



BRECKENRIDGE TOWN COUNCIL WORK SESSION

Tuesday, October 09, 2012; 3:00 PM

Town Hall Auditorium

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

3:00-3:15pm	I	<u>PLANNING COMMISSION DECISIONS</u>	2
3:15-3:35pm	II	<u>LEGISLATIVE REVIEW*</u>	
		Unlicensed Ski Instructor Ordinance	10
		Harris Landmarking Ordinance	13
		Restitution Ordinance Amendment	17
3:35-4:00pm	III	<u>MANAGERS REPORT</u>	
		Public Projects Update	
		Housing/Childcare Update	
		Committee Reports	27
		Financials	28
4:00-5:30pm	IV	<u>OTHER</u>	
		Rodeo Recap	43
		Mind Mixer (Engage Breckenridge) Overview	46
		Transit Winter Routes Presentation	47
		Ethics Ordinance Amendment	50
5:30pm	V	<u>EXECUTIVE SESSION</u>	
		Negotiations, details of investigations and conferences with the Town Attorney	

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

MEMORANDUM

To: Town Council

From: Chris Neubecker, Current Planning Manager

Date: October 3, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the October 2, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF October 2, 2012:

CLASS C APPLICATIONS:

- 1) Wellington Block 9, Lot 11 (MM) PC#2012080; 4 Logan Road
New single family residence with 3 bedrooms, 2 bathrooms, 1,250 sq. ft. of density and 1,734 sq. ft. of mass for a F.A.R. of 1:3.07. Approved.
- 2) Wellington Block 9, Lot 20 (MM) PC#2012084; 19 Paradise Green
New single family residence with 3 bedrooms, 2 bathrooms, 1,250 sq. ft. of density and 1,734 sq. ft. of mass for a F.A.R. of 1:3.45. Approved.
- 3) Wellington Block 9, Lot 22 (MM) PC#2012085; 21 Paradise Green
New single family residence with 3 bedrooms, 2 bathrooms, 2,364 sq. ft. of density and 2,848 sq. ft. of mass for a F.A.R. of 1:1.87. Approved.

CLASS B APPLICATIONS:

- 1) Verizon Wireless Temporary Communications Facility and Height Variance (CN) PC#2012079; 600 South Ridge Street
Installation of a 65' temporary wireless tower. Denied.

CLASS A APPLICATIONS:

None.

Lincoln West Mall
Unit 3A Solar PV System
100 South Main Street

Wellington Block 9 Lot 11
4 Logan Road

Wellington Block 9 Lot 20
19 Paradise Green

Wellington Block 9 Lot 22
23 Paradise Green

Verizon Wireless
Temporary
Communications Facility
and Height Variance
600 South Ridge Street



NOT TO SCALE

printed 4/12/2011

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 7:00 pm

ROLL CALL

Kate Christopher Gretchen Dudney Jim Lamb
Dan Schroder Trip Butler Eric Mamula
David Pringle
Gary Gallagher, Town Council Liaison, was absent

APPROVAL OF AGENDA

With no changes, the October 2, 2012 Planning Commission meeting agenda was approved unanimously (7-0).

APPROVAL OF MINUTES

With changes below, the September 18, 2012 Planning Commission meeting minutes were approved unanimously (7-0).

Ms. Dudney:

Page 4: Please change “can it be approved upon?” to “can it be improved upon?”

Mr. Pringle:

Page 5: Please change “32-36 feet” to “32-36 inches”.

Ms. Dudney:

Page 6: Please change “with other projects before us” to “with other projects that have come before us”.

Ms. Dudney: Wondered if the Applicant for the solar panels at Lincoln West Mall misunderstood the Planning Commission concerns. Why was the application withdrawn? (Mr. Neubecker: I didn’t go into a detailed conversation with the Applicant about why the application was withdrawn.)

Mr. Schroder: Reiterated to the audience that the Lincoln West Mall Solar Panel application has been withdrawn from meeting, and will not be discussed tonight.

CONSENT CALENDAR:

1. Wellington Block 9, Lot 11 (MM) PC#2012080; 4 Logan Road
2. Wellington Block 9, Lot 20 (MM) PC#2012084; 19 Paradise Green
3. Wellington Block 9, Lot 22 (MM) PC#2012086; 23 Paradise Green

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

CONTINUED HEARINGS:

1. Lincoln West Mall Unit 3A Solar PV System (CN) PC#2012076; 100 South Main Street

Mr. Neubecker presented a memo from the Applicants indicating their request to continue the hearing until further notice.

COMBINED HEARINGS:

1. Verizon Wireless Temporary Communications Facility and Height Variance (CN) PC#2012079; 600 South Ridge Street

Mr. Schroder: Asked that public be considerate when making public comments. Citizens should address the Planning Commission, not the Applicant. We will give everyone one opportunity each and everyone is welcome to speak.

Mr. Neubecker presented an application to install a temporary wireless communications tower to supplement existing wireless infrastructure. The tower is anticipated to be in place for 9 – 12 months, at which time a permanent location is expected to be in service. The temporary tower is needed to provide additional bandwidth at the south end of Breckenridge.

Staff finds no applicable Relative policies under which positive or negative points should be assigned and that the application meets all Absolute policies, with the exception of Policy 6/Building Height, for which a variance is requested. Staff finds that many of the policies in the Development Code do not apply to a temporary structure, but welcomes feedback from the Commission on these policies. If the Planning Commission believes that any points should be assigned under Relative policies, or that the variance does not apply in this situation, please let staff know.

This application has been advertised as a combined preliminary and final hearing and may be approved or denied tonight. However, staff understands that there may be questions raised by the Commission or the public concerning this application, and that additional information, or plan changes, may be requested. In this case, staff would request feedback from the Commission on what additional information is needed, and in that event this application should be continued to a later date.

If the Commission is comfortable that the application and variance can be approved as submitted, Staff presented a set of approval Findings and Conditions.

Commission Questions / Comments:

- Mr. Schroder: A number of policies are addressed, and Staff says that they aren't sure that they apply to temporary structures; should we be focusing on policies or should we be focused on variance?
- Mr. Neubecker: We believe the primary question relates to the variance from the height policy—comments have been about height.
- Mr. Mamula: There is an issue before that, which is whether or not the temporary structure is allowable, period. Code says temporary structures “may be approved” instead of “shall be approved”; there is an earlier question of allowing a temporary structure.
- Mr. Lamb: Some of the wording in the code seems to counter this proposal
- Ms. Dudney: What about the noise complaint? (Mr. Neubecker: We did hear a noise complaint from a neighbor near another tower (temporary AT&T tower). But that neighbor was only 20 feet away; I haven't been at a tower listening to it from 150ft away, so I don't know what it would sound like. Nearest neighbors are about 150 feet away with this application.) Is that right that there are houses whose decks back right up to this building? (Mr. Neubecker: They are 100-150 feet away; you can see the setbacks in the report; to the east property line is 115 feet, to the south is 95 feet; add those to the setbacks of the neighboring homes and that will tell the distance to this tower.)
- Mr. Schroder: All Summit Accommodations (Mark Roberts) called me today and intended to represent his owners tonight; Mark was going to attend to represent his owners but he had a bike crash, so on the record: 113 Powder Ridge, 115 Powder Ridge, and 130 Powder Ridge owners would like to object. (Mr. Neubecker: This is an ex-parte contact. Did you feel like this swayed you in anyway?) What he is coming to the table with did not sway me; should I participate in this discussion? (Ms. Dudney, Mr. Lamb, Mr. Mamula: No problem.) (Mr. Neubecker: We should ask the Applicant if they see this as a conflict.) (Mr. Jeff Sherer, Applicant: No concerns. We can move forward.)
- Mr. Pringle: This is going to be a contentious issue, I understand that you weren't able to avoid the ambush from your friends or neighbors; hopefully everyone understands that public isn't supposed to lobby us; best to get comments to town staff. I'm sure that Mr. Schroder made every effort to avoid public contact. I don't have a problem with it.
- Mr. Schroder: For tonight...should I stay? (A poll was taken and 100% of the remainder of the Commission said to stay.)

Applicant Presentation:

Mr. Jeff Sherer, Black and Beach Corp, agents for Verizon Wireless: Introduced himself as well as other agents for the Applicant, David Kennard (Radio Frequency Engineer) and Peter Hoops.

We heard the neighbors' concerns and have read the letters. We didn't know that there would be as much feedback as there has been. We went out there today and realized that we could drop 20 feet off that tower and lose some coverage. We felt that with that 20 foot drop, it would be basically screened from the neighborhood area. The last plan had the antenna spread away from the tower; the revised plans show that they will be flush mounted. If you look at these antennas, they are only 37 inches across. With respect to the noise that the other site generated, this site only has air conditioners that equate to the noise of household air conditioners; additionally we have buildings that buffer the noise. We do not foresee any noise pollution at all. We appreciate Staff's recommendations and appreciate feedback.

Commissioner Questions / Comments:

Mr. Mamula: With the AT&T tower, the couple that lived next door (here-say), thought that radiation and noise was a disturbance. The couple had to keep replacing microwaves, etc. (Mr. Sherer: These are federally regulated and meet all standards. We run a dedicated line to the site and there should not be a problem with interference.) AT&T made some settlement with the couple at the end and it was a big deal. (Mr. Sherer: We looked at 4 sites; we looked at the AT&T site, and it is surrounded with homes; also that COW sits out in the open, not screened, don't know how the power was run; we are sitting behind 2 vacant buildings, with an 8 foot screen.)

Ms. Dudney: Why do you need this? (Mr. David Kennard, Senior Manager for Verizon Wireless: During the ski season, the existing site for the area has reached its capacity limits. We have every licensed channel turned on and it will not be adequate for this coming winter.) What do you mean by "not adequate"; not as many bars on your phone? (Mr. Kennard: Same bars, but more blocked calls, and slower data rates.)

Mr. Pringle: How come you can't upgrade existing current equipment? (Mr. Kennard: Every licensed frequency is in use at his current site, so that when we build this temporary site, it will pull some traffic from existing site.)

Ms. Dudney: Couldn't we have 2 towers at existing site? (Mr. Kennard: No; proximity is too close.) (Mr. Sherer: This is going to be up for 6-9 months; we are building another site in the spring. This is just a temporary site.) Since you don't have a permanent tower, what can you tell the residents that you won't come back at the end of this permit and say you can't build in another location? (Mr. Sherer: Your approval is only for a year; this will expire, and we can't come back for a renewal.) Well there is concern that you will put it up in this location, your service improves, but you don't have another (permanent) location. (Mr. Sherer: There will be a contract (permit) if you approve this. After that year, you have the right to pull the plug on it. Also, in terms of our site, we don't need two sites. This is not speculative; we aren't making any additional money; if we had known that there would be this kind of opposition, we would have gone somewhere else.)

Mr. Butler: What is holding up the permanent site? (Mr. Sherer: We have been negotiating with the owners and HOA and have worked through all of the major problems, and we are looking to redline a contract. There is a construction period, and we can't build until the spring. We can't build the permanent tower in the winter.)

Mr. Schroder opened the hearing to public comment.

Tom W. Klaus:

I am manager of our family LLC at JAJ Breckenridge at 107 Shadow Mountain Drive. Are you aware of where Breckenridge Village is? (He distributed a plat for location reference.) The site for this project is right in front of the building on the left. I would like to refer you to Staff comments. On page 40, it says that the placement of temporary

structures is strongly discouraged. Section 8 says that temporary structures should only be used to replace a structure on same site. This proposed temporary site and any subsequent site will be different. I see no relevance to the structures at Peak 8; those structures were at the same site. My reading of Section 8 is that it does not apply either. It relates to temporary structures like air structures or tents not designed for commercial use. The tower is obviously a commercial use and does not fall within Section B. The building heights on page 41; Staff states its main issue is with the height. Your prior experience with AT&T at CMC was only a 35ft tower which is significantly smaller than the proposed 65ft. Section D on page 41, states that the Applicant must prove physical hardship. The Applicant can place this tower at any location on the south side of town. Additionally, the Commission must find that it be in general harmony and not in detriment to the neighborhood. Staff says that it is not detrimental. The cell tower will materially hurt property values, block our views and hurt us with physical issues. On behalf of my family, we do not want to look at this tower every day with its magnetic radiation beaming down on us. On Page 2, code recommends residential use not exceeding 2 stories; this is 2 times that height. Staff admits it is not compatible with surrounding neighborhood and cannot be made so. Page 14A states that the Applicant has had slow negotiations with owners and locations. Admittedly more preferable locations and it is not our fault that they are not going as they would have them. Customers are not the appropriate party for hardship; Section 14B Staff acknowledges that the tower is taller than allowed but will not have impact on view. I strongly disagree with this. Section 15c, I disagree that the temporary use will not be detrimental to neighborhood. I have pointed out several areas in our code where this is in violation and respectfully request that you do not approve this. I have several letters from other owners in the neighborhood and will give you a copy. (Ms. Dudney: How many letters do you have?) At least 12 plus 7; well over half the neighborhood. (Mr. Schroder: Clarification. The original application was 60ft, but this submittal is 42 or so feet.) (Mr. Neubecker: They changed it to 60 feet, and now the application is for 42.6’.)

Eben Clark, Attorney representing Placer Ridge HOA in the 500 block directly adjacent to proposed site:
The real issue for the Commission is the variance; this application doesn't meet a single one of the criteria. Another aspect is that the fact that the code doesn't contemplate this type of development. Doesn't really fit into the code of temporary structures; in a more character related. This is not complimentary to historical assets. My final broader point is the slippery slope point; many other counties have a full deck of regulations that deal with these issues; if this is done half way now, the next applicant will be able to slide in as well. Coming back to temporary structure, it is strongly discouraged. The code doesn't address it at all, you can't allow it. For the present application, the Satellite Earth Station Policy 41 is more applicable. No antenna should exceed 20 feet in height, visual impacts fully screened, and even though now Verizon is receding the antenna it really can't be done flush. A variance is undue hardship based on aspects of that specific lot. On these subject properties, everything around this tower is very low. They have not shown undue hardship. Cost or inconvenience shall not be the reason for the variance. Economic negotiation is not a criterion in which to vary your code. I've been told by my clients with Verizon that their service is fine. This is not undue hardship. They can improve when they can meet standards of code. Height is still 3.5 times what is permitted in this area. I would ask if there is going to be a backup generator on this site. When that kicks on it is like a jackhammer. This will have security lights, will this be lit up high, it will generate noise pollution, red lights for airlines; the electromagnetic radiation have everyone concerned. This is on a site adjacent to my client. Staff acknowledges that there are other sites. Lower sites in multiple locations. If there is an alternative, a variance is not appropriate and economics are not a reason to grant a variance. What other alternatives has the Applicant tried? Stealthing? Monopine? If the Commission is predisposed to granting this, conditions could change to fit well into approval. Harmony with the neighborhood; this is industrial looking close to historic transition zone. There are flag pole configurations that can do the same thing for stealthing and less like a tower. Consider the visitors to this resort area and you should be mindful of that. The satellite earth station policies would require a much higher level of stealthing. If the Commission is going to consider this, we would request strict language about removal with no extensions. In addition, the policy regarding temporary structures; a bond is stated as a requirement for approval and additionally that there be no generations on site. (Mr. Neubecker: It seems like we are going to get most of the public saying the same thing; let's do a show of hands to see if anyone would approve it, or etc. Would rather not spend another hour taking comment that is all the same. I can see where this is heading.)

Monique Melhauser, 81 Deep Powder Circle:

My husband and I along with our neighbors oppose this tower. Here are 8 additional letters from neighbors. Some may have been sent already, and here are some more sent today. We have the same concerns: the height variance; the existing building is currently 25 feet and the 42.6 feet is much higher and clearly visible. There are homes directly behind it. We ask you to think about the place you call home in Summit; would you allow such in your neighborhood? Would you be concerned with the precedent set with this decision? I am a Verizon customer and have never had any service issues.

Michael Rob, Larkin Management for owners at 517 and 515 South French street and for myself:

My client's lots look directly down on that old lodge and onto that tower. We rent these out to short term renters who come back every year and that they would be very disappointed. If we do this for Verizon, AT&T and all of the other phone companies will be able to do it. It is not acceptable in this area.

Shawna Weinstein, 111 Shadow Mountain:

We are directly behind proposed site; as it is now at 26 feet, you can see the roof line of the lodge; we could obviously see the tower. We have 2 small children who would pass that tower on a daily basis without any set information on what the exposure would be to that. Our deck looks at that mountain and the tower site and we do rent it out, and this would affect that. It would affect our selling our home in the future if it stays there; it puts a cloud on why we bought this home.

Dennis Kraft, 84 Powder Circle:

There is a variance issue; undue hardship is not met; no other viable economic alternatives; I don't believe that. I believe that there are other options; no negative aesthetic affects, this is surrounded by three subdivisions.

Jeff Klaus, 107 Shadow Mountain:

I am President of Ski Village Resorts; we manage 105 properties in town. I have letters from two owners, which are within the 100-200 feet zone around this proposed tower: Kirk Mallense at 512 South Ridge Street, and Doctor James Hauer. My bedroom window will be within 150 feet range from this tower along with my 15 month daughter. I don't want to expose her to this tower.

Jeanie Gurten 132 Powder Ridge:

I agree with the opposition; we really think that there are alternative sites to this.

Linda Kraft, 84 Deep Powder Circle:

People say to me, why do you want to live in Breckenridge where the Town codes are so strict? That's why. You do a great job of upholding the code. I would hate for you to start a precedent of not upholding the code.

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

Commissioner Final Comments:

Mr. Pringle: There were no negative points associated the height; why? (Mr. Neubecker: I think the code is not written for this, and does not work well for temporary uses. Many policies are not applicable.)

Mr. Schroder: Page 43 under Staff recommendation; we have been asked to consider what information could we give to the Applicant to make it work? (Mr. Neubecker: If it's the height, Applicant can try to address it; they could consider multiple locations, if we can get feedback, please give it. This gives the Applicant a chance to go one way or another.)

Mr. Mamula: Historically I was on Council when the COW (Cell on Wheels) came through; people came and supported it were AT&T customers; in the end the people that were affected, it was detrimental to the people around that site. I don't think that there has been enough proof that this site is better than another site. This one is taller; no proof that it will be quieter; the Council was strong armed

into an extension so it is what we are worried about. I would deny this based on the language ‘may’ rather than ‘shall’; it says in the code that the word shall is mandatory and may is permissive. If we have to move onto the various criteria, this doesn’t meet any of the four points of the criteria. Anybody should be able to build anything at any time because no one caused the problems with their lots, etc. You can bring more information or find a better location not so near residential. I know that there are too many people that this will affect. I don’t hear an outcry that this will do anything for our community.

Ms. Christopher: I’m going to echo that; if it were a 3 ½ stories in a 3 ½ story neighborhood, but you still have the noise and danger that neighbors are concerned about. We need to try and cater to people here and place industrial type structures out of site.

Mr. Butler: If this had been a few other places in mind, I would have felt better. I keep going back to the negotiation part; it’s not going to make a lot of people happy. The answer is a permanent tower, and it’s going to cause a lot of trouble. Not much undue hardship. I am against it.

Mr. Schroder: Temporary structure are not designed for commercial and height; variance criteria, and general harmony, and on that note I will not be able to support a variance.

Mr. Lamb: This is clearly commercial; it doesn’t qualify for A or for B; I don’t know what would work but there are way too many people affected; we don’t know the affects of radio frequency. I would be hesitant to live there. The Harris Street tower for AT&T was put in my neighborhood; the people that I spoke with said that it was a disaster; it was loud, ugly, there too long, and I thought that that was the last one we would see. This might work somewhere else, but this is clearly not the place for it.

Mr. Pringle: I don’t believe that the temporary structure policy is good to use for this application; you can’t use any of the bulleted items with it. The other criteria within the code talks about replacing a permanent structure with a temporary one which doesn’t fit, it’s a stretch of use. I am less driven by the ‘not in my neighborhood’ but we have to look at this as code. I have the question as to whether or not this is utility or business. I am coming down to the fact that this is a business. We shouldn’t be granting variances to improve their business. It’s not an undue hardship. I don’t think it meets any variance criteria and the best thing would be to work somewhere else. I am not in favor of the variance. And maybe we need a code change.

