



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING

Tuesday, January 10, 2012; 7:30 PM

Town Hall Auditorium

I CALL TO ORDER, ROLL CALL

II APPROVAL OF MINUTES - DECEMBER 13, 2011

III APPROVAL OF AGENDA

IV COMMUNICATIONS TO COUNCIL

- A. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)
- B. BRECKENRIDGE RESORT CHAMBER UPDATE
- C. SKI AREA UPDATE

V CONTINUED BUSINESS

- A. SECOND READING OF COUNCILS BILLS, SERIES 2011 - PUBLIC HEARINGS
 - 1. Council Bill No, 41, Series 2011 - An Ordinance Amending The Model Traffic Code For Colorado, 2010 Edition, Concerning The Operation Of Pedal Busses Within The Town Of Breckenridge
 - 2. Council Bill No, 42, Series 2011 - An Ordinance Amending The Breckenridge Town Code Concerning Pedal Busses
 - 3. Council Bill No, 43, Series 2011 - An Ordinance Making The Keeping Of Manure A Public Nuisance, And Providing An Exception For Aged Manure That Is Thoroughly Mixed Into The Soil And Used As Fertilizer
 - 4. Council Bill No. 44, Series 2011 - An Ordinance Designating The Summit Fire Authority As The Emergency Response Authority For The Town Of Breckenridge
 - 5. Council Bill No. 45, Series 2011 - An Ordinance Approving A Lease With Colorado Mountain Junior College District

VI NEW BUSINESS

- A. FIRST READING OF COUNCIL BILLS, SERIES 2012
 - 1. Council Bill No. 1, Series 2012 - An Ordinance Amending Chapter 12 Of Title 1 Of The Breckenridge Town Code Concerning Municipal Elections
 - 2. Council Bill No. 2, Series 2012 - An Ordinance Amending Chapter 1 Of Title 9 Of The Breckenridge Town Code, Known As The "Breckenridge Development Code", Concerning Landscape Plans
 - 3. Council Bill No. 3, Series 2012 - An Emergency Ordinance Amending Section 6-3F-16 Of The Breckenridge Town Code Concerning The Municipal Offense Of "Open Containers Prohibited"
 - 4. Council Bill No. 4, Series 2012 - An Ordinance Submitting To The Registered Electors Of The Town Of Breckenridge At The Regular Town Election To Be Held On April 3, 2012 The Question Of Whether, Commencing July 1, 2012, The Town Of Breckenridge Should Impose An Admissions Excise Tax Of Four And One-Half Percent (4.5%) On Every Person Who Pays To Gain Admission To Any Place Or Event Open To The Public And Requiring Every Person, Whether Owner, Lessee, Or Operator, Who Charges Or Causes To Be Charged Admission To Any Such Place Or Event Open To The Public To Collect Such Admissions Tax For The Town, As A New Tax Pursuant To Article X, Section 20 Of The Colorado Constitution; Requiring Revenues Collected By The Town From The New Tax To Be Used Only For Designated Purposes; Setting Forth The Ballot Title; And Providing For The Conduct Of The Election
 - 5. Council Bill No. 5, Series 2012 - An Ordinance Providing For An Increase In Municipal Water User Fees Effective January 1, 2012; And Increasing The Fee For Mailing Paper Billing Statements
- B. RESOLUTIONS, SERIES 2012 - NONE
- C. OTHER

*Report of the 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.

1. Open Burn Permits - Ullr, Snowsculpting

VII PLANNING MATTERS

- A. PLANNING COMMISSION DECISIONS
- B. BRECKENRIDGE STABLES, LLC CALL UP DECISION

VIII REPORT OF TOWN MANAGER AND STAFF

IX REPORT OF MAYOR AND COUNCILMEMBERS

- A. CAST/MMC (MAYOR WARNER)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. DUDICK)
- C. BRC (MR. BURKE)
- D. MARKETING COMMITTEE (MR. DUDICK)
- E. SUMMIT COMBINED HOUSING AUTHORITY (MR. JOYCE)
- F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BURKE)
- G. WATER TASK FORCE (MR. MAMULA)

X OTHER MATTERS

XI SCHEDULED MEETINGS

XII ADJOURNMENT

*Report of the 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.

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, DECEMBER 13, 2011
PAGE 1**

CALL TO ORDER, ROLL CALL

Mayor Warner called the December 13, 2011 Town Council Meeting to order at 7:34 p.m. The following members answered roll call: Mr. Joyce, Ms. McAtamney, Mr. Bergeron, Mr. Mamula, Mr. Dudick, Mr. Burke, and Mayor Warner.

APPROVAL OF MINUTES – November 22, 2011

Mr. Burke had a correction under New Business, Council Bill No. 40, Series 2011, Mr. Burke voted to oppose, Ms. McAtamney voted for and the vote passed 6-1. Mr. Dudick asked a correction be made on page 63: BOSAC not BRC. Mayor Warner declared the minutes would be accepted as corrected.

APPROVAL OF AGENDA

There were no changes to the Agenda.

COMMUNICATIONS TO COUNCIL

- A. Special Proclamation – Mayor Warner read the Proclamation to Terry Perkins, Public Works Director. The Mayor showed an Architect’s rendering of the new Public Works Building, which will be named the “Terry L. Perkins Public Works Administration Building”, and thanked Mr. Perkins for his service. Mr. Perkins said a few words thanking everyone and gave credit to the Town Council, Tim Gagen, Kate Boniface, Gary Martinez, and the people in the trenches for doing all the work. He mentioned it has been a great pleasure to be part of the Town and the Community, the naming of the building is quite a surprise, and something he will cherish, along with the memories of the Town.
- B. Citizen’s Comment - (Non-Agenda Items ONLY; 3-minute limit please)
Mayor Warner opened the public comments. There were no comments, and Communications to Council was closed.
- C. BRC Director- Sandy Metzger, BRC Events Director mentioned the financial report sent to the Town Council, and asked that questions be directed to her; the Race of the Santas had 140 Santas registered, which had great Public Relations (PR) including an Associated Press (AP) upload to the internet, a 2 minute piece in which 9 News will thank Adopt an Angel, and a Skype interview on Fox 31; the Breckenridge 50 Year Bash starts on Ridge Street; the Ullr Fest will have the coronation at Main Street Station; the Ullr Bon Fire will be at the Gondola lot with Stan Miller providing a steel pit, and A Cut Above Forestry putting the fuel in the pit; the Ullympics will be held at the Maggie for better lighting; the BRC has tracked all the Ullr Kings and Queens from the past, with an exception of 3 years; the International Snow Sculpture Competition runs from January 16 – February 5, 2012 with sculpting from January 24 – 28, and a viewing week January 29 – February 5; the Public Relations angle is the caliber of repeat medalists competing in the event; and an AP photographer will guarantee a photo upload to the AP wire.
- D. Recognition of USA PCC Local Organizing Committee Chairs – Mayor Warner and Brian Waldes, Financial Services Manager presented framed posters and jerseys to the LOC chairs, Lucy Kay and Mike Schilling. Mayor Warner read a script, and asked the LOC members to stand and be recognized. Mr. Schilling and Ms. Kay said a few words of thank you and remarked they are looking forward to and are already planning next year’s event, which will be a start instead of a finish.

CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILLS, SERIES 2011 - PUBLIC HEARINGS

1. Council Bill No. 40, Series 2011 – An Ordinance Concerning Cooking Grease, Trash Dumpsters, and Trash Compactors

Mayor Warner read the title into the minutes. Mr. Berry, Town Attorney, stated the ordinance takes the town out of the business of storing cooking grease, and has the businesses take care of it on their own. There are no changes to the proposed ordinance. Mayor Warner opened a public hearing. With no comments from the public the hearing was closed.

Mr. Bergeron moved to approve Council Bill No. 25, Series 2011 as previously read into the record. Mr. Mamula seconded the motion. The motion passed 6-1, with Mr. Burke voting against the motion.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2011

1. Council Bill No. 41, Series 2011 – An Ordinance Amending The Model Traffic Code For Colorado, 2010 Edition, Concerning The Operation Of Pedal Busses Within The Town Of Breckenridge

Mayor Warner read the title into the minutes. Mr. Berry stated a couple of months ago a permit was approved for a pedal bus, a human powered vehicle about the size of a car in which everyone pedals together and the driver steers. The Colorado traffic code does not address pedal busses, and the Council needs to act to put traffic rules in place, and this

ordinance would do that. He stated this ordinance has been approved by CDOT, approved by the Attorney General, adds a specific definition of a pedal bus, and addresses the traffic laws. Mr. Berry recommended the town not wait and see what happens in the legislature but rather put something in place.

Mr. Dudick moved to approve Council Bill No. 25, Series 2011 as previously read into the record. Ms. McAtamney seconded the motion. The motion passed 7-0.

2. Council Bill No. 42, Series 2011 – An Ordinance Amending The Breckenridge Town Code Concerning Pedal Busses

Mr. Berry stated Council Bill No. 42 is a separate ordinance adopting the same sign code regulations for Pedicabs and include Pedibusses.

Mr. Dudick moved to approve Council Bill No. 25, Series 2011 as previously read into the record. Mr. Mamula seconded the motion. The motion passed 7-0.

3. Council Bill No. 43, Series 2011 – An Ordinance Making The Keeping Of Manure A Public Nuisance, And Providing An Exception For Aged Manure That Is Thoroughly Mixed Into The Soil And Used As Fertilizer

Mayor Warner read the title into the minutes. Mr. Neubecker, Senior Planner, stated a citizen was using manure which was fresh and not aged, there were several complaints. This ordinance gets rid of the current language in one section, declares it a nuisance unless it is aged or composted, and is tilled within 24 hours of delivery to the site. He pointed out horse and carriage manure is a separate ordinance.

Mr. Bergeron moved to approve Council Bill No. 25, Series 2011 as previously read into the record. Ms. McAtamney seconded the motion. The motion passed 7-0.

4. Council Bill No. 44, Series 2011 – An Ordinance Designating The Summit Fire Authority As The Emergency Response Authority For The Town Of Breckenridge

Mayor Warner read the title into the minutes. Chief Holman stated the current ordinance designates fire authority to the Summit Fire Authority as the emergency reporting authority for the town.

Mr. Mamula moved to approve Council Bill No. 25, Series 2011 as previously read into the record. Mr. Bergeron seconded the motion. The motion passed 7-0.

5. Council Bill No. 45, Series 2011 – An Ordinance Approving A Lease With Colorado Mountain Junior College District (Part Of Former CMC/High School Building – 103 South Harris Street)

Mayor Warner read the title into the minutes. Mr. Berry stated the purchase contract allows the CMC to use certain portions of the property for 10 years after closing; this ordinance memorializes the agreement and sets standards staff felt were needed for upkeep of the building and snow removal. He stated the lease runs to the end of the 10 year period, the agreement has been reviewed and approved by CMC. The town requires approval by ordinance if it is a multi-year lease.

Mr. Mamula moved to approve Council Bill No. 25, Series 2011 as previously read into the record. Mr. Burke seconded the motion. The motion passed 7-0.

B. RESOLUTIONS, SERIES 2011

1. A Resolution Authorizing The Mayor To Sign An Agreement For Attorney Services With Timothy H. Berry, P.C. For 2012

Mayor Warner read the title into the minutes. Mr. Gagen stated the Council makes two appointments in addition to the Town Manager. They are the Town Attorney and the Town Prosecuting Attorney.

Mr. Mamula moved to approve Council Bill No. 25, Series 2011 as previously read into the record. Ms. McAtamney seconded the motion. The motion passed 7-0.

2. A Resolution Approving An Agreement For Municipal Court Prosecution Services With Spierer, Woodward, Corbalis & Goldberg, P.C.

Mayor Warner read the title into the minutes. Mr. Gagen stated the only change from the previous year's agreement is a \$5.00 increase to the hourly rate for the Town Prosecuting Attorney. The rate has not been increased for a while.

Mr. Bergeron moved to approve Council Bill No. 25, Series 2011 as previously read into the record. Mr. Mamula seconded the motion. The motion passed 7-0.

3. A Resolution Approving An Intergovernmental Agreement For Aid In Hazardous Substance Incidents

Chief Holman stated if passed would allowed the Town to enter into a Intergovernmental Agreement (IGA) with the other Summit County towns and the Summit Fire Authority; the Town currently pays into the Hazardous Substance Incidents Team which is able to go in and control the incident, instead of waiting for a team out of Denver; the cost is about \$7400.00 annually. This resolution will renew the terms up to 5 years. The Council discussed the hazardous responses and the jurisdiction over high mountain passes.

Ms. McAtamney moved to approve Council Bill No. 25, Series 2011 as previously read into the record. Mr. Burke seconded the motion. The motion passed 7-0.

C. OTHER

1. Breckenridge Marketing Advisory Committee Appointments – The Council discussed the merits of the candidates. Mr. Gagen outlined the selection process indicating the different categories. The Council voted in Toby Babich, Dick Carleton, and John Cronin.
2. Public Arts Commission Appointments – The Council discussed the merits of the candidates. The Council discussed the size of the Art Commission and the pros and cons of growing the Arts District. The Council voted in Lisa Benison Noll, Janis Bunchman, Robin Theobald, Tom Kramer, and Gene Sosville. Jenn Cram asked the Mayor to mention the next meeting date to the newly appointed members.

PLANNING MATTERS

A. Planning Commission Decisions of December 6, 2011

There were no requests for call up. Mayor Warner declared the Planning Commission Decisions were approved as presented.

B. THE BRECKENRIDGE STABLES, LLC CALL UP HEARING.

The call up hearing on application number PC#2011061 was held in accordance with Section 9-1-18-5 of the Town's Development Code. A **verbatim** tape recording of the proceedings was made and will be maintained as required by law. No attempt is made in these minutes to set forth a **verbatim** record of the proceedings of this hearing.

Councilmember Mike Dudick was determined to have a disqualifying conflict of interest with respect to the application and the call up hearing. Mr. Dudick left the Council Chambers and did not participate in the hearing.

During the hearing the Council, by motion duly adopted, modified the Point Analysis for the project proposed by the staff to assess -3 points under Paragraph C of Policy 2/Relative of the Development Code concerning "Nuisances." This resulted in the application receiving a total score of -3 points on the relevant relative policies.

At the conclusion of the call up hearing, Mr. Mamula moved to deny application No. PC#2011061 because it failed to receive a score of zero or higher on the approved Point Analysis. The motion further directed the Town Attorney to prepare a written decision reflecting the Council's determination of this application for the January 10, 2012 Town Council meeting.

Mr. Bergeron seconded the motion. A roll call vote was taken. All Council members voted in favor of the motion, with Councilmember Dudick abstaining. The motion was declared to have passed. The hearing was concluded at 10:01 P.M.

REPORT OF TOWN MANAGER AND STAFF*

No Report

REPORT OF MAYOR AND COUNCILMEMBERS*

- A. CAST/MMC (Mayor Warner)-Included in the committee report.
- B. Breckenridge Open Space Advisory Commission (Mr. Dudick)-No report.
- C. BRC (Mr. Burke)-No report.
- D. Marketing Committee (Mr. Dudick)-No report.
- E. Summit Combined Housing Authority (Mr. Joyce)-No report.
- F. Breckenridge Heritage Alliance (Mr. Burke)-Mr. Burke reported national historic bookends are up and it is a priority to secure space for archives for the new library.
- G. Water Task Force (Mr. Mamula)-No report.

X OTHER MATTERS

Mr. Burke mentioned the article about the lift ticket tax meeting, and stated his concern that the article reported the business and lodging community were against it when not many were invited to the meeting. The Council discussed the current status of the amusement tax, de-incentivizing automobiles, having the ski area commit funds instead of imposing a tax on them, establishing an ideal transportation system, and implementing a joint vision that would be sustainable. Mr. Gagen stated, if directed, the Town could generate the 2008 numbers for transportation.

Mayor Warner stated he received a criticism of the street light policy on Ski Hill Road. The citizen asked if she could adopt a couple street lights. Mr. Gagen stated, the Town, would first want to try the experiment, however, a street light adoption program would be easy to implement since street lights have a cost. He mentioned the trial period is 6 months to 1 year. The Council discussed the street light policy.

Mr. Bergeron noted the lack of activity at Shock Hill.

Mr. Burke mentioned citizen concern regarding whether or not building inspector scheduling is meeting the current needs. Mr. Joyce stated the building department has always met his needs. Mr. Gagen suggested Mr. Burke recommend the citizens talk to Peter Grosshuesch or Glen Morgan if there is an issue with inspector scheduling and availability.

XI SCHEDULED MEETINGS

XII ADJOURNMENT

With no further business to discuss, the meeting adjourned at 10:43 p.m.
Submitted by Cathy Boland, Municipal Court Clerk.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill Nos. 41 & 42 (Pedal Bus Ordinances)
DATE: December 27, 2011 (for January 10th meeting)

The second readings of the two “pedal bus” ordinances are scheduled for your meeting on January 10th. You will recall that Council Bill 41 amends the Town’s Traffic Code to establish traffic rules for the operation of pedal busses within the Town. Council Bill 42 amends the Town’s Riverwalk Ordinance and Sign Code to specifically deal with pedal busses.

There are no changes proposed to either ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – JAN. 10**

2
3 **NO CHANGE FROM FIRST READING**

4
5 Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 41

9
10 Series 2011

11
12 AN ORDINANCE AMENDING THE MODEL TRAFFIC CODE FOR COLORADO, 2010
13 EDITION, CONCERNING THE OPERATION OF PEDAL BUSES WITHIN THE TOWN
14 OF BRECKENRIDGE

15
16 WHEREAS, Section 42-4-110(1)(b), C.R.S., authorizes local authorities to adopt by
17 reference a model traffic code embodying the rules of the road and vehicle requirements set forth
18 in Article 4 of Title 42, C.R.S., and such additional local regulations as are provided for in
19 Section 42-4-111, C.R.S.; and

20
21 WHEREAS, the Town of Breckenridge has adopted (and amended) the Model Traffic
22 Code For Colorado, 2010 edition, as the Traffic Code for the Town; and

23
24 WHEREAS, the Town Council finds, determines, and declares that the Model Traffic
25 Code For Colorado, 2010 edition, should be amended as set forth in this ordinance.

26
27 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
28 COLORADO:

29
30 Section 1. Section 7-1-2 of the Breckenridge Town Code is amended by the addition of
31 the following definition:

32
33 **Appendix I (definitions) of the adopted code is amended by the addition of the**
34 **following definition:**

35
36 **(69.3) “Pedal bus” means a non-motorized vehicle that is available for hire**
37 **that has more than three wheels and moves by human power provided by the**
38 **operator and/or passengers of the vehicle.**

39
40 Section 2. Section 7-1-2 of the Breckenridge Town Code is amended by the addition of a
41 new Section 1418, which shall read in its entirety as follows:
42

1 1418. Operation of Pedal Busses. (1) A pedal bus is a “vehicle” as defined in
2 this code. All code sections that are applicable to vehicles shall apply to pedal
3 busses. A pedal bus shall have all of the equipment that a vehicle is required
4 to have under this code.

5
6 (2) Every person operating a pedal bus on the streets within the Town shall
7 have all of the rights and duties applicable to the driver of any other vehicle
8 under this code, except as to those rights and duties which by their nature
9 can have no application. Every person operating a pedal bus shall comply
10 with the rules set forth in this section, the other applicable rules of this code,
11 and all other applicable laws, rules, and regulations when using the streets
12 within the Town.

13
14 (3) The driver or operator of a pedal bus must be at least 18 years of age.
15 When operating a pedal bus on the streets within the Town the driver or
16 operator shall have in his or her immediate possession a valid Colorado
17 driver’s license.

18
19 (4) No pedal bus shall be operated on Colorado Highway 9 (Park Avenue)
20 south of the intersection of Colorado Highway 9 (Park Avenue) and South
21 Main Street and north of the intersection of Colorado Highway 9 (Park
22 Avenue) and Village Road within the Town. Pedal busses may lawfully be
23 operated on Colorado Highway 9 (Park Avenue) between the intersection of
24 Colorado Highway 9 (Park Avenue) and South Main Street and the
25 intersection of Colorado Highway 9 (Park Avenue) and Village Road within
26 the Town, subject to the other rules described in this section.

27
28 (5) No pedal bus shall be used to carry more persons at one time than the
29 number for which it is designed or equipped.

30
31 (6) At all times when a pedal bus is operated on the streets within the Town
32 the owner of a pedal bus shall maintain in effect a policy of comprehensive
33 commercial general liability insurance with limits of liability not less than
34 One Hundred Thousand Dollars (\$100,000) per person per claim, Three
35 Hundred Thousand Dollars (\$300,000) aggregate for each accident, and Fifty
36 Thousand Dollars (\$50,000) for property damage. The Town shall be named
37 as an additional insured under such insurance policy. An ACORD Form 27,
38 or other certificate of insurance acceptable to Town Clerk, shall be
39 completed by the owner’s insurance agent and provided to the Town Clerk
40 as evidence that policies prior to commencement of the operations of the
41 pedal bus on the Town streets, and on each renewal or replacement of the
42 policy during the time the pedal bus is being operated on the Town streets.
43 No pedal bus may be operated on a Town street unless the required
44 insurance is in effect and proof thereof has been provided to the Town Clerk
45 as required by this subsection.

1
2 **(7) Any person who violates any provision of this section commits a**
3 **misdemeanor traffic offense.**
4

5 **(8) Upon request, the law enforcement agency having jurisdiction shall**
6 **complete a report concerning an injury or death incident that involves a**
7 **pedal bus anywhere within the Town, even if such accident does not involve a**
8 **motor vehicle.**
9

10 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
11 various secondary codes adopted by reference therein, shall continue in full force and effect.
12

13 Section 4. The Town Council hereby finds, determines and declares that this ordinance is
14 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
15 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
16 thereof.
17

18 Section 5. The Town Council hereby finds, determines and declares that it has the power
19 to adopt this ordinance pursuant to: (i); Section 42-4-111(1)(h), C.R.S.; (ii) Section 42-4-
20 110(1)(a), C.R.S.; (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
21 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
22 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
23 contained in the Breckenridge Town Charter.
24

25 Section 6. This ordinance shall be published as provided by Section 5.9 of the
26 Breckenridge Town Charter, and shall become effective upon the last to occur of: (i) approval of
27 this ordinance by the Colorado Department of Transportation pursuant to Sections 42-4-
28 110(1)(e) and 43-2-135(1)(g), C.R.S.; and (ii) the effective dated provided by Section 5.9 of the
29 Breckenridge Town Charter.
30

31 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
32 PUBLISHED IN FULL this ____ day of _____, 2011. A Public Hearing shall be held at the
33 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
34 _____, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
35 Town.
36

37 TOWN OF BRECKENRIDGE, a Colorado
38 municipal corporation
39

40
41 By _____
42 John G. Warner, Mayor
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1 ATTEST:

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Mary Jean Loufek, CMC,
Town Clerk

1 **FOR WORKSESSION/SECOND READING – JAN. 10**

2
3 **NO CHANGE FROM FIRST READING**

4
5 Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 42

9
10 Series 2011

11
12 AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE CONCERNING
13 PEDAL BUSES

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

17
18 Section 1. Section 6-3H-5(A) of the Breckenridge Town Code is amended by the addition
19 of the following definition:

20
21 **PEDAL BUS:**

**As defined in the Town’s Traffic Code
adopted by reference in Title 7, Chapter 1 of
this Code.**

22
23 Section 2. Section 6-3H-5(G) of the Breckenridge Town Code is amended to read in its
entirety as follows:

24
25 G. Pedicabs may lawfully be operated on the Riverwalk only from November 1
26 through the end of the ski season at the Breckenridge Ski Area. It is unlawful to
27 operate a pedicab on the Riverwalk at any other time. **It is unlawful to operate a
pedal bus on the Riverwalk at any time.**

28
29
30 Section 3. The definition of “human powered vehicle” in Section 8-2-3 of the
31 Breckenridge Town Code is repealed.

32
33 Section 4. Section 8-2-3 of the Breckenridge Town Code is amended by the addition of a
34 new definition of “Pedicab”, which shall read in its entirety as follows:

35
36 **PEDICAB:**

**As defined in the Town’s Traffic Code
adopted by reference in Title 7, Chapter 1 of
this Code.**

37
38 Section 5. Section 8-2-3 of the Breckenridge Town Code is amended by the addition of a
39 new definition of “Pedal Bus”, which shall read in its entirety as follows:

PEDAL BUS:

**As defined in the Town's Traffic Code
adopted by reference in Title 7, Chapter 1 of
this Code.**

1
2 Section 6. Section 8-2-14-1 of the Breckenridge Town Code is amended so as to read in
3 its entirety as follows:

4
5 8-2-14-1: SPECIFIC REGULATIONS: SIGNS ON PEDICABS **AND PEDAL**
6 **BUSSES**: The following regulations shall apply to signs placed on pedicabs **and**
7 **pedal busses**. In the event of a conflict between this section and any other
8 provision of this chapter, the provisions of this section shall control:
9

10 A. Number of Signs Permitted: Not more than one sign shall be placed on the
11 rear of a pedicab **or pedal bus**. Not more than one sign per side shall be placed on
12 a pedicab **or pedal bus**.
13

14 B. Size limitation: No individual sign on a human-powered vehicle **or pedal bus**
15 shall exceed four (4) square feet. The total signage that is placed on a human-
16 powered vehicle **or pedal bus** shall not exceed a combined total of seven (7)
17 square feet in size.
18

19 C. No Illumination: A sign that is placed on a human-powered vehicle **or pedal**
20 **bus** shall not be illuminated; provided, however, this provision shall not prohibit
21 the placement of lighting on a human-powered vehicle **or pedal bus** that is
22 required for safety, **or to comply with any applicable law**.
23

24 D. No Double-Sided Signage: No signage that is placed on a human-powered
25 vehicle **or pedal bus** shall be double-sided.
26

27 E. Off-Premises Signage Allowed: A sign that is placed on a human-powered
28 vehicle **or pedal bus** is exempt from the prohibition against off-premises signage
29 set forth in Section 8-2-15(F) of the chapter.
30

31 F. Permit Required: No person shall display, maintain, or use a sign on a human-
32 powered vehicle **or pedal bus** without a valid sign permit issued pursuant to this
33 chapter.
34

35 Section 7. Except as specifically amended hereby, the Breckenridge Town Code, and the
36 various secondary codes adopted by reference therein, shall continue in full force and effect.
37

38 Section 8. The Town Council hereby finds, determines and declares that this ordinance is
39 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
40 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
41 thereof.
42

1 Section 9. The Town Council finds, determines, and declares that it has the power to
2 adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
3 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
4 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
5 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
6 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
7 contained in the Breckenridge Town Charter.

