and the total amount paid to each circulator. The filing shall be made at the same time the petition is filed with the clerk. Any payment made to circulators is an expenditure under article 45 of title 1, C.R.S.

→ § 31-11-114. Unlawful acts--penalty

(1) It is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of the person, organization, association, league, or political party;

(b) For any person to sign any name other than his or her own name to any petition or knowingly to sign his or her name more than once for the same measure at one election;

(c) For any person knowingly to sign any petition relating to an initiative or referendum in a municipality who is not a registered elector of that municipality at the time of signing the petition;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in the affidavit to be true;

(e) For any person to certify that an affidavit attached to a petition was subscribed or sworn to before him or her unless it was so subscribed and sworn to before him or her and unless the person so certifying is duly qualified under the laws of this state to administer an oath;

(f) For any officer or person to do willfully, or with another or others conspire, or agree, or confederate to do, any act that hinders, delays, or in any way interferes with the calling, holding, or conducting of any election permitted under the initiative and referendum powers reserved by the people in section 1 of article V of the state constitution or with the registering of electors therefor;

(g) For any officer to do willfully any act that shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election or refuse to submit any petition in the form presented for submission at any election;

(h) For any officer or person to violate willfully any provision of this article.

(2) Any person, upon conviction of a violation of any provision of this section, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one year in the county jail, or by both such fine and imprisonment.

→ § 31-11-115. Tampering with initiative or referendum petition

(1) Any person commits a class 2 misdemeanor who:

(a) Willfully destroys, defaces, mutilates, or suppresses any initiative or referendum petition;

(b) Willfully neglects to file or delays the delivery of the initiative or referendum petition;

(c) Conceals or removes any initiative or referendum petition from the possession of the person authorized by law to have custody of the petition;

(d) Adds, amends, alters, or in any way changes the information on the petition as provided by the elector; or

(e) Aids, counsels, procures, or assists any person in doing any of such acts.

(2) Any person convicted of committing such a misdemeanor shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(3) This section shall not preclude a circulator from striking a complete line on the petition if the circulator believes the line to be invalid.

→ § 31-11-116. Enforcement

(1) Any person may file with the district attorney an affidavit stating the name of any person who has violated any of the provisions of this article and stating the facts that constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and, if reasonable grounds appear therefor, the district attorney shall prosecute the same.

(2) The attorney general of the state shall have equal power with district attorneys to file information or complaints against any person for violating any provision of this article.

→ § 31-11-117. Retention of petitions

After a period of three years from the time of submission of the petitions to the clerk, if it is determined that the retention of the petitions is no longer necessary, the clerk may destroy the petitions.

→ § 31-11-118. Powers of clerk and deputy

(1) Except as otherwise provided in this article, the clerk shall render all interpretations and shall make all initial decisions as to controversies or other matters arising in the operation of this article.

(2) All powers and authority granted to the clerk by this article may be exercised by a deputy clerk in the absence of the clerk or in the event the clerk for any reason is unable to perform the duties of the clerk's office.

Memorandum

To: Town Council

From: Tom Daugherty

Date: 2/4/2010

Re: CDOT Maintenance Contract

As you may know, the Town is contracted by CDOT to maintain SR 9 through the Town limits. This is a very common practice throughout the state. Our contract is up for renewal and a resolution from the Council is required by CDOT.

Staff has reviewed the contract and finds it acceptable. Little has changed from the old contract.