Ms. Dudney: I agree with all of my fellow Commissioners. I don’t think anyone has a right to a variance. The people have a right to depend on consistent adherence to the code. If anyone requests a variance, I am going to place heavy weight on that.

Mr. Mamula made a motion to deny the Verizon Wireless Temporary Communications Facility, PC#2012079, 600 South Ridge Street, for failing to meet the variance criteria. Ms. Christopher seconded, and the motion was carried unanimously (7-0).

Commissioners stated that the Applicants could come back with a different location with same design. The Applicants said that this is what they would like to do. Mr. Neubecker clarified that they need to submit a new application on a new location.

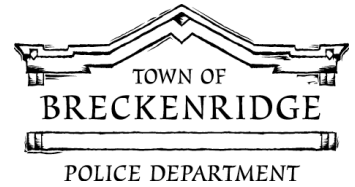
OTHER MATTERS:

The Field trip to Steamboat Springs is scheduled for October 17, 2012. We aim to depart at 7am from Breckenridge. Meet with Planning Staff, and Steamboat Springs Ski and Resort Corporation staff.

ADJOURNMENT:

The meeting was adjourned at 8:30 p.m.

Dan Schroder, Chair



MEMORANDUM

To: Mayor and Town Council
From: Shannon Haynes, Chief of Police
Date: October 3, 2012
Subject: Unlawful Acts on National Forest System Land Ordinance – 2nd Reading

This ordinance is scheduled for second reading on October 9, 2012. Based on comments received, a minor change was made since the first reading of the ordinance. The proposed ordinance was changed to add a requirement that work or service be provided for payment in order for the action to be a violation. Staff believes this change will address a specific concern we heard from the Council and the community.

At Council's request staff surveyed other ski resort locales to determine how other areas handle complaints of this type. Staff received the following feedback:

- Jill Wick, USFS LEO for Eagle and Summit Counties – Wick indicated that she is not aware of any municipalities with an illegal ski instructor ordinance. She stated she would be in favor of Breckenridge enacting an ordinance. In Vail, enforcement is handled by the USFS or by the Eagle County Sheriff's Office through the use of a trespass law. In cases of trespass, the Sheriff's Office provides a warning to the illegal instructor notifying him/her that they are not welcome on the ski area property. If the person returns to the property they are charged with trespassing.
- Sgt. Brian Olson, Snowmass Village Police – There is no ordinance in place in Snowmass. They do respond to calls of illegal instructors and they have officers on the mountain seven days per week. Olson stated they have referred several cases to the USFS LEO for enforcement. In other cases, they have trespassed illegal instructors the first time they are caught, and then charged them with trespassing if they returned. While Snowmass has not considered a local ordinance, they are interested in how Breckenridge moves forward.
- Sgt. Bill Lynn, Aspen Police – The Pitkin Sheriff's Office and USFS handle most illegal instructors as the base areas are in unincorporated county. Lynn stated the Sheriff's Office trespasses illegal instructors, and then charges them with trespassing if they return.
- Jim Kershner, Head of Ski School at Beaver Creek – Kershner reported that his staff coordinates the internet tracking of illegal ski instructors on Craigslist for all the Vail Resorts ski areas. On average they locate 4-6 illegal ads per week and 6-8 ads per week before holidays and 3 day weekends. In those ads, individuals are offering bootleg lessons at Vail Resorts ski areas. When Kershner's staff finds an on-line ad, they contact Craigslist to have the ad removed based on the fact that it promotes illegal activity. Often times the illegal instructor places a second or third ad on Craigslist. When that occurs, the ski area attempts to identify the instructor and warn him/her. They may pull the individual's pass or initiate a "sting". Kershner related an incident at Beaver Creek in which an illegal ski instructor left an injured client alone on the slope so he would not be caught.

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

2
3 Additions To The Ordinance As Approved on First Reading Are
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. 28

7
8 Series 2012

9
10 AN ORDINANCE AMENDING CHAPTER 3H OF TITLE 6 OF THE BRECKENRIDGE
11 TOWN CODE BY ADOPTING PROVISIONS CONCERNING THE MUNICIPAL OFFENSE
12 OF “UNLAWFUL ACTS ON NATIONAL FOREST SERVICE LAND”

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

16
17 Section 1. Chapter 3H of Title 6 of the Breckenridge Town Code is amended by the
18 addition of a new Section 6-3H-10, which shall read in its entirety as follows:

19
20 6-3H-10: UNLAWFUL ACTS ON NATIONAL FOREST SERVICE LAND:

21
22 A. It is unlawful and a misdemeanor offense for any person to offer to conduct or
23 perform any kind of work activity or service **for a monetary consideration** on
24 National Forest System land unless such person is authorized to conduct such
25 work activity or service by federal law, regulation, or special-use authorization.

26
27 B. As used in this Section “National Forest System land” has the meaning
28 provided in 36 C.F.R. Section 212.1.

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

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

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

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 29 (Harris Residence Landmarking Ordinance)
DATE: September 27, 2012 (for October 9th meeting)

The second reading of the ordinance designating the Harris residence at 206 South French Street as a landmark under the Town's Historic Preservation Ordinance is scheduled for your meeting on October 9th. There are no changes proposed to ordinance from first reading.

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

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

2
3 **NO CHANGE FROM FIRST READING**

4
5 COUNCIL BILL NO. 29

6
7 Series 2012

8
9 AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK
10 UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE

11 (Lots 7 and 8, Block 5, Abbetts Addition)

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

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

18
19 A. Anthony Harris and Ann Harris own the hereinafter described real property.
20 Such real property is located within the corporate limits of the Town of Breckenridge,
21 County of Summit and State of Colorado.

22
23 B. Anthony Harris and Ann Harris filed an application with the Town pursuant
24 to Chapter 11 of Title 9 of the Breckenridge Town Code seeking to have the Town
25 designate the hereinafter described real property as a landmark (“**Application**”).

26
27 C. The Town followed all of procedural requirements of Chapter 11 of Title 9 of
28 the Breckenridge Town Code in connection with the processing of the Application.

29
30 D. The improvements located on hereinafter described real property are more
31 than fifty (50) years old.

32
33 E. The hereinafter described real property meets the “architectural” designation
34 criteria for a landmark as set forth in Section 9-11-4(A)(1)(a) of the Breckenridge Town
35 Code because the property:

- 36
37 (i) exemplifies specific elements of architectural style or period;
38 (ii) is of a style particularly associated with the Breckenridge area; and
39 (iii) is a significant historic remodel.

40
41 F. The hereinafter described real property meets the “physical integrity” criteria
42 for a landmark as set forth in Section 9-11-4(A)(3) of the Breckenridge Town Code
43 because:

- 44
45 (i) the property retains original design features, materials and/or character;

- 1 (ii) the structure on the property is on its original location or is in the same
2 historic context after having been moved; and
3 (iii) the structure on the property has been accurately reconstructed or restored
4 based on documentation.
5

6 G. In accordance with the requirements of Section 9-11-3(B)(3) of the
7 Breckenridge Town Code, on June 19, 2012 the Application was reviewed by the
8 Breckenridge Planning Commission. On such date the Planning Commission
9 recommended to the Town Council that the Application be granted.
10

11 H. The Application meets the applicable requirements of Chapter 11 of Title 9 of
12 the Breckenridge Town Code, and should be granted without conditions.
13

14 I. Section 9-11-3(B)(4) of the Breckenridge Town Code requires that final
15 approval of an application for landmark designation under Chapter 11 of Title 9 of the
16 Breckenridge Town Code be made by ordinance duly adopted by the Town Council.
17

18 Section 2. Designation of Property as Landmark. The following described real
19 property:
20

21 Lots 7 and 8, Block 5, Abbett Addition to the Town of Breckenridge, as shown on
22 the filed plat thereof; commonly known and described as 206 South French Street,
23 Breckenridge, Colorado
24

25 is designated as a landmark pursuant to Chapter 11 of Title 9 of the Breckenridge Town
26 Code.
27

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

33 Section 4. Town Authority. The Town Council finds, determines, and declares that it has
34 the power to adopt this ordinance pursuant to the authority granted to home rule municipalities
35 by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
36 Charter.
37

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

41 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
42 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
43 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
44 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
45 Town.
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 30 (Restitution Ordinance)
DATE: September 27, 2012 (for October 9th meeting)

The second reading of the new Restitution Ordinance is scheduled for your meeting on --- October 9th. There are no changes proposed to ordinance from first reading.

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

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

2
3 **NO CHANGE FROM FIRST READING**

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

8
9 COUNCIL BILL NO. 30

10
11 Series 2012

12
13 AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE CONCERNING
14 RESTITUTION TO BE AWARDED TO VICTIMS OF CRIMES

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

18
19 Section 1. Section 1-4-3 of the Breckenridge Town Code is amended to read in its
20 entirety as follows:

21
22 1-4-3: RESTITUTION:

23
24 ~~A defendant who has been adjudged guilty or against whom a judgment has been entered for~~
25 ~~violating any ordinance of the town may be required, so far as possible and upon such reasonable~~
26 ~~terms as the municipal court may impose, to make restitution or reparation to any aggrieved~~
27 ~~person for any actual damage or loss caused by the offense or infraction for which the conviction~~
28 ~~or judgment of liability was had.~~

29
30 **A. The Town Council finds and declares that:**

- 31
32 **1. Crime victims endure undue suffering and hardship resulting from physical**
33 **injury, emotional and psychological injury, or loss of property;**
34
35 **2. Persons found guilty of causing such suffering and hardship should be under**
36 **a moral and legal obligation to make full restitution to those harmed by their**
37 **misconduct;**
38
39 **3. The payment of restitution by criminal offenders to their victims is a**
40 **mechanism for the rehabilitation of offenders;**
41

RESTITUTION ORDINANCE

- 1 **4. Restitution is recognized as a deterrent to future criminality;**
2
3 **5. An effective criminal justice system requires timely restitution to victims of**
4 **crime and to members of the immediate families of such victims in order to**
5 **lessen the financial burdens inflicted upon them, to compensate them for**
6 **their suffering and hardship, and to preserve the individual dignity of**
7 **victims;**
8
9 **6. The purposes of this Section is to provide for and collect full restitution for**
10 **victims of those municipal ordinance offenses that are under the jurisdiction**
11 **of the Town’s municipal court in the most expeditious manner.**
12

13 **B. It is the intent of the Town Council that restitution be ordered, collected, and**
14 **disbursed to the victims of crime and their immediate families. Such restitution will**
15 **aid the offender in reintegration as a productive member of society. This Section**
16 **shall be liberally construed to accomplish all such purposes.**
17

18 **C. As used in this Section, unless the context otherwise requires:**
19

- 20 **1. “Conviction” means a verdict of guilty by a judge or jury or a plea of guilty**
21 **or nolo contendere that is accepted by the municipal court for any municipal**
22 **ordinance offense. “Conviction” also includes having received a deferred**
23 **judgment and sentence; except that a person shall not be deemed to have**
24 **been convicted if the person has successfully completed a deferred sentence.**
25
26 **2. “Money advanced by a governmental agency for a service animal” means**
27 **costs incurred by a peace officer, law enforcement agency, fire department,**
28 **fire protection district, or governmental search and rescue agency for the**
29 **veterinary treatment and disposal of a service animal that was harmed while**
30 **aiding in official duties and for the training of an animal to become a service**
31 **animal to replace a service animal that was harmed while aiding in official**
32 **duties, as applicable.**
33
34 **3. “Money paid by the Town in connection with the defendant’s arrest or**
35 **incarceration” means all money paid by the Town to the Summit County**
36 **Sheriff, or any other person or governmental entity, in connection with the**
37 **defendant’s arrest, booking, incarceration, care while incarcerated, or**
38 **safekeeping in a detoxification center or otherwise. Such term also includes,**
39 **all money paid by the Town for the care and treatment of a defendant’s**
40 **animal, and the care of a defendant’s property.**
41
42 **4. “Municipal court” or “court” means the municipal court of the Town of**
43 **Breckenridge.**

RESTITUTION ORDINANCE

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
5. “Municipal ordinance offense” means a violation of this Code, or any code adopted by reference in this Code, for which a penalty is provided.
6. “Person” means any public or private corporation, firm, partnership, limited liability entity of any kind, association, organization, municipality, county, special district, state, or other governmental entity, or any other group acting as a unit, as well as a natural person.
7. “Proximately caused” means a cause which in the natural and probable sequence produced the claimed injury and without which the claimed injury would not have been sustained.
8. (a) “Restitution” means any pecuniary loss suffered by a victim and includes but is not limited to all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, money advanced by law enforcement agencies, money advanced by a governmental agency for a service animal, adjustment expenses, and other losses or injuries proximately caused by an offender’s conduct and that can be reasonably calculated and recompensed in money. “Restitution” does not include damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages.
- (b) “Restitution” may also include extraordinary direct public and all private investigative costs.
- (c) “Restitution” shall also include all costs incurred by a government agency or private entity to:
- i. Remove, clean up, or remediate a place used to manufacture or attempt to manufacture a controlled substance or which contains a controlled substance or which contains chemicals, supplies, or equipment used or intended to be used in the manufacturing of a controlled substance;
 - ii. Store, preserve, or test evidence of a controlled substance violation; or
 - iii. Sell and provide for the care of and provision for an animal disposed of under any applicable animal cruelty law.

RESTITUTION ORDINANCE

1 Costs under this subsection shall include, but are not limited to, overtime
2 wages for peace officers or other government employees, the operating
3 expenses for any equipment utilized, and the costs of any property designed
4 for one-time use, such as protective clothing.

5
6 (d) If a loss claimed is not specifically mentioned in this Section it must be a
7 loss that was proximately caused by the defendant's conduct.

8
9 9. "Service animal" means any animal, the services of which are used to aid the
10 performance of official duties by a peace officer, law enforcement agency,
11 fire department, fire protection district, or governmental search and rescue
12 agency.

13
14 10. (a) "Victim" means any person aggrieved by the conduct of an offender and
15 includes but is not limited to the following:

16
17 i. Any person against whom any municipal ordinance offense has been
18 perpetrated or attempted;

19
20 ii. Any person harmed by an offender's criminal conduct in the course of
21 a scheme, conspiracy, or pattern of criminal activity;

22
23 iii. Any person who has suffered losses because of a contractual
24 relationship with, including but not limited to an insurer, or because
25 of liability under Section 14-6-110, C.R.S., for a person described in
26 subsection (i) or (ii) of this subsection (a);

27
28 iv. Any victim compensation board that has paid a victim compensation
29 claim;

30
31 v. If any person described in subsection (i) or (ii) of this subsection (a) is
32 deceased or incapacitated, the person's spouse, parent, legal guardian,
33 natural or adopted child, child living with the victim, sibling,
34 grandparent, significant other, as defined in Section 24-4.1-302(4),
35 C.R.S., or other lawful representative;

36
37 vi. Any person who had to expend resources for the purposes described
38 in subsection 7(c) of this Section.

39
40 (b) "Victim" shall not include a person who is accountable for the crime or a
41 crime arising from the same conduct, criminal episode, or plan under this
42 Code.

43
RESTITUTION ORDINANCE

1 (c) Any “victim” under the age of eighteen is considered incapacitated,
2 unless that person is legally emancipated or the court orders otherwise.

3
4 (d) It is the intent of the Town Council that this definition of the term
5 “victim” shall apply to this Section and shall not be applied to any other
6 municipal ordinance that refers to the term “victim”.

7
8 D. Every order of conviction of a municipal ordinance offense shall include
9 consideration of restitution. Each such order shall include one or more of the
10 following:

- 11 1. An order of a specific amount of restitution be paid by the defendant;
- 12 2. An order that the defendant is obligated to pay restitution, but that the
13 specific amount of restitution shall be determined within the ninety-one days
14 immediately following the order of conviction, unless good cause is shown for
15 extending the time period by which the restitution amount shall be
16 determined;
- 17 3. An order, in addition to or in place of a specific amount of restitution, that
18 the defendant pay restitution covering the actual costs of specific future
19 treatment of any victim of the crime; or
- 20 4. Contain a specific finding that no victim of the crime suffered a pecuniary
21 loss and therefore no order for the payment of restitution is being entered.

22
23
24
25
26
27 E. Every order of restitution shall include an order that the defendant repay to the
28 Town all money paid by the Town in connection with the defendant’s arrest or
29 incarceration.

30
31 F. The municipal court shall base its order for restitution upon information presented
32 to the court by the prosecuting attorney, who shall compile such information
33 through victim impact statements or other means to determine the amount of
34 restitution and the identities of the victims. Further, the prosecuting attorney shall
35 present this information to the court prior to the order of conviction or within
36 ninety-one days, if it is not available prior to the order of conviction. The court may
37 extend this date if it finds that there are extenuating circumstances affecting the
38 prosecuting attorney’s ability to determine restitution.

39
40 G. Any order for restitution may be:
41

1 **1. Increased if additional victims or additional losses not known to the judge or**
2 **the prosecuting attorney at the time the order of restitution was entered are**
3 **later discovered and the final amount of restitution due has not been set by**
4 **the court; or**

5
6 **2. Decreased:**

7
8 **a. With the consent of the prosecuting attorney and the victim or victims**
9 **to whom the restitution is owed; or**

10
11 **b. If the defendant has otherwise compensated the victim or victims for**
12 **the pecuniary losses suffered.**

13
14 **H. If more than one defendant owes restitution to the same victim for the same**
15 **pecuniary loss, the orders for restitution shall be joint and several obligations of the**
16 **defendants.**

17
18 **I. Any amount paid to a victim under an order of restitution shall be set off against**
19 **any amount later recovered as compensatory damages by such victim in any federal**
20 **or state civil proceeding.**

21
22 **J. When a person's means of identification or financial information was used without**
23 **that person's authorization in connection with a conviction for any crime, the**
24 **municipal court may issue such orders as are necessary to correct a public record**
25 **that contains false information resulting from any violation of such laws.**

26
27 **K. (1) Notwithstanding the provisions of Section D of this Section, the municipal court**
28 **shall order restitution concerning only the portion of the victim's pecuniary loss for**
29 **which the victim cannot be compensated under a policy of insurance, self-**
30 **insurance, an indemnity agreement, or a risk management fund.**

31
32 **(2) The court, in determining the restitution amount, shall consider whether the**
33 **defendant or the vehicle driven by the defendant at the time of the offense was**
34 **covered by:**

35
36 **a. A complying policy of insurance or certificate of self-insurance as**
37 **required by the laws of the State of Colorado;**

38
39 **b. Self-insurance, including but not limited to, insurance coverage**
40 **pursuant to the provisions of part 15 of article 30 of title 24, C.R.S.; or**
41

1 c Any other insurance or indemnity agreement that would indemnify
2 the defendant for any damages sustained by the victim.

3
4 (3)(a) Except as otherwise provided in this subsection (a), the municipal court may
5 not award restitution to a victim concerning a pecuniary loss for which the victim
6 has received or is entitled to receive benefits or reimbursement under a policy of
7 insurance or other indemnity agreement.

8
9 (b) The municipal court may award a victim restitution for a deductible amount
10 under his or her policy of insurance.

11
12 (c) Nothing in this subsection (d) shall prohibit a nonowner driver or passenger in
13 the vehicle from being awarded restitution if the driver or passenger was not
14 covered by his or her own medical payments coverage policy.

15
16 (d) Nothing in this Section shall be construed to limit or abrogate the rights and
17 immunities set forth in the “Colorado Governmental Immunity Act”, Article 10 of
18 Title 24, C.R.S.

19
20 L. The prosecuting attorney must establish by a preponderance of the evidence the
21 amount of restitution owed.

22
23 M. The municipal court may not order restitution without a hearing at which the
24 prosecution must prove the amount of the victim’s loss and its causal link to the
25 defendant’s conduct, and at which the defendant may contest those matters.