8
9 Section 10. This ordinance shall be published and become effective as provided by
10 Section 5.9 of the Breckenridge Town Charter.

11
12 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
13 PUBLISHED IN FULL this ____ day of _____, 2011. 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 _____, 2011, 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

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

25
26 ATTEST:

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30
31 _____
32 Mary Jean Loufek, CMC,
33 Town Clerk

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 43 (Manure Ordinance)
DATE: December 27, 2011 (for January 10th meeting)

The second reading of the Manure Ordinance is scheduled for your meeting on January 10th. 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 – JAN. 10**

2
3 **NO CHANGE FROM FIRST READING**

4
5 Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 43

9
10 Series 2011

11
12 AN ORDINANCE MAKING THE KEEPING OF MANURE A PUBLIC NUISANCE, AND
13 PROVIDING AN EXCEPTION FOR AGED MANURE THAT IS THOROUGHLY MIXED
14 INTO THE SOIL AND USED AS FERTILIZER

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

18
19 Section 1. Section 5-2-5(C) of the Breckenridge Town Code is deleted.

20
21 Section 2. Section 5-1-7 of the Breckenridge Town Code is amended by the addition of a
22 new Section K, which shall read in its entirety as follows:

23
24 5-1-7: NUISANCES DECLARED: The following are declared to be nuisances:

25
26 ...

27
28 K. **The keeping of manure on any property within the Town. Exceptions:**
29 **This section does not apply to: (1) not more than one inch (1”) of dried**
30 **and decomposed manure that is thoroughly mixed into the soil within**
31 **twenty four hours of delivery to the site, and used as fertilizer on a**
32 **lawn or garden; (2) a horse and carriage operation on Town streets**
33 **and alleys for which a permit has been issued by the Town; (3) any**
34 **commercial stable for which a permit has been issued by the Town;**
35 **and (4) any premises for which a Town permit has been issued**
36 **authorizing animals to be kept upon such premises.**

37
38 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
39 various secondary codes adopted by reference therein, shall continue in full force and effect.

40
41 Section 4. The Town Council hereby finds, determines and declares that this ordinance is
42 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
43 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
44 thereof.
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Section 5. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) Section 31-15-103, C.R.S. (concerning municipal police powers); (ii) Section 31-15-401, C.R.S.(concerning municipal police powers); (iii) Section 31-15-401(1)(c), C.R.S. (concerning municipal power to declare and abate nuisances; (iv) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (v) the powers contained in the Breckenridge Town Charter.

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

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2011. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 44 (Emergency Response Authority Ordinance)
DATE: December 27, 2011 (for January 10th meeting)

The second reading of the ordinance designating the Summit Fire Authority as the Town's emergency response authority is scheduled for your meeting on January 10th. 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 – JAN. 10***

2
3 ***NO CHANGE FROM FIRST READING***

4
5 Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 44

9
10 Series 2011

11
12 AN ORDINANCE DESIGNATING THE SUMMIT FIRE AUTHORITY AS THE
13 EMERGENCY RESPONSE AUTHORITY FOR THE TOWN OF BRECKENRIDGE

14
15 WHEREAS, Section 29-22-102(3)(a), C.R.S., requires every town to designate by
16 ordinance or resolution an emergency response authority for hazardous substance incidents
17 occurring within the corporate limits of such town; and

18
19 WHEREAS, the Town Council finds and determines that the Summit Fire Authority
20 should be designated as the emergency response authority for hazardous substance incidents
21 occurring within the corporate limits of the Town of Breckenridge.

22
23 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
24 BRECKENRIDGE, COLORADO:

25
26 Section 1. Section 5-4-2 of the Breckenridge Town Code is hereby amended so as to
27 read in its entirety as follows:

28
29 5-4-2: EMERGENCY RESPONSE AUTHORITY DESIGNATED: Pursuant to
30 section 29-22-102(3)(a), C.R.S., ~~Summit County Sheriff's Department~~ **the**
31 **Summit Fire Authority** is designated as the emergency response authority for
32 hazardous substance incidents occurring within the corporate limits of the Town.

33
34 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
35 various secondary codes adopted by reference therein, shall continue in full force and effect.

36
37 Section . The Town Council hereby finds, determines, and declares that it has the power
38 to adopt this ordinance pursuant to Section 29-22-102(3)(a), C.R.S., and the powers possessed by
39 home rule municipalities in Colorado.

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

43
44 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
45 PUBLISHED IN FULL this ____ day of _____, 2011. A Public Hearing shall be held at the

1 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
2 ____, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
3 Town.

4
5 TOWN OF BRECKENRIDGE, a Colorado
6 municipal corporation
7

8
9
10 By _____
11 John G. Warner, Mayor
12

13 ATTEST:
14
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16

17 _____
18 Mary Jean Loufek, CMC,
19 Town Clerk
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MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No.45 (CMC Lease Ordinance)

DATE: December 27, 2011 (for January 10th meeting)

The second reading of the ordinance approving the Lease with CMC for a part of the building at 103 South Harris is scheduled for your meeting on January 10th. There are no changes proposed to ordinance from first reading, but the two typos in the Lease the Mayor noted at the time of first reading have been corrected.

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

1 ***FOR WORKSESSION/SECOND READING – JAN. 10***

2
3 ***NO CHANGE FROM FIRST READING***

4
5 COUNCIL BILL NO. 45

6
7 Series 2011

8
9 AN ORDINANCE APPROVING A LEASE WITH COLORADO MOUNTAIN JUNIOR
10 COLLEGE DISTRICT
11 (Part of Former CMC/High School Building – 103 South Harris Street)

12
13 WHEREAS, the Town of Breckenridge owns the real property at 103 South Harris Street,
14 commonly known as “the Former CMC/High School Building”; and

15
16 WHEREAS, the Town purchased the Former CMC/High School Building from Colorado
17 Mountain Junior College District in 2009; and

18
19 WHEREAS, pursuant to Section 16(a) of the Contract of Sale the Town agreed to allow
20 Colorado Mountain Junior College District to continue to use the existing Ceramics Studio,
21 Photography Lab, and Dance Studio for a period of ten years after closing upon certain terms and
22 conditions; and

23
24 WHEREAS, a proposed Lease with Colorado Mountain Junior College District for the
25 continued use of the existing Ceramics Studio, Photography Lab, and Dance Studio at the
26 Former CMC/High School Building has been negotiated by the parties and reviewed by the
27 Town Council; and

28
29 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

30
31 The council may lease, for such time as council shall determine, any real or
32 personal property to or from any person, firm, corporation, public and private,
33 governmental or otherwise.

34
35 and;

36
37 WHEREAS, the term of the proposed Lease with Colorado Mountain Junior College
38 District exceeds one year in length; and

39
40 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
41 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

42
43 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
44 BRECKENRIDGE, COLORADO:

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Section 1. The proposed “103 South Harris Building Lease (Ceramics Studio, Photography Lab, and Dance Studio)” between the Town and Colorado Mountain Junior College District, a copy of which is marked **Exhibit “A”**, attached hereto and incorporated herein by reference, is approved, and the Town Manager is authorized, empowered, and directed to execute such Lease for and on behalf of the Town of Breckenridge.

Section 2. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

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

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2011. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

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**103 South Harris Building Lease
Ceramics Studio, Photography Lab, and Dance Studio**

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THIS LEASE (“*Lease*”) is dated and is effective as of January 1, 2011 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“*Landlord*”) and COLORADO MOUNTAIN JUNIOR COLLEGE DISTRICT, a Colorado statutory junior college district (“*Tenant*”).

26
27

Background

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Pursuant to the Contract of Sale between Landlord and Tenant dated October 22, 2009, (“*Contract of Sale*”) the Tenant sold to Landlord the real property and improvements located at 103 South Harris Street in Breckenridge, Colorado. Such property is now known as the “Former CMC/High School Building.” Pursuant to Section 16(a) of the Contract of Sale the Landlord agreed to allow Tenant to continue to use the existing Ceramics Studio, Photography Lab, and Dance Studio located within the Former CMC/High School Building after closing of the sale of the property to conduct classes and provide instruction for Tenant’s students. The Contract of Sale provided for Tenant’s right to use the existing Ceramics Studio, Photography Lab, and Dance Studio without payment of rent, but did require Tenant to pay its share of the utilities for the leased property. The Contract of Sale further authorized Tennant’s use of the Ceramics Studio, Photography Lab, and Dance Studio for a period of 10 years after the closing of the sale of the Former CMC/High School Building to Landlord. Closing of the sale of the Former CMC/High School Building to Landlord occurred on November 3, 2009. This Lease is entered into pursuant to Section 16(a) of the Contract of Sale.

33
34

Lease

35
36
37

Landlord leases the Leased Premises to Tenant, and Tenant leases the Leased Premises from Landlord, upon the following terms and conditions:

- 38
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42
1. **Definitions.** As used in this Lease the following terms have the following meaning, unless the content clearly requires otherwise:

Building: The “Former CMC/High School Building” located at 103 South Harris Street in Breckenridge, Colorado.

Leased Premises: The: (i) “Ceramics Studio” (consisting of approximately 2498 square feet), (ii) “Photography Lab” (consisting of approximately 820 square feet), and (iii) “Dance Studio” (consisting of approximately 705 square feet) located in the Building. The Leased Premises are indicated in cross hatching on the attached **Exhibit “A”**, which is incorporated herein by reference. The Leased Premises does not include any portion of the Building except the Ceramics Studio, Photograph Lab, and Dance Studio. The Leased Premises may be amended at any time during the Lease to decrease the space occupied by Tenant.

- 1
2 2. Term. Subject to earlier termination as hereafter provided, the initial term of this Lease
3 commenced on January 1, 2011 and ends on December 31, 2011. Tenant, at its option,
4 may extend the term of this Lease for 8 additional terms of one-year each by serving
5 notice on the Landlord not later than 2 months prior to the expiration of the initial term or
6 any extended term (as applicable). Landlord acknowledges receipt of Tenant's notice of
7 exercise of the option for the year 2012, and no further notice is required for such year.
8 Upon the timely giving of Tenant's required notice, this Lease will be extended upon all
9 of its terms and conditions for the extended term without the necessity of the execution of
10 any further instruments or documents, and all references in this Lease to "the term" of
11 this Lease" will then apply to the applicable extension term; provided, however, that if on
12 the date that the Tenant attempts to exercise an option to extend this Lease the Tenant is
13 in default in the performance of any of the terms of this Lease and has received a notice
14 of default from Landlord, the Tenant's attempt to exercise such option will be null, void,
15 and of no force or effect whatsoever. Tenant's notice of the exercise of the any option to
16 extend this Lease must be given in writing in accordance with Section 24 of this Lease,
17 and time is of the essence in the giving of such notice.
18
- 19 3. Rent. Tenant may use the Leased Premises without payment of rent. However, Tenant
20 will reimburse Landlord for certain costs associated with the Leased Premises as required
21 of it by this Lease.
- 22 4. Use Of Leased Premises.
- 23 A. Tenant will use the Leased Premises only to conduct student classes and student
24 instruction in ceramics, photography, and dance. Use of the Leased Premises is
25 limited to persons enrolled in Tenant's classes, Tenant's instructors, and Tenant's
26 maintenance and janitorial staff. Tenant will not use the Leased Premises for any
27 other purpose without Landlord's prior written consent.
- 28 B. Tenant may not use any portion of the Building except the Leased Premises (and
29 the parking lots as provided in Section 9) without Landlord's prior written
30 consent.
- 31 C. Tenant will provide to Landlord with a list of scheduled Ceramic Studio,
32 Photography Lab, and Dance classes not later than 30 days before the start of each
33 semester during the term of this Lease.
- 34 D. An instructor employed by the Tenant must be present at all times while the
35 Leased Premises are in use by Tenant's students.
- 36 E. Tenant will, at its expense, promptly comply with all applicable statutes,
37 ordinances, rules, regulations, orders, restrictions of record and requirements in
38 effect during the term of this Lease that regulate the use of the Leased Premises
39 by Tenant. Tenant will not use or permit the use of the Leased Premises in any
40 manner that will tend to create waste or a nuisance.

1 5. Taxes. Because both Landlord and Tenant are tax-exempt entities under Colorado law,
2 the parties anticipate that the Leased Premises will be tax-exempt throughout the term of
3 this Lease. However, if taxes are lawfully assessed against the Building as a result of
4 Tenant's use of the Leased Premises Tenant will pay such taxes before they become
5 delinquent.

6 6. Utilities.

7 A. Landlord has contracted for, and obtained in its name, water, sewer, gas and
8 electrical utility service for the Leased Premises.

9 B. Tenant will annually reimburse Landlord for the water, sewer, gas and electric
10 service used at the Leased Premises as follow. Tenant will pay (such percentages
11 will be amended if the Leased Premises is amended):

12 i. 16% of the total electric and gas charges for the Building (less the electric
13 demand charge);

14 ii. 30% of the total electric demand charge for the Building;

15 iii. 16% of the total sewer charges for the Building; and

16 iv. 16% of the total water charges for the Building.

17 C. Sanitation service will not be provided to the Tenant at anytime during this Lease
18 in connection with its use of the Ceramics Studio. Tenant may take cold water for
19 use at the Ceramics Studio only from the one sink currently used for such purpose
20 by Tenant. Tenant is responsible for the transportation and removal of all water,
21 material, and waste in conjunction with its use of the Ceramics Studio. Tenant
22 will not permit any of Tenant's students or instructors to place any material of any
23 kind (including, but not limited to, water) into the Building's sanitation system. If
24 Tenant elects to provide sewer service to the Ceramics Studio, Tenant is solely
25 responsible for any and all improvements required in connection with such
26 services

27 D. Tenant may use the restrooms located at the front entrance on the Building's main
28 floor.

29 E. Tenant will initiate, contract for, and obtain in its name, all other required utilities
30 and services in connection with its use of the Leased Premises, including, without
31 limitation, telephone, cable, internet, recycling, and trash removal. Tenant will
32 pay all charges for such services as they become due.

33 7. Cleaning and Maintenance.

34 A. During the term of this Lease, Tenant will, at its sole expense, keep the Leased
35 Premises, and the restrooms located at the front entrance on the Building's main

1 floor and the Building's common areas, in a neat and clean condition. Tenant's
2 will, at a minimum, provide 2 cleanings per week as follows:

3 **FIXTURES:** Toilet bowls, toilet seats, urinals and sinks will be cleaned and
4 sanitized each service. Bright metal will be cleaned and polished each service.
5

6 **TRASH CONTAINERS:** Trash containers will be emptied each service and
7 trash removed. Exterior of containers will be spot cleaned each service. Plastic
8 liners will be installed from Tenant's stock.
9

10 **GLASS:** Glass and mirrors will be cleaned and polished each service.
11

12 **WALLS:** Splash marks will be removed from walls around sinks and dispensers
13 each service. Ceramic walls will be spot cleaned each service. Partition walls and
14 doors will be spot cleaned each service, wiped down and sanitized monthly.
15

16 **DISPENSERS:** Dispensers will be cleaned and polished each service and
17 supplies installed from Tenant's stock.
18

19 **FLOORS:** Floors will be swept, damp mopped and sanitized each service.
20

21 B. Landlord may periodically inspect and evaluate Tenant's cleaning of the Leased
22 Premises. If Landlord determines that the quality of Tenant's cleaning does not
23 meet Landlord's standard for the cleaning of its other public buildings, Landlord
24 may give notice of default to Tenant in accordance with Section 21(A).

25 C. Tenant will provide at its expense all paper products for the restrooms located in
26 the front entrance of the Building on the main floor.

27 D. Landlord will maintain the interior and exterior of the Leased Premises
28 (including, but not limited to, the roof) in such a condition and state of repair as
29 will allow the Leased Premises to be used by Tenant for the uses described in
30 Section 4.

31 E. Tenant is responsible for any damages to the Leased Premises or the Building
32 caused by its staff, students or contractors.

33 8. Snow Plowing and Snow Removal.

34 A. Landlord will provide or arrange for the plowing and removal of snow from the
35 Building's parking lots. As of the date of this Lease Landlord will plow the South
36 parking lot itself, and Summit County Government will plow the North parking
37 lot.

38 B. The Landlord will provide, either through a contractor or by use of Landlord's
39 own employees, at Landlord's option, once daily snowplowing and/or snow
40 shoveling of the walkways, entrance ways, and handicap access ramps of the

- 1 Building from October 1 through April 30 during the term of this Lease. Tenant
2 will reimburse Landlord for the actual costs incurred by Landlord in providing
3 such service, not to exceed the total sum of \$1,000.00 each year.
- 4 C. If Tenant requires snowplowing and/or snow shoveling from the walkways,
5 entrance ways, and handicap access ramps of the Building in addition to that
6 provided by Landlord pursuant to Subsection 8(B), Tenant must provide such
7 service at its cost.
- 8 9. Parking. As part of this Lease, Tenant's students and faculty may use the Building's
9 paved parking lots. Such parking use is subject to any reasonable regulations
10 promulgated by Landlord to regulate the use of such area.
- 11 10. Tenant's Payments. Tenant will reimburse Landlord for those costs described in Section
12 6(B)(utilities) and Section 8(B)(snow shoveling) within 30 days of the date of Landlord's
13 invoice. Tenant will pay a late charge of 5% on any amount not received by Landlord
14 within 30 days of the due date.
- 15 11. Alterations and Improvements. Tenant may not make any improvement to or change of
16 any portion of the Leased Premises without Landlord's prior written consent.
- 17 12. Signs. Tenant may not post, place, affix, erect, or display any sign within or outside of
18 the Leased Premises without Landlord's prior approval. In considering Tenant's request
19 to place a sign within or outside of the Leased Premises, Landlord acts in its capacity as
20 landlord of the Leased Premises, and not in its governmental capacity. Landlord may
21 remove any sign placed within or outside of the Leased Premises in violation of the
22 portions of this subparagraph. Tenant will maintain all signs located within or outside of
23 the Leased Premises in good, clean, and attractive condition. Tenant will remove all signs
24 placed by Tenant within or outside of the Leased Premises at the expiration or earlier
25 termination of this Lease, and repair any damage or injury caused thereby. If not so
26 removed by Tenant, the Landlord may remove such sign(s) at Tenant's expense.
- 27 13. Surrender of Leased Premises; Removal of Tenant's Property. At the end of the term of
28 this Lease Tenant will surrender the Leased Premises to the Landlord in as good a
29 condition as existed at the time of the commencement of this Lease, normal wear and tear
30 excepted. At the end of the term of this Lease Tenant will remove its property from the
31 Leased Premises. Any of Tenant's property not removed from the Leased Premises
32 within 30 days after the expiration or earlier termination of this Lease will be considered
33 abandoned and Landlord will have the right (but not the duty), without any notice to
34 Tenant, to sell or otherwise dispose of the same at the expense of the Tenant, and
35 Landlord will not be accountable to the Tenant for any part of the proceeds of such sale,
36 if any.
- 37 14. Inspection of Leased Premises. Tenant acknowledges that it is familiar with the condition
38 of the Leased Premises. Tenant accepts the Leased Premises in "AS IS" condition,
39 without recourse to Landlord for any dangerous conditions, known or unknown.

- 1 15. Access To Leased Premises. Landlord and Landlord’s agents and representatives have the
2 right to enter the Leased Premises at any time for any purpose.
- 3 16. Hazardous Materials. Tenant will not store or permit the storage on the Leased Premises
4 of any type of hazardous or similar material which is regulated by federal, state or local
5 regulation without prior written consent of the Landlord. Tenant will obtain Landlord’s
6 permission before storing any hazardous materials, including paint, on the Leased
7 Premises. Landlord approves Tenant’s use and storage of regulated chemicals in
8 connection with Tenant’s Photography Lab and Ceramics Studio; provided, however,
9 Tenant will comply with all applicable OSHA regulations when using such regulated
10 chemicals, including appropriate signage and material safety data sheets (MSDS).
- 11 17. Assignment. Tenant will not sublet the Leased Premises, or any part thereof, or assign
12 this Lease, or any part hereof, without the prior written consent of the Landlord.
- 13 18. Insurance.
- 14 A. Tenant will procure and maintain the minimum insurance coverages listed below.
15 Such coverages will be procured and maintained with forms and insurers
16 acceptable to the Landlord. All coverages will be continuously maintained to
17 cover all liability, claims, demands, and other obligations assumed by Tenant
18 pursuant to Section 19. In the case of any claims-made policy, the necessary
19 retroactive dates and extended reporting periods will be procured to maintain such
20 continuous coverages. Tenant’s required insurance coverages under this Lease
21 will be as follows:
- 22 i. worker’s compensation insurance to cover obligations imposed by
23 applicable laws for any employee of Tenant. Evidence of qualified self-
24 insured status may be substituted for the Worker’s Compensation
25 requirements of this Subsection.
- 26 ii. commercial general liability insurance with limits of liability of not less
27 than the limits of liability established from time to time under the
28 Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.
29 (“*Act*”).
- 30 B. The Tenant’s commercial general liability insurance policy required by
31 Subsection 18(A)(ii) will be endorsed to include the Landlord and Landlord’s
32 officers and employees as additional insureds.
- 33 C. Every policy required of Tenant by this Section 18 will be primary insurance, and
34 any insurance carried by Landlord, its officers, or its employees, or carried by or
35 provided through any insurance pool of Landlord, will be excess and not
36 contributory insurance to that provided by Tenant.
- 37 D. Tenant will be solely responsible for any deductible losses under any policy
38 required by this Section 18.

1 E. Within 30 days of the execution of this Lease, and upon each renewal or
2 replacement of Tenant's required insurance policies throughout the term of this
3 Lease, a certificate of insurance will be completed by Tenant's insurance agent
4 and provided to the Landlord as evidence that policies providing the required
5 coverages, conditions, and minimum limits are in full force and effect. Landlord
6 may reviewed and approve such certificate. The certificate will identify this Lease
7 and will provide that the coverages afforded under the policies will not be
8 canceled or terminated until at least 30 days' prior written notice has been given
9 to Landlord. The completed certificate of insurance must be sent to:

10 Town Clerk
11 P.O. Box 168
12 Breckenridge, CO 80424
13

14 F. Both the Landlord and the Tenant are relying on, and do not waive or intend to
15 waive by any provision of this Lease, the monetary limitations (presently
16 \$150,000 per person and \$600,000 per occurrence) or any other rights,
17 immunities, and protections provided by the Act, as from time to time amended,
18 or any other limitation or defense otherwise available to Landlord or Tenant, their
19 officers, or their employees.

20 19. Indemnification. To the extent permitted by applicable law, and subject to the limits of
21 liability established from time to time by Act (if the Act is applicable), Tenant will
22 indemnify and defend the Landlord, its officers, employees and insurers from and against
23 all liability, claims, and demands on account of injury, loss, or damage, including,
24 without limitation, claims arising from bodily injury, personal injury, sickness, disease,
25 death, property loss or damage, or any other loss of any kind whatsoever, which arise out
26 of or are in any manner connected with Tenant's occupancy of the Leased Premises
27 pursuant to this Lease. Tenant will investigate, handle, respond to, and provide defense
28 for and defend against any such liability, claim, or demand at the sole expense of Tenant.
29 Tenant will also pay all other costs and expenses related thereto, including court costs
30 and attorney's fees.

31 20. Non-liability Of Landlord. Tenant releases Landlord, and Landlord's representatives,
32 agents, and employees, from any and all liability for any injury or damage to Tenant, or
33 to Tenant's property located on or about the Leased Premises, resulting from any cause
34 whatsoever, except injury or damage caused by the gross negligence or willful act or
35 omission of Landlord, or the representatives, agents, and employees of Landlord.

36 21. Default.

37 A. Tenant's Default. Tenant will be in default under this Lease if it fails to comply
38 with any of the applicable terms, provisions, or covenants of this Lease within 3
39 days following service of a demand for compliance notice by Landlord in
40 accordance with Section 24.

1 B. Landlord's Default. Landlord will be in default under this Lease if Landlord fails
2 to comply with any of the terms, provisions or covenants of this Lease within 3
3 days following service of a written notice of default by Tenant in accordance with
4 the provisions of Section 24.

5 C. Default Not Capable of Cure Within Three Days. If the nature of a default is such
6 that more than 3 days are reasonably required for its cure, then the defaulting
7 party will not be in default under this Lease if it begins to undertake action to cure
8 the default within the 3 day period and thereafter prosecutes such cure to
9 completion with due diligence and in good faith. Any cure period will terminate at
10 any time that the default becomes incurable or when the cure efforts become
11 futile.

12 22. Remedies Upon Default.