1 **FOR WORKSESSION/ADOPTION – JAN. 12**

2
3 A RESOLUTION

4
5 SERIES 2010

6
7 A RESOLUTION APPROVING A CONTRACT FOR THE MAINTENANCE OF
8 COLORADO HIGHWAY 9 WITH THE STATE OF COLORADO, DEPARTMENT OF
9 TRANSPORTATION

10
11 WHEREAS, governmental entities are authorized by Article XIV of the Colorado
12 Constitution and Part 2 of Article 1 of Title 29, C.R.S., to co-operate and contract with one
13 another to provide any function, service, or facility lawfully authorized to each of the co-
14 operating or contracting governmental entities; and

15
16 WHEREAS, Sections 43-2-102 and 103, C.R.S., requires the State of Colorado to
17 maintain state highways, including where such highways extend through a city or an
18 incorporated town; and

19
20 WHEREAS, the State of Colorado, Department of Transportation and the Town have
21 come to an agreement whereby the Town will provide certain maintenance services for the State
22 on Colorado Highway 9 within the corporate limits of the Town of Breckenridge, all as more
23 fully set forth in the proposed Contract between the parties, a copy of which is marked Exhibit
24 “A”, attached hereto and incorporated herein by reference (“Contract”); and

25
26 WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed
27 Contract, and finds and determines that it would be in the best interests of the Town and its
28 residents for the Town to enter into the proposed Agreement; and

29
30 WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a
31 resolution may be used to approve a contract.

32
33 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
34 BRECKENRIDGE, COLORADO, as follows:

35
36 Section 1. The proposed Contract with the State of Colorado, Department of
37 Transportation (Exhibit "A" hereto) is approved; and the Town Manager and Town Clerk are
38 hereby authorized, empowered and directed to execute such Contract for and on behalf of the
39 Town of Breckenridge.

40
41 Section 2. This resolution shall become effective upon its adoption.

42
43 RESOLUTION APPROVED AND ADOPTED THIS _____ DAY OF _____,
44 2010.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

TOWN OF BRECKENRIDGE

:

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

APPROVED IN FORM

Town Attorney date

CONTRACT

THIS CONTRACT made this ___ day of _____ 20___, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the “State”, or “CDOT”, and the TOWN OF BRECKENRIDGE, P.O. Box 168, Breckenridge, Colorado 80424, CDOT Vendor #: 2000297, hereinafter referred to as the “Contractor”, the “Local Agency” or the “Town.”

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function 2400, GL Acct. 4541000020, Cost Center R1512-010, (Contract Encumbrance Amount: \$27,000.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Section 43-2-102 and 103, C.R.S require the State to maintain state highways (including where such highways extend through a city or an incorporated town), and 43-2-135 describes certain specific responsibilities of the State and affected local entities (respectively) with respect to state highways that are also part of a local street system;
4. The parties desire to enter this Contract for the Contractor to provide some or all of the certain “maintenance services” (as defined in Section 5) on state highways that are the responsibility of the State under applicable law, and for the State to pay the Contractor a reasonable negotiated fixed rate for such services;
5. The parties also intend that the Contractor shall remain responsible to perform any services and duties on state highways that are the responsibility of the Contractor under applicable law, at its own cost;
6. The State and the Contractor have the authority, as provided in Sections 29-1-203, 43-1-106, 43-2-103, 43-2-104, and 43-2-144 C.R.S., as amended, and in applicable ordinance or resolution duly passed and adopted by the Contractor, to enter into contract with the Contractor for the purpose of maintenance on the state highway system as hereinafter set forth; and
7. The Contractor has adequate facilities to perform the desired Maintenance Services on State highways within its jurisdiction.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Contractor shall perform all Maintenance Services for the certain State Highway System segments described herein, located within the Contractor's jurisdiction, for a total length of 7.47 lane miles ("the Highways")

**7.47 miles on State Highway 9, from Boreas Pass Road (MP 86.3) to Valley Brook Road (MP 87.9)
OR as detailed in Exhibit A**

Such services and highways are further detailed in Section 5.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 24 of this contract
2. This contract
3. Exhibit A (Scope of Work)
4. Exhibits C and D (Contract Modification Tools)
5. Other Exhibits in descending order of their attachment.

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall be for a **term of FIVE (5) years**. Provided, however, that the State's financial obligation for each subsequent, consecutive fiscal year of that term after the first fiscal year shall be subject to and contingent upon funds for each subsequent year being appropriated, budgeted, and otherwise made available therefore.