26
27 N. A victim’s confidential medical and mental health records in the possession of the
28 prosecuting attorney as part of a victim’s impact statement or for restitution
29 purposes shall not be provided to the defendant without an in-camera review of the
30 records by the municipal judge. To obtain an in-camera review of a victim’s
31 confidential medical or mental health records a defendant must show:

- 32
33 1. that his or her request is not speculative; and
34 2. that an evidentiary hypothesis warrants in-camera review because such
35 documents would tend to disprove all or part of the prosecuting attorney’s
36 restitution request on the basis that the requested amounts were not
37 proximately caused by the defendant’s conduct, or that such documents are
38 otherwise relevant to the criminal allegations pending against the defendant.

39
40 An in-camera review conducted under this Section means a review conducted solely
41 by the municipal judge in his or her chambers.

42
43 Section 2. Section 6-3-4 of the Breckenridge Town Code is repealed.

RESTITUTION ORDINANCE

1
2 Section 3. Section 6-3D-10(B) of the Breckenridge Town Code is repealed.

3
4 Section 4. Section 9-1-6(D)(6) of the Breckenridge Town Code is amended to read in its
5 entirety as follows:

6
7 Upon conviction for any violation of this chapter the ~~court shall require restitution~~
8 ~~pursuant to section 1-4-3 of this code if appropriate~~ **the requirements of Section**
9 **1-4-3 of this Code concerning restitution shall apply.**

10
11 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the
12 various secondary codes adopted by reference therein, shall continue in full force and effect.

13
14 Section 6. The Town Council hereby finds, determines and declares that this ordinance is
15 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
16 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
17 thereof.

18
19 Section 7. The Town Council hereby finds, determines and declares that it has the power
20 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
21 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

22
23 Section 8. This ordinance shall be published and become effective as provided by
24 Section 5.9 of the Breckenridge Town Charter.

25
26 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
27 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
28 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
29 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
30 Town.

31
32 TOWN OF BRECKENRIDGE, a Colorado
33 municipal corporation

34
35
36
37 By _____
38 John G. Warner, Mayor
39
40

RESTITUTION ORDINANCE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57

ATTEST:

Town Clerk

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen, Town Manager
DATE: October 3, 2012
SUBJECT: Committee Reports for 10-9-2012 Council Packet

The following committee reports were submitted by Town Employees and/or the Town Manager:

Summit Stage Advisory Board Meeting	September 26, 2012	James Phelps
--	---------------------------	---------------------

- John Jones reported under old business that the Stage has been able to reduce the Bus Fleet from a total of 33 buses to 28 buses. The reduction of 'spare' buses is due to improved Fleet Maintenance Services. Additionally, the Summit Stage will be receiving (8) 40' buses from the defunct Colorado Springs FREX System. These buses will cost the Stage \$28K each. This purchase will have positive impact to the capital & operational budgets of the Stage for the next 7.5 years. The buses are expected to be in service by December 01.
- 'Directors Report' there was continued positive increase in Ridership for the August period. For the report all categories saw positive ridership increase. Mass Transit Tax collections were up for the Fourth straight month.
- Total Ridership for August 2012: increase of 6.46% over 2011. Para transit Ridership for August 2012: increase of 3.37% over 2011. Late Night Ridership for August 2012: increase of 23.0% over 2011. Lake County August Ridership: increase of 24.35% over 2011. Mass Transit Tax Collections for July 2012 were up 7.0% over 2011. Actual YTD tax collection is up 3.1%

Committees	Representative	Report Status
CAST	Mayor Warner	Verbal Report
CDOT	Tim Gagen	No Meeting/Report
CML	Tim Gagen	No Meeting/Report
I-70 Coalition	Tim Gagen	No Meeting/Report
Mayors, Managers & Commissions Meeting	Mayor Warner	Verbal Report
Summit Leadership Forum	Tim Gagen	No Meeting/Report
Liquor Licensing Authority*	Mistaya Pierpont	No Meeting/Report
Wildfire Council	Matt Thompson	No Meeting/Report
Public Art Commission*	Jenn Cram	No Meeting/Report
Summit Stage Advisory Board*	James Phelps	Included
Police Advisory Committee	Chief Haynes	No Meeting/Report
Housing/Childcare Committee	Laurie Best	Verbal Report
CMC Advisory Committee	Tim Gagen	No Meeting/Report

Note: Reports provided by the Mayor and Council Members are listed in the council agenda.

* Minutes to some meetings are provided in the Manager's Newsletter.

FINANCIAL MEMORANDUM

TO: TIM GAGEN, TOWN MANAGER; RICK HOLMAN, ASSISTANT TOWN MANAGER
FROM: CLERK AND FINANCE DIVISION
SUBJECT: AUGUST NET TAXABLE SALES & SEPTEMBER RETT REPORTING
DATE: 10/3/2012

This memo explains significant items of note in relation to sales that occurred within the Town of Breckenridge in the month of August. Real Estate Transfer Tax, including an analysis of the monthly “churn” and sales by property type, is also included.

New Items of Note:

Net Taxable Sales

- As in July, overall August net taxable sales tracked quite well for a summer month and are currently ahead of 2011 by 6.2%. More importantly, we exceeded 2007 sales, with the most August sales on record.
- All categories, with the exception of Retail, Supplies and Utilities, had the best August sales on record.
- In the Supplies category, while we remain below 2005 #s, year-to-date figures are now ahead of 2010 and 2011.

Real Estate Transfer Tax

- Collections for the month of September surpassed prior year by 12.5% (yet, still below 2007 by 56.3%), but we came in at only 88.6% of budget.
- YTD collections are still behind PY – currently by 20.2%. However, this is in line with our budget prediction; we are ahead of YTD budget – at 102%.
- We continue to exceed the prior year churn (5 months in a row). Additionally, we are now ahead of prior year churn.
- Vacant Land has tracked quite impressively for most of 2012.
- Single Family homes and Condos continue to comprise the majority of the sales.

Continuing Items of Note:

- Net Taxable Sales are reported in the first Council meeting following the due date of the tax remittance to the Town of Breckenridge. Taxes collected from the customer by the vendor are remitted to the Town on the 20th of the following month.
- Quarterly taxes are reported in the last month of the period. For example, taxes collected in the first quarter of the year (January – March), are include on the report for the period of March.

- Net Taxable Sales are continually updated as late tax returns are submitted to the Town of Breckenridge. Therefore, you may notice slight changes in prior months, in addition to the reporting for the current month.
- 2012 Real Estate Transfer Tax budget is based upon the monthly distribution for 2007. The reasoning is that we should compare to a year with a “normal distribution.”

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

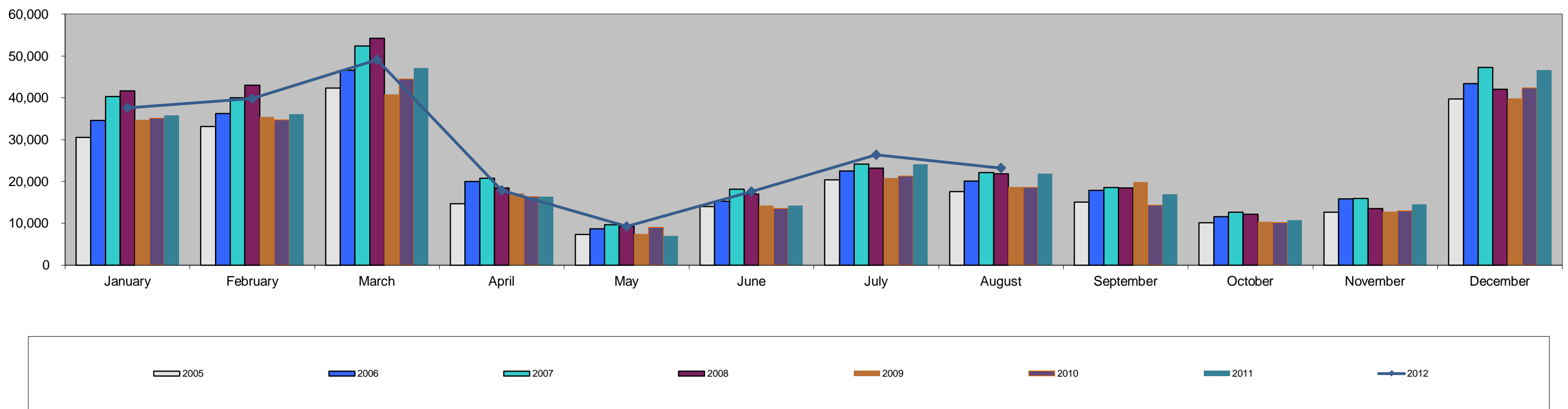
(in Thousands of Dollars)

* excluding Undefined and Utilities categories

Total - All Categories*

	Actual 2005	YTD 2005	Actual 2006	YTD 2006	Actual 2007	YTD 2007	Actual 2008	YTD 2008	Actual 2009	YTD 2009	Actual 2010	YTD 2010	Actual 2011	YTD 2011	Actual 2012	YTD 2012	Monthly 11-12	YTD % Change 11-12
January	30,549	30,549	34,589	34,589	40,283	40,283	41,665	41,665	34,783	34,783	35,105	35,105	35,805	35,805	37,642	37,642	5.1%	5.1%
February	33,171	63,720	36,236	70,825	40,034	80,317	43,052	84,717	35,453	70,236	34,791	69,896	36,128	71,933	39,799	77,441	10.2%	7.7%
March	42,370	106,090	46,603	117,428	52,390	132,707	54,237	138,954	40,810	111,046	44,485	114,381	47,101	119,034	49,134	126,575	4.3%	6.3%
April	14,635	120,725	19,963	137,391	20,758	153,465	18,483	157,437	17,171	128,217	16,346	130,727	16,371	135,405	17,870	144,445	9.2%	6.7%
May	7,355	128,080	8,661	146,052	9,629	163,094	9,251	166,688	7,475	135,692	8,999	139,726	6,976	142,381	9,248	153,693	32.6%	7.9%
June	14,043	142,123	15,209	161,261	18,166	181,260	16,988	183,676	14,286	149,978	13,557	153,283	14,235	156,616	17,578	171,271	23.5%	9.4%
July	20,366	162,489	22,498	183,759	24,168	205,428	23,160	206,836	20,788	170,766	21,346	174,629	24,134	180,750	26,385	197,656	9.3%	9.4%
August	17,625	180,114	20,071	203,830	22,125	227,553	21,845	228,681	18,656	189,422	18,603	193,232	21,878	202,628	23,232	220,888	6.2%	9.0%
September	15,020	195,134	17,912	221,742	18,560	246,113	18,481	247,162	19,806	209,228	14,320	207,552	16,969	219,597	0	220,888	n/a	n/a
October	10,170	205,304	11,544	233,286	12,687	258,800	12,120	259,282	10,410	219,638	10,226	217,778	10,740	230,337	0	220,888	n/a	n/a
November	12,647	217,951	15,877	249,163	15,943	274,743	13,483	272,765	12,809	232,447	12,985	230,763	14,549	244,886	0	220,888	n/a	n/a
December	39,687	257,638	43,431	292,594	47,258	322,001	42,076	314,841	39,859	272,306	42,343	273,106	46,651	291,537	0	220,888	n/a	n/a
Totals	257,638		292,594		322,001		314,841		272,306		273,106		291,537		220,888			

2012 Monthly Sales Tax Activity (in thousands of dollars)



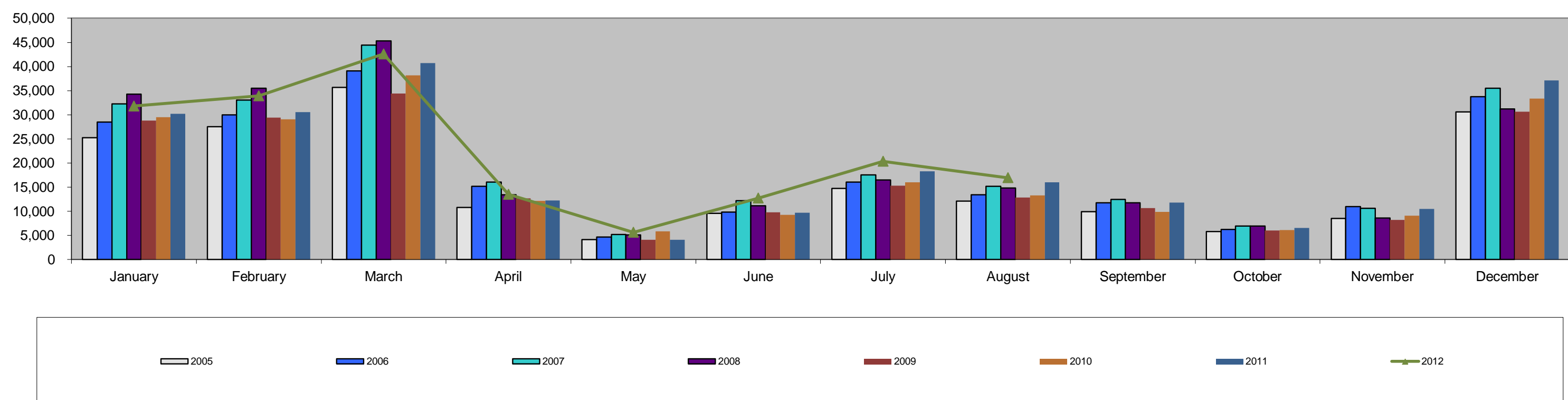
**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail-Restaurant-Lodging Summary

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD % Change 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	25,240	25,240	28,528	28,528	32,258	32,258	34,290	34,290	28,802	28,802	29,538	29,538	30,174	30,174	31,808	31,808	5.4%	5.4%
February	27,553	52,793	29,972	58,500	33,039	65,297	35,511	69,801	29,401	58,203	29,090	58,628	30,504	60,678	33,927	65,735	11.2%	8.3%
March	35,705	88,498	39,051	97,551	44,390	109,687	45,338	115,139	34,428	92,631	38,136	96,764	40,676	101,354	42,611	108,346	4.8%	6.9%
April	10,773	99,271	15,134	112,685	16,025	125,712	13,410	128,549	12,653	105,284	12,154	108,918	12,281	113,635	13,522	121,868	10.1%	7.2%
May	4,179	103,450	4,647	117,332	5,146	130,858	5,111	133,660	4,125	109,409	5,836	114,754	4,082	117,717	5,660	127,528	38.7%	8.3%
June	9,568	113,018	9,789	127,121	12,225	143,083	11,112	144,772	9,829	119,238	9,302	124,056	9,713	127,430	12,748	140,276	31.2%	10.1%
July	14,766	127,784	16,038	143,159	17,499	160,582	16,446	161,218	15,305	134,543	15,993	140,049	18,296	145,726	20,373	160,649	11.4%	10.2%
August	12,122	139,906	13,446	156,605	15,167	175,749	14,815	176,033	12,859	147,402	13,261	153,310	16,010	161,736	16,970	177,619	6.0%	9.8%
September	9,897	149,803	11,761	168,366	12,418	188,167	11,794	187,827	10,705	158,107	9,894	163,204	11,834	173,570	0	177,619	n/a	n/a
October	5,824	155,627	6,248	174,614	6,934	195,101	6,977	194,804	5,986	164,093	6,143	169,347	6,517	180,087	0	177,619	n/a	n/a
November	8,557	164,184	10,963	185,577	10,650	205,751	8,637	203,441	8,234	172,327	9,068	178,415	10,513	190,600	0	177,619	n/a	n/a
December	30,619	194,803	33,736	219,313	35,517	241,268	31,211	234,652	30,667	202,994	33,363	211,778	37,081	227,681	0	177,619	n/a	n/a
Totals	194,803		219,313		241,268		234,652		202,994		211,778		227,681		177,619			

2012 Monthly Sales Tax Activity (in thousands of dollars)



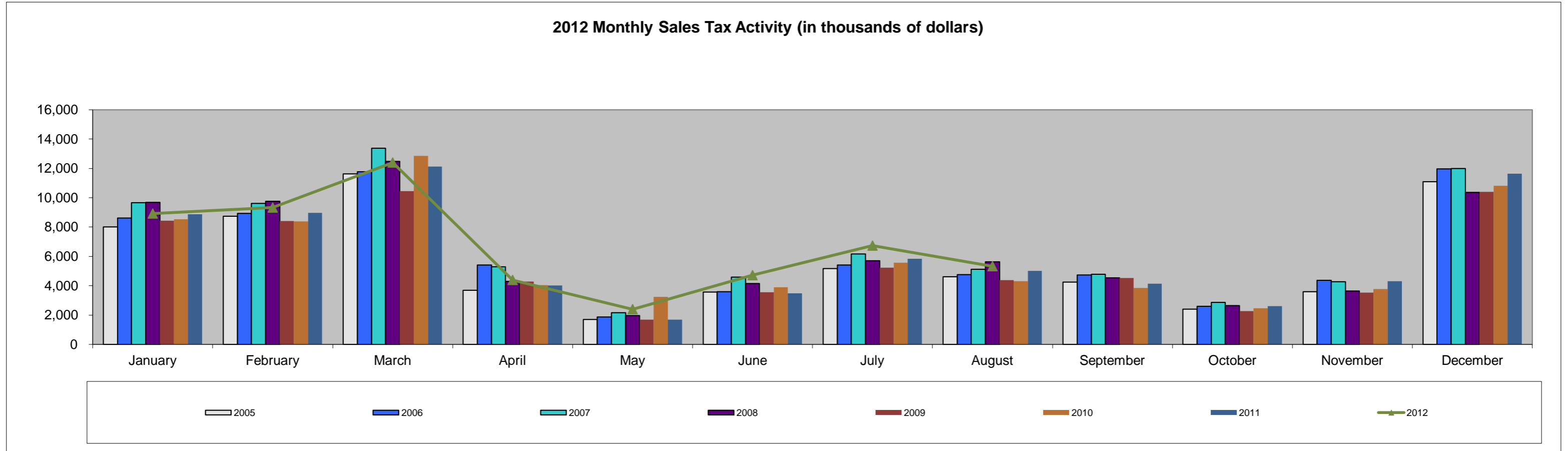
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail Sales

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	8,001	8,001	8,607	8,607	9,665	9,665	9,684	9,684	8,430	8,430	8,530	8,530	8,862	8,862	8,925	8,925	0.7%	0.7%
February	8,744	16,745	8,942	17,549	9,607	19,272	9,763	19,447	8,401	16,831	8,378	16,908	8,982	17,844	9,332	18,257	3.9%	2.3%
March	11,632	28,377	11,774	29,323	13,373	32,645	12,479	31,926	10,449	27,280	12,851	29,759	12,125	29,969	12,402	30,659	2.3%	2.3%
April	3,678	32,055	5,406	34,729	5,287	37,932	4,301	36,227	4,274	31,554	4,032	33,791	4,006	33,975	4,393	35,052	9.7%	3.2%
May	1,708	33,763	1,858	36,587	2,165	40,097	1,965	38,192	1,675	33,229	3,251	37,042	1,679	35,654	2,402	37,454	43.1%	5.0%
June	3,565	37,328	3,589	40,176	4,597	44,694	4,153	42,345	3,558	36,787	3,895	40,937	3,477	39,131	4,720	42,174	35.7%	7.8%
July	5,174	42,502	5,403	45,579	6,176	50,870	5,700	48,045	5,240	42,027	5,582	46,519	5,834	44,965	6,736	48,910	15.5%	8.8%
August	4,620	47,122	4,757	50,336	5,110	55,980	5,631	53,676	4,384	46,411	4,302	50,821	5,003	49,968	5,333	54,243	6.6%	8.6%
September	4,249	51,371	4,726	55,062	4,783	60,763	4,527	58,203	4,536	50,947	3,848	54,669	4,132	54,100	0	54,243	n/a	n/a
October	2,404	53,775	2,591	57,653	2,866	63,629	2,635	60,838	2,277	53,224	2,453	57,122	2,609	56,709	0	54,243	n/a	n/a
November	3,586	57,361	4,376	62,029	4,267	67,896	3,641	64,479	3,540	56,764	3,764	60,886	4,301	61,010	0	54,243	n/a	n/a
December	11,099	68,460	11,971	74,000	12,000	79,896	10,358	74,837	10,403	67,167	10,824	71,710	11,629	72,639	0	54,243	n/a	n/a
Totals	68,460		74,000		79,896		74,837		67,167		71,710		72,639		54,243			