13 A. Remedies of Landlord. If the Tenant is in default under this Lease, Landlord has
14 all of the remedies provided for in such circumstances by Colorado law,
15 including, without limitation, the right to terminate this Lease by written notice to
16 Tenant. Upon the occurrence of such event Tenant will immediately surrender the
17 Leased Premises to Landlord and, if Tenant fails to do so, Landlord may, without
18 prejudice to any other remedy which it may have for possession or arrearages in
19 rent, enter upon and take possession of the Leased Premises and expel or evict
20 Tenant and any other person who may be occupying the Leased Premises or any
21 part thereof, by force if necessary, without being liable for any claim for damages
22 therefore.

23 B. Remedies of Tenant. If the Landlord is in default under this Lease, Tenant has all
24 of the remedies provided for in such circumstances by Colorado law.

25 23. Attorney's Fees. If any action is brought in a court of law by either part to this Lease
26 concerning the enforcement, interpretation, or construction of this Lease, the prevailing
27 party, either at trial or upon appeal, is entitled to reasonable attorney's fees and costs,
28 including expert witness's fees, incurred in the prosecution or defense of such action.

29 24. Notice. All notices required or permitted under this Lease must be given by registered or
30 certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier
31 delivery, or fax copy directed as follows:

32 If intended for Landlord to:

33
34 Town of Breckenridge
35 P.O. Box 168
36 150 Ski Hill Road
37 Breckenridge, Colorado 80424
38 Attn: Town Manager
39 Fax number: (970) 547-3104
40 Telephone number: (970) 453-2251

1
2 with a copy in each case (which will not constitute notice) to:

3
4 Timothy H. Berry, Esq.
5 Timothy H. Berry, P.C.
6 131 West 5th Street
7 P. O. Box 2
8 Leadville, Colorado 80461
9 Fax number: (719) 486-3039
10 Telephone number: (719) 486-1889

11
12 If intended for Tenant, to:

13
14 Colorado Mountain College District
15 PO Box 2208
16 Breckenridge, CO 80424
17 Fax number: (970) 453-2209
18 Telephone number: (970) 453-6757

19
20 Any notice delivered by mail in accordance with this Section 24 will be effective on the
21 third business day after the notice is deposited in any post office or postal box regularly
22 maintained by the United States postal service, postage prepaid. Any notice delivered by
23 fax in accordance with this Section will be effective upon receipt if concurrently with
24 sending by fax receipt is confirmed orally by telephone and a copy of said notice is sent
25 by certified mail, return receipt requested, on the same day to that intended recipient.
26 Any notice delivered by hand or commercial carrier will be effective upon actual receipt.
27 Either party, by notice given as above, may change the address to which future notices
28 may be sent. E-mail is not a valid method for giving notice under this Lease.

29
30 25. Miscellaneous.

- 31 A. The terms “will” and “will not” indicate a mandatory obligation to act or to
32 refrain from acting as indicted in context in which such terms are used.
- 33 B. Time is of the essence of this Lease.
- 34 C. Any consent, permission or approval required to be given by Landlord under this
35 Lease may be granted, withheld, or conditionally approved in Landlord’s sole and
36 absolute discretion.
- 37 D. Landlord is not a partner, associate, or joint venturer of Tenant in the conduct of
38 its business at the Leased Premises.
- 39 E. There are no third party beneficiaries of this Lease.
- 40 F. This Lease and the Contract of Sale contain the complete and final expression of
41 the agreement between the parties as to the subject matter of this Lease. There are

- 1 no promises, representations, or inducements except as provided in this Lease and
2 the Contract of Sale.
- 3 G. This Lease may be modified or amended only by a duly authorized written
4 instrument executed by the parties hereto. Oral amendments to this Lease are not
5 permitted.
- 6 H. This Lease is to be interpreted in all respects in accordance with the laws of the
7 State of Colorado. The parties agree to the jurisdiction and venue of the courts of
8 Summit County, Colorado in connection with any dispute arising out of or in any
9 matter connected with this Lease.
- 10 I. This Lease may be executed simultaneously in two or more counterparts, each of
11 which will be considered an original for all purposes and all of which together
12 will constitute but one and the same instrument.
- 13 J. For all purposes contemplated in this Agreement, including execution of this
14 Lease, facsimile or scanned signatures will be as valid as the original. Both
15 parties waive any claim or defense that a facsimile or scanned signature is not
16 valid, or is not the best evidence of signature.
- 17 K. Section headings are inserted for convenience only and in no way limit or define
18 the interpretation to be placed upon this Lease.
- 19 L. The failure of either party to exercise any of its rights under this Lease will not be
20 a waiver of those rights. A party waives only those rights specified in writing and
21 signed by the party waiving its rights.
- 22 M. This Lease will **NOT** be recorded in the real property records of the Clerk and
23 Recorder of Summit County, Colorado.
- 24 N. Both parties acknowledge having had the opportunity to participate in the drafting
25 of this Agreement. This Agreement will not be construed against either party
26 based upon authorship.
- 27 O. This Lease is binding upon, and inures to the benefit of, the parties and their
28 respective successors and permitted assigns.
- 29 P. Both parties hereby acknowledge receipt of a complete and signed copy of this
30 Lease.
- 31

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LANDLORD:

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Timothy J. Gagen, Town Manager

[Affix Town Seal Here]

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

TENANT:
COLORADO MOUNTAIN JUNIOR COLLEGE
DISTRICT, a Colorado statutory junior college
district

By _____

Title: _____

Exhibit "A"

Depiction of Leased Premises

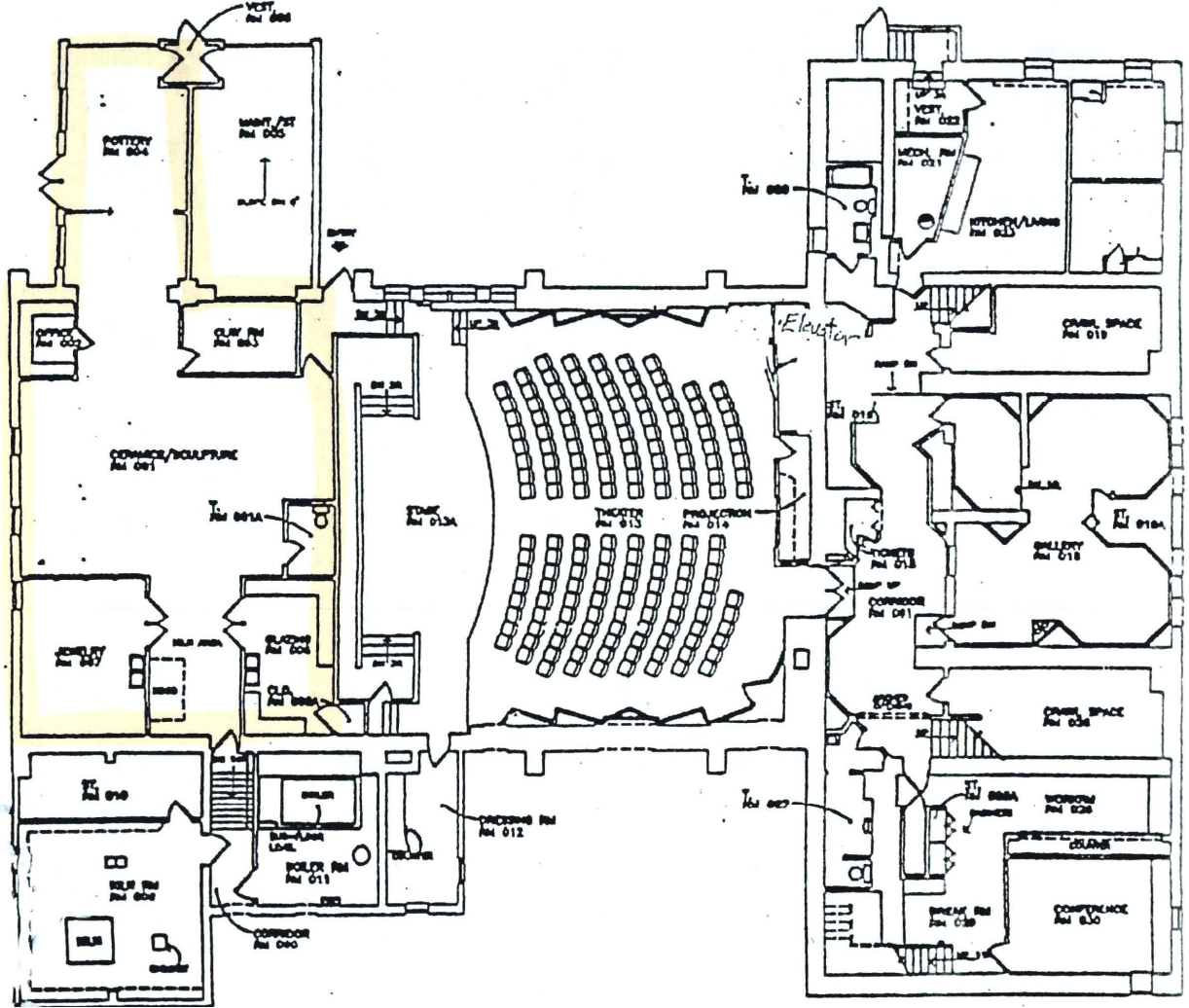
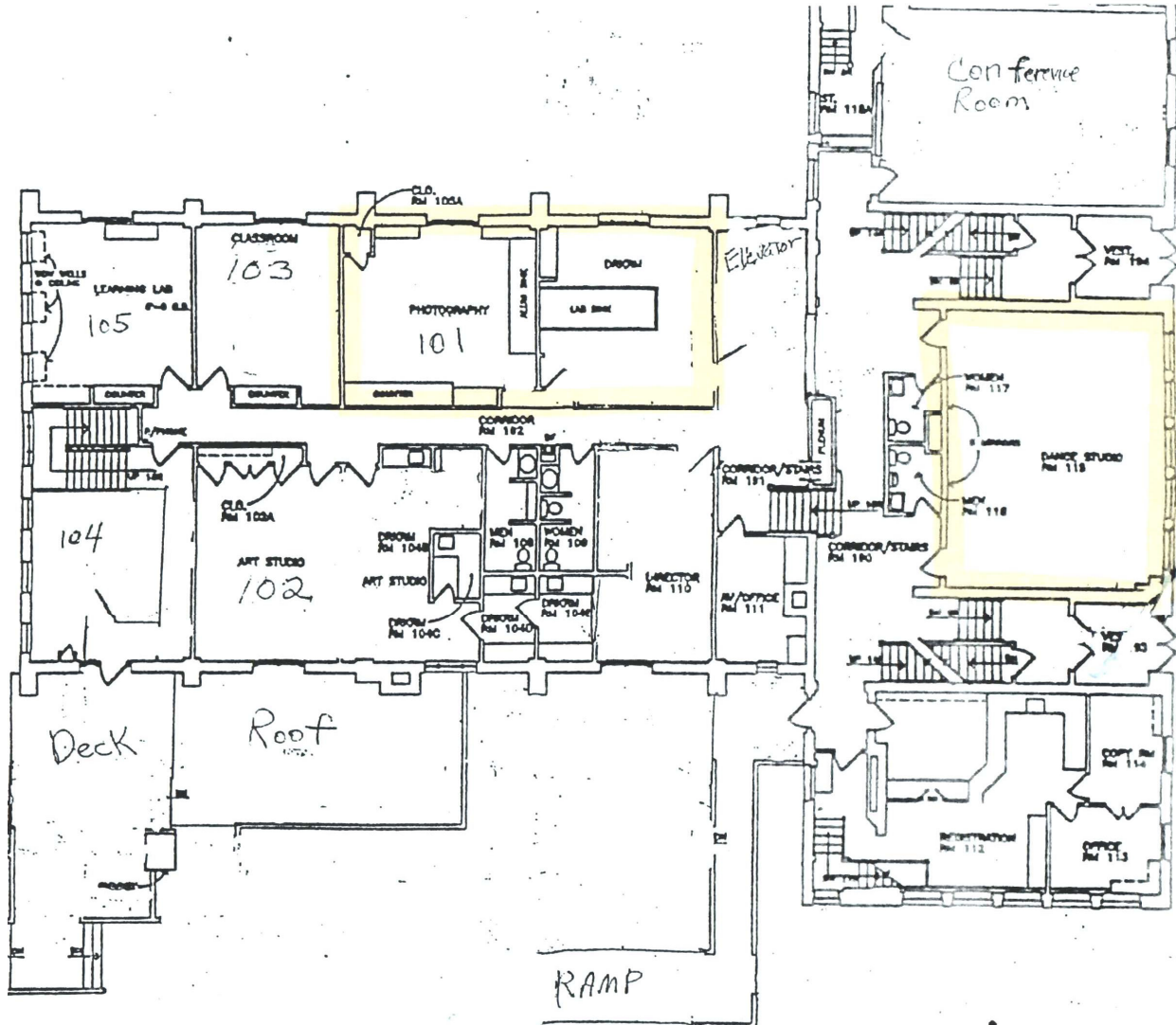
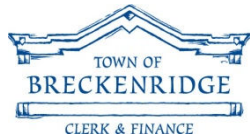


Exhibit "A" (Continued)

Depiction of Leased Premises





MEMORANDUM

TO: Mayor & Town Council
FROM: MJ Loufek, Town Clerk
DATE: December 29, 2011
SUBJECT: Election Ordinance

Attached to this memo is an ordinance that proposes several changes to Chapter 12 of Title 1 of the Breckenridge Town Code concerning "Municipal Elections."

Section 1-12-1

To facilitate conducting the April 2012 election by mail ballot, a change to 1-12-1 is proposed. This section currently specifies the appropriate Election Code to be followed for conducting municipal elections:

- Colorado Municipal Election Code for all municipal elections (regular, biennial April election; special elections); and
- Uniform Election Code for elections coordinated with the County (November general election; November odd-year election).

Municipal mail ballot elections are generally conducted pursuant to Article 7.5 of the Uniform Election Code, in conjunction with the Municipal Election Code. Therefore, the proposed change will authorize the Town to also use the Uniform Election Code for conducting a municipal mail ballot election.

Section 1-12-8

This new section requires any person who wishes to run as a write-in candidate to file a "write-in candidate affidavit" by 21 days before the election. By doing so, it guarantees that the candidate is eligible to run for office, and that election night counting center judges do not have to hand-count and record write-in votes unless an affidavit was previously filed. As you will see on the attached election results from 2004 and 2008, several of the write-ins were not eligible for office in Breckenridge and there was even a vote for someone's dog!

Section 1-12-9

This new section works in conjunction with 1-12-8 above and allows for cancellation of an election if:

- The only matter before voters is the election of persons to Town office (no ballot issues or questions);
- There are not more candidates than offices to be filled, including write-in candidates.

If the two criteria are met, the election may be cancelled by resolution and the candidates declared elected. This happens frequently in smaller communities, such as the Town of Blue River, and I don't anticipate this happening very often, if at all, in Breckenridge. If it does occur, however, the ability to cancel the election saves Election Day expenses.

Section 1-12-10

The proposed change to 1-12-10 is also related to mail ballot elections and specifies that the Town Council adopt a resolution to conduct any municipal election as a mail ballot election.

The Breckenridge Election Commission and the Town Clerk recommend adoption of the proposed changes.



PUBLIC NOTICE

**STATEMENT AND CERTIFICATE OF DETERMINATION
OF AN ELECTION HELD IN BRECKENRIDGE, COLORADO,
ON TUESDAY THE 6TH DAY OF APRIL, 2004**

Name of Candidate	Office	# Votes Cast
Ernie Blake	Mayor	492
Sam Mamula	Mayor	3
Any Other	Mayor	2
Eric Mamula	Mayor	2
Michael K. Yearout	Mayor	2
Bernie McMenamy	Mayor	1
Dick Bauder	Mayor	1
Eric Laguardia	Mayor	1
Harriet Hamilton	Mayor	1
Helen Cospolich	Mayor	1
John Daisy	Mayor	1
John Woods	Mayor	1
Justin J. McCarthy	Mayor	1
Justin McCarthy	Mayor	1
Kim McGahey	Mayor	1
Kim McGehee	Mayor	1
Mickey Mouse	Mayor	1
Mike Khavari	Mayor	1
Mike Lovely	Mayor	1
My Dog Big T	Mayor	1
Nick Di Batista	Mayor	1
Pat Baughman	Mayor	1
Robert Rianoshek	Mayor	1
Sara Howlin	Mayor	1
Steve Burrell	Mayor	1
Thomas A. Rollis	Mayor	1
Turk Montepare	Mayor	1
Eric Mamula	Town Council	447
Jeffrey Bergeron/Biff	Town Council	373
Rob Millisor	Town Council	256
Jim Lamb	Town Council	208
Ron Schuman	Town Council	107
Carol Rockne	Town Council	85
Christopher Kulick	Town Council	75
David Cook	Town Council	33
Mary V. Augustyn	Town Council	27
Stephen O'Hearne	Town Council	2
Greg Abernathy	Town Council	1
Jane Stebbins	Town Council	1
Karen Martiny	Town Council	1
Mark Kline	Town Council	1
Total Number Voting		599
# Absentee Voters		191
# Registered Voters		3,045

**TOWN OF BRECKENRIDGE
REFERRED MEASURE A**

SHALL THE TOWN OF BRECKENRIDGE DEBT BE INCREASED \$4,500,000 WITH A REPAYMENT COST OF \$7,509,600, AND SHALL TOWN TAXES BE INCREASED \$377,950 ANNUALLY WITH THE INTENT AND PURPOSE THAT SUCH TAXES ARE TO BE USED FOR PAYMENT OF THE BONDS ONLY IF THE COUNCIL DETERMINES OTHER REVENUES OF THE TOWN ARE NOT SUFFICIENT TO PAY THE DEBT SERVICE ON THE BONDS, SUBJECT TO THE FOLLOWING LIMITATIONS:



PUBLIC NOTICE

**STATEMENT AND CERTIFICATE OF DETERMINATION
OF AN ELECTION HELD IN BRECKENRIDGE, COLORADO,
ON TUESDAY THE 1st DAY OF APRIL, 2008**

Name of Candidate	Office	# Votes Cast
John G. Wamer	Mayor	354
Dave Rossi	Mayor	3
George W. Bush	Mayor	2
Harriet Hamilton	Mayor	2
Pat Baughman	Mayor	1
Jeff Boyd	Mayor	1
Dick Cheney	Mayor	1
Caryn Coders	Mayor	1
Ace Conway	Mayor	1
Jerry Cooney	Mayor	1
Tim Keeling	Mayor	1
Margret Meo	Mayor	1
Unknown	Mayor	1
Eric Mamula	Town Council	281
Peter Joyce	Town Council	240
Jeffrey Bergeron	Town Council	239
Michael J. Bertaux	Town Council	139
John E. Ebright	Town Council	89
Geoffrey Gempeler	Town Council	77
Mark Dwyer	Town Council	1
Tim Keeling	Town Council	1
Joe Kohutek	Town Council	1
G. William Schardt	Town Council	1
Total Number Voting		409
# Registered Voters		3,328

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

We, the undersigned, Canvassers of the Election Returns of an Election held in said Town of Breckenridge, in the State of Colorado, on Tuesday, the 1st day of April, 2008, for the purpose of electing a Mayor and three (3) Council members, do hereby certify that the above and foregoing is a true and correct abstract of the votes cast at said election, as shown by the abstracts for the voting precincts in said Town of Breckenridge.

WITNESS our hands and seals this 4th day of April, 2008.

ATTEST:

Mary Jean Loufek, CMC
Town Clerk

Buck Allen
Municipal Judge

1 ***FOR WORKSESSION/FIRST READING – JAN. 10***

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2012

9
10 AN ORDINANCE AMENDING CHAPTER 12 OF TITLE 1 OF THE BRECKENRIDGE
11 TOWN CODE CONCERNING MUNICIPAL ELECTIONS

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

15
16 Section 1. Section 1-12-1 of the Breckenridge Town Code is amended by to read in its
17 entirety as follows:

18
19 1-12-1: MUNICIPAL ELECTION CODE: Except as otherwise provided by
20 ordinance, or in connection with a coordinated election as provided in Section 1-
21 12-6 of this **Chapter or a mail ballot election as provided in Section 1-12-10 of**
22 **this Chapter**, all municipal elections shall be held in accordance with the
23 provisions of the Colorado Municipal Election Code of 1965, Article 10 of title
24 31, Colorado Revised Statutes.

25
26 Section 2. Chapter 12 of Title 1 of the Breckenridge Town Code is amended by the
27 addition of new a Section 1-12-8, which shall read in its entirety as follows:

28
29 **1-12-8: WRITE-IN CANDIDATE AFFIDAVIT: No write-in vote for any**
30 **Town office shall be counted unless an affidavit of intent has been filed with**
31 **the Town Clerk by the person whose name is written in prior to twenty (20)**
32 **days before the date of the election indicating that such person desires the**
33 **office and is qualified to assume the duties of that office if elected.**

34
35 Section 3. Chapter 12 of Title 1 of the Breckenridge Town Code is amended by the
36 addition of new a Section 1-12-9, which shall read in its entirety as follows:

37
38 **1-12-9: ELECTION MAY BE CANCELLED – WHEN: If the only matter**
39 **before the voters is the election of persons to Town office and if, at the close**
40 **of business on the nineteenth (19th) day before the election, there are not**
41 **more candidates than offices to be filled at such election, including write-in**
42 **candidates filing affidavits of intent pursuant to Section 1-12-8 of this**
43 **Chapter, the Town Clerk, if instructed by resolution of the Town Council**
44 **either before of after such date, shall cancel the election and by resolution**
45 **declare the candidates elected. Upon such declaration the candidates shall be**

1 **deemed elected. Notice of cancellation shall be published by the Town Clerk,**
2 **if possible, in order to inform the electors of the Town, and notice of**
3 **cancellation shall be posted at each polling place and in not less than one (1)**
4 **other public place.**

5
6 Section 4. Chapter 12 of Title 1 of the Breckenridge Town Code is amended by the
7 addition of new a Section 1-12-10, which shall read in its entirety as follows:
8

9 **1-12-10: MAIL BALLOT ELECTIONS: Pursuant to the authority granted**
10 **by Section 1-7.5-104(1), C.R.S., unless otherwise prohibited by law the Town**
11 **Council may determine by resolution that any municipal election shall be**
12 **conducted as a mail ballot election under the supervision of the Colorado**
13 **Secretary of State and pursuant to the rules for mail ballot elections**
14 **promulgated by the Colorado Secretary of State.**
15

16 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the
17 various secondary codes adopted by reference therein, shall continue in full force and effect.
18

19 Section 6. The Town Council hereby finds, determines and declares that it has the power
20 to adopt this ordinance pursuant to: (i) the Colorado Municipal Election Code of 1965 (Article
21 10 of Title 31, C.R.S.; (ii) the Uniform Election Code of 1992 (Articles 1 through 13, inclusive,
22 of Title 1, C.R.S.); (iii) the authority granted to home rule municipalities by Article XX of the
23 Colorado Constitution; and (iv) the powers contained in the Breckenridge Town Charter.
24

25 Section 7. This ordinance shall be published and become effective as provided by
26 Section 5.9 of the Breckenridge Town Charter.
27

28 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
29 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
30 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
31 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
32 Town.
33

34 TOWN OF BRECKENRIDGE, a Colorado
35 municipal corporation
36

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39 By _____
40 John G. Warner, Mayor
41
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ATTEST:

Mary Jean Loufek, CMC,
Town Clerk



Memorandum

To: Town Council
From: Jennifer Cram, AICP
Date: December 22, 2011
Subject: Landscape Plans and Landscape Architecture Licensure Requirements

In 2007 the Colorado legislature enacted the “Landscape Architects Professional Licensing Act”. This Act requires that, with certain exceptions specified in the Act, landscape plans submitted to a municipality must be stamped by a licensed landscape architect. Attached to this memo is a draft ordinance that adopts state requirements for submitting landscape plans to the Town according to the Landscape Architects Professional Licensing Act.

In summary, this ordinance requires that all multi-family developments with greater than four units and commercial development landscape plans are required to be stamped by a licensed landscape architect. Residential landscape design, consisting of landscape design services for single- and multi- family residential properties of four or fewer units not including common areas are exempt, as are the activities of licensed architects and professional engineers.

We shared this information with the Planning Commission on January 3, 2012, and invited local architects and landscape designers to attend. We wanted to provide an opportunity to ask questions in a public forum before taking this to the Council for first reading on January 10, 2012. Subsequently, the Planning Commission unanimously recommended that the Council adopt the attached ordinance.

Staff and the Town Attorney will be present during the worksession to discuss the ordinance and answer any questions.

1 ***FOR WORKSESSION/FIRST READING – JAN. 10***

2
3 COUNCIL BILL NO. ____

4
5 Series 2012

6
7 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
8 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”,
9 CONCERNING LANDSCAPE PLANS

10
11 WHEREAS, in 2007 the Colorado legislature enacted the “Landscape Architects
12 Professional Licensing Act” (the “Act”); and

13
14 WHEREAS, the Act requires that, with certain exceptions specified in the Act, landscape
15 plans submitted to a municipality must be stamped by a licensed landscape architect.

16
17 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
18 BRECKENRIDGE, COLORADO:

19
20 Section 1. Section 9-1-5 of the Breckenridge Town Code is amended by the addition
21 of a new definition of “Landscape Plan”, which shall read in its entirety as follows:

<p><u>LANDSCAPE PLAN:</u></p>	<p><u>A document showing site landscape improvements submitted to the Town pursuant to this chapter. All exemptions provided in Section 12-45-118, C.R.S., are incorporated by reference, including, but not limited to, landscape design services for single- and multi-family residential properties of four or fewer units not including common areas. Unless exempted by Section 12-45-118, C.R.S., a landscape plan shall be prepared and stamped by a Colorado licensed landscape architect in accordance with the Colorado Landscape Architects Professional Licensing Act, Article 45 of Title 12, C.R.S.</u></p>
--------------------------------------	--

22
23 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and
24 the various secondary codes adopted by reference therein, shall continue in full force and effect.