Section 4. Project Funding and Payment Provisions

A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as Exhibit B.

B. Subject to the terms of this Contract, for the satisfactory performance of the Maintenance Services on the Highways, as described in Section 5, the State shall pay the

Contractor on a lump sum basis, payable in monthly installments, upon receipt of the Contractor's statements, as provided herein.

1. The lump sum payments shall be based solely on the rate negotiated by the parties per mile of the Highways, times the number of miles of the Highways - figured to the hundredth of a mile, per fiscal year of the Contract term. Provided, however, that the total of such payments during the term of the Contract shall not exceed the particular maximum amount determined by that formula of "rate X miles", unless the Contract is amended or extended accordingly.

The rate negotiated by the parties per mile for this Contract is **\$3,395.00 per mile**, and the number of miles of the Highways for which the Contractor will provide Maintenance Services is 7.74 lane miles, for a **total maximum amount of \$27,000.00 per fiscal year**. The negotiated rate per mile shall remain fixed for the full term of the Contract, unless this rate per mile is renegotiated in accord with the procedure set forth herein in Section 17. The total payments to the Contractor during the term of this Contract shall not exceed that maximum amount of \$135,000.00 ("rate X miles"), unless this Contract is amended or extended accordingly.

2. The statements submitted by the Contractor for which payment is requested shall contain an adequate description of the type(s) and the quantity(ies) of the Maintenance Services performed, the date(s) of that performance, and on which specific sections of the Highways such services were performed, in accord with standard Contractor billing standards.

3. If the Contractor fails to satisfactorily perform the maintenance for a segment of the Highways (or portion thereof), or if the statement submitted by the Contractor does not adequately document the payment requested, after notice thereof from the State, the State may deduct and retain a proportionate amount from the monthly payment, based on the above rate, for that segment or portion.

Section 5. State and Local Agency Commitments

A. The Contractor shall perform the Maintenance Services for the certain State Highway System segments described herein. Such services and highways are detailed in Section 1 (or Exhibit A).

B. As used herein the term Maintenance Services shall mean only those maintenance services normally performed by the State to comply with its responsibility under §§ 43-2-102 and 43-2-135, C.R.S., as described in the State's then current "Maintenance Management Information Manual", as amended, which is incorporated herein by this reference. The Contractor shall obtain a copy of that Manual from the State before it performs any Maintenance Services under this Contract. ("Maintenance Services" do not include reconstruction of portions of the highways destroyed by major disasters, fires, floods, or Acts of God. Provided, however, that the Contractor shall give the State immediate notice of the existence of any such conditions on the

Highways.)

1. Maintenance Services to be performed by the Contractor, at State expense, for the Highways under this Contract shall include (without limitation) the following services:

- a. Removal of snow, sanding and salting.
- b. Minor patching (any patching that does not require a lay-down machine or large roller), making safe, repairing, spot reconditioning, spot stabilization and spot seal coating, including shoulders, and damage caused by ordinary washouts. Should the amount of patching become extensive the Town will contact CDOT to inspect and determine how to complete the patching.
- c. For graffiti removal within the contract limits.
- d. Warning the State's representative of any "dangerous condition" (as that term is defined in §24-10-103(1) C.R.S., as amended), and/or repairing that condition.
- e. Inspecting State Highway signing and regulatory devices on the Highways at least weekly and notifying the State's Region Transportation Director as soon as the Contractor has notice of any State Highway signing and regulatory devices in need of repair.

2. Contractor shall also continue to perform, at its own expense, all activities/duties on the Highways that Contractor is required to perform by §43-2-135 (1) (a) and (e), C.R.S., as amended, including, but not limited to: cutting weeds and grasses within the State's right of way; fence maintenance; cleaning of roadways, including storm sewer inlets and catch basins; cleaning of ditches; and repairing of drainage structures, excluding storm sewers.