2012 Monthly Sales Tax Activity (in thousands of dollars)



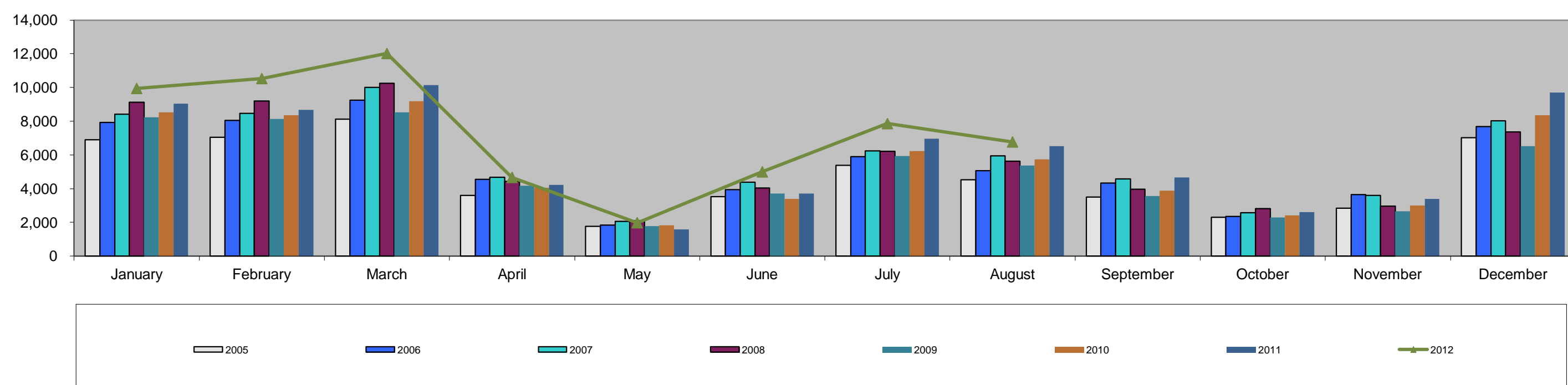
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Restaurants/Bars

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	6,897	6,897	7,924	7,924	8,414	8,414	9,117	9,117	8,231	8,231	8,515	8,515	9,039	9,039	9,942	9,942	10.0%	10.0%
February	7,047	13,944	8,058	15,982	8,467	16,881	9,208	18,325	8,129	16,360	8,343	16,858	8,660	17,699	10,527	20,469	21.6%	15.7%
March	8,117	22,061	9,256	25,238	10,015	26,896	10,240	28,565	8,527	24,887	9,186	26,044	10,151	27,850	12,015	32,484	18.4%	16.6%
April	3,609	25,670	4,552	29,790	4,678	31,574	4,440	33,005	4,173	29,060	4,042	30,086	4,222	32,072	4,662	37,146	10.4%	15.8%
May	1,760	27,430	1,832	31,622	2,058	33,632	2,107	35,112	1,783	30,843	1,812	31,898	1,570	33,642	1,976	39,122	25.9%	16.3%
June	3,525	30,955	3,938	35,560	4,370	38,002	4,030	39,142	3,712	34,555	3,397	35,295	3,704	37,346	4,992	44,114	34.8%	18.1%
July	5,375	36,330	5,905	41,465	6,249	44,251	6,218	45,360	5,931	40,486	6,222	41,517	6,949	44,295	7,856	51,970	13.1%	17.3%
August	4,521	40,851	5,067	46,532	5,933	50,184	5,639	50,999	5,365	45,851	5,729	47,246	6,526	50,821	6,766	58,736	3.7%	15.6%
September	3,498	44,349	4,340	50,872	4,585	54,769	3,971	54,970	3,565	49,416	3,883	51,129	4,656	55,477	0	58,736	n/a	n/a
October	2,290	46,639	2,352	53,224	2,564	57,333	2,818	57,788	2,285	51,701	2,420	53,549	2,618	58,095	0	58,736	n/a	n/a
November	2,841	49,480	3,651	56,875	3,593	60,926	2,972	60,760	2,649	54,350	3,006	56,555	3,380	61,475	0	58,736	n/a	n/a
December	7,017	56,497	7,681	64,556	8,028	68,954	7,371	68,131	6,524	60,874	8,351	64,906	9,701	71,176	0	58,736	n/a	n/a
Totals	56,497		64,556		68,954		68,131		60,874		64,906		71,176		58,736			

2012 Monthly Sales Tax Activity (in thousands of dollars)



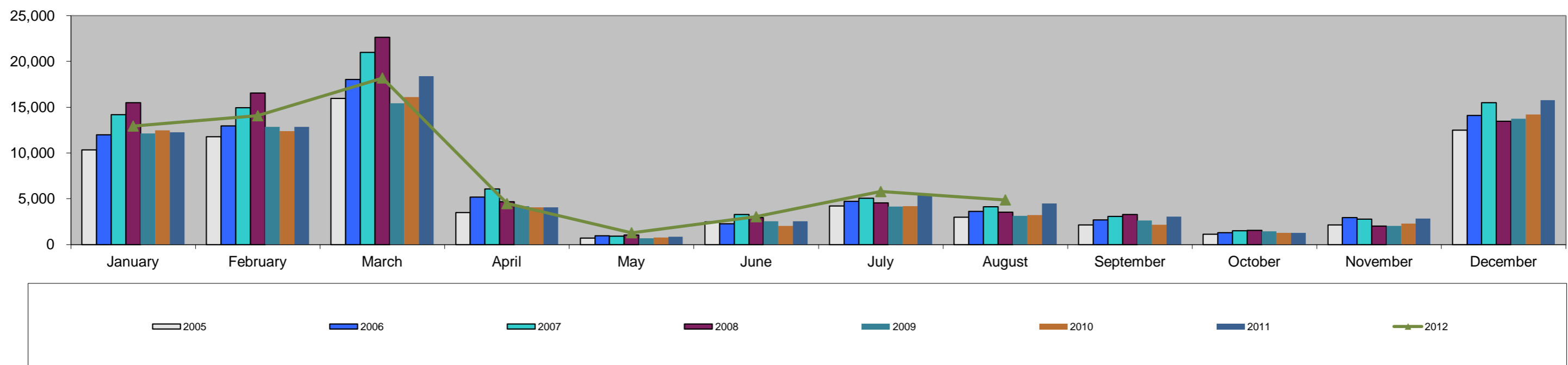
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Short-Term Lodging

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	10,342	10,342	11,997	11,997	14,179	14,179	15,489	15,489	12,141	12,141	12,493	12,493	12,273	12,273	12,941	12,941	5.4%	5.4%
February	11,762	22,104	12,972	24,969	14,965	29,144	16,540	32,029	12,871	25,012	12,369	24,862	12,862	25,135	14,068	27,009	9.4%	7.5%
March	15,956	38,060	18,021	42,990	21,002	50,146	22,619	54,648	15,452	40,464	16,099	40,961	18,400	43,535	18,194	45,203	-1.1%	3.8%
April	3,486	41,546	5,176	48,166	6,060	56,206	4,669	59,317	4,206	44,670	4,080	45,041	4,053	47,588	4,467	49,670	10.2%	4.4%
May	711	42,257	957	49,123	923	57,129	1,039	60,356	667	45,337	773	45,814	833	48,421	1,282	50,952	53.9%	5.2%
June	2,478	44,735	2,262	51,385	3,258	60,387	2,929	63,285	2,559	47,896	2,010	47,824	2,532	50,953	3,036	53,988	19.9%	6.0%
July	4,217	48,952	4,730	56,115	5,074	65,461	4,528	67,813	4,134	52,030	4,189	52,013	5,513	56,466	5,781	59,769	4.9%	5.8%
August	2,981	51,933	3,622	59,737	4,124	69,585	3,545	71,358	3,110	55,140	3,230	55,243	4,481	60,947	4,871	64,640	8.7%	6.1%
September	2,150	54,083	2,695	62,432	3,050	72,635	3,296	74,654	2,604	57,744	2,163	57,406	3,046	63,993	0	64,640	n/a	n/a
October	1,130	55,213	1,305	63,737	1,504	74,139	1,524	76,178	1,424	59,168	1,270	58,676	1,290	65,283	0	64,640	n/a	n/a
November	2,130	57,343	2,936	66,673	2,790	76,929	2,024	78,202	2,045	61,213	2,298	60,974	2,832	68,115	0	64,640	n/a	n/a
December	12,503	69,846	14,084	80,757	15,489	92,418	13,482	91,684	13,740	74,953	14,188	75,162	15,751	83,866	0	64,640	n/a	n/a
Totals	69,846		80,757		92,418		91,684		74,953		75,162		83,866		64,640			

2012 Monthly Sales Tax Activity (in thousands of dollars)



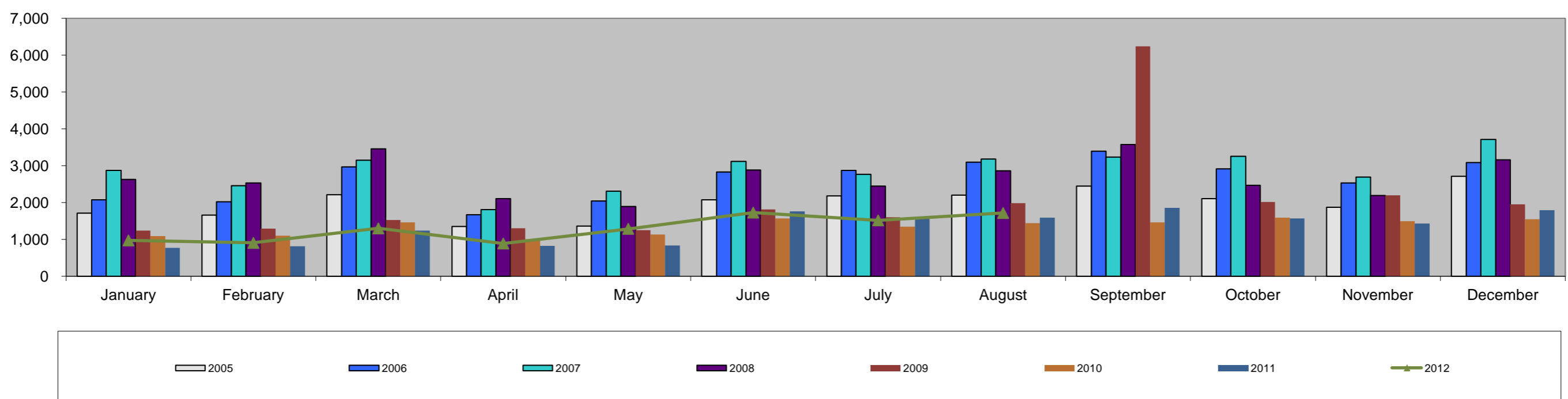
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Supplies

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	1,720	1,720	2,084	2,084	2,876	2,876	2,631	2,631	1,240	1,240	1,095	1,095	777	777	977	977	25.7%	25.7%
February	1,669	3,389	2,031	4,115	2,459	5,335	2,532	5,163	1,297	2,537	1,111	2,206	821	1,598	910	1,887	10.8%	18.1%
March	2,216	5,605	2,967	7,082	3,156	8,491	3,463	8,626	1,530	4,067	1,472	3,678	1,245	2,843	1,303	3,190	4.7%	12.2%
April	1,359	6,964	1,680	8,762	1,813	10,304	2,114	10,740	1,305	5,372	1,006	4,684	829	3,672	894	4,084	7.8%	11.2%
May	1,370	8,334	2,045	10,807	2,314	12,618	1,894	12,634	1,250	6,622	1,139	5,823	841	4,513	1,292	5,376	53.6%	19.1%
June	2,083	10,417	2,836	13,643	3,119	15,737	2,886	15,520	1,814	8,436	1,573	7,396	1,765	6,278	1,732	7,108	-1.9%	13.2%
July	2,186	12,603	2,872	16,515	2,770	18,507	2,450	17,970	1,602	10,038	1,354	8,750	1,619	7,897	1,522	8,630	-6.0%	9.3%
August	2,211	14,814	3,096	19,611	3,187	21,694	2,869	20,839	1,990	12,028	1,446	10,196	1,597	9,494	1,721	10,351	7.8%	9.0%
September	2,452	17,266	3,394	23,005	3,234	24,928	3,574	24,413	6,237	18,265	1,471	11,667	1,857	11,351	0	10,351	n/a	n/a
October	2,107	19,373	2,924	25,929	3,259	28,187	2,470	26,883	2,016	20,281	1,595	13,262	1,575	12,926	0	10,351	n/a	n/a
November	1,876	21,249	2,537	28,466	2,693	30,880	2,199	29,082	2,196	22,477	1,495	14,757	1,437	14,363	0	10,351	n/a	n/a
December	2,712	23,961	3,091	31,557	3,713	34,593	3,160	32,242	1,958	24,435	1,548	16,305	1,794	16,157	0	10,351	n/a	n/a
Totals	23,961		31,557		34,593		32,242		24,435		16,305		16,157		10,351			

2012 Monthly Sales Tax Activity (in thousands of dollars)



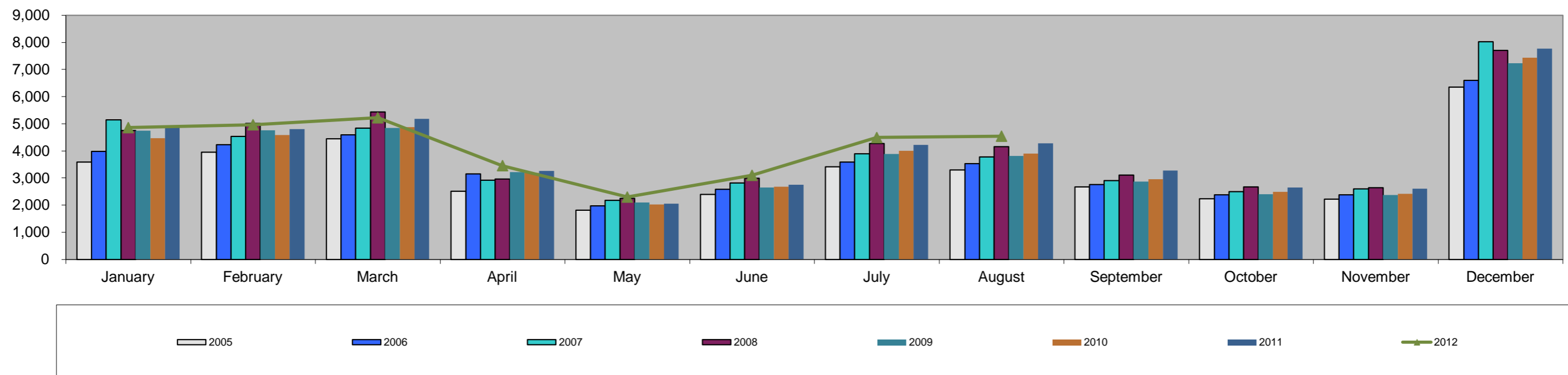
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Grocery/Liquor Stores

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD		
January	3,589	3,589	3,977	3,977	5,149	5,149	4,744	4,744	4,741	4,741	4,472	4,472	4,854	4,854	4,857	4,857	0.1%	0.1%
February	3,949	7,538	4,233	8,210	4,536	9,685	5,009	9,753	4,755	9,496	4,590	9,062	4,803	9,657	4,962	9,819	3.3%	1.7%
March	4,449	11,987	4,585	12,795	4,844	14,529	5,436	15,189	4,852	14,348	4,877	13,939	5,180	14,837	5,220	15,039	0.8%	1.4%
April	2,503	14,490	3,149	15,944	2,920	17,449	2,959	18,148	3,213	17,561	3,186	17,125	3,261	18,098	3,454	18,493	5.9%	2.2%
May	1,806	16,296	1,969	17,913	2,169	19,618	2,246	20,394	2,100	19,661	2,024	19,149	2,053	20,151	2,296	20,789	11.8%	3.2%
June	2,392	18,688	2,584	20,497	2,822	22,440	2,990	23,384	2,643	22,304	2,682	21,831	2,757	22,908	3,098	23,887	12.4%	4.3%
July	3,414	22,102	3,588	24,085	3,899	26,339	4,264	27,648	3,881	26,185	3,999	25,830	4,219	27,127	4,490	28,377	6.4%	4.6%
August	3,292	25,394	3,529	27,614	3,771	30,110	4,161	31,809	3,807	29,992	3,896	29,726	4,271	31,398	4,541	32,918	6.3%	4.8%
September	2,671	28,065	2,757	30,371	2,908	33,018	3,113	34,922	2,864	32,856	2,955	32,681	3,278	34,676	0	32,918	n/a	n/a
October	2,239	30,304	2,372	32,743	2,494	35,512	2,673	37,595	2,408	35,264	2,488	35,169	2,648	37,324	0	32,918	n/a	n/a
November	2,214	32,518	2,377	35,120	2,600	38,112	2,647	40,242	2,379	37,643	2,422	37,591	2,599	39,923	0	32,918	n/a	n/a
December	6,356	38,874	6,604	41,724	8,028	46,140	7,705	47,947	7,234	44,877	7,432	45,023	7,776	47,699	0	32,918	n/a	n/a
Totals	38,874		41,724		46,140		47,947		44,877		45,023		47,699		32,918			

2012 Monthly Sales Tax Activity (in thousands of dollars)



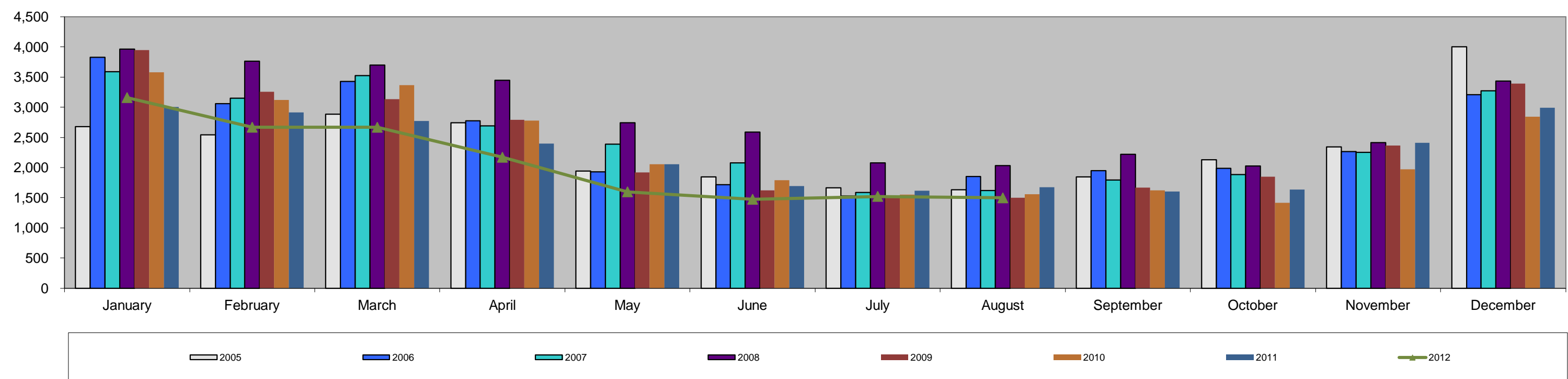
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Utilities