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

1 Section 4. The Town Council hereby finds, determines and declares that it has the
 2 power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling
 3 Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning
 4 municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers);
 5 (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the Colorado
 6 Landscape Architects Professional Licensing Act, Article 45 of Title 12, C.R.S.; (vi) the
 7 authority granted to home rule municipalities by Article XX of the Colorado Constitution; and
 8 (vii) the powers contained in the Breckenridge Town Charter.

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

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

15 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
 16 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
 17 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
 18 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
 19 Town.

20
 21 TOWN OF BRECKENRIDGE, a Colorado
 22 municipal corporation
 23

24
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 26 By _____
 27 John G. Warner, Mayor
 28

29 ATTEST:
 30

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 33 _____
 34 Mary Jean Loufek, CMC,
 35 Town Clerk
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MEMORANDUM

To: Mayor and Town Council
From: Rick Holman, Chief of Police
Date: January 3, 2012
Subject: Open Container Emergency Ordinance

Staff is recommending the Town Council approve an emergency ordinance that will amend the Town's Open Container law.

Once or twice a year, the Town will host an event that does not have an event liquor permit associated with the event. Because of the long history of those events, many participants will often attend with an alcoholic beverage. Under our current Town Code, it is illegal to possess an open container of alcohol in a public place. Staff is recommending the Council consider amending this ordinance which will allow for an exception to the law for permitted events that do not have an associated liquor license and which the Town Manager considers appropriate. In addition, this exception is only valid during the scheduled time of a designated event. Under the new law, participants could attend those designated events with an open container of alcohol and not be in violation of a Town ordinance. Staff does not feel this change in the law will lead to more problems at any event as there are other laws that still would pertain to participants who become disorderly or problematic.

Staff is asking for this to be read as an emergency ordinance on January 10th so it will be in effect for the Ullr bonfire which is scheduled for January 12, 2012.

1 ***FOR WORKSESSION/ADOPTION AS AN***
2 ***EMERGENCY ORDINANCE – JAN. 10***
3

4 COUNCIL BILL NO. ____

5
6 Series 2012

7
8 AN EMERGENCY ORDINANCE AMENDING SECTION 6-3F-16 OF THE
9 BRECKENRIDGE TOWN CODE CONCERNING THE MUNICIPAL OFFENSE OF “OPEN
10 CONTAINERS PROHIBITED”
11

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

14
15 Section 1. Section 6-3F-16 of the Breckenridge Town Code is amended to read in its
16 entirety as follows:

17
18 6-3F-16: OPEN CONTAINERS PROHIBITED:

19
20 A. 1. It is unlawful for any person to possess any alcoholic beverage in any open
21 container or to consume any alcoholic beverage in any public place within the
22 town, or in the interior of any motor vehicle while the motor vehicle is either
23 parked on a public street, right of way or alley within the town or is being
24 operated on a public street, right of way or alley within the town.
25

26 2. The provisions of subsection A1 of this section shall not apply to the
27 possession of an open container or the consumption of an alcoholic beverage
28 within the licensed premises of an establishment licensed by the town to sell such
29 beverage for consumption upon the premises, or to the possession of an open
30 container or the consumption of a malt liquor or a vinous liquor as defined in the
31 Colorado liquor code in those public parks known as “Kingdom park” and “Carter
32 park”.
33

34 3. The provisions of this subsection A1 shall not apply to a person in possession
35 of one opened but resealed container of partially consumed vinous liquor which
36 was lawfully removed from the licensed premises of an establishment holding a
37 liquor license pursuant to section 12-47-411(3.5), CRS.
38

39 4. The provisions of subsection A1 of this section shall not apply to the
40 possession of an open container or the consumption of an alcoholic beverage
41 within the permitted area of a special event for which a special event permit
42 has been issued pursuant to chapter 13 of title 4 of this code if: (a) no special
43 event liquor license has been issued and is in effect for the special event; and
44 (b) the Town Manager or his designee approves the application of this

1 **subsection A4 to such event. When made applicable, this exception applies**
2 **only during those times when the special event is approved to operate.**
3

4 B. The provisions of subsection 6-3F-2F of this article shall be applicable to any
5 trial for a violation of subsection A of this section.
6

7 C. Any peace officer is authorized to seize any alcoholic beverage which is used
8 in the commission of a violation of subsection A of this section. If no summons or
9 complaint is issued for a violation of this section, and if the circumstances
10 reasonably permit, the peace officer may require the person who has committed a
11 violation of this section to abandon the alcoholic beverage to the officer for
12 destruction.
13

14 ~~D. The provisions of this subsection A1 shall not apply to a person in possession~~
15 ~~of one opened but resealed container of partially consumed vinous liquor which~~
16 ~~was lawfully removed from the licensed premises of an establishment holding a~~
17 ~~liquor license pursuant to section 12-47-411(3.5), CRS.~~
18

19 ~~**D**~~. The town council hereby finds, determines and declares that the provisions of
20 this section are no less restrictive than the provisions of section 42-4-1305, CRS.
21

22 ~~**F**~~. An underage person and one or two (2) other persons shall be immune from
23 criminal prosecution under this section if they establish the following:
24

- 25 1. One of the underage persons called 911 and reported that another underage
26 person was in need of medical assistance due to alcohol consumption;
27
- 28 2. The underage person who called 911 and, if applicable, one or two (2) other
29 persons acting in concert with the underage person who called 911 provided each
30 of their names to the 911 operator;
31
- 32 3. The underage person was the first person to make the 911 report; and
33
- 34 4. The underage person and, if applicable, one or two (2) other persons acting in
35 concert with the underage person who made the 911 call remained on the scene
36 with the underage person in need of medical assistance until assistance arrived
37 and cooperated with medical assistance and law enforcement personnel on the
38 scene.
39

40 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
41 various secondary codes adopted by reference therein, shall continue in full force and effect.
42

43 Section 3. The Town Council hereby finds, determines and declares that it has the power
44 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
45 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
46

1 Section 4. The Town Council of the Town of Breckenridge hereby finds, determines
2 and declares that an emergency exists and that this ordinance is necessary for the immediate
3 preservation of public property, health, welfare, peace or safety because of the Town Council’s
4 desire to have this ordinance in effect prior to the date of the upcoming Ullr events. The Town
5 Council further determines that the adoption of this ordinance as an emergency ordinance is in
6 the best interest of the citizens of the Town of Breckenridge.
7

8 Section 5. Pursuant to Section 5.11 of the Breckenridge Town Charter this ordinance
9 shall take effect and be in full force upon adoption of this ordinance by the affirmative votes of at
10 least five (5) members of the Town Council.
11

12 Section 6. This ordinance shall be published in full within ten (10) days after adoption,
13 or as soon thereafter as possible, as required by Section 5.11 of the Breckenridge Town Charter.
14

15 ADOPTED AND APPROVED as an Emergency Ordinance this ___ day of _____,
16 2012.

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 _____
32 Mary Jean Loufek, CMC,
33 Town Clerk

34 APPROVED IN FORM
35
36
37
38
39 _____
40 Town Attorney
41
42
43
44
45



MEMORANDUM

To: Mayor & Town Council
From: Tim Gagen, Town Manager
Date: January 3, 2012
Subject: *Admission Tax Ballot Question*

Background

Over the last several years, Town Councils have discussed the possibility of placing a ballot question before the voters of Breckenridge regarding the establishment of an admission tax, sometimes referred to as a lift ticket tax. Currently, there is no tax, local or statewide, on lift tickets or other ticketed/admission events in Breckenridge.

At the Council's most recent budget retreat, the topic of an admission tax was discussed again. The Council decided to pursue discussion with the Ski Area regarding alternatives to an admission tax and the preparation of a possible ballot question in case these discussions are unsuccessful. As part of these discussions, the Council focused on transit, parking and related uses as priority uses of the revenue to be generated from such a tax and a tax rate comparable to what the Town currently gets from sales tax (4.5%).

Given the deadlines for potential ballot questions for the April election, an admission tax question would need to be considered for first and second readings in January following our normal meeting schedule. A draft admission tax question has been prepared for discussion and possible placement for a first reading on January 10th, which would allow for a possible second reading and public hearing on January 24th. This schedule also allows continued discussion between the Ski Area and the Town on an alternative plan to the ballot approach through most of January.

Staff and the Town Attorney will be asking for any refinements or changes to the draft question including tax rate and purpose for use of revenue. Also attached is previously produced background information regarding admission taxes from the retreat.

1 ***FOR WORKSESSION/FIRST READING – JAN. 10***

2
3 COUNCIL BILL NO. __

4
5 Series 2012

6
7 AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF
8 BRECKENRIDGE AT THE REGULAR TOWN ELECTION TO BE HELD ON APRIL 3, 2012
9 THE QUESTION OF WHETHER, COMMENCING JULY 1, 2012, THE TOWN OF
10 BRECKENRIDGE SHOULD IMPOSE AN ADMISSIONS EXCISE TAX OF FOUR AND
11 ONE-HALF PERCENT (4.5%) ON EVERY PERSON WHO PAYS TO GAIN ADMISSION
12 TO ANY PLACE OR EVENT OPEN TO THE PUBLIC AND REQUIRING EVERY PERSON,
13 WHETHER OWNER, LESSEE, OR OPERATOR, WHO CHARGES OR CAUSES TO BE
14 CHARGED ADMISSION TO ANY SUCH PLACE OR EVENT OPEN TO THE PUBLIC TO
15 COLLECT SUCH ADMISSIONS TAX FOR THE TOWN, AS A NEW TAX PURSUANT TO
16 ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION; REQUIRING
17 REVENUES COLLECTED BY THE TOWN FROM THE NEW TAX TO BE USED ONLY
18 FOR DESIGNATED PURPOSES; SETTING FORTH THE BALLOT TITLE; AND
19 PROVIDING FOR THE CONDUCT OF THE ELECTION
20

21 WHEREAS, the Town of Breckenridge (“**Town**”) is a home rule municipal corporation
22 organized and existing under Article XX of the Colorado Constitution; and
23

24 WHEREAS, the electors of the Town adopted the Breckenridge Town Charter on April
25 1, 1980; and
26

27 WHEREAS, Section 12.1 of the Breckenridge Town Charter provides that the Town
28 Council of the Town (“**Town Council**”) may, by ordinance, levy and collect excise taxes for
29 municipal purposes; and
30

31 WHEREAS, the Town’s next regular biennial municipal election will be held on April 3,
32 2012; and
33

34 WHEREAS, the Town Council finds and determines that there should be submitted to the
35 registered electors of the Town, at the Town’s regular municipal election to be held on April 3,
36 2012, as a referred measure, the question of whether effective July 1, 2012 the Town should
37 adopt a new four and one-half percent (4.5%) admissions excise tax on every person who pays to
38 gain admission to any place or event open to the public and requiring every person, whether
39 owner, lessee, or operator, who charges or causes to be charged admission to any such place or
40 event open to the public to collect such admissions excise tax for the Town, with the revenues
41 collected by the Town from such new tax to be used only for those purposes designated in this
42 ordinance; and
43

44 WHEREAS, Section 31-11-111(2), C.R.S., provides that the Town Council or its
45 designee shall fix a ballot title for the referred measure set forth in Section 3 of this ordinance;
46 and

1
2 WHEREAS, the Town Council has determined that it should fix the ballot title for the
3 referred measure set forth in Section 3 of this ordinance.

4
5 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
6 BRECKENRIDGE, COLORADO:

7
8 Section 1. The Breckenridge Town Code is amended by the addition of a new Chapter 10
9 of Title 3, entitled “Admissions Tax”, which shall read in its entirety as follows:

10 CHAPTER 10

11
12 ADMISSIONS TAX

13
14 SECTION:

- 15
16 3-10-1: Purpose
17 3-10-2: Definitions
18 3-10-3: Imposition of Tax
19 3-10-4: Use of Collected Tax Revenues
20 3-10-5: Exemptions
21 3-10-6: Collection of Tax By Vendor; Vendor Liability
22 3-10-7: Remittance Collected By Vendor
23 3-10-8: Remittance on Other Than Monthly Basis
24 3-10-9: Consolidation of Returns
25 3-10-10: Tax Disputes
26 3-10-11: Procedure for Refund of Tax Paid Under Dispute
27 3-11-12: Denial of Refund
28 3-10-13: Right of Refund Not Assignable
29 3-10-14: Action for Recovery of Refund
30 3-10-15: Preservation of Returns and Other Records; Confidentiality
31 3-10-16: Records and Accounts To Be Kept
32 3-10-17: Examination of Returns; Recomputations, Credits, and Deficiencies
33 3-10-18: Investigation of Records Related to Taxes; Hearings
34 3-10-19: Subpoenas and Witness Fees
35 3-10-20: Attendance of Witness and Production of Evidence
36 3-10-21: Depositions
37 3-10-22: Audit of Records
38 3-10-23: Failure to Make Return; Estimate of Taxes; Notices; Appeal
39 3-10-24: Appeal From Administrative Hearing Decision:
40 3-10-25: Duties of Financial Services Manager
41 3-10-26: Assessment and Recurring Assessment Penalty
42 3-10-27: Compliance Penalty
43 3-10-28: Fraud Penalty
44 3-10-29: Special Penalty
45 3-10-30: Rate of Interest; Method of Calculation
46 3-10-31: Tax Constitutes Lien

- 1 3-10-32: Sale of Business Subject to Lien
- 2 3-10-33: Certificate of Discharge of Lien
- 3 3-10-34: Jeopardy Assessment
- 4 3-10-35: Enforcing Collection of Taxes
- 5 3-10-36: Recovery of Unpaid Tax by Action at Law
- 6 3-10-37: Town as Party in Title Actions
- 7 3-10-38: Injunctive Relief
- 8 3-10-39: Waiver of Penalties, Interest and Fees
- 9 3-10-40: Obligations of Fiduciaries and Others
- 10 3-10-41: Review of Decisions of Financial Services Manager
- 11 3-10-42: Review Bond Required
- 12 3-10-43: Notices
- 13 3-10-44: Tax in Addition to All Other Taxes
- 14 3-10-45: Location of Hearings
- 15 3-10-46: Administration By Financial Services Manager; Rules and Regulations
- 16 3-10-47: Authority to Compromise Taxes
- 17 3-10-48: Violations; Penalties
- 18 3-10-49: Limitations on Actions to Collect
- 19 3-10-50: Claims for Recovery

20
21 **3-10-1: PURPOSE:**

22 The purpose of this Chapter is to impose an admissions excise tax upon every person (unless
23 specifically exempted by this Chapter) who pays to gain admission or entry to any place or event
24 within the Town that is open to the public. Admission to any such place or event is a taxable
25 privilege. It is the further purpose of this Chapter to require every person, whether owner, lessee
26 or operator, who charges or causes to be charged admission or entry to any such place or event
27 that is open to the public to collect such admissions excise tax for the Town.

28 **3-10-2: DEFINITIONS:**

29 The following words and phrases, when used in this Chapter, shall have the meanings
30 respectively ascribed to them:

ADMISSION:

means the admission or the right of entry to any place or event within the Town that is open to members of the public upon payment of a charge or fee. This term may include, by way of illustration but not by way of limitation, the following places and events when a charge or fee for admission to such places and events is placed upon members of the public:

- a. Any ski area.
- b. Any performance of a motion picture, stage show, play, concert, festival, carnival, circus,

play, concert or other manifestation of the performing arts.

c. Any sporting or athletic contest, exhibition or event, whether amateur or professional and whether the person is acting as a spectator or participant.

d. Any lecture, rally, speech or dissertation.

e. Any showing, display or exhibition of any type, such as an art exhibit.

f. Any restaurant, tavern, lounge, bar or club, whether the admission charge is termed a cover charge, door charge, or any other similar term.

DESIGNATED REVENUES:

means all revenues collected by the Town pursuant to this Chapter.

GROSS TAXABLE SALES:

means the total amount, valued in money, received or to be received in money, credits, property or other consideration derived from sales of admissions subject to the tax imposed by this Chapter.

PURCHASE OR SALE:

means contract for sale and include any transaction for furnishing by any person to any person the taxable privilege of admission as herein defined.

PURCHASER:

means any person to whom the taxable privilege of admission is or has been rendered.

SKI AREA:

means the ski slopes or trails and other places within the ski area boundary under the control a ski area operator and administered as a single enterprise.

SKI AREA OPERATOR:

means any person, partnership, corporation, or other commercial entity having operational responsibility for any ski area.

SKI PASS:

means any certificate, card, slip, token, badge, patch, pass, or other document that entitles the owner thereof to ski at a ski area located within the Town.

SKI:	means to use a ski area for the purpose of skiing, which includes, without limitation, sliding downhill or jumping on snow or ice on skis, a toboggan, a sled, a tube, a snowbike, a snowboard, or any other device.
SKI SLOPES OR TRAILS:	means ski slopes or trails and adjoining skiable terrain designated by a ski area operator to be used for sliding downhill or jumping on snow or ice on skis, a toboggan, a sled, a tube, a snowbike, a snowboard, or any other device.
TAX:	means either the tax payable by the purchaser, or the aggregate amount of taxes due from a vendor, pursuant to this Chapter.
TAXPAYER:	means any person obligated to account to the Financial Services Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this Chapter.
VENDOR:	means a person making a sale to a purchaser of the taxable privilege of admission.

1 **3-10-3: IMPOSITION OF TAX:**

- 2 A. On and after 12:01 a.m., July 1, 2012, there is levied and there shall be collected and paid
3 an excise tax by every person exercising the taxable privilege described in this Chapter.
4 Such tax is due and shall be pad for the exercise of such taxable privilege.
- 5 B. The amount of the tax hereby levied is four and one-half percent (4.5%) of the price of
6 each admission; provided that a tax derived from calculations resulting in a fraction of a
7 cent being a part of the tax shall be increased or rounded to the next whole cent.
- 8 C. The facilities owned by the Town that are open to members of the public upon payment
9 of a charge or fee, including, but not limited to, the facilities commonly known as the
10 Riverwalk Center, Backstage Theatre, and the Recreation Center, are subject to the tax
11 imposed by this Chapter.
- 12 D. If a block of admissions is sold to a single purchaser at a bulk rate, the tax shall be
13 computed on the bulk rate in such case instead of on individual admissions, provided that
14 none of the tickets in the block are resold.
- 15 E. If any ski pass entitles the owner thereof to ski at a ski area located within the Town and
16 one or more additional ski areas not located with the Town, the operator of the in-Town
17 ski area shall calculate the number of skier visits at the in-Town ski area resulting from
18 the use of such ski pass, and the average consideration paid by the owner of such ski pass
19 for a skier day at the in-Town ski area, and shall pay the tax imposed by this Chapter

1 accordingly. The methodology used by the in-Town ski area to pay the tax pursuant to
2 this Subsection E, as well as the date of payment of the tax by the in-town ski area
3 determined pursuant to this Subsection E, shall be reviewed and approved by the
4 Financial Services Manager. Matters related to this Subsection E may also be included in
5 the rules and regulations promulgated by the Financial Services Manager pursuant to
6 Section 3-10-46.

7 **3-10-4: USE OF COLLECTED TAX REVENUES:** The Designated Revenues shall be used only
8 to:

- 9 A. pay or reimburse the Town for direct and indirect costs incurred for the operation of the
10 Town's transit system, including labor and equipment costs associated therewith;
- 11 B. pay or reimburse the Town for the direct and indirect costs of providing public parking;
- 12 C. pay or reimburse the Town for other direct and indirect costs determined by the Town
13 Council to enhance the movement of visitors within the Town; and
- 14 D. such other general purposes of the Town as may be determined by the Town Council.

15 **3-10-5: EXEMPTIONS:**

- 16 A. The providing of free passes, complimentary admission tickets or otherwise, where no
17 admission price is charged or paid, shall exempt that person from payment of the tax
18 imposed by this Chapter; however, if a reduced charge for admission is made, whether
19 for a pass, complimentary admission, or otherwise, the tax applicable to the amount of
20 such charge shall be due.
- 21 B. Notwithstanding any provision of this Chapter to the contrary, the State and any political
22 subdivision of the State (except the Town as provided in Section 3-10-3(C)) shall be
23 exempt from collection and remittance of the admissions tax.
- 24 C. Any cover charge paid to obtain entrance to any restaurant, tavern, lounge, bar or club,
25 that is taxable under the Town's Sales Tax Ordinance (Chapter 1 of Title 3 of this Code)
26 is exempt from taxation under this Chapter.

27 **3-10-6: COLLECTION OF TAX BY VENDOR; VENDOR LIABILITY:**

- 28 A. Every owner or operator who charges admission or causes admission to be charged to any
29 place or event open to the public shall be liable for the collection and remittance of the
30 tax. If an owner or operator of a facility leases or rents such facility to another party,
31 which in turn sponsors or conducts some public event in such facility, such owner or
32 operator shall be relieved of the liability of collecting and remitting the tax only if the
33 party to whom the facility is leased or rented is, at the time of such lease or rental,
34 licensed to collect and remit the tax.
- 35 B. The tax to be collected as provided in this Chapter shall be stated and charged separately
36 from the admissions charge on any record thereof at the time when the charge is made or

1 at the time when evidence of the charge is issued or employed by the owner or operator.
2 When added, such tax shall constitute a part of such purchase price or charge and shall be
3 a debt from the purchaser to the owner or operator until paid and shall be recoverable at
4 law in the same manner as other debts. The purchaser shall pay the tax to the owner or
5 operator, as Council member for and on account of the Town, and the owner or operator
6 shall be liable for the collection therefor and on account of the Town.

7 C. Taxes paid on the amount of gross admissions charges that are represented by accounts
8 which are found to be worthless and are actually and properly charged off as bad debts
9 for the purpose of the income tax imposed by state law may be credited upon subsequent
10 payment of the tax herein provided. However, if any such accounts are thereafter
11 collected by the taxpayer, a tax shall be paid upon the amount so collected.

12 D. The burden of proving that any transaction is not subject to the tax implemented by this
13 Chapter shall be upon the person upon whom the duty to collect the tax is imposed.

14 E. Every vendor shall add the tax imposed by this Chapter to the purchase price, charge or
15 other consideration paid for the taxable privilege of admission; provided, however, that
16 the vendor shall be liable and responsible to the Town for the payment of an amount
17 equivalent to said tax on each such admission based on his or her gross taxable sales.

18 F. A credit will be allowed if the taxpayer refunds an admissions sale, provided that the
19 taxpayer thereon has refunded the full admissions price thereof and the full tax due and
20 paid to the purchaser.

21 **3-10-7: REMITTANCE COLLECTED BY VENDOR:**

22 A. Vendors shall remit to the Town taxes collected pursuant to this Chapter.

23 B. Every vendor shall file a tax return with the Financial Services Manager on or before the
24 twentieth day of each month for the preceding month and remit the tax due to the Town
25 simultaneously therewith, except as may be otherwise permitted by the Financial Services
26 Manager pursuant to Section 3-10-8. The monthly amounts remitted to the Financial
27 Services Manager shall be made in such manner and upon such forms as the Financial
28 Services Manager may prescribe.

29 C. If any vendor shall, during any reporting period or for any transaction, collect as a tax an
30 amount in excess of the rate stated in Section 3-10-3, the vendor shall remit to the
31 Financial Services Manager the full amount of the tax imposed and such excess. If the
32 taxpayer undercollects tax on any admissions sale, the vendor shall remit the full amount
33 actually due in accordance with Section 3-10-3. The vendor shall not net overcollected
34 and undercollected taxes for reporting or remittance purposes.

35 **3-10-8: REMITTANCE ON OTHER THAN MONTHLY BASIS:**

36 If the accounting method regularly employed by the vendor in the transaction of his or her
37 business or other conditions are such that reports of sales made on a calendar-month basis will
38 impose unnecessary hardship on the vendor, the Financial Services Manager may, upon written

1 request of the vendor, accept returns at such intervals as will, in the Financial Services
2 Manager's opinion, better suit the convenience of the vendor and will not jeopardize the
3 collection of the tax. The Financial Services Manager may require a bond or other financial
4 guarantee to secure payment of the tax on such less frequent basis and may revoke permission to
5 pay the tax on such basis if payment of the tax due becomes delinquent.

6 **3-10-9: CONSOLIDATION OF RETURNS:**

7 A vendor doing business in two (2) or more places or locations, whether within or without
8 the Town, and collecting taxes hereunder may file one (1) return covering all such places or
9 locations when accompanied by a supplemental report showing the gross and net taxable sales
10 and the taxes collected thereon for each such place or location.

11 **3-10-10: TAX DISPUTES:**

12 Should a dispute arise between the purchaser and vendor as to whether or not the sale of
13 admission is exempt from taxation under this Chapter, the vendor shall collect and the purchaser
14 shall pay such tax, and the vendor shall thereupon issue to the purchaser a receipt or certificate
15 on forms prescribed by the Financial Services Manager, showing the names of the purchaser and
16 vendor, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The
17 purchaser thereafter may apply to the manager for a refund of such taxes, and it shall be the duty
18 of the Financial Services Manager to determine the question of exemption, subject to review by
19 the courts as herein provided.

20 **3-10-11: PROCEDURE FOR REFUND OF TAX PAID UNDER DISPUTE:**

- 21 A. Any person who claims that a transaction was not taxable or claims an exemption as
22 provided in this Chapter may apply for a refund of the tax paid under dispute.
- 23 B. An application for a refund of admissions tax paid under dispute by a purchaser who
24 claims an exemption shall be made within sixty (60) days after the date of purchase for
25 which an exemption is claimed. An application for refund of taxes paid in error or by
26 mistake shall be made within three (3) years after the date of transaction for which the
27 refund is claimed. Such applications shall be accompanied by the original paid invoice or
28 sales receipt and shall be made upon forms prescribed and furnished by the Financial
29 Services Manager.
- 30 C. The burden of proving that any transaction or item is not taxable or is exempt from the
31 tax shall be upon the person asserting such claim under such reasonable requirements of
32 proof as the Financial Services Manager may prescribe.
- 33 D. Upon receipt of an application, the Financial Services Manager shall examine the same
34 with all due speed and shall give written notice to the applicant of his or her decision
35 thereon.