C. The Contractor shall perform all Maintenance Services on an annual basis. The Contractor's performance of such services shall comply with the same standards that are currently used by the State for the State's performance of such services, for similar type highways with similar use, in that year, as determined by the State. The State's Regional Transportation Director, or his representative, shall determine the then current applicable maintenance standards for the Maintenance Services. Any standards/directions provided by the State's representative to the Contractor concerning the Maintenance Services shall be in writing. The Contractor shall contact the State Region office and obtain those standards before the Contractor performs such services.

D. The Contractor shall perform the Maintenance Services in a satisfactory manner and in accordance with the terms of this Contract. The State reserves the right to determine the proper quantity and quality of the Maintenance Services performed by the Contractor, as well as the adequacy of such services, under this Contract. The State may withhold payment, if necessary, until Contractor performs the Maintenance Services to the State's satisfaction. The State will notify the Contractor in writing of any deficiency in the Maintenance Services. The Contractor shall commence corrective action within 24 hours of receiving actual or constructive notice of

such deficiency: a) from the State; b) from its own observation; or c) by any other means. In the event the Contractor, for any reason, does not or cannot correct the deficiency within 24 hours, the State reserves the right to correct the deficiency and to deduct the actual cost of such work from the subsequent payments to the Contractor, or to bill the Contractor for such work.

Section 6. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State and FHWA to inspect the project and to inspect, review and audit the project records.

Section 7. Termination Provisions

This contract may be terminated as follows:

A. This Contract may be terminated by either party, but only at the end of the State fiscal year (June 30), and only upon written notice thereof sent by registered, prepaid mail and received by the non-terminating party not later than 30 calendar days before the end of that fiscal year. In that event, the State shall be responsible to pay the Contractor only for that portion of the highway maintenance services actually and satisfactorily performed up to the effective date of that termination, and the Contractor shall be responsible to provide such services up to that date, and the parties shall have no other obligations or liabilities resulting from that termination.

Notwithstanding subparagraph A above, this contract may also be terminated as follows:

B. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

C. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies

delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

D. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 8. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 9. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 1, 18500 E. Colfax Avenue, Aurora, Colorado 80011. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 1 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:
Michael DeLong
CDOT Region 1
Maintenance Superintendent
18500 East Colfax Avenue

If to the Local Agency:
Tim Gagen
Town Manager
Town of Breckenridge
P.O. Box 168

Aurora, CO 80011
(303) 365-7100

Breckenridge, Colorado 80424
(970) 453-3179

Section 10. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 11. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 12. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 13. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 14. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 15. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any

force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 16. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 17. Modification and Amendment

A. This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

B. Either party may suggest renegotiation of the terms of this Contract, provided that the Contract shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the parties agree to change the provisions of this Contract, the renegotiated terms shall not be effective until this Contract is amended/modified accordingly in writing. Provided, however, that the rates will be modified only if the party requesting the rate change documents, in accord with then applicable cost accounting principles and standards (including sections 24-107-101, et seq., C.R.S. and implementing regulations), that the requested increase/decrease is based on and results from (and is proportionate to) an increase/decrease in the "allowable costs" of performing the Work. Any such proposed renegotiation shall not be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved by the State Controller or his delegee.

Section 18. Change Orders and Option Letters

A. Bilateral changes within the general scope of the Contract, as defined in Section 1A above, may be executed using the change order letter process described in this paragraph and a form substantially equivalent to the sample change order letter attached as Exhibit C, for any of the following reasons.

1. Where the agreed changes to the specifications result in an adjustment to the price, delivery schedule, or time of performance.
2. Where the agreed changes result in no adjustment to the price, delivery schedule, or time of performance. The change order shall contain a mutual release of claims for adjustment of price, schedules, or time of performance.
3. Where the changes to the contract are priced based on the unit prices to be paid

for the goods and/or services established in the contract.

4. Where the changes to the contract are priced based on established catalog generally extended to the public.

Other bilateral modifications not within the terms of this paragraph must be executed by formal amendment to the contract, approved in accordance with state law.