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	2,675	2,675	3,829	3,829	3,591	3,591	3,961	3,961	3,950	3,950	3,577	3,577	3,004	3,004	3,159	3,159	5.2%	5.2%
February	2,540	5,215	3,056	6,885	3,149	6,740	3,765	7,726	3,253	7,203	3,118	6,695	2,913	5,917	2,668	5,827	-8.4%	-1.5%
March	2,883	8,098	3,428	10,313	3,525	10,265	3,699	11,425	3,134	10,337	3,365	10,060	2,772	8,689	2,667	8,494	-3.8%	-2.2%
April	2,741	10,839	2,778	13,091	2,694	12,959	3,448	14,873	2,792	13,129	2,779	12,839	2,400	11,089	2,170	10,664	-9.6%	-3.8%
May	1,939	12,778	1,926	15,017	2,386	15,345	2,742	17,615	1,917	15,046	2,057	14,896	2,057	13,146	1,597	12,261	-22.4%	-6.7%
June	1,846	14,624	1,713	16,730	2,078	17,423	2,588	20,203	1,620	16,666	1,793	16,689	1,693	14,839	1,473	13,734	-13.0%	-7.4%
July	1,663	16,287	1,529	18,259	1,588	19,011	2,075	22,278	1,539	18,205	1,548	18,237	1,614	16,453	1,521	15,255	-5.8%	-7.3%
August	1,629	17,916	1,854	20,113	1,621	20,632	2,031	24,309	1,497	19,702	1,558	19,795	1,673	18,126	1,497	16,752	-10.5%	-7.6%
September	1,843	19,759	1,949	22,062	1,792	22,424	2,219	26,528	1,667	21,369	1,625	21,420	1,604	19,730	0	16,752	n/a	n/a
October	2,127	21,886	1,987	24,049	1,883	24,307	2,026	28,554	1,845	23,214	1,412	22,832	1,632	21,362	0	16,752	n/a	n/a
November	2,340	24,226	2,264	26,313	2,251	26,558	2,411	30,965	2,364	25,578	1,972	24,804	2,409	23,771	0	16,752	n/a	n/a
December	4,005	28,231	3,206	29,519	3,271	29,829	3,435	34,400	3,389	28,967	2,845	27,649	2,991	26,762	0	16,752	n/a	n/a
Totals	28,231		29,519		29,829		34,400		28,967		27,649		26,762		16,753			

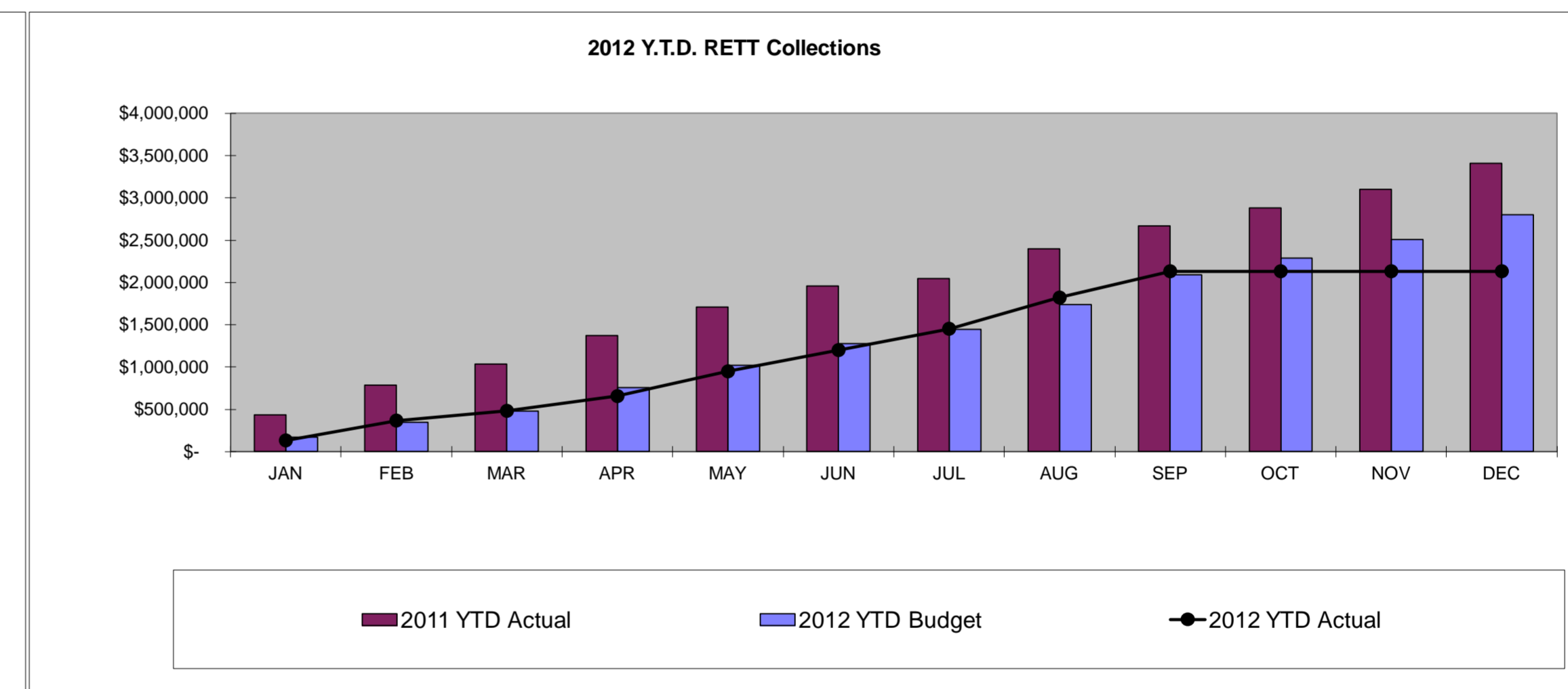
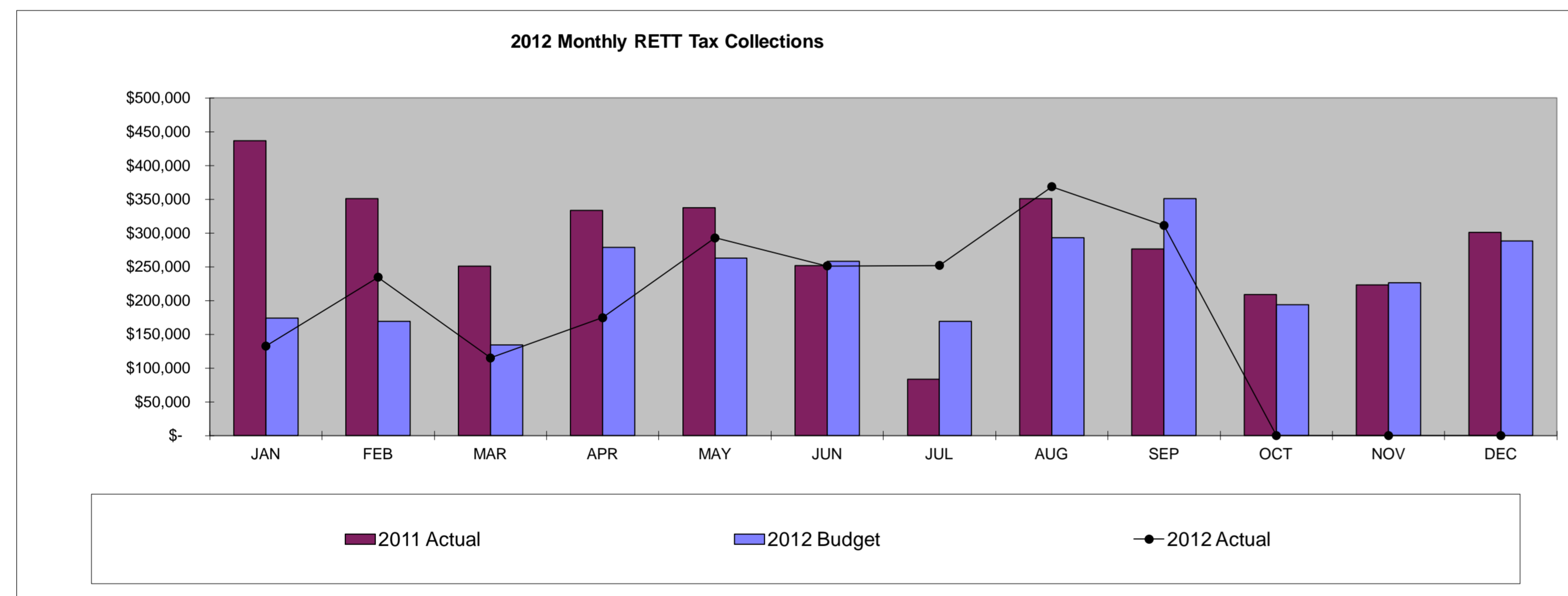
2012 Monthly Sales Tax Activity (in thousands of dollars)



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

Sales Period	2007 Collections			2009 Percent of Total	2011 Collections			2012 Budget			2012 Monthly				2012 Year to Date			
	Tax Collected	Year To Date	Percent of Total		Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% of Budget	% Change from 2007	% Change from 2011	Actual	% of Budget	% Change from 2007	% Change from 2011
JAN	\$ 352,958	\$ 352,958	6.2%	4.3%	\$ 436,605	\$ 436,605	12.8%	\$ 174,140	\$ 174,140	6.2%	\$ 132,557	76.1%	-62.4%	-69.6%	\$ 132,557	76.1%	-62.4%	-69.6%
FEB	342,995	695,953	12.3%	7.6%	350,866	787,471	23.1%	169,224	343,364	12.3%	234,630	138.7%	-31.6%	-33.1%	367,186	106.9%	-47.2%	-53.4%
MAR	271,817	967,770	17.1%	14.1%	250,986	1,038,457	30.5%	134,107	477,470	17.1%	114,921	85.7%	-57.7%	-54.2%	482,107	101.0%	-50.2%	-53.6%
APR	564,624	1,532,394	27.0%	29.6%	333,424	1,371,881	40.3%	278,570	756,040	27.0%	174,514	62.6%	-69.1%	-47.7%	656,621	86.9%	-57.2%	-52.1%
MAY	533,680	2,066,074	36.4%	39.1%	337,577	1,709,458	50.2%	263,303	1,019,342	36.4%	292,708	111.2%	-45.2%	-13.3%	949,329	93.1%	-54.1%	-44.5%
JUN	522,999	2,589,073	45.6%	43.4%	251,806	1,961,263	57.6%	258,033	1,277,375	45.6%	251,400	97.4%	-51.9%	-0.2%	1,200,729	94.0%	-53.6%	-38.8%
JUL	343,610	2,932,683	51.7%	48.2%	83,522	2,044,785	60.0%	169,527	1,446,903	51.7%	252,104	148.7%	-26.6%	201.8%	1,452,833	100.4%	-50.5%	-28.9%
AUG	594,349	3,527,032	62.1%	56.2%	350,730	2,395,515	70.3%	293,235	1,740,138	62.1%	368,749	125.8%	-38.0%	5.1%	1,821,582	104.7%	-48.4%	-24.0%
SEP	711,996	4,239,028	74.7%	67.0%	276,774	2,672,289	78.5%	351,278	2,091,416	74.7%	311,285	88.6%	-56.3%	12.5%	2,132,867	102.0%	-49.7%	-20.2%
OCT	392,752	4,631,779	81.6%	78.7%	208,831	2,881,120	84.6%	193,773	2,285,189	81.6%	-	0.0%	n/a	n/a	2,132,867	93.3%	-54.0%	-26.0%
NOV	459,147	5,090,926	89.7%	87.5%	223,271	3,104,391	91.2%	226,530	2,511,719	89.7%	-	0.0%	n/a	n/a	2,132,867	84.9%	-58.1%	-31.3%
DEC	\$ 584,308	\$ 5,675,235	100.0%	100.0%	\$ 301,397	\$ 3,405,788	100.0%	\$ 288,281	\$ 2,800,000	100.0%	\$ -	0.0%	n/a	n/a	\$ 2,132,867	76.2%	-62.4%	-37.4%

2012 budget is based upon 2007 monthly distribution

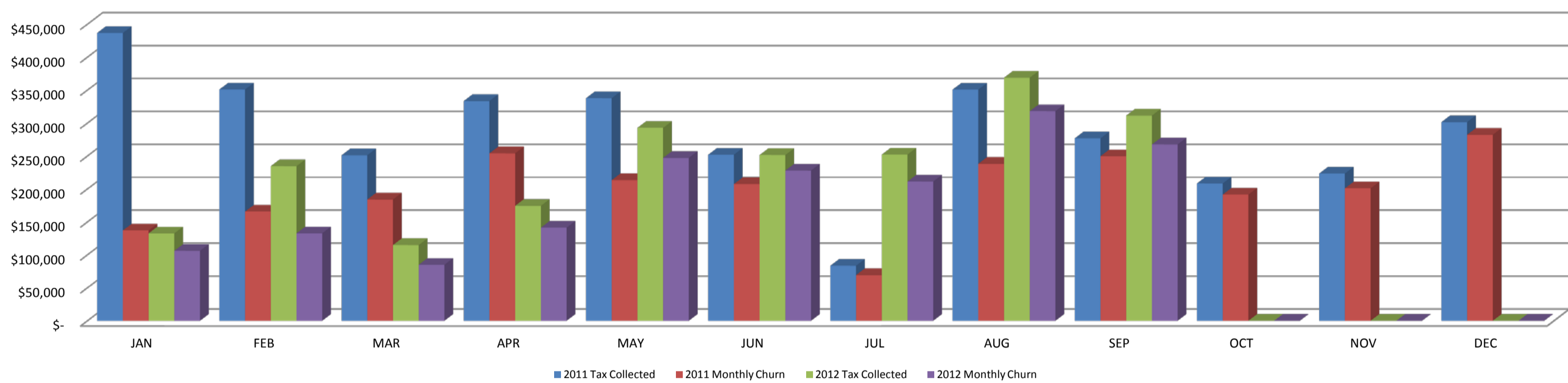


**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX CHURN
REPORTED IN THE PERIOD EARNED**

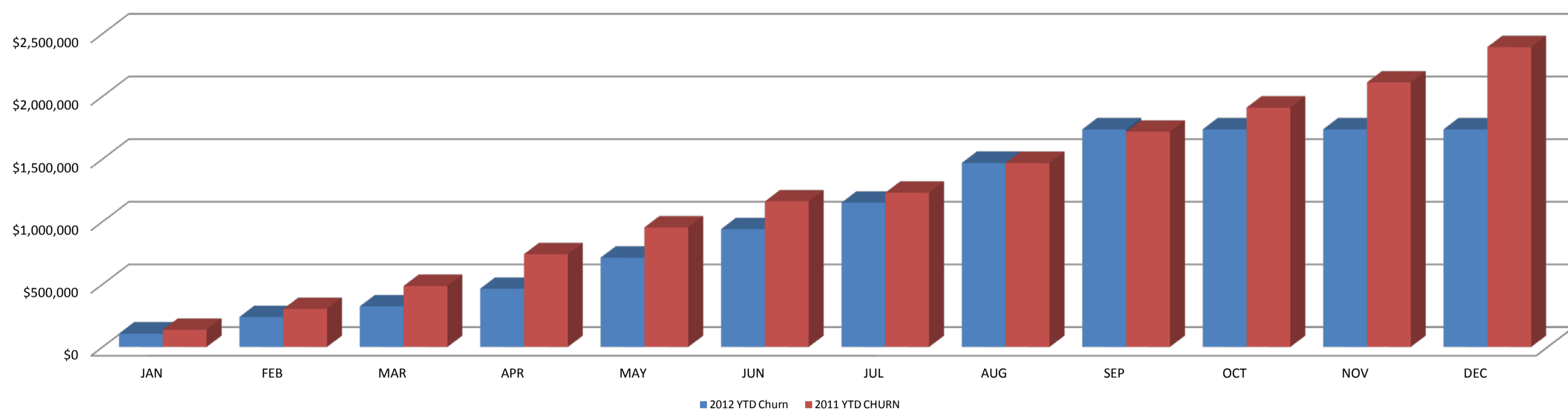
Sales Period	Tax Collected	Year To Date	2011 Collections				Monthly Churn	YTD Churn	% of YTD Total
			Grand Lodge	New Construction		Other			
				1 Ski Hill	Water House				
JAN	\$ 436,605	\$ 436,605	246,243	0	53,370	0	\$ 136,992	\$136,992	31.4%
FEB	\$ 350,866	\$ 787,471	147,234	26,482	11,550	0	\$ 165,599	\$302,592	38.4%
MAR	\$ 250,986	\$ 1,038,457	57,703	0	9,300	0	\$ 183,982	\$486,574	46.9%
APR	\$ 333,424	\$ 1,371,881	41,651	7,296	19,170	11,300	\$ 254,006	\$740,580	54.0%
MAY	\$ 337,577	\$ 1,709,458	87,830	36,403	0	0	\$ 213,344	\$953,925	55.8%
JUN	\$ 251,806	\$ 1,961,263	44,417	0	0	0	\$ 207,389	\$1,161,314	59.2%
JUL	\$ 83,522	\$ 2,044,785	14,277	0	0	0	\$ 69,244	\$1,230,558	60.2%
AUG	\$ 350,730	\$ 2,395,515	107,470	0	0	5,050	\$ 238,210	\$1,468,768	61.3%
SEP	\$ 276,774	\$ 2,672,289	27,114	0	0	0	\$ 249,660	\$1,718,428	64.3%
OCT	\$ 208,381	\$ 2,880,670	2,223	0	0	14,800	\$ 191,359	\$1,909,787	66.3%
NOV	\$ 223,271	\$ 3,103,941	5,083	17,212	0	0	\$ 200,975	\$2,110,762	68.0%
DEC	\$ 301,397	\$ 3,405,338	7,928	0	0	11,300	\$ 282,169	\$2,392,931	70.3%

Sales Period	Tax Collected	Year To Date	2012 Collections				Monthly Churn	YTD Budget	YTD Churn	% of YTD Total	Change In Churn from Prior Year
			Grand Lodge	New Construction		Other					
				1 Ski Hill	Water House						
JAN	\$ 132,557	\$ 132,557	26,492	0	0	0	\$ 106,065	\$ 174,140	\$106,065	80.0%	-22.6%
FEB	\$ 234,630	\$ 367,186	69,718	0	0	32,250	\$ 132,661	\$ 343,364	\$238,726	65.0%	-21.1%
MAR	\$ 114,921	\$ 482,107	29,935	0	0	0	\$ 84,985	\$ 477,470	\$323,712	67.1%	-33.5%
APR	\$ 174,514	\$ 656,621	33,127	0	0	0	\$ 141,388	\$ 756,040	\$465,099	70.8%	-37.2%
MAY	\$ 292,708	\$ 949,329	45,605	0	0	0	\$ 247,103	\$ 1,019,342	\$712,203	75.0%	-25.3%
JUN	\$ 251,400	\$ 1,200,729	23,453	0	0	0	\$ 227,947	\$ 1,277,375	\$940,150	78.3%	-19.0%
JUL	\$ 252,104	\$ 1,452,833	40,804	0	0	0	\$ 211,300	\$ 1,446,903	\$1,151,450	79.3%	-6.4%
AUG	\$ 368,749	\$ 1,821,582	50,843	0	0	0	\$ 317,906	\$ 1,740,138	\$1,469,355	80.7%	0.0%
SEP	\$ 311,285	\$ 2,132,867	24,763	0	0	18,956	\$ 267,566	\$ 2,091,416	\$1,736,922	81.4%	1.1%
OCT	\$ -	\$ 2,132,867					\$ -	\$ 2,285,189	\$1,736,922	n/a	n/a
NOV	\$ -	\$ 2,132,867					\$ -	\$ 2,511,719	\$1,736,922	n/a	n/a
DEC	\$ -	\$ 2,132,867					\$ -	\$ 2,800,000	\$1,736,922	n/a	n/a