36 **3-10-12: DENIAL OF REFUND:**

- 1 A. An appeal of a denial of a refund shall be submitted in writing to the Financial Services
2 Manager within twenty (20) calendar days from the date of the denial of the refund and
3 shall identify the amount of the refund requested and the basis for the appeal.
- 4 B. An appeal of a denial of a refund may include a request for a hearing. Hearing procedures
5 shall be as described in Section 3-10-18.

6 **3-10-13: RIGHT OF REFUND NOT ASSIGNABLE:**

7 The right of any person to a refund under this Chapter is not assignable. An application for a
8 refund must be made by the individual who paid the tax, as shown on the sales receipt or invoice.

9 **3-10-14: ACTION FOR RECOVERY OF REFUND:**

10 If any person obtains any refund unlawfully, the Financial Services Manager is empowered
11 and directed to bring appropriate action for recovery of such refund. A conviction for the
12 violation of Section 3-10-48 shall constitute prima facie evidence that all refunds received by
13 such person pursuant to the application which contained the false statement were obtained
14 unlawfully. Obtaining a refund unlawfully shall be an act of fraud against the Town and shall be
15 subject to applicable penalties as outlined in Section 3-10-48.

16 **3-10-15: PRESERVATION OF RETURNS AND OTHER RECORDS;
17 CONFIDENTIALITY:**

- 18 A. Returns shall be preserved for a period of three (3) years from the date of filing with the
19 Financial Services Manager, after which time the Financial Services Manager may order
20 them destroyed.
- 21 B. Chapter 7 of this Title , concerning confidentiality of tax returns and information, applies
22 to this Chapter.
- 23 C. Nothing in this Section shall be construed to prohibit the delivery to the taxpayer or
24 authorized representative thereof a copy of any application, report, return or any other
25 document kept, filed or maintained in connection with such person's tax liability.
- 26 D. Nothing in this Section shall be construed to prohibit the publication of statistics so
27 classified as to prevent the identification of particular reports or returns and contents
28 thereof, or the inspection of any documents by the Town Attorney or other official
29 representatives of the Town.

30 **3-10-16: RECORDS AND ACCOUNTS TO BE KEPT:**

31 Every person who is required by this Chapter to collect an admissions tax shall keep and
32 preserve suitable records of all admissions sales made by such person, and such other books or
33 accounts as may be necessary to determine the amount of tax for the collection or payment of
34 which such person is liable hereunder. It is the duty of every such person to keep and preserve all
35 such books, invoices and other records for a period of three (3) years following the date the taxes
36 were due to the Town (see Section 3-10-7). Such items shall be open for examination in

1 accordance with Section 3-10-18. If the taxpayer has filed a tax return for any period after the
2 due date for that period, then the records for the period must be preserved for three (3) years after
3 the date the return was filed. If taxpayers have not filed a tax return for any period, then the
4 records must be preserved indefinitely. Failure to preserve all records shall be an act of fraud
5 against the Town and shall be subject to applicable penalties as outlined in Section 10-3-28.

6 **3-10-17: EXAMINATION OF RETURNS; RECOMPUTATION, CREDITS,**
7 **DEFICIENCIES:**

8 As soon as practicable after a return is filed, the Financial Services Manager shall examine it.
9 If it appears that the correct amount of tax to be remitted may be greater or less than that shown
10 in the return, the tax shall be recomputed by the Financial Services Manager. If the amount paid
11 exceeds that which is due, the excess shall be refunded or credited against any subsequent
12 remittance from the taxpayer. If the amount paid is less than the amount due, the amount of the
13 deficiency with a penalty of ten percent (10%) of the amount of the deficiency plus interest on
14 both the deficiency and the penalty shall be due and payable in accordance with the procedures
15 set forth in Section 3-10-23. If any part of the deficiency is due to fraud with the intent to evade
16 the tax, there shall be added a fraud penalty as set forth in Section 3-10-28.

17 **3-10-18: INVESTIGATION OF RECORDS RELATING TO TAXES; HEARINGS:**

18 A. For the purpose of ascertaining the correctness of a return, or for the purpose of
19 determining the amount of tax due from any person, the Financial Services Manager may
20 hold investigations, including audits and hearings, concerning any matters covered by
21 this Chapter, and may examine any relevant books, papers, records or memoranda of any
22 such person, or any officer or employee of such person, or of any person having
23 knowledge of the transactions involved, and may take testimony and evidence as proof of
24 the information. The Financial Services Manager shall have the power to administer
25 oaths to such persons.

26 B. The Financial Services Manager may schedule a hearing, notifying all interested parties
27 by regular mail at least thirty (30) days prior to the date of the hearing. The Financial
28 Services Manager is authorized to issue subpoenas as outlined in Section 3-10-19. Such
29 hearing shall be informal and no transcript, rule of evidence or filing of briefs shall be
30 required; but the taxpayer may elect to submit a brief, in which case the Town may
31 submit a brief. The Financial Services Manager shall hold such hearing and issue a final
32 decision thereon within ninety (90) days after the Town's notification to the taxpayer,
33 except the Town may extend such period if the delay in holding the hearing or issuing the
34 decision thereon was occasioned by the taxpayer, but, in any event, the Financial Services
35 Manager shall hold such hearing within one hundred eighty (180) days of notifying the
36 taxpayer of the hearing. The decision shall be mailed by regular mail to the taxpayer. If a
37 taxpayer has exhausted Town remedies, the taxpayer may dispute the decision of the
38 Financial Services Manager in the Summit County District Court.

39 **3-10-19: SUBPOENAS AND WITNESS FEES:**

1 All subpoenas issued under the terms of this Chapter may be served by any person over the
2 age of eighteen (18) years. The fees of witnesses for attendance in response to a subpoena shall
3 be the same as the fees of witnesses before the Summit County District Court, such fees to be
4 paid when the witness is excused from further attendance. When the witness is subpoenaed at the
5 instance of the Financial Services Manager, such fees shall be paid by the Town. When a witness
6 is subpoenaed at the instance of any other party to such proceeding, the Financial Services
7 Manager may require that the cost of service of the subpoena and the fee of the witness be borne
8 by the party at whose instance the witness is summoned. In such case, the Financial Services
9 Manager, in his or her discretion, may require a deposit to cover the cost of such service and
10 witness fees prior to issuing such subpoenas. A subpoena issued as aforesaid shall be served in
11 the same manner as a subpoena issued out of a court of record.

12 **3-10-20: ATTENDANCE OF WITNESS AND PRODUCTION OF EVIDENCE:**

13 Any judge of the Summit County District Court or the Municipal Court, upon the application
14 of the Financial Services Manager, may compel the attendance of witnesses, the production of
15 books, papers, records or memoranda and the giving of testimony before the Financial Services
16 Manager, by an action for contempt or otherwise in the same manner as though the production of
17 evidence were before such court.

18 **3-10-21: DEPOSITIONS:**

19 The Financial Services Manager, or any party to an investigation or hearing before the
20 Financial Services Manager, may cause the deposition of witnesses residing within or without
21 the State to be taken in the manner prescribed by law for depositions in civil actions in courts of
22 this State and to that end compel the attendance of witnesses and the production of books,
23 papers, records or memoranda.

24 **3-10-22: AUDIT OF RECORDS:**

- 25 A. For the purpose of ascertaining the correct amount of tax due from any taxpayer required
26 to collect an admissions tax in the Town, the Financial Services Manager may authorize
27 an agent to conduct an audit by examining any relevant books, accounts and records of
28 such person.
- 29 B. All of the taxpayer's books, accounts and records shall be open at any reasonable time for
30 examination by an authorized agent of the Financial Services Manager. If any taxpayer
31 refuses to furnish voluntarily any of the foregoing information when requested by the
32 Financial Services Manager, the Financial Services Manager may issue a subpoena to
33 require that the taxpayer or the taxpayer's representative attend a hearing or produce any
34 such books, accounts and records for examination.
- 35 C. Any tax deficiency or overpayment ascertained through audit shall be computed by one
36 (1) or more of the following methods or any other method as the agent of the Financial
37 Services Manager deems appropriate:
- 38 1. By identifying admissions tax transactions on which the tax was not properly or
39 accurately collected or paid.

- 1 2. By identifying other irregularities in the calculation of tax due.
- 2 3. By estimating taxes due based on the results of testing taxpayer's records on a
3 statistical or other reasonable basis.
- 4 D. Any charitable organization claiming exemption under the provisions of this Chapter is
5 subject to audit in the same manner as any other person engaged in business in the Town.
- 6 E. The Town is authorized to audit the taxpayer's records for the thirty-six (36) calendar
7 months preceding the month the taxpayer is notified that an audit is to be conducted. The
8 ability to audit this thirty-six-month period shall not lapse due to the passage of time once
9 the taxpayer has been notified of the audit period. If the taxpayer failed to file a return,
10 the Town shall have the right to audit periods not filed for an indefinite period of time. If
11 a return is filed late, the Town shall have the right to audit the late return for thirty-six
12 (36) months following the month the return was filed.
- 13 F. All taxpayer records shall be made available to the Town within a fifty-mile radius of the
14 Town. If the taxpayer does not wish to make records available within this area, the
15 Financial Services Manager may elect to assess the taxpayer for all expenses associated
16 with sending auditors to the location selected by the taxpayer and for reasonable
17 expenses, including food and lodging, incurred by the auditors during the period for the
18 audit and until their return to the Town. Such liability shall become part of the final audit
19 assessment and shall be treated as an unpaid admission or other tax.
- 20 G. If the taxpayer does not provide files in an organized format; if the auditors must go
21 through taxpayer files, boxes etc., in order to obtain records for audit; or if the taxpayer
22 fails to provide information in a timely fashion, the Town shall be entitled to charge an
23 hourly fee for time spent organizing, gathering or in any way assembling taxpayer
24 records for audit. Such fee shall be determined by the Financial Services Manager, but in
25 no event shall said fee exceed two and one-half (2.5) times the auditor's hourly salary.

26 **3-10-23: FAILURE TO MAKE RETURN; ESTIMATE OF TAXES; NOTICES; APPEAL:**

- 27 A. If any person fails, neglects or refuses to collect the tax or to file a return and pay the tax
28 as required by this Chapter, or fails, neglects or refuses to collect, report or pay any
29 portion of the tax, the Financial Services Manager shall make an estimate of the tax due
30 based on available information and shall add thereto a penalty equal to the sum of fifteen
31 dollars (\$15.00) or ten percent (10%) of the tax due, whichever is greater, and interest on
32 such delinquent tax at the rate imposed by Section 3-10-30, plus one-half of one percent
33 (.5%) per month from the date the return and tax was due, which interest shall not exceed
34 eighteen percent (18%) in the aggregate.
- 35 B. The Financial Services Manager shall serve upon the delinquent taxpayer, personally or
36 by first class mail directed to the last address of the taxpayer on file with the Town,
37 written notice assessing such estimated taxes, penalty and interest. Such notice shall
38 constitute a notice of determination, assessment and demand for payment, and such
39 assessment shall be due and payable from the taxpayer to the Financial Services Manager
40 within twenty (20) days from the date of service of the notice or the date of mailing;

1 provided, however, that within the twenty-day period, such delinquent taxpayer may
2 appeal the notice of assessment.

3 C. An appeal of a notice of assessment issued to the taxpayer for failure to file a return,
4 underpayment of tax owed or as a result of an audit shall be submitted in writing to the
5 Financial Services Manager within twenty (20) calendar days from the date of the notice
6 of assessment. Any such appeal shall identify the amount of tax disputed and the basis for
7 the appeal.

8 D. An appeal of a notice of assessment may include a request for a hearing.

9 E. If a hearing is requested in response to the petition, the Financial Services Manager shall
10 notify the petitioner in writing of the time and place of the hearing. The hearing shall be
11 held in accordance with the provisions of Section 3-10-18. After such hearing, or after a
12 consideration of the facts and figures contained in the petition if no hearing is requested,
13 the Financial Services Manager shall make such order in the manner he or she deems just
14 and proper and shall furnish a copy of such order to the petitioner.

15 **3-10-24: APPEAL FROM ADMINISTRATIVE HEARING DECISION:**

16 An appeal of a final decision of the Financial Services Manager in a hearing held pursuant to
17 Section 3-10-18 shall be commenced within thirty (30) days of such decision

18 **3-10-25: DUTIES OF ENFORCEMENT OFFICER:**

19 A. The tax enforcement officer shall be supervised by the Financial Services Manager.

20 B. It shall be the duty of the tax enforcement officer to enforce this Chapter.

21 C. The tax enforcement officer shall be deemed a peace officer for the limited purpose of
22 enforcing the provisions delineated in Subsection (B) above and shall have power to issue
23 summons and the complaints for violations of those provisions pursuant to the Colorado
24 Municipal Court Rules of Procedure, Rule 204, as may be amended. The tax enforcement
25 officer shall also have other duties as outlined in rules and regulations promulgated by the
26 Financial Services Manager.

27 **3-10-26: ASSESSMENT AND RECURRING ASSESSMENT PENALTY:**

28 If any taxpayer has failed, neglected or refused to pay the tax imposed by this Chapter within
29 the time specified for payment, the Financial Services Manager may assess the following
30 penalties, in addition to the taxes, penalties and interest provided for elsewhere in this Chapter,
31 the additional amount being imposed to compensate the Town for administrative and collection
32 costs incurred in collecting such delinquent taxes:

33 1. Upon the first or second issuance of a notice of determination, assessment and
34 demand for payment within twelve (12) months, fifteen dollars (\$15.00) per
35 notice;

1 2. Upon the third, fourth or fifth issuance of a notice of determination, assessment
2 and demand for payment within twelve (12) months, twenty-five dollars (\$25.00)
3 or fifteen percent (15%) of the delinquent taxes, penalties and interest, whichever
4 is greater, per notice;

5 3. Upon the sixth or more issuance of a notice of determination, assessment and
6 demand for payment within twelve (12) months, fifty dollars (\$50.00) or thirty
7 percent (30%) of the delinquent taxes, penalties and interest, whichever is greater,
8 per notice.

9 **3-10-27: COMPLIANCE PENALTY:**

10 A penalty of one hundred dollars (\$100.00) shall be assessed for each section of this Chapter
11 which the taxpayer violates. This penalty shall be in addition to any other applicable penalties
12 and interest.

13 **3-10-28: FRAUD PENALTY:**

14 In the event that the taxpayer commits an act of fraud upon the Town with intent to evade the
15 tax imposed by this Chapter, the Town shall be entitled to assess a fraud penalty of one hundred
16 dollars (\$100.00) or one hundred percent (100%) of the taxes owed, whichever is greater. Such
17 penalty shall be in addition to any other penalties to which the Town is entitled under this
18 Chapter. An additional three percent (3%) per month penalty on the amount of fraud penalty
19 shall be added from the date the penalty was due until it is paid.

20 **3-10-29: SPECIAL PENALTY:**

21 In the event that the taxpayer is audited and deficiencies are found in the taxpayer's records
22 which result in unpaid taxes owed to the Town, the taxpayer shall have six (6) months from the
23 date of the audit assessment in which to correct its records. If the deficiencies are not corrected
24 and result in unpaid taxes due to the Town in the future, the Town shall be entitled to assess a
25 special penalty against the taxpayer. Such special penalty shall be assessed from the first day
26 after the last day through which taxpayer's records were previously audited. The special penalty
27 shall be fifty dollars (\$50.00) or fifty percent (50%) of the taxes owed, whichever is greater.
28 Such penalty shall be in addition to any other penalties to which the Town is entitled under this
29 Chapter.

30 **3-10-30: RATE OF INTEREST; METHOD OF CALCULATION:**

31 When interest is required or permitted to be charged under any provision of this Chapter, the
32 annual rate of interest shall be calculated using the rate established by the state commissioner of
33 banking pursuant to Section 39-21-110.5, C.R.S. For the purpose of calculating the amount of
34 interest due, the date the return and tax were due shall be determined without regard to any
35 extension of time for payment and shall be determined without regard to any notice of
36 assessment and demand for payment issued, by reason of jeopardy, prior to the last date
37 otherwise prescribed for such payment.

38 **3-10-31: TAX CONSTITUTES LIEN:**

- 1 A. The admissions tax imposed by this Chapter, along with all penalties and interest
2 pertaining thereto, is a first and prior lien upon the goods, stock-in-trade and business
3 fixtures in which the vendor has an ownership interest, except for goods that have been
4 purchased in the ordinary course of business by retail purchasers, and such lien takes
5 priority over other liens or claims of whatsoever kind or nature on such property.
- 6 B. The admissions tax imposed by this Chapter, along with all penalties and interest
7 pertaining thereto, is a first and prior lien on the real and personal property of the
8 taxpayer, and such lien takes priority.
- 9 C. Whenever the business or property of any taxpayer is placed in receivership, bankruptcy,
10 seized under distraint for nonpayment of property taxes, or an assignment is made for the
11 benefit of creditors, all taxes, penalties and interest imposed by this Chapter and for
12 which the taxpayer is in any way liable under this Chapter are a prior and preferred claim
13 against all the property of the taxpayer. No sheriff, receiver, assignee or other officer
14 shall sell the property of any taxpayer subject to the provisions of this Chapter under
15 process or order of any court without first ascertaining from the Financial Services
16 Manager the amount of any taxes, penalties or interest due and payable under this
17 Chapter. If there are any such taxes, penalties or interest due, owing or unpaid, it is the
18 duty of such officer to first pay the amount of the taxes, penalties or interest out of the
19 proceeds of such sale before paying any moneys to judgment creditors or other claimants,
20 except that the officer may pay costs of the proceeding and other pre-existing liens or
21 claims taking lawful precedence over the Town's claim.
- 22 D. In the event that the taxpayer discharges its debts through bankruptcy, dissolution,
23 reorganization or other means, the Town shall be empowered to pursue collection of the
24 unpaid taxes from any officer, agent, Council member or other official of the taxpayer.
25 The Town may collect the taxes due through garnishment, liens or any other lawful
26 methods, including but not limited to enforcement actions applicable to the taxpayer.
- 27 E. If any tax, penalty or interest imposed by this Chapter and shown due by returns filed by
28 the taxpayer or by assessments made by the Town as provided in this Chapter is not paid
29 within five (5) days after it is due, the Financial Services Manager may issue a notice,
30 setting forth the name of the taxpayer, the amount of the tax penalties and interest, the
31 date of its accrual, and the fact that the Town claims a first and prior lien therefor on the
32 real and personal property of the taxpayer. The notice of lien shall be made on forms
33 prescribed by the Financial Services Manager and verified by the Financial Services
34 Manager and may be filed in the office of the clerk and recorder of any county in the
35 State in which the taxpayer owns real or personal property or with any person in
36 possession of any personal property or rights to property belonging to the taxpayer.
- 37 F. The Financial Services Manager shall release any lien as shown on the records of the
38 county clerk and recorder as herein provided, upon payment of all taxes, penalties and
39 interest covered thereby, in the same manner as mortgages and judgments are released.

40 **3-10-32: SALE OF BUSINESS SUBJECT TO LIEN:**

- 1 A. Any person who sells a business or closes a business shall complete and file the returns
2 required under this Chapter; pay the taxes, penalties and interest due within ten (10) days
3 of the date on which such person sold the business or closed the business; and indicate
4 that it is a final return, that the business is sold or closed, and the name and address of the
5 purchaser of the business, if any.
- 6 B. The tax imposed by this Chapter shall be a first and prior lien on the real or personal
7 property, furniture, fixtures, furnishings, equipment, owned or used by a vendor. This lien
8 shall take priority over all other claims or liens against the property. A purchaser of a
9 business who has acquired the real or personal property, furniture, fixtures or equipment
10 of the business shall withhold sufficient funds from the purchase money to cover the
11 amount of taxes, penalties and interest imposed by this Chapter due and unpaid until the
12 seller provides a receipt from the Financial Services Manager showing that such taxes,
13 penalties and interest have been paid. If taxes, penalties and interest imposed by this
14 Chapter are due and unpaid after the ten-day period herein provided, such purchaser of
15 the business is personally liable for the payment of the taxes, penalties and interest
16 imposed by this Chapter due and unpaid to the Town to the same extent as the seller of
17 the business.

18 **3-10-33: CERTIFICATE OF DISCHARGE OF LIEN:**

- 19 A. If any real or personal property is subject to a lien for payment of tax due to the Town
20 under this Chapter, the Financial Services Manager may issue a certificate of discharge of
21 any part of the property subject to the lien if the Financial Services Manager finds that the
22 fair market value of that part of such property remaining subject to the lien is at least
23 twice the amount of the unsatisfied tax liability plus the value of any liens on the property
24 that have priority over the Town's lien.
- 25 B. If any real or personal property is subject to a lien for payment of tax due to the Town
26 under this Chapter, the Financial Services Manager may issue a certificate of discharge of
27 any part of the property subject to the lien if the Town is paid in partial satisfaction of the
28 tax liability an amount determined by the Financial Services Manager to be not less than
29 the value of the Town's interest in the part of the property so discharged. In determining
30 the value of the part of the property to be discharged, the Financial Services Manager
31 shall consider the fair market value of the property and the value of any liens on the
32 property that have priority over the Town's lien.
- 33 C. A certificate of release of lien issued under this Section is conclusive evidence that the
34 Town's lien upon the property is extinguished, but does not extinguish or release any
35 portion of the lien on property not specified in the release.

36 **3-10-34: JEOPARDY ASSESSMENT:**

- 37 A. If the Financial Services Manager finds that collection of the tax will be jeopardized for
38 any reason, the Financial Services Manager may declare the taxable period immediately
39 terminated, determine the tax and issue a notice of determination, assessment and demand
40 for payment. Notwithstanding any other provision of this Chapter, the tax shall then be

1 due and payable forthwith, and the Financial Services Manager may proceed to collect
2 the tax as provided in Section 3-10-35.

- 3 B. If the taxpayer subject to a jeopardy assessment provides security for payment of the tax
4 satisfactory to the Financial Services Manager, the Financial Services Manager may
5 forego the jeopardy assessment collection proceedings.

6 **3-10-35: ENFORCING COLLECTION OF TAXES:**

- 7 A. The Financial Services Manager may issue a warrant directed to any employee, agent or
8 representative of the Town or any police officer from the Town, commanding such
9 person to distrain, seize and sell any personal property in which the taxpayer has an
10 ownership interest, except such property as is exempt from the execution and sale by any
11 state statute for the payment of tax due together with interest and penalties thereon and
12 costs of execution for any of the following reasons:

- 13 1. When any deficiency in tax is not paid within twenty (20) days from the date of
14 the notice of determination, assessment and demand for the payment and no
15 hearing or extension has been requested in a timely manner;
- 16 2. When any deficiency in tax is not paid within thirty (30) days from the date of the
17 notice of determination, assessment and demand for payment and no appeal from
18 such notice has been docketed in the Municipal Court or Summit County District
19 Court during such time, except that if the Financial Services Manager finds that
20 collection of the tax will be jeopardized during such period, the Financial Services
21 Manager may immediately issue a distraint warrant;
- 22 3. When any deficiency in tax is not paid within the time prescribed in the judgment
23 and order of court on any appeal to the Summit County District Court;
- 24 4. Immediately upon making a jeopardy assessment or issuing a demand for
25 payment upon jeopardy assessment as provided in Section 3-10-34; or
- 26 5. After or concurrently with the filing of a notice of lien as provided in Section 3-
27 10-31.

- 28 B. The Financial Services Manager may apply to a judge of the Municipal Court for a
29 warrant authorizing the Financial Services Manager to search for and seize property
30 located within the Town limits for the purpose of enforcing the collection of taxes under
31 this Chapter. The Financial Services Manager may apply to a judge of the Summit
32 County District Court for a warrant outside the Town limits. The judge shall issue such
33 warrant after the Financial Services Manager determines that:

- 34 1. The premises to which entry is sought contain property that is subject to levy and
35 sale for taxes due; and
- 36 2. At least one (1) of the preconditions of Paragraph (1) have been satisfied;
37 however, if a jeopardy assessment has been declared under Section 3-10-34, the

1 Financial Services Manager must set forth the reasons that collection of the tax
2 will be jeopardized.

3 C. The procedures to be followed in issuing and executing a warrant in Municipal Court
4 pursuant to Subsection (B) above shall comply with the Colorado Municipal Court Rules
5 of Procedure, Rule 241(c) and (d).

6 D. The taxpayer may contest a warrant previously issued under the procedure provided by
7 the Colorado Municipal Court Rules of Procedure, except that no proceeding to contest
8 such warrant may be brought after five (5) days prior to the date fixed for sale of the
9 distrained property.