B. The State may increase the quantity of goods/services described in Exhibit A at the unit prices established in the contract. The State may exercise the option by written notice to the contractor within 30 days before the option begins in a form substantially equivalent to Exhibit D. Delivery/performance of the goods/service shall continue at the same rate and under the same terms as established in the contract

C. The State may also unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices established in the contract and the schedule of services required, as set by the state. The State may exercise the option by providing a fully executed option to the contractor, in a form substantially equivalent to Exhibit D, immediately upon signature of the State Controller or his delegate. Performance of the service shall continue at the same rate and under the same terms as established in the contract.

Section 19. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 20. Does not supercede other agreements

This Contract is not intended to supercede or affect in any way any other agreement (if any) that is currently in effect between the State and the Contractor for other "maintenance services" on State Highway rights-of-way within the jurisdiction of the Contractor. Also, the Contractor shall also continue to perform, at its own expense, all such activities/duties (if any) on such State Highway rights-of-ways that the Contractor is required by applicable law to perform.

Section 21. Subcontractors

The Contractor may subcontract for any part of the performance required under this Contract, subject to the Contractor first obtaining approval from the State for any particular subcontractor. The State understands that the Contractor may intend to perform some or all of the services required under this Contract through a subcontractor. The Contractor agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State [which shall not be unreasonably withheld]. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

Section 22. Option Letters

Option Letters may be used to extend Agreement term, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. **These options are limited to the specific scenarios listed below.** The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Following are the applications for the individual options under the Option Letter form:

Option 1 - Option to extend or renew (this option applies to Highway and Signal maintenance contracts only). In the event the State desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to one (1) year. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate at the end of the one (1) year period or when the replacement contract is signed by the Colorado State Controller or an authorized delegate.

The State may exercise this option by providing a fully executed option to the contractor, within thirty (30) days prior to the end of the current contract term, in a form substantially equivalent to **Exhibit C**. If the State exercises this option, the extended contract will be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

Option 2 – Level of service change within current term due to unexpected overmatch in an overbid situation only. In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding.

The State may unilaterally increase the total dollars of this contract as stipulated by the executed

Option Letter (**Exhibit C**), which will bring the maximum amount payable under this contract to the amount indicated in Exhibit C-1 attached to the executed Option Letter (future changes to Exhibit C shall be labeled as C-2, C-3, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

Option 3 – Option to add overlapping phase without increasing contract dollars. The State may require the contractor to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit C**. If the State exercises this option, the contract will be considered to include this option provision.

Option 4 - To update funding (increases and/or decreases) with a new Exhibit C. This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (Exhibit C) in the Original Contract with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc).

The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in Exhibit C- 1, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit F**. If the State exercises this option, the contract will be considered to include this option provision.

Section 23. Statewide Contract Management System

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §23 applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state agreements/contracts and inclusion of agreement/contract performance information in a statewide contract management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's

performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4. [*Not Applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES.** CRS §8-17.5-101. [*Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services*] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

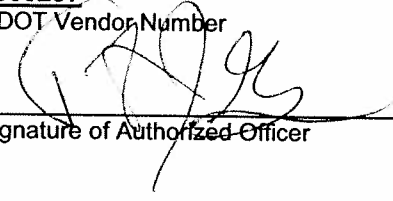
CONTRACTOR:

STATE OF COLORADO:
BILL RITTER, JR., GOVERNOR

Town of Breckenridge, Colorado
Legal Name of Contracting Entity

By _____
Executive Director
Department of Transportation

2000297
CDOT Vendor Number



Signature of Authorized Officer

LEGAL REVIEW:
JOHN W. SUTHERS
ATTORNEY GENERAL

Print Name & Title of Authorized Officer

By _____

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
DAVID J. MCDERMOTT, CPA

By _____

Date _____

FORM 463
or
SCOPE OF WORK

Intentionally Omitted – See Section 5

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below
AND cannot be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	CLIN Routing #
-------	--------------------	-------------------	----------------