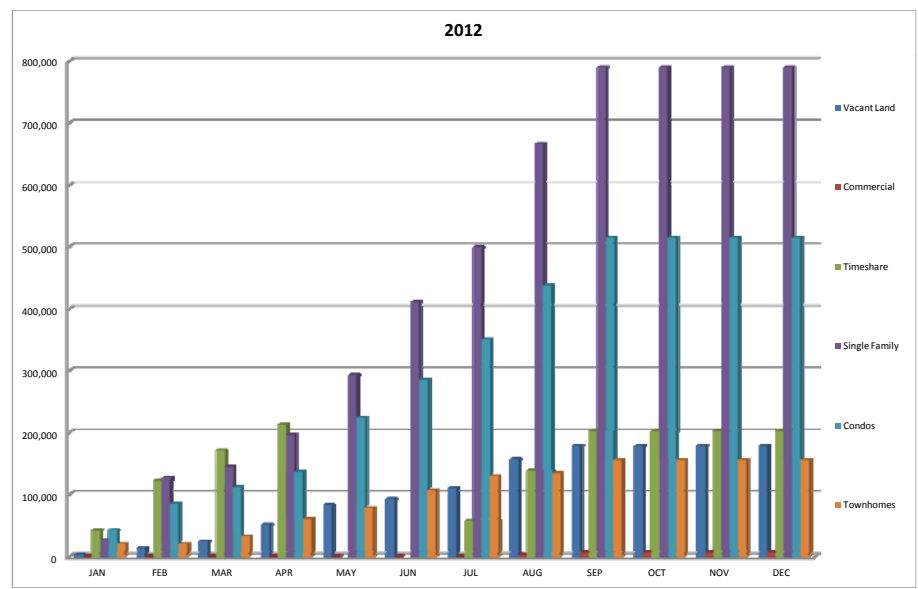
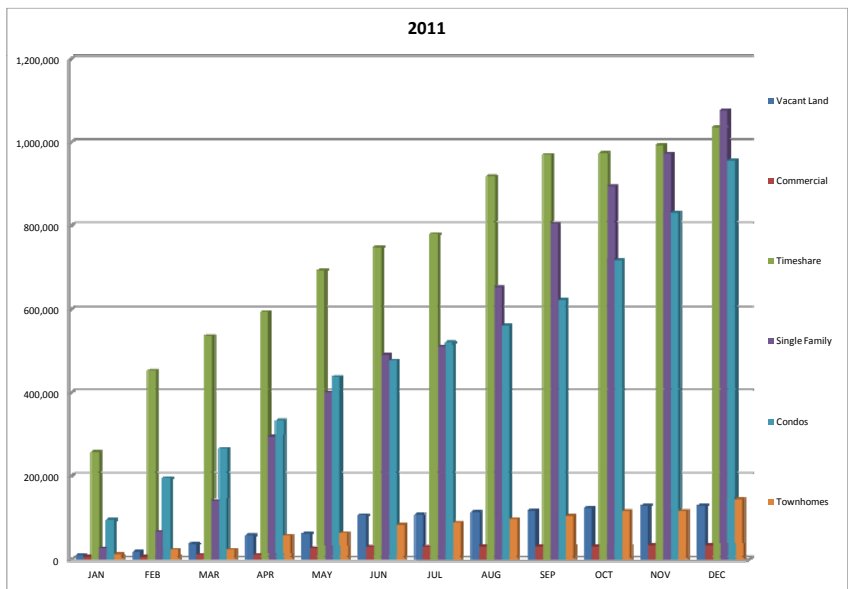
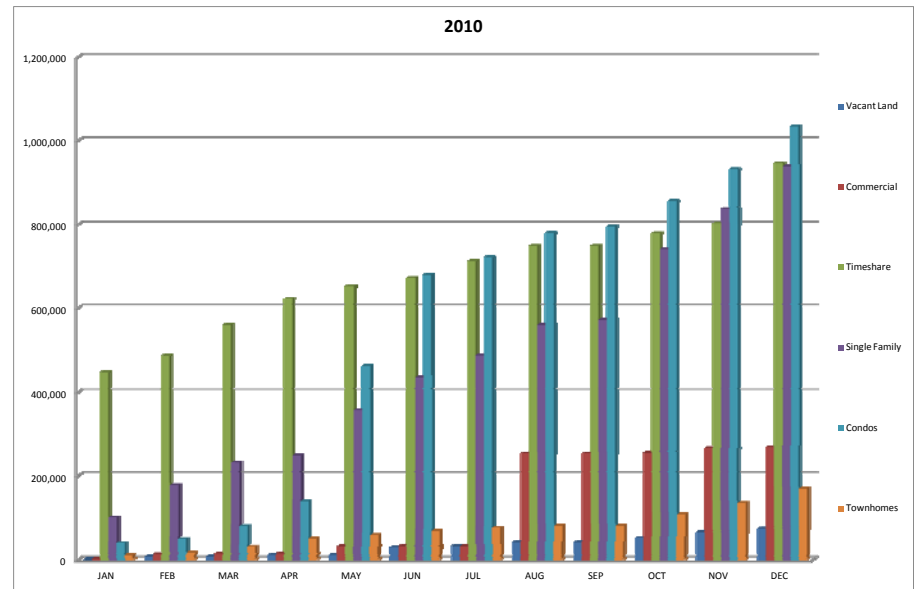
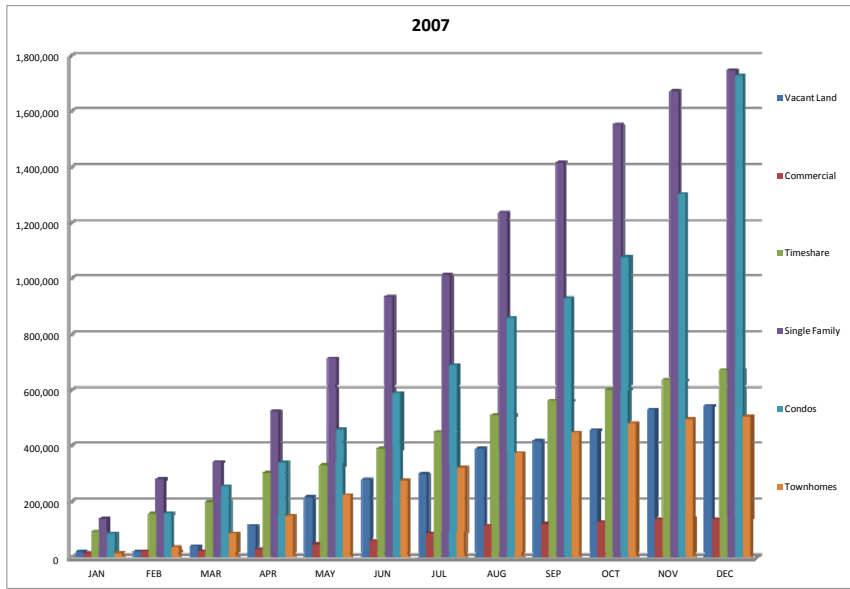
RETT Monthly Collections vs. Churn



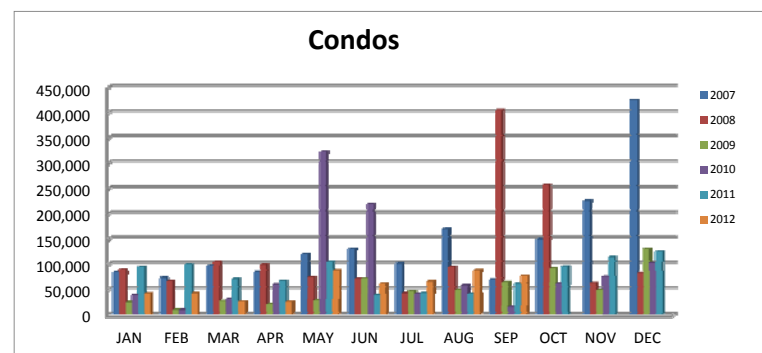
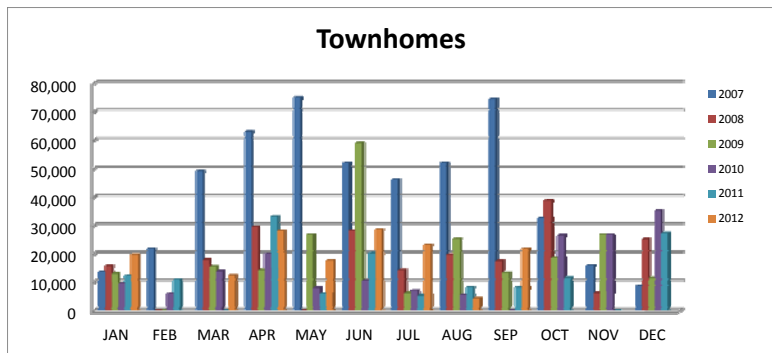
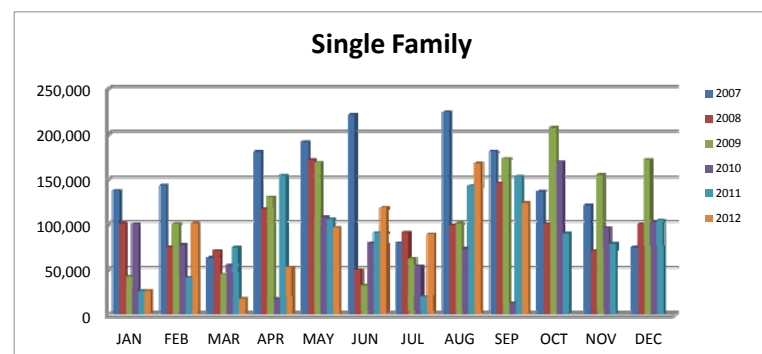
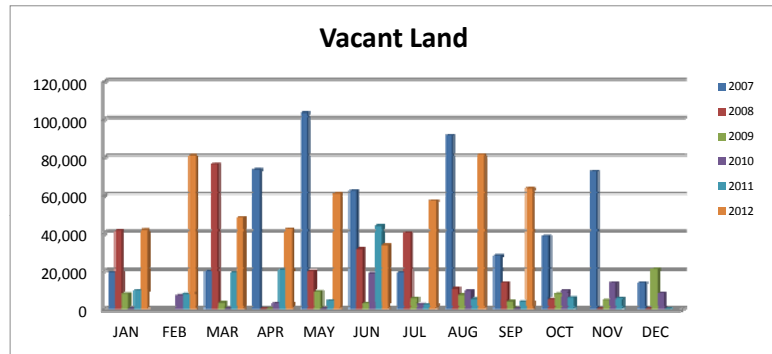
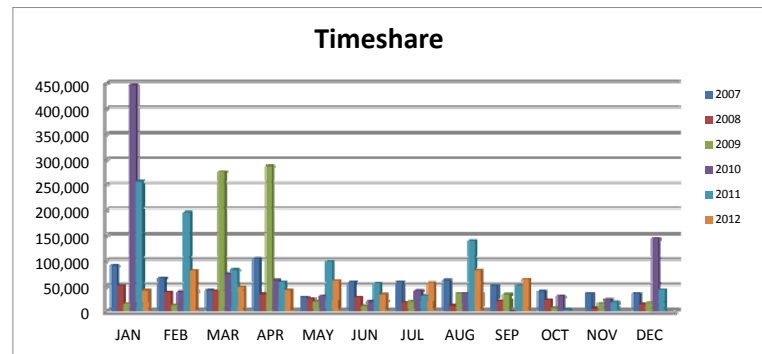
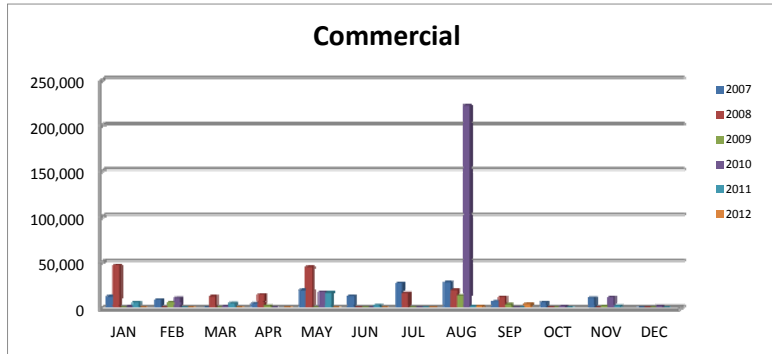
YTD Churn Analysis



**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX COLLECTIONS
YTD CATEGORIES BY MONTH**



TOWN OF BRECKENRIDGE REAL ESTATE TRANSFER TAX COLLECTIONS MONTHLY BY CATEGORY



MEMO

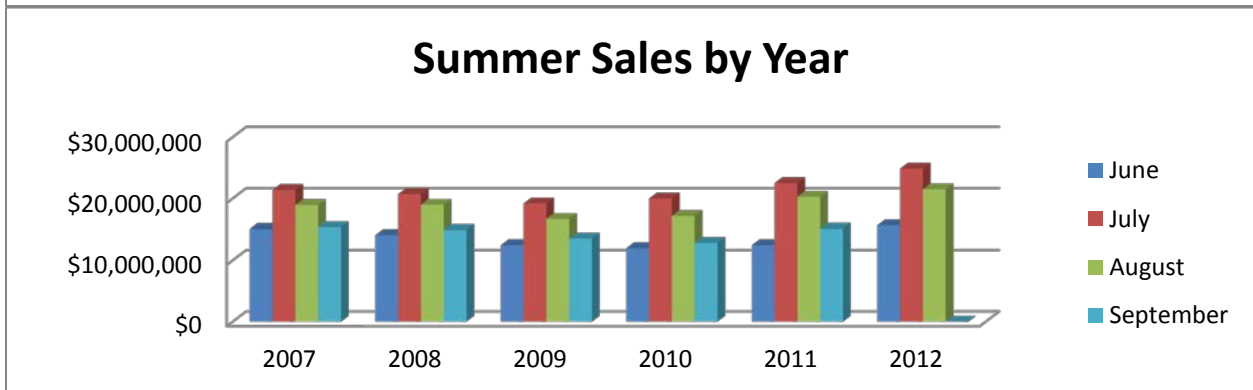
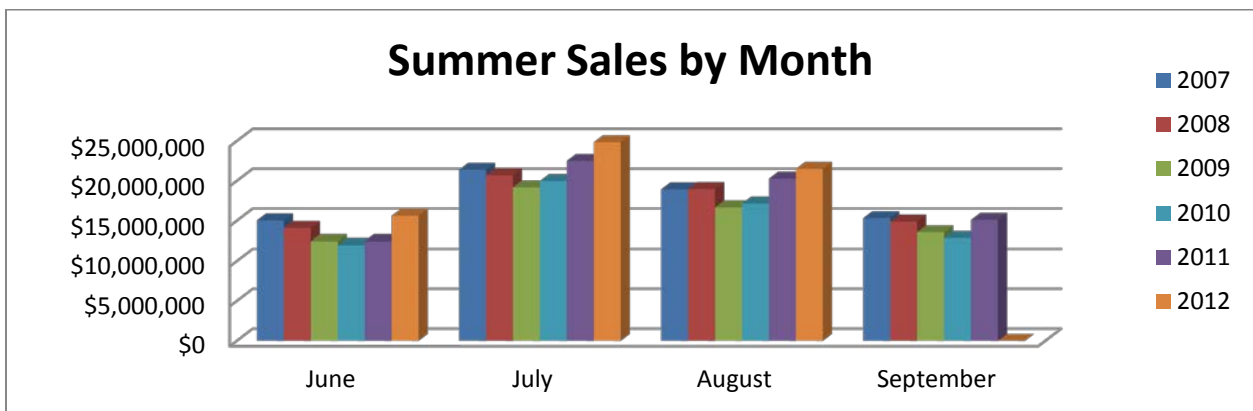
TO: Town Council

FROM: Tax Auditor

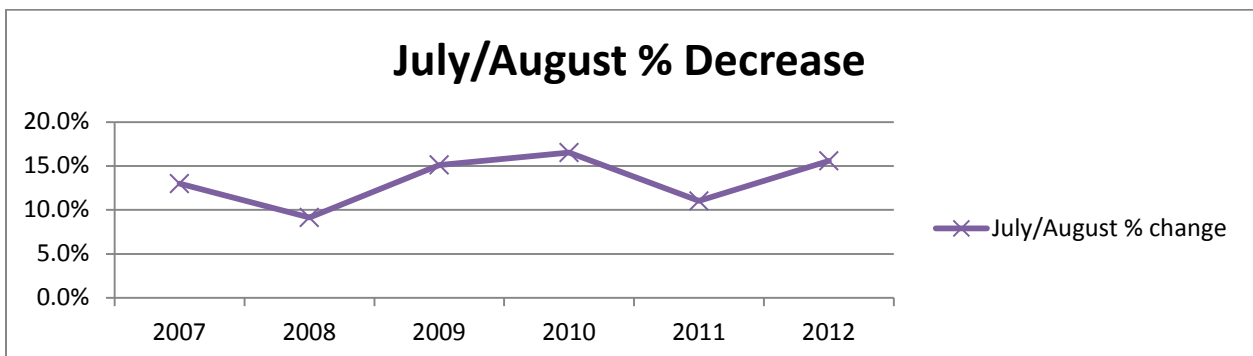
RE: Breckenridge Summer Tax Collections

DATE: October 2, 2012

As you can see from the charts below, in recent years sales tax collections for summer months follow the order of July, August, September, June (in highest to lowest tax collections). The data includes net taxable sales in the tourism categories of Restaurant/Bar, Retail, Lodging, and Grocery. Data for September 2012 was not available at the time of this report.



Regarding the decrease in sales that occurs annually between July and August, the below graph displays that decrease as a percentage, by year.



Please do let me know if you have any questions regarding this summer comparison.



M E M O

Date: October 2, 2012 *(for 10.09.12 meeting)*
To: Mayor and Town Council Members
Cc: Town Manager, Assistant Town Manager
From: Riverwalk and Events Manager
RE: Rodeo Recap

The Breckenridge PRCA ProRodeo occurred for five weekends beginning August 4, 2012 for a total of 10 events from 5pm-7pm each Saturday and Sunday on those weekends. Doors opened at 3:30pm each day for a “behind the chutes” tour and children’s event signup. Mr. Brad Bays began rodeo grounds set up in mid June and the site was cleared by late September. The following is a recap of the most significant issues which arose out of the rodeo permit application and during the event.

Dust-There were no complaints regarding dust. The approved permit required mitigation as needed throughout the week. Streets staff monitored.

Smell/Odor- Mr. Bays was required to remove animal waste on a daily basis while animals were onsite. There was 1 complaint of noticeable odor from a resident on Airport Road. Significant animal odor was not observed by staff, and it was confirmed that Mr. Bays was removing manure each day that animals were onsite.

Medical- Summit County Ambulance was required to be on site for each event. There were no transports via ambulance and the most serious incident involved knocked out teeth.

Animal Welfare- Mr. Bays hired a Summit County Animal Control Officer to be at each rodeo event. Their reports indicated that the event was “extremely professional” and “animals were being cared for extremely well”. Mr. Bays also hired representatives from the Colorado Department of Agriculture Animal Welfare Division to visit three times and provide reports on animal treatment. They concluded “detail in relation to animal welfare was exemplary”, “grounds were clean and very well kept” and “pens had very little manure in them”.

Also, as required by PRCA and the event permit, a veterinarian was onsite during each event. There was one incident of injury to a bull reported by both the Animal Control Officer and the Colorado Department of Agriculture monitor. A bull “went down” in the stripping chute after leaving the arena in “good condition”. As reported by the monitor, the bull was treated immediately by the veterinarian with “the utmost care and respect”. The bull recovered the next day with what appeared to be a temporary nervous system issue, a neck “kink.”

Access to the Blue River and Erosion/Runoff- Access to the Blue River was maintained during set up, during the event and during teardown. The Engineering Division issued a Class D permit outlining requirements that all run-off and sediment be contained on the site. Earthen berms were constructed to control water run-off, and silt fencing and erosion control logs were installed to control sediment migration. Waste water containment ponds were installed in two areas, and Mr. Bays was required to remove any waste water when it accumulated. This was monitored by staff.

Sound Levels-There were 3 complaints of excessive noise (all reported to staff and not to emergency dispatch)- 2 reports from the Highlands and 1 from Airport Road. Subsequently, the Breckenridge Police Department measured sound levels at 5 locations (4 on Airport Road and 1 in the Highlands) during each day of the last 4 weekends of the event. During the

first 3 events, the highest reading on Airport Road was 99 and in the Highlands it was 70. Levels this high are not uncommon during large outdoor events.