10 E. The agent charged with the search and seizure shall make or cause to be made an account
11 of the items or effects distrained, and shall leave a copy of such account, signed by the
12 agent making such distraint, with the owner or possessor of the property; or if the owner
13 or possessor of the property is unavailable at the owner's or possessor's usual place of
14 abode, with some family member over the age of eighteen (18) years; or at the owner's or
15 possessor's usual place of business with a stenographer, bookkeeper or chief clerk; or if
16 the taxpayer is a corporation, with any officer, manager, general agent or agent for
17 process; with a statement of the sum demanded and time and place of sale. The agent
18 charged with collection shall forthwith cause to be published a notice of the time and
19 place of sale and a description of the property to be sold in a newspaper within the county
20 wherein distraint is made or, in lieu thereof and in the discretion of the Financial Services
21 Manager, the agent or sheriff shall cause such notice to be publicly posted at the county
22 courthouse wherein such distraint is made and copies thereof shall be posted in at least
23 two (2) other public places within the county. The time fixed for the sale shall not be less
24 than ten (10) days nor more than sixty (60) days from the date of such notification to the
25 owner or possessor of the property and the publication or posting of such notices. The
26 sale may be adjourned or postponed from time to time by the agent or sheriff, if the agent
27 or sheriff deems it advisable, to a date certain but not for a time to exceed in all ninety
28 (90) days from the date first fixed for the sale. When any personal property is advertised
29 for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such
30 property at public auction, offering the property at not less than a fair minimum price that
31 includes the expenses of making the seizure and of advertising the sale. If the amount bid
32 for the property at the sale does not equal the fair minimum price so fixed, the agent or
33 sheriff conducting the sale may declare the same to be purchased for the Town. The
34 property so purchased may then be sold by the agent or sheriff under such regulations as
35 may be prescribed for disposing of Town property. The chattel or effects so distrained
36 shall be restored to the owner or possessor, if, prior to the sale, the amount due is paid
37 together with the expenses, fees and other charges, or they may be redeemed by any
38 person holding a chattel mortgage or other evidence of right of possession.

39 F. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to
40 each purchaser, and such certificate is prima facie evidence of the right of the agent or
41 sheriff to make such sale and conclusive evidence of the regularity of the proceedings in
42 making the sale. The certificate transfers to the purchaser all right, title and interest of the
43 delinquent taxpayer in and to the property sold. Where such property consists of

1 certificates, securities or other evidence of indebtedness in the possession of the agent or
2 sheriff, the taxpayer shall endorse such certificates to the purchaser thereof and supply
3 the purchaser with proof of the taxpayer's authority to transfer the same or with any other
4 requisite that may be necessary to obtain registration of the transfer of the certificate. Any
5 surplus remaining above, following payment of the Town's taxes, penalties, interest,
6 costs and expenses of making the seizure and of advertising the sale; and then after any
7 amounts distributed pro rata to other jurisdictions under recorded sales, ad valorem, or
8 other tax liens, shall be returned to the property owner or such person having a legal right
9 to the property; and, on demand, the Financial Services Manager shall render an account
10 in writing of the sale.

- 11 G. In any case where a taxpayer has refused or neglected to pay any tax due to the Town
12 under this Chapter and a lien has been filed as provided in Section 3-10-31, the Financial
13 Services Manager may, in addition to pursuing other collection remedies, certify the
14 amount of the tax, penalties and interest due, together with the appropriate amount for
15 costs of county collection, to the county treasurer to be levied against the person's
16 property for a collection by the county in the same manner as delinquent general taxes
17 upon such property are collected. Before certifying such amounts to the county for
18 collection, the Financial Services Manager shall provide to the property owner an
19 opportunity for a hearing to contest the authority of the Town to impose the tax or the
20 amount thereof. The Financial Services Manager shall mail the notice to the property
21 owner by first class mail addressed to the last known owner of the property on the records
22 of the county assessor. If the Financial Services Manager's decision after a hearing
23 affirms the imposition of charges, the decision shall include notice that the charges are
24 due and payable within ten (10) days of the date of the decision and that, if not paid when
25 due, they will be certified to the county treasurer for collection, along with an appropriate
26 amount for the cost of county collection. Whenever the Financial Services Manager
27 certifies any such amounts to the county treasurer for collection, the Financial Services
28 Manager shall record notice of such certification with the Summit County Clerk and
29 Recorder.

30 **3-10-36: RECOVERY OF UNPAID TAX BY ACTION AT LAW:**

- 31 A. In addition to other remedies provided in this Chapter, the Financial Services Manager
32 may treat any such taxes, penalties or interest due and unpaid as a debt due to the Town
33 from the taxpayer. If a taxpayer fails to pay the tax, or any portion thereof, or any penalty
34 or interest thereon, when due, the Financial Services Manager may recover at law the
35 amount of such taxes, penalties and interest in Municipal Court or in any county or
36 district court wherein the taxpayer resides or has a principal place of business, that has
37 jurisdiction over the amounts sought to be collected. The return filed by the taxpayer or
38 the notice of determination, assessment and demand for payment issued by the Financial
39 Services Manager is prima facie proof of the amount due.
- 40 B. The Town Attorney is hereby authorized upon request by the Financial Services Manager
41 to commence any legal action or suit for the recovery of the tax due under this Chapter.
42 The taxpayer shall be responsible for all costs, including but not limited to attorneys'
43 fees, incurred by the Town in any such action.

1 C. Such actions may be actions in attachment, and writs of attachment may be issued to the
2 sheriff. In any such proceedings, no bonds shall be required of the Town, nor shall any
3 sheriff require of the Financial Services Manager an indemnifying bond for executing the
4 writ of attachment or writ of execution upon any judgment entered in such proceedings.
5 The Town may also prosecute appeals or writs of error in such cases without the
6 necessity of providing bond therefor.

7 D. In any case in which a taxpayer has refused or neglected to pay any tax, penalty or
8 interest due to the Town under this Chapter and a lien has been filed upon any real or
9 personal property, the Financial Services Manager may cause a civil action to be filed in
10 the county district court or municipal court in which is situated any such property subject
11 to such lien to enforce the lien and subject any real or personal property or any right, title
12 or interest in such property to the payment of the amount due. The court shall decree a
13 sale for such real property and distribute the proceeds of such sale according to the
14 court's findings concerning the interest of the parties and of the Town. The proceedings
15 with regard to the redemption of property from such sale, and the execution of any deed
16 of conveyance shall be in accordance with the law of foreclosures of mortgages upon real
17 property. In any such action, the court may appoint a receiver of the property involved in
18 such action if equity so requires.

19 **3-10-37: TOWN AS PARTY IN TITLE ACTIONS:**

20 In any action affecting the title to real property or the ownership or right to possession of
21 personal property, the Town may be made a party defendant for the purpose of obtaining an
22 adjudication or determination of its lien upon the property involved therein.

23 **3-10-38: INJUNCTIVE RELIEF:**

24 The Financial Services Manager may seek injunctive or other equitable relief in any court of
25 competent jurisdiction to enforce the provisions of this Chapter.

26 **3-10-39: WAIVER OF PENALTIES, INTEREST AND FEES:**

27 The Financial Services Manager is authorized to waive, for good cause shown, any penalty,
28 interest or fee imposed under this Chapter.

29 **3-10-40: OBLIGATIONS OF FIDUCIARIES AND OTHERS:**

30 A. For the purpose of facilitating settlement and distribution of estates, trusts, receiverships,
31 other fiduciary relationships and the assets of corporations in the process of dissolution or
32 that have been dissolved, the Financial Services Manager may agree with the fiduciary or
33 surviving corporate directors upon an amount of taxes due from the decedent or from the
34 decedent's estate, the trust, receivership or other fiduciary relationship, or corporation for
35 any of the periods of tax liability under this Chapter. Payment in accordance with such
36 agreement fully satisfies the tax liability for the periods that the agreement covers, unless
37 the taxpayer has committed fraud or misrepresented a material fact regarding the tax or
38 liability therefor.

- 1 B. Except as provided in Subsection (D) below, any personal representative of a decedent or
2 the estate of a decedent, any Council member, receiver or other person acting in a
3 fiduciary capacity, or any director of a corporation in the process of dissolution or that
4 has been dissolved, who distributes the estate or fund under such person's control without
5 having first paid any taxes covered by this Chapter due from such decedent, decedent's
6 estate, trust estate, receivership or corporation and that may be assessed within the
7 periods authorized by this Chapter is personally liable to the extent of the property
8 distributed by such person for any unpaid taxes of the decedent, decedent's estate, trust
9 estate, receivership or corporation imposed by or due under this Chapter and assessed
10 within the periods authorized by this Chapter.
- 11 C. The distributor of a decedent's estate, a trust estate, or fund and the stockholder of any
12 dissolved corporation who receives any of the property of such decedent's estate, trust
13 estate, fund or corporation is personally liable under this Chapter to the same extent that
14 the decedent, trust estate, fund or corporation is liable under this Chapter.
- 15 D. If a tax under this Chapter is due from a decedent or the decedent's estate, the personal
16 liability of the persons enumerated in this Section shall remain in effect only if a
17 determination of the tax due is made and notice and demand therefor issues within
18 eighteen (18) months after the decedent's personal representative files with the Financial
19 Services Manager a written request for such determination, which request shall be filed
20 after he or she has filed the decedent's final return or the decedent's estate's return to
21 which the request applies. A request for determination under this paragraph does not
22 extend the otherwise applicable period of limitation.
- 23 E. If a tax under this Chapter is due from a corporation that is in the process of dissolution
24 or has been dissolved, the personal liability of directors or stockholders as provided in
25 this Section shall remain in effect only if a determination of the tax due is made, and
26 notice and demand issued within eighteen months (18) after the corporation files with the
27 Financial Services Manager a written request for such determination, which request shall
28 be filed after it has filed the corporation's return, but only if the request states that the
29 dissolution was begun in good faith before the expiration of the eighteen-month period
30 and the dissolution is completed. A request for determination under this Section does not
31 extend the otherwise applicable period of limitation.

32 **3-10-41: REVIEW OF DECISIONS OF FINANCIAL SERVICES MANAGER:**

33 In the event the taxpayer has exhausted all local remedies, the taxpayer may apply for a
34 review of the decision of the Financial Services Manager in the Summit County District Court.

35 **3-10-42: REVIEW BOND REQUIRED:**

36 Within twenty (20) days after making application to the Summit County District Court for
37 review of the decision of the Financial Services Manager, the party making such application
38 shall file with the Summit County District Court a surety bond in twice the amount of the taxes,
39 penalties, interest and other charges stated in the final decision by the Financial Services
40 Manager which are contested on appeal. The taxpayer may, at his or her option, satisfy the surety

1 bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or
2 national bank or by a state or federal savings and loan association, in accordance with the
3 provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the taxes, penalties,
4 interest and other charges stated in the final decision by the Financial Services Manager. The
5 taxpayer may, at his or her option, deposit the disputed amount with the Financial Services
6 Manager in lieu of posting a surety bond. If such amount is so deposited, no further interest shall
7 accrue on the contested amount during the pendency of the action. At the conclusion of the
8 action, after appeal or after the time for such appeal has expired, the funds deposited shall be, at
9 the direction of the Court, either retained by the Financial Services Manager and applied against
10 the amount due or returned in whole or in part with interest due to the taxpayer from the date it
11 was paid to the Financial Services Manager. No claim for refund of amounts deposited with the
12 Financial Services Manager need be made by the taxpayer in order for such amounts to be repaid
13 in accordance with the direction of the court.

14 **3-10-43: NOTICES:**

15
16 All written notices required to be given to any taxpayer under the provisions of this Chapter
17 shall be hand delivered or mailed by first class mail, postage prepaid, addressed to such taxpayer
18 at the last known address of the taxpayer on file with the Town.

19 **3-10-44: TAX IN ADDITION TO ALL OTHER TAXES:**

20 The tax imposed by this Chapter shall be in addition to all other taxes imposed by law, except
21 as herein otherwise provided.

22 **3-10-45: LOCATION OF HEARINGS:**

23 Every hearing before the Financial Services Manager shall be held in the Town.

24 **10-3-46: ADMINISTRATION BY FINANCIAL SERVICES MANAGER; RULES AND**
25 **REGULATIONS.**

26 The administration of all provisions of this Chapter is vested in and shall be exercised by the
27 Financial Services Manager, who shall prescribe forms and formulate and promulgate reasonable
28 rules and regulations in conformity with this Chapter for the making of returns, for the
29 ascertainment, assessment and collection of taxes imposed and for the proper administration and
30 enforcement thereof.

31 **3-10-47: AUTHORITY TO COMPROMISE TAXES:**

32 The Financial Services Manager shall have the authority to compromise or enter into a
33 payment plan with respect to any liability for taxes where the total amount of the liability does
34 not exceed ten thousand dollars (\$10,000.00). Where the total amount of the liability is in excess
35 of ten thousand dollars (\$10,000.00), any compromise or payment plan must be approved by the
36 Town Council upon the recommendation of the Financial Services Manager. In any action
37 involving the Town Council, the taxpayer expressly waives his or her right to confidentiality.

38 **3-10-48: VIOLATIONS; PENALTIES:**

- 1 A. It is unlawful and a misdemeanor offense for any taxpayer to fail to collect or for any
2 purchaser or user to fail to pay any tax, penalty or interest levied by this Chapter
3 regardless of whether the tax liability is disputed or an exemption is claimed.
- 4 B. It is unlawful and a misdemeanor offense for any taxpayer to retain any tax collected in
5 excess of the rate stated in Section 3-10-3 or to fail to remit punctually to the Financial
6 Services Manager the full amount required by the provisions of this Chapter, including
7 taxes, penalties and interest.
- 8 C. It is unlawful and a misdemeanor offense for any person to fail or refuse to make or file
9 any return required to be made or filed by this Chapter or to make any false or fraudulent
10 return or any false or fraudulent statement in any return.
- 11 D. It is unlawful and a misdemeanor offense for any applicant for a tax refund to make a
12 false statement in connection with such application.
- 13 E. It is unlawful and a misdemeanor offense for any person other than the Town or its
14 designated collection agent to become enriched or to gain any benefit from the collection
15 or payment of the taxes levied by this Chapter.
- 16 F. It is unlawful and a misdemeanor for any person to aid or abet another in any attempt to
17 evade the payment of the tax imposed by this Chapter.
- 18 G. It is unlawful and a misdemeanor offense for any person to violate any other provisions
19 of this Chapter.
- 20 H. Any person convicted of a violation described in this Section shall be punished as
21 provided in Chapter 4 of Title 1 of this Code.
- 22 I. A criminal action may be brought against any person, officer, employee, agent or other
23 representative who violates any of the provisions of this Chapter. Each day that this
24 Chapter is violated and/or each action violated shall constitute a separate violation.

25 **3-10-49: LIMITATIONS ON ACTIONS TO COLLECT:**

- 26 A. Except as otherwise provided in this Section, no assessment shall be made nor shall any
27 notice of lien be filed, distraint warrant be issued, bond be collected upon, suit for
28 collection be instituted, or any other action to collect the same be commenced, more than
29 three (3) years after the date on which the tax was due and payable. In addition, no lien
30 shall continue after such period, except for taxes assessed before the expiration of such
31 period, when a notice of lien regarding such taxes was filed prior to the expiration of such
32 period, in which case the lien shall continue for only one (1) year after the filing of notice
33 thereof. Liens which expire may be renewed indefinitely until amounts are paid.
- 34 B. In the case of a false return, fraudulent act or failure to file a return, the tax, together with
35 interest and penalties, may be assessed or proceedings for the collection of such taxes
36 may be commenced at any time.

- 1 C. Before the expiration of such period of limitation, the taxpayer and the Financial Services
2 Manager may agree in writing to an extension thereof, and the period so agreed on may
3 be extended by subsequent agreements in writing made before the expiration of the
4 previously agreed upon extension. In the event that the taxpayer refuses to extend the
5 period of limitation, the Financial Services Manager may extend the period of limitation
6 upon holding a hearing and finding good cause for the extension as a result of delays
7 caused by the taxpayer.
- 8 D. Nothing in this Section shall be construed to limit any right accrued or to revive any
9 liability barred by any statute in effect on July 1, 2012, the effective date of this Chapter.
- 10 E. The period of limitation provided herein shall not run against the Town for an audit
11 period if written notice is given to the taxpayer prior to the expiration of the statute of
12 limitations that the taxpayer's records will be audited pursuant to this Chapter. "Audit
13 period" is the thirty six (36) month reporting period preceding the date of the notice of
14 audit.

15 **3-10-50: CLAIMS FOR RECOVERY:**

- 16 A. The intent of this Section is to streamline and standardize procedures related to situations
17 where tax has been remitted to the incorrect municipality. It is not intended to reduce or
18 eliminate the responsibilities of the taxpayer to correctly pay, collect and remit admission
19 taxes to the Town.
- 20 B. As used herein, *claim for recovery* means a claim for reimbursement of admissions taxes
21 paid to the wrong taxing jurisdiction.
- 22 C. When it is determined by the Financial Services Manager that admissions tax owed to the
23 Town has been reported and paid to another municipality, the Town shall promptly notify
24 the taxpayer that taxes are being improperly collected and remitted, and that as of the date
25 of the notice the taxpayer must cease improper tax collections and remittances.
- 26 D. The Town may make a written claim for recovery directly to the municipality that
27 received tax and/or penalty and interest owed to the Town, or, in the alternative, may
28 institute procedure for collection of the tax from the taxpayer. The decision to make a
29 claim for a recovery lies in the sole discretion of the Town. Any claim for recovery shall
30 include a properly executed release of claim from the taxpayer, releasing its claim to the
31 taxes paid to the wrong municipality, evidence to substantiate the claim and a request that
32 the municipality approve or deny in whole or in part, the claim within ninety (90) days of
33 its receipt. The municipality to which the Town submits a claim for recovery may, for
34 good cause, request an extension of time to investigate the claim, and approval of such
35 extension by the Town shall not be unreasonably withheld.
- 36 E. Within ninety (90) days after receipt of a claim for recovery, the Town shall verify to its
37 satisfaction whether or not all or a portion of the tax claimed was improperly received
38 and shall notify the municipality submitting the claim in writing that the claim is either
39 approved or denied in whole or in part, including the reasons for the decision. If the claim
40 is approved in whole or in part, the Town shall remit the undisputed amount to the

1 municipality submitting the claim within thirty (30) days of approval. If a claim is
2 submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to
3 the parties jointly. Denial of a claim for recovery may only be made for good cause.

4 F. The Town may deny a claim on the grounds that it has previously paid a claim for
5 recovery arising out of an audit of the same taxpayer.

6 G. The period subject to a claim for recovery shall be limited to the thirty-six-month period
7 prior to the date the municipality that was wrongly paid the tax receives the claim for
8 recovery.

9 Section 2. The Breckenridge Town Code is amended by the addition of a new Chapter 9
10 of Title 3, to be entitled “Admissions Fund”, which shall read in its entirety as follows:

11 CHAPTER 11

12 ADMISSIONS TAX FUND

13 SECTION:

14 3-11-1: Definitions

15 3-11-2: Admissions Tax Fund

16 3-11-1: DEFINITIONS: As used in this Chapter the following words shall have the following
17 meanings:

18 ADMISSIONS TAX FUND: The Town of Breckenridge Admissions Tax
19 Fund described in Section 3-11-2.

20 DESIGNATED REVENUES: All revenues collected by the Town as a result
21 of the adoption of the Admissions Tax
22 provided for in Chapter 10 of Title 3 of this
Code.

23 3-11-2: ADMISSIONS TAX FUND: On and after July 1, 2012, immediately upon receipt or
24 collection thereof by the Town, the designated revenues shall be credited to the Admissions Tax
25 Fund. The monies in the Admissions Tax Fund shall be expended by the Town Council only as
26 described in the Admissions Tax Ordinance (Chapter 10 of Title 3 of this Code.) The amounts
27 expended from the Admissions Tax Fund shall be determined from time to time by the Town
28 Council.
29

30 Section 3. At the regular Town election to be held on Tuesday, April 3, 2012 there shall
31 be submitted to the vote of the registered electors of the Town, as a referred measure under
32 Chapter X, Section 20 of the Colorado Constitution and Section 31-11-111(2), C.R.S., the ballot
33 issue hereinafter set forth (the “**Ballot Issue**”). At the said election, the official ballot, including
34 early voters’ ballots, shall state the substance of the Ballot Issue to be voted upon and, as so
35 stated, shall constitute the ballot title, designation, and submission clause. At such election each
36

1 registered elector voting at the election shall be given the opportunity to indicate his or her
2 choice on the Ballot Issue, which shall be in the following form:

3
4 SHALL TOWN OF BRECKENRIDGE TAXES BE INCREASED
5 \$ _____ ANNUALLY COMMENCING JULY 1, 2012, AND
6 THEREAFTER BY WHATEVER AMOUNT IS ACTUALLY COLLECTED,
7 BY IMPOSING AN ADMISSIONS EXCISE TAX OF FOUR AND ONE-HALF
8 PERCENT (4.5%) OF THE PRICE OF EACH ADMISSION ON EVERY
9 PERSON WHO PAYS TO GAIN ADMISSION TO ANY PLACE OR EVENT
10 OPEN TO THE PUBLIC, AND REQUIRING EVERY PERSON, WHETHER
11 OWNER, LESSEE, OR OPERATOR, WHO CHARGES OR CAUSES TO BE
12 CHARGED ADMISSION TO ANY SUCH PLACE OR EVENT OPEN TO THE
13 PUBLIC TO COLLECT SUCH ADMISSIONS TAX FOR THE TOWN, AS A
14 NEW TAX PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO
15 CONSTITUTION AND OTHER APPLICABLE LAW, AND SHALL ALL OF
16 THE ADMISSION TAX REVENUES COLLECTED BY THE TOWN AS A
17 RESULT OF THE APPROVED NEW TAX BE PAID INTO A SPECIAL FUND
18 AND USED ONLY: (1) TO PAY FOR OR REIMBURSE THE DIRECT AND
19 INDIRECT COSTS INCURRED BY THE TOWN FOR OPERATION OF THE
20 TOWN'S TRANSIT SYSTEM, INCLUDING LABOR AND EQUIPMENT
21 COSTS ASSOCIATED THEREWITH; (2) PAY OR REIMBURSE THE TOWN
22 FOR THE DIRECT AND INDIRECT COST OF PROVIDING PUBLIC
23 PARKING; (3) TO PAY FOR OR REIMBURSE THE TOWN FOR OTHER
24 DIRECT AND INDIRECT COSTS DETERMINED BY THE TOWN COUNCIL
25 TO ENHANCE THE MOVEMENT OF VISITORS WITHIN THE TOWN; AND
26 (4) SUCH OTHER GENERAL PURPOSES OF THE TOWN AS DETERMINED
27 BY THE TOWN COUNCIL?

28
29
30 YES _____ NO _____

31
32 Section 4. In connection with the fixing of the ballot title for the Ballot Issue, the Town
33 Council of the Town of Breckenridge finds and determines as follows:

34
35 A. The Town Council has considered the public confusion that might be caused by
36 misleading ballot titles.

37
38 B. The general understanding of the effect of a "yes" or "no" vote on the Ballot Issue
39 will be clear to the electors.

40
41 C. The ballot title for the Ballot Issue will not conflict with those titles selected for any
42 other measure that will appear on the municipal ballot at the April 3, 2012 regular Town
43 election; and

44
45 D. The ballot title for the Ballot Issue correctly and fairly expresses the true intent and
46 meaning of the measure.

1
2 Section 5. If a majority of all the votes cast at the election shall be for the ballot issue set
3 forth in Section 3 of this ordinance, the amendments to the Breckenridge Town Code set forth in
4 full in Section 1 and Section 2 of this ordinance shall be deemed to have been adopted and shall
5 become effective July 1, 2012, and on such date the Town of Breckenridge shall be authorized to
6 collect, retain, and expend the full amount of the tax revenues collected by the Town as a result
7 of the new admissions excise tax approved by the Ballot Issue separate and apart from any other
8 expenditures of the Town which may be limited pursuant to Chapter X, Section 20 of the
9 Colorado Constitution, or any other state restriction on the Town's fiscal year spending, and the
10 increased tax revenues authorized for collection, retention, and expenditure by the passage of the
11 Ballot Issue shall not be counted in any such spending limitation. If a majority of all the votes
12 cast at the election shall be against the Ballot Issue the amendments to the Breckenridge Town
13 Code set forth in full in Section 3 of this ordinance shall be deemed to have been defeated, and
14 such amendments to the Breckenridge Town Code shall not become effective.
15

16 Section 6. The officers of the Town are authorized and directed to take all action
17 necessary or appropriate to effectuate the provisions of this ordinance. All action previously
18 taken by the officers of the Town with respect to the Ballot Issue is ratified, confirmed, and
19 approved.
20

21 Section 7. The Town Clerk, or the coordinated election official if so provided by
22 intergovernmental agreement, shall give or cause to be given the notice of election required by
23 Section 1-5-205, C.R.S. Additionally, the Town Clerk shall cause the notice required by Section
24 20(3)(b) of Chapter X of the Colorado Constitution to be prepared and delivered in accordance
25 with the requirements of applicable law.
26

27 Section 8. The Town Clerk shall serve as the designated election official of the Town the
28 purposes of performing acts required or permitted by law in connection with the election on the
29 Ballot Issue, and shall take such action as may be required to comply with all applicable laws
30 pertaining to the conduct of the election.
31

32 Section 9. The Town Council finds, determines and declares that this ordinance is
33 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
34 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
35 thereof.
36

37 Section 10. This ordinance shall be published and become effective as provided by
38 Section 5.9 of the Breckenridge Town Charter.
39

40 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
41 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
42 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
43 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
44 Town.
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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

INTEROFFICE MEMORANDUM

TO: TOWN COUNCIL
CC: TIM GAGEN, TOWN MANAGER; KATE BONIFACE, ASSISTANT TOWN MANAGER
FROM: CLERK AND FINANCE DIVISION
SUBJECT: ADDMISSIONS TAX ANALYSIS
DATE: 5/10/2011

1.) What are admissions tax rates in other communities?