Vendor name: _____

A. SUBJECT: (Choose applicable options listed below AND in section B and delete the rest)

1. Option to renew (for an additional term) applies to Highway and Signal maintenance contracts ONLY; this renewal cannot be used to make any change to the original scope of work;
2. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
3. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
4. Option to update funding (a new Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

B. REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

(Insert the following language for use with Options #1):

In accordance with Paragraph(s) _____ of contract routing number (insert FY, Agency code, & CLIN routing #), between the State of Colorado, Department of Transportation, and (insert contractor's name) the state hereby exercises the option for an additional term of (insert performance period here) at a cost/price specified in Paragraph/Section/Provision _____ of the original contract, AND/OR an increase in the amount of goods/services at the same rate(s) as specified in Paragraph _____ of the original contract.

(Insert the following language for use with Option #2):

In accordance with the terms of the original contract (insert FY, Agency code & CLIN routing #) between the State of Colorado, Department of Transportation and (insert contractor's name here), the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The contract is now increased by (indicate additional dollars here) specified in Paragraph/Section/Provision _____ of the original contract.

(Insert the following language for use with Option #3):

In accordance with the terms of the original contract (insert FY, Agency code & CLIN routing #) between the State of Colorado, Department of Transportation and (insert contractor's name here), the State hereby exercises the option to add an overlapping phase in (indicate Fiscal Year here) that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous). Total funds for this contract remain the same (indicate total dollars here) as referenced in Paragraph/Section/Provision/Exhibit _____ of the original contract.

(Insert the following language for use with Option #4):

In accordance with the terms of the original contract (insert FY, Agency code & CLIN routing #) between the State of Colorado, Department of Transportation and (insert contractor's name here), the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The contract is now (select one: increased and/or decreased) by (insert dollars here) specified in Paragraph/-Section/-Provision/Exhibit _____ of the original contract. A new

Exhibit C-1 is made part of the original contract and replaces Exhibit C. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)

(The following language must be included on all options):

The amount of the current Fiscal Year contract value is (*increased/decreased*) by (\$ *amount of change*) to a new contract value of (\$ _____) to satisfy services/goods ordered under the contract for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$ _____).

The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

APPROVALS:

For the Contractor:

Legal Name of Contractor

By: _____
Print Name of Authorized Individual

Signature: _____

Date: _____

Title: Official Title of Authorized Individual

State of Colorado:

Bill Ritter, Jr., Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**State Controller
David J. McDermott, CPA**

By: _____

Form Updated: June 12, 2008

Date: _____



Scheduled Meetings, Important Dates and Events

Shading indicates Council 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. All Council Meetings are held in the Council Chambers, 150 Ski Hill Road, Breckenridge.

FEBRUARY 2010

Tuesday, February 9; 3:00/7:30pm First Meeting of the Month

Tuesday, February 23; 3:00/7:30pm Second Meeting of the Month

OTHER MEETINGS

- 1st & 3rd Tuesday of the Month; 7:00pm Planning Commission; Council Chambers
- 1st Wednesday of the Month; 4:00pm Public Art Commission; 3rd floor Conf Room
- 2nd & 4th Tuesday of the Month; 1:30pm Board of County Commissioners; County
- 2nd Wednesday of the Month; 12 pm Breckenridge Heritage Alliance
- 2nd Thursday of the Month; 5:30pm Sanitation District
- 3rd Monday of the Month; 5:30pm BOSAC; 3rd floor Conf Room
- 3rd Tuesday of the Month; 9:00 am Liquor Licensing Authority; Council Chambers
- 3rd Thursday of the Month; 7:00pm Red White and Blue; Main Fire Station
- 4th Wednesday of the Month; 9am Summit Combined Housing Authority
- Last Wednesday of the Month; 8am Breckenridge Resort Chamber; BRC Offices

Other Meetings: CAST, CML, NWCCOG, RRR, QQ, I-70 Coalition