Nevertheless, Riverwalk Center technical staff visited the rodeo after these sound readings, assessed the set up and tweaked the system in order to improve the performance of the system and decrease sound bleed to the surrounding area. Through these improvements we were able to reduce readings greatly in both the Highlands (readings predominantly in the 40's and 50's) and on Airport Road (readings predominantly in the 60's and 70's). After working on the system, we received this comment from a resident of the Highlands who had initially reported sound issues: *"Thank you. I am not sure what you did but tonight, Sunday was very pleasant and we could sit and enjoy...and not hear the PA system. We toasted your attention to our issues..."*

Security- As per the permit, security was present during the event and whenever animals were present. The event was also required to have 2 Breckenridge Police Officers at each event. There was one intoxicated party report. The individual was intoxicated prior to the rodeo and was turned over to a responsible party at the rodeo. He didn't create any problems at the rodeo, but PD had contact with him again after and outside of the event. There was also another ancillary complaint of rodeo spectators throwing shoes at vehicles as they walked to the venue. They were contacted at the venue, there was no report of damage and they were warned.

Participant Camping- There were an average of 2 rodeo related campers parked overnight during event weekends. There were no issues and PD monitored.

Waste Management/Site Condition- Mr. Bays had the event site cleaned each night post event and cleaned again the following morning paying attention to all areas including along the Blue River. Parks monitored and reported, along with staff from other departments, that the site was exceptionally clean. Also, Mr. Bays placed planters provided by Summit Landscaping throughout the site to provide an atmosphere "reflecting the character of Breckenridge".

Public Meetings- Mr. Bays held 4 public meeting (1 prior, 2 during and 1 post event). The highest attendance was 3 during the first meeting. No one attended Mr. Bays' final recap meeting. Town staff utilized the 200 person email list generated during public feedback period pre event to send out meeting information for Mr. Bays.

Ancillary Activities- Organized after parties at local bars and restaurants were reported by Mr. Bays "as not being very successful" likely because rodeo participants were not in significant attendance at these events.

Permitting Process- The permitting process was lengthy for staff and applicant as this event was new, long in duration and unusually complex. The process would be easier in future years if the event were to return. Mr. Bays reported that "without the entire special event process, we would not have known what was needed and would not have been prepared for this event. We would have been lost."

Recap Summary:

Staff has recapped internally and with Mr. Bays. In summary, staff found Mr. Bays to be consistently responsive and conscientious. Mr. Bays did everything from moving fences to modifying the sound system to respond to staff and public feedback. Staff identified only relatively minor logistical issues involving site set up which could be improved in the future. The event site has been cleaned, cleared of all event supplies and left in excellent condition. Mr. Bays reported an average of 934 attendees per event and estimated that his expenses were 3 times more than anticipated. Final financials are not yet available.

The Breckenridge Resort Chamber sent out a business survey. There were 62 responses- 75% were supportive, 14% were not supportive and 11% were neutral. Also, a recap notice was sent out by staff to the 200 person email list generated during the pre event feedback period. As of 10.02.12, staff has received 18 responses from citizens unable to attend the Town Council recap (11 in support, 5 not in support and 2 neutral/maybe).

Closing:

Mr. Bays proposes continuing the rodeo during the summer of 2013 and has requested that Town Council consider 11 event weekends starting June 2013.

- Would Town Council be supportive of the rodeo returning summer 2013?
- If so, for how many weekends? (Staff could post this question to garner community feedback when “EngageBreckenridge” is launched in mid-October- feedback would then be available early November)



Date: October 2, 2012 (*for 10.9.12 meeting*)
To: Mayor and Town Council Members
Cc: Town Manager, Assistant Town Manager, EngageBreckenridge Team
From: Director of Communications
RE: *Council Top 10: Public Engagement*

Background:

The Town Council identified Public Engagement as a goal for 2012. Since then, Town staff – at many levels – has been researching how to reach our citizens, assessing at what level the public would like to engage, how they receive information currently, and then identifying opportunities to enhance timely, accurate, and relevant information flow to the community.

At the end of August, a survey was distributed electronically (utilizing SurveyMonkey) to 19 property management companies (potentially reaching 42,000 homeowners), to 2,000 business contacts via the BRC’s Member EBlast, and to both the Merchant Association (53 members) and Restaurant Association. One hundred-ninety-nine responded overall, with 36% noting a High interest in being more informed about Town issues, and 36% responding that they have a Medium interest in being more involved with Town issues.

Research also included the exploration with other entities (i.e. Towns of Frisco, Silverthorne, Dillon, Summit County and Summit School District) of utilizing a third-party vendor for a community engagement web-based program. Three companies were reviewed, and MindMixer was chosen. Frisco and Breckenridge have signed agreements; Silverthorne, Summit County and Summit School District are still considering.

Current situation:

We have formed an internal team of five from various departments to head up the ‘EngageBreckenridge’ efforts from the Town’s end in development of the site as well as getting the word out to citizens to sign up. Our intent is to continue to utilize this group as the ‘sounding board’ for future topics and questions, as well as involve the Senior Leadership Team in determining the topics and the respective response mechanisms.

The EngageBreckenridge Team includes Sherilyn Gourley, Julia Puester, Helen Cospolich, Chris Lukesic and myself. We will be providing a demonstration for the Council at the October 9th Work Session. Our anticipated launch date for EngageBreckenridge is October 16, 2012.

NOTE: EngageBreckenridge is another tool for us to use in the on-going efforts to engage and inform our citizens and will be utilized along with a variety of other tools, including Open Houses, Task Forces, etc.

Council Action:

We request the Council’s feedback and questions as we demonstrate the EngageBreckenridge tool.



October 03, 2012 – for October 9, 2012 Work Session

TO: Breckenridge Town Council

FROM: James Phelps, Assistant Director Public Works & Maribeth Lewis-Baker, Transportation Manager

RE: 2012-13 Winter Transit Operations Plan

As recommended by Transit Plus in our Transit Integration Feasibility Study, there are operational efficiencies that could be achieved through schedule changes to the Free Ride and Breckenridge Ski Resort (BSR) that would:

- make the overall transit network more efficient,
- make for a better use of the current transit resources,
- and provide better customer service to our guests.

Through a series of meetings with the BSR transportation operational staff, we developed a joint plan for the 2012-2013 Ski Season. This plan will be the first phase in a cooperative effort to improve service times between both transit providers.

The Town has utilized the same basic winter schedule since LSC Transportation Consultants prepared the 2009 Transit Master Plan. During this period the Transit Division has concurrently identified operational improvements that make sense to implement in conjunction with Phase 1 integration, per the Feasibility Study. Phase 1 plan is defined as activities for Winter 2012-13 and include: common brand, joint communications system, central lost and found, common headsigns, and improved route efficiencies. Phase 2 & 3 are for subsequent years.

Breckenridge Free Ride Transit Winter Plan will utilize the (3) existing town buses (Gray N, Gray S, & Yellow – last year's service plan) and change to (3) Gray Route buses that would operate on a 45 minute circuit from the start of morning service at 6:15 am until 5 pm. This proposal is the same number of buses from previous years and would provide for 15 minute service on the Gray Route. At 5 pm, Free Ride would have a phased ramp down, where (1) one bus would become the evening Black Route, the (2nd) second bus would operate the evening Yellow Route, and the (3rd) third bus would be parked for evening. The Yellow (30 min) Route will provide service for the Beaver Run/Kings Crown Loop, Airport Road, and Colorado Mountain College (when school is in session). The Orange route services the Ice

Rink and the Brown route services the Village and Main Street Station. Transit Management saw an opportunity to eliminate some redundant service on the Gray South route by going with a Yellow evening route. We can also more effectively serve the Beaver Run/Kings Crown loop and the north side of town with an evening Yellow Route on 30-minute service and cut our miles driven with this proposed plan. We can effectively communicate Day & Evening Routes on our network's schedule map for the public. Our operating hours will be from 6:15 am to 11:45 pm, seven days per week.

We will continue to have the Orange Route (Main Street), the Purple Route (French Creek/Wellington Neighborhood), Evening Black Route (Ski Hill Road/Peak 7 & 8), and the Brown Route (Warrior's Mark Neighborhood). The Brown Route has a second bus during Peak Times (7 am – 10:30 am and 2:30 pm – 6 pm) that is funded via an operating grant. No changes are proposed for those routes.

We examined the Gray Route proposal against the current BSR Green Route schedule. Our analysis concluded that we can improve operational issue on the north side of Town, however we would not be spaced very well on the Beaver Run/Kings Crown loop with the ski area Green buses. In discussions with the ski area, we reached an agreement to tighten up the current Green route schedule. This will in turn improve the spacing of buses on the Beaver Run/Kings Crown Loop.

The 2012-2013 winter operations plan is a first phase in rationalizing the schedules/efficiencies between the two transit systems. As recommended by Transit Plus, there is a need to analyze the changes and then make subsequent steps to further refine the efficiencies and customer service goals.

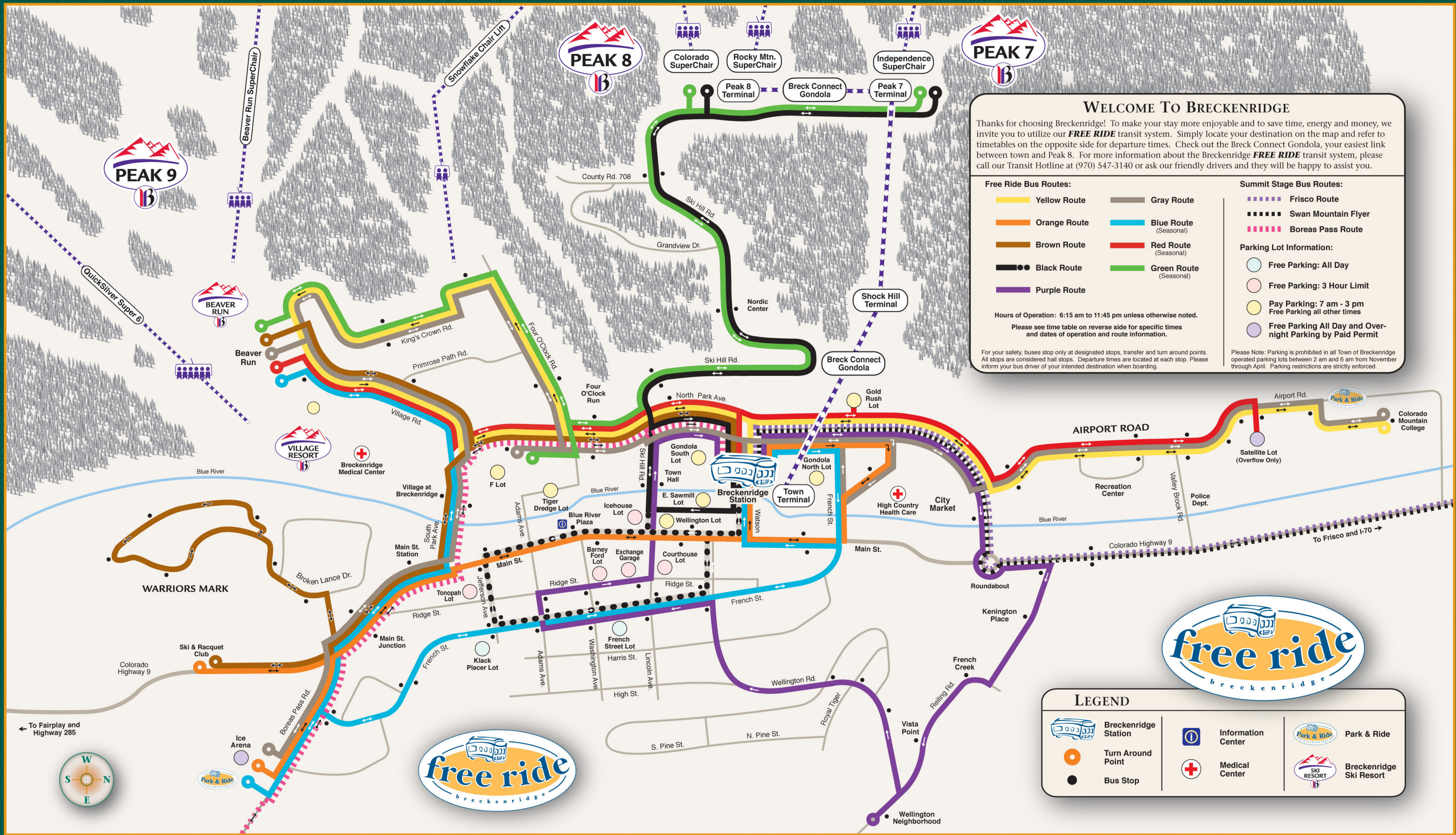
In concert with the 3 bus -Gray Route proposal, this proposed schedule would provide better spacing between the Green and Gray buses:

- The service plan does not require any additional staffing resources for either system.
- More frequent service, achieved by tightening schedules and working together,
- The proposed operations plan represents a collaborative plan with improved customer service.

The only other change to the winter schedule from last year will be the BSR Blue Route. The Blue Route will be realigned to travel outbound on French St. from Park Ave.

Also this ski season, you will see (6) six BSR ski areas buses "branded" as the Free Ride brand and the ski area will put the Free Ride radio with GPS capability on their buses operating fixed routes so that they will display on the "Where's My Bus" screens. These two improvements should greatly enhance transit service for the customer. Capitalizing on the Free Ride brand was a recommendation from the transit consultant and you will see more efforts to highlight the brand.

Staff will be on-hand at the Work Session with a short overview presentation of the Winter Operations Plan and to answer any questions you may have.



Town of Breckenridge - Proposed 2012-13 Free Ride Transit Routes

MEMO

TO: Town Council

FROM: Town Attorney

RE: Revised Ethics Ordinance

DATE: October 3, 2012 (for October 9th meeting)

Background

The Town's Ethics Ordinance was adopted in 1992. Before that, the Town's ethics rules consisted primarily of one key provision in the Town's Charter dealing with a Council member's conflict of interest; one State statute law describing a few ethical rules for Colorado municipalities; and the State's Code of Conduct for State and local government officials and employees.

It is generally acknowledged that Colorado home rule municipalities have the right to adopt their own set of ethic rules under their constitutional home rule powers. In 1992, the Council decided to use the Town's home rule powers to craft its own Ethics Ordinance. The Ethics Ordinance has been amended from time to time over the past 20 years, but has never been substantially revised.

From my perspective, the Town's Ethics Ordinance is one of its most important local laws. It establishes an agreed set of rules for the "ethical" operation of local government. The current ordinance has worked reasonably well over the past two decades. However, it is my belief that the ordinance needs updating so that it reflects this Council's view of what constitutes ethical local government, as well as addressing a few issues that have come up since the ordinance was initially adopted.

The original ordinance was based in large part upon what was then the new State Code of Ethics. While taking the position that the Town (by virtue of its home rule status) did not have to follow the State Code of Ethics, it was thought that the State statute provided a reasonably good framework for organizing and describing the Town's new ethical rules. While the State Code of Ethics was the foundation, several unique rules were included in the Town's Ethics Ordinance to address local concerns and issues, and to truly make this Breckenridge's Ethics Ordinance .

Enclosed with this memo is the current draft of a proposed new Ethics Ordinance. The changes from the current ordinance are such that it is not possible to create a blacklined version of the new ordinance showing changes to the current ordinance. Please keep in mind that the enclosed document is only a draft. If the current Ethics Ordinance is to be revised, it is important that the Council be comfortable with both the format and content of the new ordinance.

Format of the New Ordinance

The original Ethics Ordinance divided the Town's ethic laws into two broad categories: those rules that are applicable to "Town Officers", and those rules that are applicable to "Town Employees." Originally, Town Officers were defined to include only the Council and the Planning Commission. As new permanent boards and commissions were created, the term was broadened to include members of BOSAC and the Liquor Licensing Authority.

In preparing the draft of the new ordinance, I have taken a different approach. I have written sections of the new ordinance that are applicable specifically to the Town Council; the three permanent boards and commissions of the Town (Planning Commission, BOSAC, and the Liquor Licensing Authority); temporary Town boards and commissions; Town employees; and a section that applies to Town contractors.

Much of my work with the Ethics Ordinance over the years has involved the conflict of interest rules. Currently, much of the applicable conflict of interest provisions are contained in the definitional section of the Ethics Ordinance. As you will see, I have moved the conflict of interest provisions into the parts of the ordinance where the provisions are to be applied. For example, there is now a specific section on conflict of interest involving Town Council members, and a separate section involving conflict of interest involving members of the three permanent Town boards and commissions. Each section contains an applicable definition of conflict of interest. Moving the provisions around seemed to me to make the ordinance more user friendly, as well as providing additional clarity.

Some of changes to the current Ethics Ordinance are merely structural; some, however, are truly substantive in nature. I hope the format changes are acceptable to you. The substantive changes are the ones I really want you to focus on.

Substantive Changes to the Current Ordinance

Here are what I think are the most important substantive changes contained in the draft ordinance:

1. New language has been inserted in Section 1-16-3 to make it clear that the State's Code of Ethics, as well as the State Gift Reporting Statute and the State ethic's statute that is applicable to statutory municipalities, do not apply to the Town. This additional language is necessary to make it clear that the Town's ethical rules are set forth in Town law, not in State law.

2. New language has been added in Section 1-16-4(B) to the effect that although it is the Town's position that the State Gift Reporting Statute does not apply to the Town, the Town Council members will voluntarily file the periodic reports required by the statute. As far as I've been able to determine, this is the approach taken by many Colorado home rule municipalities.

3. In the definition of "Town Contractor" in Section 1-16-9, I have removed language that makes a contractor subject to the Town's Ethics Ordinance for up to 12 months after the contract has ended. In addition to being hard to police, it did not seem necessary to continue to

make the Ethics Ordinance applicable once the contract ended.

4. A new section 1-16-10(F) has been added to reflect a 2012 amendment to the State Code of Ethics. While the Town is not required to incorporate the change in State law into its own ordinance, in this instance the language change seemed to be appropriate.

5. Section 1-16-11 lists certain Council member conduct that is specially determined not to be unethical or a violation of the ordinance. I have suggested only one change here. The current language (from the original version of the ordinance) allows a Council member to appear before the Council or a board or commission in such person's capacity as a citizen. Since the original Ethics Ordinance has been adopted I have become convinced that a Council member should not appear before the Council "as a citizen." I think that clearly runs afoul of the prohibition against a conflicted Council member attempting to influence the Council on the matter as to which a conflict exists. It also seems to me that allowing a Council member to address the Council as a citizen may raise questions among the public as to whether the remainder of Council might be inclined to give the conflicted Council member's perspective more weight simply because he or she is a fellow Council member. To me, clearly prohibiting Council member "citizen" comments is simply good public policy.

6. Section 1-16-12 is the new section dealing specifically with conflict of interest in Town Council action. Incorporated into this new section is the controlling definition of a conflict of interest. There are no substantive changes to the definition. However, I have inserted new language requiring each Council member to "carefully consider" whether he or she has a conflict of interest before taking action on a particular matter, and I have provided that a Council member "may, but is not required to" bring the issue of a fellow Council member's potential conflict of interest to the attention of the Council. Are you okay with this approach?

I know some members of the Council have struggled with the provision of the Town Charter that requires the Council as a body to determine whether a conflict of interest exists. However, unless that Charter provision is changed by the voters the Ethics Ordinance must reflect the Charter's current requirement. As you will see, the requirement to comply with the Charter provision is still contained in Subsection G.

Subsection H deals specifically with what must be done when a Council member is found to have a conflict of interest. Although I prefer that a conflicted Council member leave the room until the matter is decided (to avoid any argument that he or she somehow attempted to influence the Council on the matter), I have carried forward the current ordinance language that only requires a conflicted member to leave the table until the matter is concluded.