Admissions Taxes				
Municipality	Sports Events	Entertainment events	Cover Charges	Other admissions
Arvada	none	4% in lieu of sales tax	4% in lieu of sales tax	none
Aurora	3.75% sales tax	3.75% sales tax	3.75% sales tax	none
Boulder	5% in lieu of sales tax	5% in lieu of sales tax	5% in lieu of sales tax	none
Colorado Springs	none	none	none	2% on movies
Denver	10% at city-owned facilities	10% at city-owned facilities	10% at city-owned facilities	10% at city-owned facilities
Edgewater	15% in lieu of sales tax	15% in lieu of sales tax	15% in lieu of sales tax	15% in lieu of sales tax
Glendale	3.5% in lieu of sales tax	3.5% in lieu of sales tax	3.5% in lieu of sales tax	none
Lakewood	none	none	2% if licensed to sell alcohol	2% on movies
Larkspur	6% in lieu of sales tax	6% in lieu of sales tax	6% in lieu of sales tax	6% in lieu of sales tax
Lone Tree	4% in lieu of sales tax	4% in lieu of sales tax	4% in lieu of sales tax	4% in lieu of sales tax
Longmont	none	none	2.95% sales tax	none
Northglenn	3% in lieu of sales tax	3% in lieu of sales tax	3% in lieu of sales tax	3% in lieu of sales tax
Pueblo	none	none	none	3% for movies
Steamboat Springs	none	none	4.5% sales tax	none
Thornton	3.75% sales tax	3.75% sales tax (some exemptions)	3.75% sales tax	3.75% sales tax
Westminster	none	none	3% if licensed to sell alcohol	3% for bowling, movies, & live displays
Wheat Ridge	4% in lieu of sales tax	4% in lieu of sales tax	4% in lieu of sales tax	none

2.) What other communities charge tax on lift ticket sales?

Area	Tax	Taxing Entity	Comments
Vail, CO	4%	Local	General fund-mainly transportation
Mt. Crested Butte, CO	4%	Local	Ski ticket applicable thru "admissions tax" (for transportation and marketing)
Snowmass, CO	1%	Local	Transportation
Durango, CO	0%	n/a	Never have looked into topic
Steamboat Springs, CO	0%	n/a	Looked into in the 90s but never followed through; believe that tax payers would not vote for it.
Telluride, CO	0%	n/a	May be in conversations with Mountain Village in the near future.
Mountain Village, CO	0%	n/a	Was brought up at the last Town Council meeting as joint tax with Telluride.
Winter Park, CO	0%	n/a	Never have looked into topic
Aspen, CO	0%	n/a	Aspen and County have discussed issue before- never went forward, believed it to be "anti-social" for tourism and difficult to implement with their municipal boundaries.
Park City, UT	7.4%	1.4% city; 4.65% state; 0.35% county	
Jackson, WY	0%	n/a	Never have looked into topic
Sun Valley, ID	6%	State	
Heavenly, CA	0%	n/a	
Northstar, CA	0%	n/a	
Killington, VT	7%	6% VT State tax; 1% local	
Eagle Crest, AK	5%	Local	Reappears on ballot every 5 years (applies to ALL services); ski area owned by City of Juneau
Boyne Mountain, MI	6%	State	
Whistler, BC	12%	5% Federal, 7% Provincial	
Stevens, WA	8.6%	6.5% State; 2.1% Local	
Crystal Mountain, WA	7.8%	6.5% State; 1.3% Local	

3.) How is the tax currently working in Vail?

In Vail, the occupation tax (not a sales tax) was passed by ordinance in 1966. The occupation tax is based upon consideration for the right to the occupancy of a seat or position on any ski lift or ski tow operated in the Town. It is charged using Vail Resorts calculation of skier visits and average consideration for a skier day, instead of charging a sales tax based upon tickets sold in the Town of Vail. This method allows for the tax to be applied to a season pass holder that purchased the pass in Denver, but decides to utilize the pass on occasion in Vail.

The tax originally funded the transportation and parking programs as part of an agreement with Vail Resorts. This is a result of the fact that in Vail, the ski area does not provide either of these services to its guests. However, as reflected in the figures below, parking and transportation expenditures seem to now be covered by the parking revenues. This is due to the fact that the Town of Vail, over time, has developed an extensive paid parking program.

The Transportation and Parking Programs provide in-town and outlying public transit service, limited charter and special event service, bus shelter programs, administers Village Transportation and LionsHead property leasing, bus grant preparation and administration, bus advertising contract, parking structure booth and electronic gate and ticket operations, service surveys, parking structure enterprise budget development and statistical reporting functions. In the winter, the department employs 33 full-time employees (4 shared with Parks Dept.) and 52 seasonal employees.

	2008	2009	2010	2011	2012	2013	2014
	Actual	Actual	Projected	Budget	Projected	Projected	Projected
Revenue:							
Ski Lift Tax	\$3,277,703.00	\$3,048,011.00	\$3,115,000.00	\$3,193,000.00	\$3,272,800.00	\$3,354,600.00	\$3,524,400.00
Parking Fees	\$4,816,505.00	\$4,975,796.00	\$4,932,744.00	\$4,911,500.00	\$4,911,500.00	\$5,094,800.00	\$5,094,800.00
Total Revenue:	\$8,094,208.00	\$8,574,744.00	\$8,547,744.00	\$8,815,900.00	\$9,108,500.00	\$9,410,900.00	\$9,723,300.00
Expenditures:							
Transportation & Parking	\$4,780,515.00	\$4,458,923.00	\$4,701,320.00	\$4,661,727.00	\$4,978,709.35	\$5,085,746.60	\$5,263,731.69
Total Expenditures:	\$4,780,515.00	\$4,629,449.00	\$4,701,320.00	\$4,873,868.90	\$4,978,709.35	\$5,085,746.60	\$5,263,731.69
Revenue Over (Under) Expenditures	\$3,313,693.00	\$3,945,295.00	\$3,846,424.00	\$3,942,031.10	\$4,129,790.65	\$4,325,153.40	\$4,459,568.31

4.) What do we know about Beaver Creek?

The Beaver Creek transportation system has 2 major components – the parking lot bus system and Dial-a-Ride (DAR). The parking lot bus system takes day skiers from the parking lots and overflow areas to the lifts in Beaver Creek. DAR moves people around within the resort between lodging, lifts, retail and restaurants. The system is jointly funded by the Beaver Creek Resort Company (BCRC) and the Beaver Creek Metropolitan District (BCMD). They each pay roughly half the total cost. BCRC gets its funding from real estate transfer fees, sales assessments (like a sales tax) and lodging assessments. Lift ticket sales contribute to the sales assessment. BCMD gets all of its funding from real estate property taxes. The transportation system is run by Vail Resorts under contract to BCMD. BCRC pays BCMD for its share of the cost. Maintenance on all busses is provided by the Town of Avon under contract to BCMD for parking lot busses and to Vail Resorts for DAR busses. Some limited bus service directly into BC from the Town of Avon transportation center and the Westin is jointly funded by BCRC, the Town of Avon and the Westin.

When Beaver Creek’s parking lots get full, overflow parking occurs on Prater Rd. by permission from BCMD and on Rt. 6 by permission from CDOT. There is also an overflow parking lot at the BC rodeo grounds in Avon. It is rare that there is a day when these overflow options could not handle the volume of cars. However, that doesn’t mean that people don’t park in other areas in Avon and walk or take a bus to the gondola or Avon transportation center.

5.) What types of sales would an admissions tax apply to in the Town of Breckenridge?

- Lift ticket sales
- Summer Fun Park revenue
- Bar and restaurant cover charges
- Theaters - Speakeasy theater, Backstage theater, CMC theater
- Sleigh ride revenue
- Event tickets sales (including Riverwalk ticket revenue)

	Ticket revenue for Town of Breckenridge concerts			
	2008	2009	2010	2011 (budget)
Revenue	\$400,096.00	\$380,951.00	\$468,486.00	\$352,504.00
4.5% Tax	\$18,004.32	\$17,142.80	\$21,081.87	\$15,862.68

6.) How much revenue can we estimate that an admissions tax would generate?

Breckenridge effective ticket price (est) ¹	\$40.00
Skier Visits (2007-2008)	1,630,000
Skier Visits (2008-2009)	1,528,000
Skier Visits (2009-2010)	1,614,000
Breckenridge Lift Ticket Sales 2009-2010	\$64,560,000

¹ average ticket price estimate based upon \$48.13 for all of Vail Resorts

² based estimate of Breckenridge effective ticket price

Lift Ticket Tax	
Tax Rate	Tax from lift ticket sales*
1%	\$645,600
2%	\$1,291,200
2.5%	\$1,614,000
3%	\$1,936,800
4%	\$2,582,400
4.5%	\$2,905,200

7.) What is our current cost of Parking & Transit?

	2006	2007	2008	2009	2010 (unaudited)	2011 (budget)
Revenue:						
Community Service	\$397,577	\$453,391	\$507,643	\$629,566	\$517,400	\$510,600
Transit	\$53,072	\$193,991	\$318,407	\$618,810	\$742,861	\$516,067
<i>Total Revenue</i>	<i>\$450,649</i>	<i>\$647,382</i>	<i>\$826,050</i>	<i>\$1,248,376</i>	<i>\$1,260,261</i>	<i>\$1,026,667</i>
Expense:						
Community Service	\$118,353	\$111,038	\$207,823	\$446,087	\$424,372	\$494,378
Transit	\$1,713,858	\$1,846,716	\$2,670,498	\$2,285,890	\$2,369,260	\$2,078,370
<i>Total Expense</i>	<i>\$1,832,211</i>	<i>\$1,957,754</i>	<i>\$2,878,321</i>	<i>\$2,731,977</i>	<i>\$2,793,632</i>	<i>\$2,572,748</i>
Net Income	(\$1,381,562)	(\$1,310,372)	(\$2,052,271)	(\$1,483,601)	(\$1,533,371)	(\$1,546,081)

8.) What is our potential future cost by taking over all local transit operation (including routes currently run by the ski area)?

We have been awarded a CDOT grant for a 5304 Planning Study to have a consultant come in and do such an analysis. The Ski Area supported the application. We anticipate that a study will be underway by November that would garner some real hard data. In the past, the Ski Area has given us estimates of between \$750,000 and \$1 M to operate their transit service but no details were provided.

9.) What revenue (besides RETT) does Vail currently contribute to the Town as a result of their operations?

Due to the confidential nature of sales tax information, this cannot be disclosed in the Town Council packet. However, the information can be made available in a Town Council executive session, if desired.

TO: MAYOR AND TOWN COUNCIL
FROM: CLERK AND FINANCE DIVISION
SUBJECT: 2011 WATER ORDINANCE
DATE: 1/5/2012
CC: TIMGAGEN

Enclosed is the 2012 Water Rates Ordinance. It has been marked to show the changes in the water fees that will occur effective January 1, 2012.

The changes in the ordinance include an increase in existing fees (1%/year for water user fees, 5%/year for PIF's) as well as an increased fee for paper statements (\$10/billing cycle).

1 ***FOR WORKSESSION/FIRST READING –JAN. 10***

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2012

9
10 AN ORDINANCE PROVIDING FOR AN INCREASE IN MUNICIPAL WATER USER FEES
11 EFFECTIVE JANUARY 1, 2012; AND INCREASING THE FEE FOR MAILING PAPER
12 BILLING STATEMENTS

13
14 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
15 COLORADO:

16
17 Section 1. The Town Council of the Town of Breckenridge hereby finds and determines
18 as follows:

19
20 A. The Town of Breckenridge is a home rule municipal corporation organized and
21 existing pursuant to Article XX of the Colorado Constitution.

22
23 B. The Town owns and operates a municipal water utility pursuant to the authority
24 granted by Section 13.1 of the Breckenridge Town Charter and §31-35-402(1)(b), C.R.S.

25
26 C. Section 13.3 of the Breckenridge Town Charter provides that "(t)he council shall by
27 ordinance establish rates for services provided by municipality-owned utilities."

28
29 D. The rates, fees, tolls and charges imposed in connection with the operation of a
30 municipal water system should raise revenue required to construct, operate, repair and replace
31 the water works, meet bonded indebtedness requirements, pay the overhead and other costs of
32 providing service. Such rates, fees, tolls and charges may also recover an acceptable rate of
33 return on investment. The rates, fees, tolls and charges imposed by this ordinance accomplish the
34 Town's goals and objectives of raising revenue required to construct, operate, repair and replace
35 the Town's water works and to service the bonded indebtedness of the Town's enterprise water
36 fund.

37
38 E. The action of the Town Council in setting the rates, fees, tolls, and charges to be
39 charged and collected by the Town in connection with the operation of its municipal water
40 system is a legislative matter.

41
42 Section 2. Section 12-4-11 of the Breckenridge Town Code is hereby amended so as to
43 read in its entirety as follows:

12-4-11: WATER USER FEES; RESIDENTIAL:

A. The in town base rate user fee for all residential water users, regardless of the size of the water meter, includes a usage allowance of not to exceed twelve thousand (12,000) gallons of water per SFE per billing cycle, and shall be computed according to the following table:

<u>Water Use Date</u>	<u>Base User Fee</u>
Effective January 1, 2011	\$30.34 per billing cycle per SFE
<u>Effective January 1, 2012</u>	<u>\$30.64 per billing cycle per SFE</u>

B. In addition to the base user fee set forth in subsection A of this section, each in town residential water user shall pay an excess use charge for each one thousand (1,000) gallons of metered water, or fraction thereof, used per SFE per billing cycle in excess of the usage allowance of twelve thousand (12,000) gallons of water per SFE per billing cycle. The amount of the excess use charge shall be computed according to the following table:

<u>Water Use Date</u>	<u>Excess Use Charge</u>
Effective January 1, 2011	\$3.02
<u>Effective January 1, 2012</u>	<u>\$3.05</u>

Section 3. Section 12-4-12(A) of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

12-4-12: WATER USER FEES; NONRESIDENTIAL:

A. The in town base rate user fee per SFE per billing cycle and the usage allowance per SFE per billing cycle for all nonresidential water users shall be determined based upon the size of the water meter which connects the water using property to the water system, as follows:

For water used commencing January 1, ~~2011~~**2012**

<u>Meter Size</u>	<u>Base Water Fee Per Account</u>	<u>Usage Allowance Per Account (Gallons)</u>
Less than 1 inch	\$ 34.74 <u>35.09</u>	13,000
1 inch	52.12 <u>52.64</u>	20,000
1½ inch	90.93 <u>91.84</u>	35,000

1	2 inch	143.18	54,000
2		<u>144.61</u>	
3	3 inch	275.30	105,000
4		<u>278.06</u>	
5	4 inch	425.59	162,000
6		<u>429.84</u>	
7	6 inch	836.19	318,000
8		<u>844.55</u>	

9
10 Section 4. Section 12-4-13 of the Breckenridge Town Code is hereby amended so as to
11 read in its entirety as follows:

12
13 12-4-13: WATER USER FEES; MIXED USE:

14
15 The in town base rate user fee and the usage allowance per billing cycle for all
16 mixed use water using properties shall be calculated based upon the predominant
17 use of the water using property as determined by the finance director. In addition
18 to the base user fee, each in town mixed use water user shall pay an excess use
19 charge of ~~three~~ three dollars ~~two~~ five cents (~~\$3.02~~ \$3.05) per one thousand
20 (1,000) gallons of metered water, or fraction thereof, used per billing cycle in
21 excess of the applicable usage allowance.
22

23 Section 5. Chapter 4 of Title 12 of the Breckenridge Town Code is hereby amended so as
24 to read in its entirety as follows:

25
26
27 12-4-21: FEE FOR PAPER STATEMENTS; ACCOUNT SET UP FEE;

28
29 A. Commencing with the periodic billing statement issued by the Town in March ~~2011~~
30 2012 (for water service provided during the months of January-February ~~2011~~ 2012),
31 there shall be added to each paper billing statement mailed by the Town through the
32 United States Postal Service, and there shall be assessed and paid by the owner of the
33 property that is the subject of the billing statement, a statement fee in the amount of ~~five~~
34 ten dollars (~~\$5.00~~ 10.00) per statement per billing cycle. The statement fee shall be a
35 water charge within the meaning of section 12-1-6 of this title, and shall be due and
36 payable to the town at the same time and in the same manner as other water charges are
37 due and payable to the town under this chapter. There shall be no statement fee charged if
38 the owner elects to have the billing statement delivered by electronic means.
39

40 B. A fee of \$25.00 shall be collected from each owner to either set up a new water
41 account, or to effect a change in ownership of a water account.
42

43 Section 6. Except as specifically amended hereby, the Breckenridge Town Code, and the
44 various secondary codes adopted by reference therein, shall continue in full force and effect.
45

1 Section 7. The Town Council hereby finds, determines and declares that it has the power
2 to adopt this ordinance pursuant to the provisions of Section 31-35-402(1)(f), C.R.S., and the
3 powers possessed by home rule municipalities in Colorado.
4

5 Section 8. This ordinance shall be published as provided by Section 5.9 of the
6 Breckenridge Town Charter and shall become effective January 1, 2012.
7

8 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
9 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
10 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
11 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
12 Town.
13

14 TOWN OF BRECKENRIDGE, a Colorado
15 municipal corporation
16

17
18
19 By _____
20 John G. Warner, Mayor
21

22 ATTEST:
23

24
25
26 _____
27 Mary Jean Loufek, CMC,
28 Town Clerk
29

Memorandum

To: Mayor and Town Council
CC: Deputy Fire Chief, Jay Nelson
From: Vanessa Agee
Date: January 3, 2012 *(for 1/10/12 work session)*
Re: Special Permit for 2012 Ullr Festival Bonfire and 2012 International Snow Sculpture Championships Event Barrel Fire(s)

In conjunction with the Ullr Festival and 2012 International Snow Sculpture Championships, there are requests to have open fires in a metal box (Ullr bonfire), in a 55 gallon drum (Snow Sculpture) and/or in a “kiva” stove (Snow Sculpture) on the following dates: for Ullr on Thursday, January 12, 2012 from 5:00 pm- 7:00pm and for Snow Sculpture on Thursday, January 26, 2012 from 7pm-11:30pm and Friday, January 27, 2012 from 7pm until 1am on Saturday, January 28, 2012. Red, White and Blue would approve use of a metal box (Ullr bonfire), a 55 gallon drum (Snow Sculpture) and/or a “kiva” stove (Snow Sculpture). The proposed fires would be set up in the event site for the Ullr bonfire located in the Gondola South Lot and for the 2012 International Snow Sculpture Championships which is located in the Tiger Dredge Lot in front of the Riverwalk Center at 150 West Adams.

The current Town Code (Section 5-5-3) prohibits open burning and bonfires within town limits. Specifically:

Open Fires and Burning Prohibited: *Except as authorized by this chapter, it shall be unlawful for any person to conduct open burning anywhere within the town. (Ord 21, 1994).*

However, Section 5-5-5 allows the Town Council to grant a special permit to authorize open burning and bonfires. Specifically, Section 5-5-5 states:

Notwithstanding the provisions of section 5-5-3 of this chapter, the town council shall have the authority to issue a special permit for the purpose of authorizing open burning within the town. An application for such a permit shall be made in writing to the town council and shall state the date, time, location and purpose of such fire, and a description of all safety and precautionary measures planned. The town council shall act upon such request at its next regularly scheduled meeting following receipt of the completed application. The town council may grant such application if it finds that there are special and unique circumstances which justify granting the application. All open burning conducted within the town pursuant to a special permit issued pursuant to this section shall be

conducted in accordance with the rules pertaining to open burning contained in the town's fire code. The town council may impose such other reasonable conditions upon a special permit as it shall determine to be necessary to adequately protect the health, safety and welfare of the town and its inhabitants. It shall be unlawful for any person to conduct any open burning within the town in violation of the terms and conditions of a special permit issued pursuant to this section. (Ord. 21, Series 1994)

For the 2012 Ullr bonfire, there would be personnel designated to start and put out the fire and security and police support, as well as barricades keeping participants from direct contact with the fire. The Breckenridge Resort Chamber has permission from the Breckenridge Ski Resort to use their property, Gondola South Lot, for the bonfire.

For the 2012 International Snow Sculpture Championships there would be a maximum of two fires at one time, and the fires would be started, maintained and supervised by the requesting party, members of Team Breckenridge. The fires were responsibly tended and extinguished during 2005-2011 Championships and shown to add to the ambience of the event. Many teams and spectators enjoyed this feature.

Town of Breckenridge staff would also be site at each event to monitor the fires. There would be fire extinguishers on site at each fire location, and as per Red, White and Blue Fire Department, only firewood would be used as fuel. No construction wood, cardboard or any type of trash would be used as fuel and the wood would be stacked no more than two feet high during burning. Considering the snow covered location, the fairly closed nature of these types of fire receptacles and the distance from any other fuel sources, staff believes the fires would be well contained, and would not present the threat of spreading. The fires would be completely extinguished before leaving the event sites for the night.

The applicants have already discussed this proposal with the Red, White & Blue Fire Department and a permit will be issued. A special permit from the Town Council is the only outstanding issue.

Following is a motion that the Town Council may like to use to approve the special permit:

"I motion to approve a special permit to allow open fires during the 2012 Ullr Festival and 2012 International Snow Sculpture Championships on the following dates: for Ullr Festival on Thursday, January 12, 2012 from 5:00 pm- 7:00pm and for Snow Sculpture on Thursday, January 26, 2012 from 7pm-11:30pm and Friday, January 27, 2012 from 7pm until 1am on Saturday, January 28, 2012. All burning shall comply with the "Open Burning" requirements of Section 307 of the International Fire Code, 2006 Edition. In addition, the applicant shall obtain a bonfire or open burning permit from the Red, White & Blue Fire Department. "

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: January 4, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the January 3, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF January 3, 2012:

CLASS C APPLICATIONS:

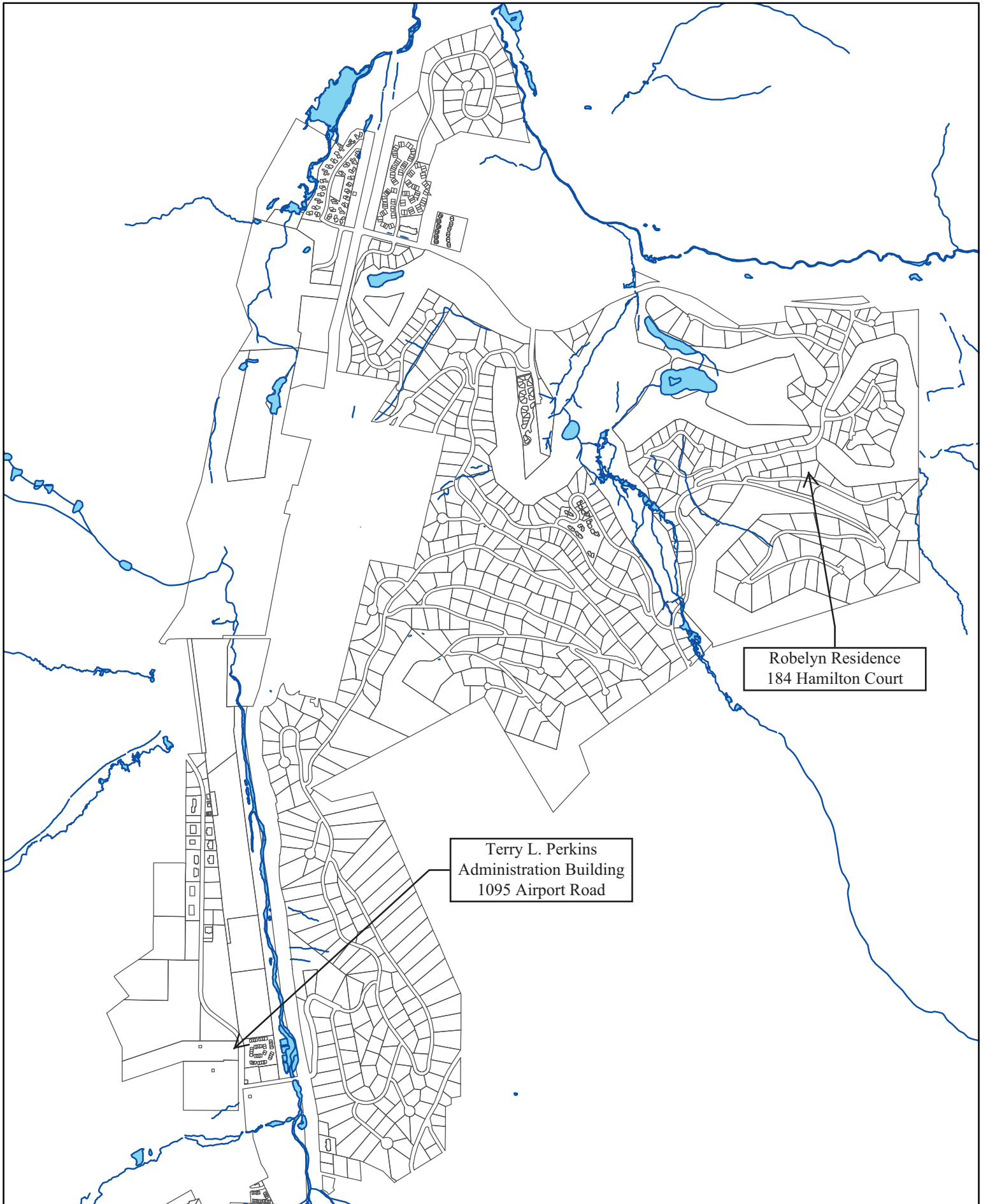
1. Tannenbaum by the River II Condominium Remodel, PC#2011076, 815 Columbine Road
Exterior remodel of three primary facades of the existing building, including: new heavy timber un-enclosed entry element; new asphaltic roofing; new fiber cement siding (shingles and board and batten); natural wood accents and trim; natural stone veneer base and metal guardrails. The design, colors and materials of the remodel will be compliant with the one elevation not receiving any work. Approved.
2. Robelen Residence, PC#2011077, 184 Hamilton Court
Construct a new, single family residence with 4 bedrooms, 4.5 bathrooms, 3,862 sq. ft. of density and 4,520 sq. ft. of mass for a F.A.R. of 1:12.50. Approved.

PUBLIC PROJECTS:

1. Terry L. Perkins Administration Building, PC#2011075, 1095 Airport Road
Construct a new, 5,200 sq. ft. administration building near the existing east entry of the Public Works property. Recommended for approval by the Town Council.

ORDINANCES:

1. Landscape Architecture Ordinance
An ordinance requiring a licensed landscape architect to design and stamp landscape plans for multi-family projects over four units and commercial projects. Recommended for approval by the Town Council.



Terry L. Perkins
Administration Building
1095 Airport Road

Robelyn Residence
184 Hamilton Court

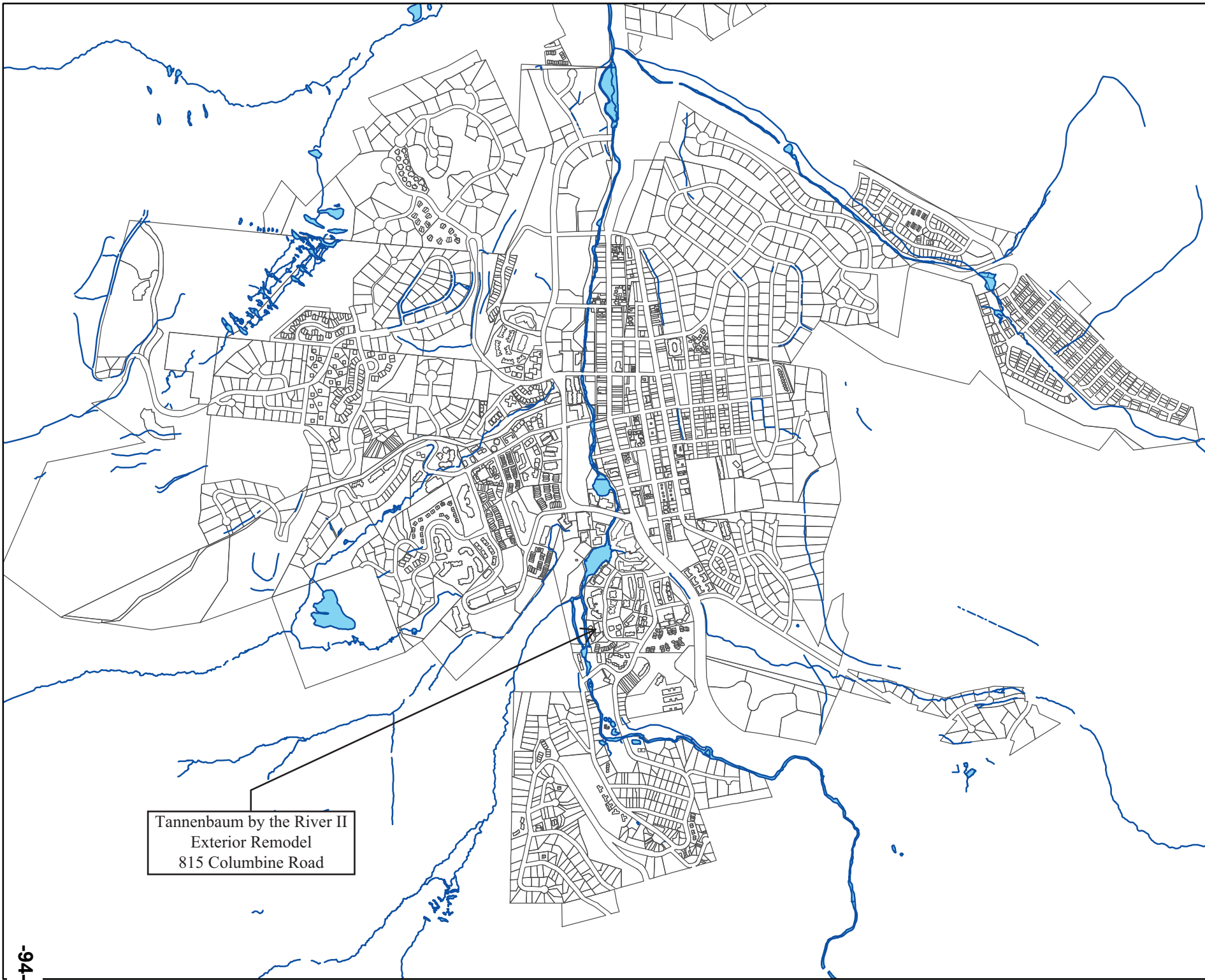


Town of Breckenridge and Summit County governments
assume no responsibility for the accuracy of the data, and
use of the product for any purpose is at user's sole risk.

Breckenridge North

printed 4/12/2011





Tannenbaum by the River II
Exterior Remodel
815 Columbine Road



Breckenridge South

Town of Breckenridge and Summit County governments
assume no responsibility for the accuracy of the data, and
use of the product for any purpose is at user's sole risk.



PLANNING COMMISSION MEETING

The meeting was called to order at 7:01 p.m.

ROLL CALL

Kate Christopher	Jim Lamb	Trip Butler
Gretchen Dudney	Michael Rath	Dan Schroder
Dave Pringle		

APPROVAL OF MINUTES

With no changes, the December 6, 2011 Planning Commission meeting minutes were approved unanimously (7-0).

APPROVAL OF AGENDA

Mr. Tim Berry, Town Attorney, proposed change the order of Worksession items to review the Landscape Architect Ordinance prior to the Quasi-Judicial Hearings discussion as the public present for the Landscape Architect Ordinance would not have to wait through the Quasi-Judicial Hearings discussion. The Commission all agreed. With no further changes, the January 3, 2012 Planning Commission meeting agenda was approved unanimously (7-0).

CONSENT CALENDAR:

1. Tannenbaum by the River II Condominium Remodel (MM) PC#2011076; 815 Columbine Road
2. Robelen Residence (MGT) PC#2011077; 184 Hamilton Court

With no requests for call-up, the consent calendar was approved as presented.

WORKSESSIONS:

- 1) Landscape Architect Ordinance (JC)

Ms. Jennifer Cram and Mr. Tim Berry presented. In 2007, the Colorado legislature enacted the “Landscape Architects Professional Licensing Act”. The Act requires that, with certain exceptions specified in the Act, landscape plans submitted to a municipality must be stamped by a licensed landscape architect. Staff presented a draft ordinance that adopts requirements for submitting landscape plans to the Town according to the Landscape Architects Professional Licensing Act.

In summary, this ordinance requires that landscape plans for all multi-family developments with greater than four units and all commercial projects be stamped by a licensed landscape architect. Residential landscape design consisting of landscape design services for single-family and multi-family residential properties of four or fewer units, not including common areas are exempt, as are the activities of licensed architects and professional engineers.

Staff requested comments from the Commission and any local architects, designers, and contractors in attendance prior to sending the ordinance to Town Council for a first reading.

Ms. Cram spoke to the Commission about how the ordinance could potentially affect staff and the planning department with regard to reviewing development applications and landscape plans. There is an exception that allows a licensed architect or professional engineer to approve landscape plans. This will allow staff to continue to design landscaping plans for Town owned projects, with approval of the Town Engineer.

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

Commissioner Questions / Comments:

Mr. Pringle: Is the Town Engineer specifically able to sign off on landscape plans for Town projects? (Mr. Berry: A licensed engineer or architect could sign off on those plans.) So the landscape plan has to be signed off by a licensed architect, landscape architect or a licensed engineer? (Ms. Cram: Yes. The ordinance complies with the state act.)

Mr. Schroder: Do we have to hire a third party to take care of that? (Ms. Cram: No.)

Mr. Pringle made a motion that the Town of Breckenridge Town Council adopts this proposed Landscape Architect Ordinance. Ms. Christopher seconded, and the motion was approved unanimously, (7-0).

2) Quasi-Judicial Hearings (Tim Berry)

Town Attorney, Mr. Tim Berry, presented a memo to the Commission regarding quasi-judicial hearings.

Two issues that are important include: 1) that your decisions can be upheld (in court) and 2) liability. I don't want to get sued over a procedural matter. We control the procedure. Also, lawsuits can include legal expenses. All of the decision makers, the applicant and the public need to hear the same thing, so they understand the decision that you made. Everything of importance should be made on the record, so all constituents are aware of the information you possess. If you can't take a fair view of a project, it is ok to step down and let people know. (Mr. Pringle: When projects get bigger and there is more information out to the public, people tend to want to talk about it to us about the issues.) Just let them know that the project is still pending and that you can't discuss the matter outside of the hearing. Urge them to come to these meetings so everyone is getting the same information and so it is on record.

This applies to all communication: (i.e.: telephone, email, text messages, personal contact). (Mr. Pringle: What about Letters to the Editor about pending projects?) In highly controversial subjects, no matter what happens, you need to be fair. (Mr. Lamb: Even if everyone in Town had the ability to read it in the paper?) That doesn't mean that everyone did read it.

(Ms. Dudney asked Mr. Berry how Quasi-Judicial impacts the possibility of Town Council projects coming up in meeting(s) when the Council asks for the Planning Commissioners opinions about specific projects.) Mr. Berry: Most Town projects are not Quasi-Judicial, since the Commission is not making a decision on the application. You are making a recommendation to the Town Council.

CONFLICT:

Commission as an entity, not as an individual.

Three important things to remember about conflict of interest:

1. Disclosure to the Commission of a possible conflict;
2. Abstain from voting;
3. No attempt to influence voting; I advise people to go out in the hall so their point of view doesn't influence others, or appear to influence others.

Commissioner Questions / Comments:

Mr. Pringle: At what point as a Commissioner do you give up your right as a citizen? (Mr. Berry: As soon as you take oath. The general rule is you should hire your own independent experts to present a project. If you as a Commissioner are presenting a project, you obviously can't vote.)

Mr. Butler: Is that why it was appropriate that Jack Wolfe stepped down? (Mr. Neubecker: Yes, he had multiple projects on the plate so stepping down was the right move for him. He did not have someone else that could make the presentations for him.)

Ms. Dudney: Can a Commissioner appear before the Town Council while Planning Commission issues are being discussed in-front of the Town Council? If they ask for our input, can we answer? (Mr. Berry: I think it is ok to attend if you have already made a decision. Let's say it is a call-up; I have no problem with you going to listen. I would prefer that you not answer questions about what happened in Planning Commission meetings because I don't believe it is on the same legal level. I would usually allow staff to explain what happened instead of you answering those questions.)

Mr. Pringle: I thought it was interesting that you also brought up that we are also potentially financially liable as well. (Mr. Berry: It is not unheard of for individual members of both the Planning Commission and the Town Council to be sued. Everyone has to be careful. Disclose, disclose, disclose.)

PUBLIC PROJECT HEARINGS:

1. Terry L. Perkins Administration Building (MM) PC#2011075; 1095 Airport Road

Mr. Mosher presented an application to construct a new, 5,200 square foot administration building near the existing east entry to the Public Works property. There were no significant concerns expressed at the last worksession, but Staff welcomed any additional comments regarding this application. Staff noted that the architect, Matthew Stais, intends to pursue energy saving designs in the building. He briefly discussed the Green Globes review process as compared to LEED (Leadership in Energy and Environmental Design) certification. More of this detail will be presented to the Town Council with their review.

Mr. Matt Stais, Architect for the project, spoke about the relative sustainable design for the new building. Green Globes is the national standard in Canada and gains more valuable feedback compared to LEED. LEED is a more stringent program, but Green Globes shows what would be required if this were a private building. I feel that we get more feedback through Green Globes, even though it is informally done. At this point in the project, it gives us a handle on where we are going and how we are going to follow through with as much of it as we can. I have helped other projects in the County with this certification (for example, Woodward at Copper Mountain).

Commissioner Questions / Comments:

- Mr. Pringle: Is Green Globes more achievable by design? (Mr. Stais: It is comparable between Green Globes and LEED. There are a lot more hoops to jump through with LEED. Green Globes staff was more helpful; they wanted us to create a better building where LEED told us why we didn't fit certain standards. As a design professional, Green Globes is more enabling and easier to work with.)
- Ms. Dudney: Do the review professionals have to be certified? (Mr. Stais: There are different levels; you don't need to be accredited but you get an extra point if you are accredited. We are the second Green Globes project in the State; the first might have been Silverthorne Elementary school. I want this to be a transparent process so we can both learn from this. Future projects that are a certain size, I think you will be seeing a lot more Green Globes projects. It is like the HERS rating for homes, you will start to understand what the difference of the numbers mean. There are still a lot of moving parts with this project, a 5-10 year master plan for the site, working with the Town and Summit County Government to be more efficient with tax money. It will be a phased approach and I think it will be a great improvement.)
- Mr. Rath: Does Green Globes consider sourcing of materials? (Mr. Stais: Yes. The system is internet based; there is a life-cycle cost analysis that they use. We will show you how this impacts the project.) For example, does Green Globes consider if the stone coming from Montana or India? Where to source green materials means costs can significantly decrease when you know where to source materials. (Mr. Stais: This building, by its nature, is going to be pretty humble, but we hope to use as many local materials as we can and have the sun help us as much as possible too.) (Mr. Neubecker: Have there been significant design changes since the last session?) (Mr. Stais: Nothing to the site plan; we will have a list with any significant changes.) (Mr. Rich Newberger, Town of Breckenridge Facilities Assistant Manager: The intention is to maintain substantial conformance to the original design.)

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

Mr. Pringle made the following motion: "with no formal point analysis, and no negative points or mitigated points, I recommend that the Town Council approve this application (Terry L. Perkins Administration Building) with the presented findings and conditions that were in the Commissioner packets for PC#2011075." Ms. Christopher seconded the motion and the motion was approved unanimously (7-0).

OTHER MATTERS:

Class C Subdivisions July 1 – December 31, 2011 (CN)

Mr. Neubecker presented a memo detailing the Class C Subdivisions that were approved for the period July 1 – December 31, 2011.

Mr. Butler, Ms. Christopher and Ms. Dudney will be attending the Saving Places conference in Denver in early February. If any other Commissioners would like to attend, please let staff know.

Staff provided an update on the December 13, 2011 Town Council meeting. Mr. Neubecker explained that the call-up hearing on the horse and carriage resulted in the Council denying the location in front of Lincoln West Mall. After the hearing, the Council provided direction for staff to issue a Class D permit for locating the horse and carriage operation in front of the Welcome Center. The permit has been issued and will expire in six months. Staff will be monitoring to see if issues arise at the new location.

Mr. Truckey provided an overview of the density for Valley Brook housing discussion that occurred at Council. Staff had provided a list of potential Town properties that density could be stripped off to provide the density (at a 1:4 ratio) for the affordable housing project at Valley Brook. The Council provided direction to extinguish density off the Carter Museum

property, which has an additional 12 units of density assigned to it. A Development Code amendment will be required in order to complete this density transfer to Valley Brook, as current code provisions only allow density transfers through a development agreement. The planning commission will see the proposed code amendment in the next month.

ADJOURNMENT:

The meeting was adjourned at 8:19 p.m.

Dan Schroder, Chair

MEMO

TO: Town Council

FROM: Town Attorney

RE: Final Decision – Breckenridge Stables, LLC Call Up Hearing

DATE: December 28, 2011 (for January 10th meeting)

At the conclusion of the Breckenridge Stables, LLC call up hearing on December 10th I was directed to prepare a written decision reflecting the Town Council’s oral decision denying the application that was announced at the conclusion of the hearing.

Enclosed please find a proposed form of Decision. I hope that the Decision accurately reflect your judgment in this matter.

The decision will be listed on your evening agenda under “Planning Matters.” Because the call up is quasi-judicial in nature, all of the Council’s discussions concerning the matter should be done “on the record” (i.e., at the evening meeting, rather than at the worksession). During the evening meeting the Council can formally discuss and consider the proposed form of Decision. Once the document is in an acceptable form, a suggested motion to approve the decision documents is as follows:

“I move that the written Decision prepared by the Town Attorney regarding the Town Council’s call up hearing on Application No. PC#2011061, the Class C Development Permit application submitted by Breckenridge Stables, LLC, as set forth in tonight’s agenda packet on pages _____, inclusive, be adopted as the final decision of the Town Council with respect to such application.”

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

PROCEEDINGS OF THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
COLORADO

Application No. PC#2011061

Applicant: Breckenridge Stables, LLC

Type of Application: Class C Permit

Project Location: The Southeast Corner of the Intersection of Main Street and Lincoln Avenue

DECISION

This matter came before the Town Council of the Town of Breckenridge, Colorado (“**Town Council**”) on December 13, 2011.

Having heard and considered all of the evidence presented both in favor of and in opposition to the Application, the Town Council finds and determines as follows:

1. This Application was originally filed as a Class D development permit application. Peter Grosshuesch, the Director of the Town’s Department of Community Development, reclassified the Application as a Class C development permit application pursuant to the authority granted to him by Section 9-1-18-4(C)(1) of the Breckenridge Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code).

2. The Application as originally filed proposed a waiting area for the horse drawn carriage at the southeast corner of the intersection of Main Street and Washington Street.

3. On September 28, 2011 the Director conditionally approved the Application.

4. In accordance with the procedures established by the Development Code, on October 4, 2011 the Director reported his action on the Application to the of Breckenridge Planning Commission (“**Planning Commission**”).

5. On October 4, 2011 the Planning Commission voted to call up the Director’s decision on the Application pursuant to Section 9-1-18-3(C)(2) of the Development Code.

6. The Planning Commission began its call up hearing on the Application on October 4, 2011. At that hearing, the Planning Commission expressed concerns about the location of the proposed waiting area at southeast corner of the intersection of Main Street and Washington Street. The Planning Commission continued the hearing to November 1, 2011 to allow the Applicant and staff to explore potential alternative sites for the waiting area.

7. The Planning Commission completed the call up hearing during the meeting of November 1, 2011. At that meeting, the proposed waiting area for the horse drawn carriage was changed to the southeast corner of the intersection of Main Street and Lincoln Avenue.

8. At the conclusion of the call up hearing on November 1, 2011, the Planning Commission conditionally approved the Application.

9. On November 8, 2011 the Planning Commission's decision on the Application was presented to the Town Council as required by Section 9-1-18-3(C)(3) of the Development Code.

10. On November 1, 2011 the Town Council voted to call up the Planning Commission's decision on the Application and, with the consent of the Applicant, set the call up hearing for December 13, 2011.

11. Pursuant to Section 9-1-5 of the Development Code, a call up is the decision of the Town Council to vacate the Planning Commission's decision on a particular development permit application, and to make the final decision on the application itself.

12. The applicable procedures for a call up hearing conducted by the Town Council are set forth in Section 9-1-18-5 of the Development Code. When the Town Council is conducting a call up hearing, it becomes the final decision maker for the Town with respect to an application and, therefore, in connection with a Council call up hearing the provisions of the Development Code that deal with the powers and authority of the Planning Commission apply equally to the Town Council. Thus, when the Town Council is conducting a call up hearing references in the Development Code to the Planning Commission may properly be taken to mean and to apply to the Town Council.

13. As a matter of law, the Town Council's decision to call up the Application operated to vacate the Planning Commission's decision on the Application.

14. Pursuant to Section 9-1-18-5(A)(1)(c) of the Development Code, a call up hearing on a development permit application is conducted by the Town Council as a de novo hearing.

15. On December 13, 2011, the Town Council conducted its call up hearing on the Application.

16. The Town Council has jurisdiction over the Application pursuant to the Development Code.

17. Because the Application is a Class C development permit application, no special notice of the Town Council's hearing on the Application was required by Section 9-1-18-5(A)(1)(a) of the Development Code.

18. The Applicant was represented at the hearing by Brad Bays, the member of the limited liability company that is the Applicant.

19. Section 9-1-18-3(C)(2)(a)(1) of the Development Code provides that:

Prior to the call up hearing on [a class C development permit application], the staff shall deliver to the applicant and [Town Council] and make available at the town hall their written report on the proposed development, including their conclusion on compliance with absolute policies, allocation of points on all relative polices and recommend conditions to be attached for approval.

20. A “relative policy” is defined by Section 9-1-5 of the Development Code as “a policy which need not be implemented by a development, but for which positive, negative, or zero points are allocated based on the features of the proposed development.”

21. Section 9-1-17-3 of the Breckenridge Development Code provides, in pertinent part, as follows:

9-1-17-3: ASSIGNMENT OF POINTS:

All policies are applied to all developments: classes A, B, C, and D unless otherwise expressly provided in a particular policy. Relative policies are assigned points, and unless provided differently in the policy, a negative score indicates that the policy is implemented and the proposed development will have a negative impact on the community on the basis of that particular policy. A score of zero indicates either that the policy is irrelevant to the proposed development or that a negative impact on the basis of that particular policy is completely mitigated. A positive score indicates that the proposed development implements a policy in such a way that there will be a positive impact on the community (i.e., the community will benefit) on the basis of that particular policy.

A point analysis shall be conducted for all policies relevant to an application, and shall be completed prior to the final hearing on the application. However, a point analysis is not required for a class D development permit application.

22. An “Absolute Policy” is defined by Section 9-1-5 of the Development Code as “ a policy which, unless irrelevant to the development, must be implemented for a permit to be issued. The policies are described in section 9-1-19 of this chapter.”

23. The Town’s Department of Community Development (“Department”) prepared its written report on the Application as required by Section 9-1-18-3(C)(2)(a)(1) of the Development Code. The staff report reflects the Department’s best professional judgment of the manner and degree to which the Application implements all of the relevant “Relative Policies” of the Development Code, as well as the Department’s best professional judgment as to whether the Application complies with all of the relevant “Absolute Policies” of the Development Code.

24. Paragraph C of Policy 2 (Relative) of the Development Code provides:

3 x (-2/0) C. Nuisances: Uses that create a nuisance or hazard to others in the community, including, but not limited to, significant or continuous noise, vibration, odors, radio or electronic interference, heat, or glare from lighting emanating from any development shall be discouraged.

25. The Town Council further finds and determines that the Department's conclusions with respect to the relative point assignment for Paragraph C of Policy 2/Relative is incorrect, and that -3 points should be assigned to the Application under Paragraph C because the operation of the horse and carriage operation will create a nuisance due to the significant or continuous odors to be generate from the manure and urine deposited on the streets by the horses.

26. As amended as set forth above, the point analysis prepared by the Department is hereby approved and adopted by the Town Council.

27. The approved staff report and point analysis, as amended, reflects that the Application implements all relevant Absolute Policies of the Development Code, but the Application received a score of -3 points with respect to all relevant Relative Policies of the Development Code.

28. Section 9-1-18-3(C)(2)(a)(1) of the Development Code provides, in pertinent part, as follows:

If the proposed development does not implement all affected absolute policies (subject to variance), or if it **is allocated a net negative number of points for the relative policies . . . , the [Town Council] shall deny the permit.**

(emphasis added)

29. Under Section 9-1-18-3(C)(2)(a)(1) of the Development Code, the failure of the Application to receive a score of zero or higher on the final point analysis with respect to the relevant Relative Policies requires the Town Council to deny the Application.

IT IS THEREFORE ORDERED that the application of Breckenridge Stables, LLC for a Class C Development Permit to operate a horse drawn carriage for rides and tours around Breckenridge, as well as a taxi service for special events, weddings, dinners rides, and so forth, from a location at the southeast corner of the intersection of Main Street and Lincoln Avenue, as more specifically described in and as limited by the Application, is hereby is DENIED

For the purpose of determining the finality of the Town Council's decision on the Application, this Decision shall supersede the oral decision on the Application announced at the conclusion of the call-up hearing on the Application on December 13, 2011.

A copy of this Decision shall be mailed by the Town Clerk to the Applicant at its address as shown on the Application.

ADOPTED this 10th day of January, 2012.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk



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, unless otherwise noted.

JANUARY 2012

Tuesday, January 10; 2-3 p.m.; Town Hall Auditorium	Non-Profit Grant Recognition Reception
Tuesday, January 10; 3:00/7:30 p.m.	First Meeting of the Month
Tuesday, January 24; 3:00/7:30 p.m.	Second Meeting of the Month
Tuesday, January 24; 6-7:15	ISSC Opening Reception

FEBRUARY 2012

Tuesday, February 14; 3:00/7:30 p.m.	First Meeting of the Month
Tuesday, February 28; 3:00/7:30 p.m.	Second Meeting of the Month

OTHER MEETINGS

1 st & 3 rd Tuesday of the Month; 7:00 p.m.	Planning Commission; Council Chambers
1 st Wednesday of the Month; 4:00 p.m.	Public Art Commission; 3 rd floor Conf Room
2 nd & 4 th Tuesday of the Month; 1:30 p.m.	Board of County Commissioners; County
2 nd Thursday of every other month (Dec, Feb, Apr, June, Aug, Oct) 12:00 noon	Breckenridge Heritage Alliance
2 nd & 4 th Tuesday of the month; 2:00 p.m.	Housing/Childcare Committee
2 nd Thursday of the Month; 5:30 p.m.	Sanitation District
3 rd Monday of the Month; 5:30 p.m.	BOSAC; 3 rd floor Conf Room
3 rd Tuesday of the Month; 9:00 a.m.	Liquor Licensing Authority; Council Chambers
3 rd Thursday of the Month; 7:00 p.m.	Red White and Blue; Main Fire Station
4 th Wednesday of the Month; 9:00 a.m.	Summit Combined Housing Authority
4 th Wednesday of the Month; 8:30 a.m.	Breckenridge Resort Chamber; BRC Offices
TBD (on web site as meetings are scheduled)	Breckenridge Marketing Advisory Committee; 3 rd floor Conf Room

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