6. Section 1-16-18 contains the list of conduct for members of the Planning Commission, BOSAC, and the Liquor Licensing Authority that is specifically determined not to constitute unethical conduct (or a violation of the ordinance). In Subsection F I have allowed a member of the Planning Commission, BOSAC, or Liquor Licensing Authority to address the Council or a board or commission that they are not a member of by speaking as a citizen. Are you okay with approach?

7. Section 1-16-19 is the new section dealing specifically with conflict of interest in the actions of the Planning Commission, BOSAC, and the Liquor Licensing Authority. This is substantially similar to the new section dealing with Town Council conflicts.

8. Section 1-16-21 is the new section dealing with the applicability of the Ethics Ordinance to temporary Town boards and commissions. I struggled with this section. Do you agree that the ordinance should be made applicable to temporary boards? If so, does this adequately address the concern? How does this proposed rule impact BMAC?

9. Section 1-16-24 deals with conduct that is prohibited of a Town employee, and Section 1-16-25 is a list of Town employee conduct that is exempted from the application of the ordinance. Note that here I have left in the language current allowing the employee to appear before the Council or a Town board or commission as a citizen. Because an employee is typically not a final decision maker, it seems to me the potential for allowing such conduct by an employee is not nearly so significant as allowing such conduct by a Council member. Do you agree? Also note that Subsection K is new (it's the same new statutory language discussed in Paragraph 4, above).

10. Section 1-16-26 is new. It prohibits a former Town employee from personally representing a person or entity for compensation before the Council or a Town board or commission with respect to any matter that the former employee worked on while employed by the Town (no time limit). This is the "revolving door" issue that has received a lot of attention recently. Are you okay with my suggested approach to this issue? If so, should there be a similar provision dealing with a Town Council member who wants to become a Town employee after leaving the Council?

11. Section 1-16-29 is the provision that makes the Ethics Ordinance applicable to Town contractors. The Town's ordinance needs to deal with Town contractors to comply with Colorado Constitution Amendment XXIX, and the language seems pretty straightforward. Note, however, the last sentence of the section dealing with the ability of a Town contractor to accept tips or gratuities if authorized by the applicable contact, or by the Town Manager. This sentence is directed primarily at contractors who instruct at the golf course or ice rink, and are offered tips by their customers.

12. Section 1-16-30 is the ethical rule generally prohibiting the Town Council members from having an interest in a Town contract. One new exception to the general rule is proposed in the ordinance. Subsection(C)(5) is modeled after the current State Code of Ethics, and allows a Town Council member to have an interest in a Town contract if the interest is disclosed; the Town Council itself approves the contract; the conflicted member does not vote to approve the contract.

Lastly, you will notice that in Section 1-16-34, which deals with the distribution of the revised Ethics Ordinance, language has been inserted allowing the Town Clerk to provide a link to the ordinance on the Town's web site, instead of physically distributing hard copies of the new ordinance.

I hope this memo and the draft ordinance triggers a lively debate among the Council members about the Town's philosophy for what constitutes ethical conduct in the local government setting. Since the Town has a great deal of flexibility in defining ethical conduct for itself, I look forward to discussing this memo and the draft ordinance with you, and ultimately coming up with an ordinance that reflects your vision for ethical government in Breckenridge.

1 ***DRAFT October 3, 2012 DRAFT***

2
3 COUNCIL BILL NO. ____

4
5 Series 2012

6
7 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 16 OF
8 TITLE 1 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE
9 TOWN CODE OF ETHICS”

10
11 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
12 COLORADO:

13
14 Section 1. Chapter 16 of Title 1 of the Breckenridge Town Code is repealed and
15 readopted with changes so as to read in its entirety as follows:

16
17 CHAPTER 16

18
19 TOWN CODE OF ETHICS

20
21 **Part A Introduction**

- 22
- 23 1-16-1: Citation
- 24 1-16-2: Declaration of Policy
- 25 1-16-3: Finding of Local Concern
- 26 1-16-4: Finding Concerning Article XXIX of the Colorado Constitution; Statutory Gift-
- 27 Reporting Form
- 28 1-16-5: Authority
- 29 1-16-6: Effect of Common Law
- 30 [1-16-7 though 1-16-8: reserved]

31
32 **Part B Definitions**

- 33
- 34 1-16-9: Definitions
- 35

36 **Part C Town Council**

- 37
- 38 1-16-10: Prohibited Conduct Town Council Member
- 39 1-16-11: Exemptions Town Council Member
- 40 1-16-12: Conflict of Interest in Town Council Action
- 41 1-16-13: When Town Council Member With Conflict of Interest May Vote
- 42 [1-16-14 though 1-16-16: reserved]

43
44 **Part D – Town Boards and Commissions**

2012 ETHICS ORDINANCE

- 1
- 2 1-16-17: Prohibited Conduct Members of Planning Commission, Open Space Advisory
- 3 Commission, and Liquor Licensing Authority
- 4 1-16-18: Exemptions Members of Planning Commission, Open Space Advisory
- 5 Commission, and Liquor Licensing Authority
- 6 1-16-19: Conflict Of Interest in Action of Planning Commission, Open Space Advisory
- 7 Commission, and Liquor Licensing Authority
- 8 1-16-20: When Member of Planning Commission, Open Space Advisory Commission, or
- 9 Liquor Licensing Authority with Conflict of Interest May Vote
- 10 1-16-21: Prohibited Conduct Members of Temporary Boards, Commissions and
- 11 Advisory Bodies

12 [1-16-22 through 1-16-23: reserved]

13

14 **Part E Town Employees**

- 15
- 16 1-16-24: Prohibited Conduct Town Employee
- 17 1-16-25: Exemptions Town Employee
- 18 1-16-26: Restriction on Representation After Leaving Town Employment
- 19 [1-16-27 though 1-16-28: reserved]

20

21 **Part F Town Contractors**

- 22
- 23 1-16-29: Prohibited Conduct Town Contractors

24

25 **Part G Town Contracts**

- 26
- 27 1-16-30: Public Contracts

28

29 **Part H Enforcement**

- 30
- 31 1-16-31: Enforcement
- 32 1-16-32: Penalties and Remedies
- 33 1-16-33: Authority of Town Attorney to Issue Opinions
- 34 1-16-34: Distribution Of Code Of Ethics

35

36 **PART A INTRODUCTION**

37

38 1-16-1: CITATION: This Chapter is to be known and may be cited as the *2012 TOWN OF*

39 *BRECKENRIDGE CODE OF ETHICS.*

40

41 1-16-2: DECLARATION OF POLICY:

- 42
- 43 A. The proper operation of democratic government requires:

44

- 1 1. that the public officers and employees be independent, impartial, and
- 2 responsible to the people.
- 3 2. that government decisions and policy be made within the proper channels
- 4 of the governmental structure.
- 5 3. that public office not be used for personal gain.
- 6 4. that the public have confidence in the integrity of its government.

7 B. The purpose of this Code is to establish minimum ethical standards of conduct
8 for:

- 9 1. the members of the Town Council;
- 10 2. the members of all Town boards and commissions;
- 11 3. the members of all Town temporary boards, commissions and advisory
- 12 board (to the extent provided in Section 1-16-21);
- 13 4. all Town employees; and
- 14 5. all Town contractors

15 by setting forth those acts or actions that are incompatible with the best interest of
16 the Town, and by directing disclosure by such persons of private financial or other
17 interests in matters affecting the Town.

18 1-16-3: FINDING OF LOCAL CONCERN: The Town Council finds and determines that the
19 matter of ethical municipal government is a matter of local concern upon which home rule
20 municipalities in Colorado are fully empowered to legislate and to supersede conflicting state
21 statutes. Accordingly, this Chapter supersedes all conflicting state statutes, including, but not
22 limited to: (i) Article 18 of Title 24, C.R.S.; (ii) Section 24-6-203, C.R.S.; and (iii) Section 31-4-
23 404, C.R.S.

24
25 1-16-4: FINDING CONCERNING ARTICLE XXIX OF THE COLORADO CONSTITUTION;
26 STATUTORY GIFT-REPORTING FORM:

27
28 A. The Town Council finds, determines, and declares that this Chapter addresses the
29 matters covered by Article XXIX of the Colorado Constitution. Therefore, the
30 provisions of Article XXIX of the Colorado Constitution are inapplicable to the
31 Town, and to the Town Council, Town boards and commissions, Town
32 employees, and Town contractors. As such, the Independent Ethics Commission
33 created by Section 5 of Article XXIX of the Colorado Constitution has no
34 jurisdiction over any member of the Town Council, any member of a Town board
35 or commission, any Town employee, or any Town contractor.

1 B. Notwithstanding the inapplicability to the Town of Article XXIX of the Colorado
2 Constitution and Section 24-6-203, C.R.S., members of the Town Council shall
3 file the periodic reports required by Section 24-6-203(2), C.R.S.
4

5 1-16-5: AUTHORITY: The Town Council finds, determines, and declares that it has the power
6 to adopt this Chapter pursuant to the authority granted to home rule municipalities by Article XX
7 of the Colorado Constitution, and the powers contained in the Breckenridge Town Charter.
8

9 1-16-6: EFFECT OF COMMON LAW: This Chapter supersedes and overrides the common law
10 as to the subject matter of this Chapter.
11

12 [1-16-7 through 1-16-8: reserved]
13

14 **PART B □ DEFINITIONS**

15
16 1-16-9: DEFINITIONS:
17

18 A. As used in this Chapter, unless the context otherwise requires:
19

BUSINESS: Any corporation, limited liability corporation, partnership, sole proprietorship, trust, or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

CONFIDENTIAL INFORMATION: All information, whether transmitted orally or in writing, that is of such a nature that it is not, at that time, a matter of public record or public knowledge.

COUNCIL MEMBER: A member of the Town Council.

COUNCIL OR TOWN COUNCIL: The Town Council of the Town of Breckenridge.

EMPLOYEE OR TOWN EMPLOYEE: Any person employed in the service of the Town, including, without limitation, the Town Attorney, municipal judge and associate municipal judge(s). The term “town employee” does not include a member of the Town Council or a member of any Town board or commission.

LIQUOR LICENSING AUTHORITY: The Town of Breckenridge Liquor Licensing Authority created pursuant to Title 2, Chapter 5 of this Code.

OFFICIAL ACT OR OFFICIAL ACTION: Any vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

OPEN SPACE ADVISORY COMMISSION: The Town of Breckenridge Open Space Advisory Commission created pursuant to Title 2, Chapter 4 of this Code.

PLANNING COMMISSION: The Planning Commission of the Town of Breckenridge.

SUBSTANTIAL FINANCIAL INTEREST: An interest owned or held that is:
A. an ownership interest in a business;
B. a creditor interest in a business;
C. an ownership interest in real or personal property;
D. a loan or any other debtor interest;
E. a directorship or officership in a business; and
F. an employment or a prospective employment for which negotiations have begun.

A person has a substantial financial interest in any of the above mentioned interests owned, held, or controlled by the person’s spouse or dependent children.

TOWN BOARD OR COMMISSION: The Planning Commission, the Open Space Advisory Commission, and the Liquor Licensing Authority.

TOWN CONTRACTOR: A person or business under contract to perform work for the Town; or a person or business who has submitted a bid to do work for the Town, which bid is still pending.

UNDERTAKING: Any activity conducted primarily for the purpose of making a profit, including, without limitation, any activity that substantially advances a person’s private financial interest or position.

1
2 B. Terms not defined in this Chapter are to be given their common meaning.
3

4 **PART C □ TOWN COUNCIL**

5
6 1-16-10: PROHIBITED CONDUCT □ TOWN COUNCIL MEMBER: A Town Council
7 member shall not:
8

- 1 A. Disclose or use confidential information acquired in the course of the Council
2 member's duties in order to further a business or other undertaking in which the
3 Council member has a substantial financial interest.
4
- 5 B. Disclose any confidential information acquired in the course of the Council
6 member's duties to any person under circumstances where the Council member
7 knows, or reasonably should know, that the person to whom the confidential
8 information is disclosed will use the confidential information in order to further a
9 private business or undertaking.
10
- 11 C. Solicit or accept a present or future gift, favor, loan, service or thing of value from
12 a person under circumstances that would lead a reasonably prudent person to
13 believe that the gift, favor, loan, service, or thing of value was made or given
14 primarily for the purpose of influencing or attempting to influence the Council
15 member in connection with an official act, or as a reward of official action he or
16 she has previously taken.
17
- 18 D. Make or accept an ex parte communication or contact concerning a quasi-judicial
19 matter pending before the Town Council without making the contents of the
20 communication or contact a part of the record of the public hearing. The
21 provisions of this subsection do not apply to a legislative or administrative matter.
22
- 23 E. Appear, except as authorized by Section 1-16-11C and Section 1-16-11D, with
24 respect to any matter before the Town Council, any Town board or commission,
25 or the municipal court; provided, however, this subsection does not prohibit a
26 Town Council member from appearing before the Liquor Licensing Authority.
27
- 28 F. Assist or enable a member of his or her immediate family in obtaining
29 employment, a gift of substantial value, or an economic benefit tantamount to a
30 gift of substantial value, from a person whom the Town Council member is in a
31 position to reward with official action or has rewarded with official action in the
32 past.

33 1-16-11: EXEMPTIONS □ TOWN COUNCIL MEMBER: Section 1-16-10 does not prohibit a
34 Town Council member from:

- 35
- 36 A. Accepting or receiving a benefit as an indirect consequence of the performance of
37 an official act.
38
- 39 B. Taking official action when the Council member is similarly situated with other
40 Town residents, such as in connection with the adoption of general land use
41 regulations, the formation of a special or local improvement district within which
42 the Council member owns real property, the imposition of taxes, the authorization
43 of bonds, or generally acting when the matter involves the common public
44 interest.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

- C. Appearing before the Town Council or the Planning Commission in connection with a planning/development matter pertaining to the Council member’s primary residence; provided that the Council member shall be deemed to have a conflict of interest with respect to the matter.

- D. Appearing in municipal court on the Council member’s own behalf, or on behalf of the Council member’s spouse or minor child.

- E. Accepting gifts or loans that are:
 - 1. campaign contributions reported as required by law;
 - 2. an occasional nonpecuniary gift, insignificant in value;
 - 3. a nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;
 - 4. payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which the Council member is scheduled to participate as a speaker or other contributor in his or her capacity as a Town Council member if the paying or reimbursing party has no current or anticipated business with the Town. Any honorarium or other monetary compensation received by the Council member in connection with the convention or meeting shall be turned over to the Town;
 - 5. reimbursement for or acceptance of an opportunity to participate in a social function or meeting that is not extraordinary when viewed in light of the position held by the Council member;
 - 6. items of perishable or nonpermanent value, including, but not limited to, meals and tickets to sporting, recreational, educational, or cultural events;
 - 7. payment for speeches, debates, or other public events, reported as honorariums to the Town Manager; or
 - 8. a loan at a rate of interest that is not substantially lower than the commercial rate then currently prevalent for similar loans within the Town.

- F. Receiving the compensation for his or her services to the Town as may be fixed by ordinance, pay plan, budget, or other similar official action.

- 1 G. Personally contracting with a Town contractor for the performance of work so
2 long as the contract will not interfere with or delay the contractor's performance
3 of any contract with the Town, and the contractor is paid by the Council member
4 at substantially the generally prevailing market rate for the services within the
5 Town. Before entering into the contract the Council member shall notify the
6 Town Manager in writing.

7 1-16-12: CONFLICT OF INTEREST IN TOWN COUNCIL ACTION:
8

- 9 A. No member of the Town Council may take any official action on a matter as to
10 which he or she is determined by the Town Council to have a conflict of interest.

- 11 B. A Town Council member has a conflict of interest with respect to any matter
12 coming before the Town Council when the taking of any official action by the
13 Council member would:

- 14 1. substantially affect to its economic benefit a business or other undertaking
15 in which the Council member has a substantial financial interest;
- 16 2. substantially affect to its economic benefit a business or other undertaking
17 by whom the Council member is employed, or by whom the Council
18 member is engaged as counsel, consultant, representative, or agent;
- 19 3. substantially affect to its economic detriment any business or other
20 undertaking when the Council member has a substantial financial interest
21 in a competing business or undertaking;
- 22 4. give rise to the appearance of impropriety on the part of the Council
23 member; or
- 24 5. result in a conflict of interest as described in subsection 1-16-11C.

- 25 C. A Council member does not have a conflict of interest with respect to any matter
26 determined by the Council to involve the common public interest, such as matters
27 involving the adoption of general land use regulations, the formation of a special
28 or local improvement district within which the Council member owns real
29 property, the imposition of taxes, the authorization of bonds, and similar actions.
30

- 31 D. Each member of the Town Council must carefully consider whether he or she
32 may have a conflict of interest before taking official action on a matter.

- 33 E. A member of the Town Council who may have a conflict of interest on a
34 particular matter must disclose the potential conflict of interest before the Council
35 begins its consideration of the matter.
36

- 1 F. Any member of the Council who believes that another member of the Council has
- 2 a conflict of interest may, but is not required to, bring the issue to the attention of
- 3 the Council before the Council begins its consideration of the matter.
- 4
- 5 G. The Council will determine whether a conflict of interest exists by applying the
- 6 standards set forth in this Chapter.
- 7
- 8 H. If the Town Council determines that a Council member has a conflict of interest
- 9 on a particular matter:
- 10
- 11 1. the Council member with the conflict may not attempt to influence other
- 12 members of the Town Council in connection with the matter;
- 13
- 14 2. except as provided in Section 1-16-13, the Council member with the
- 15 conflict may not vote upon the matter; and
- 16
- 17 3. the Council member with the conflict must leave the Council table during
- 18 Council's discussion and action on the matter, and may return only when
- 19 the Council has taken up the next agenda item.

18 1-16-13: WHEN TOWN COUNCIL MEMBER WITH CONFLICT OF INTEREST MAY
 19 VOTE: Notwithstanding Section 1-16-12, a Town Council member may vote upon a matter as to
 20 which the Council member has a conflict of interest if:

- 21
- 22 A. His or her participation is necessary to obtain a quorum or to otherwise enable the
- 23 Town Council to act; and
- 24
- 25 B. Not later than seventy two (72) hours before voting the Town Council member
- 26 gives written notice to both the Colorado Secretary of State and the Town
- 27 Council. The notice must clearly state the nature of his or her conflict of interest.

27 [1-16-14 though 1-16-16: reserved]

28
 29 **PART D □ TOWN BOARDS AND COMMISSIONS**

30

31 1-16-17: PROHIBITED CONDUCT □ MEMBERS OF PLANNING COMMISSION, OPEN
 32 SPACE ADVISORY COMMISSION AND LIQUOR LICENSING AUTHORITY: A member
 33 of the Planning Commission, Open Space Advisory Commission, or Liquor Licensing Authority
 34 shall not:

- 35
- 36 A. Disclose or use confidential information acquired in the course of the member's
- 37 duties in order to further a business or other undertaking in which the member has
- 38 a substantial financial interest.
- 39
- 40 B. Disclose any confidential information acquired in the course of the member's
- 41 duties to any person under circumstances where the member knows, or reasonably

1 should know, that the person to whom the confidential information is disclosed
2 will use the confidential information in order to further a private business or
3 undertaking.
4

- 5 C. Solicit or accept a present or future gift, favor, loan, service or thing of value from
6 a person under circumstances that would lead a reasonably prudent person to
7 believe that the gift, favor, loan, service, or thing of value was made or given
8 primarily for the purpose of influencing or attempting to influence the member in
9 connection with an official act, or as a reward of official action he or she has
10 previously taken.
- 11
- 12 D. Make or accept an ex parte communication or contact concerning a quasi-judicial
13 matter pending before the member's Town board or commission without making
14 the contents of the communication or contact a part of the record of the public
15 hearing. The provisions of this subsection do not apply to a legislative or
16 administrative matter.
- 17
- 18 E. Appear, except as authorized by Section 1-16-18C and Section 1-16-18D, with
19 respect to any matter before the Town Council, any Town board or commission,
20 or the municipal court; provided, however, this subsection does not prohibit a
21 member of a Town board or commission from appearing before the Liquor
22 Licensing Authority.
- 23
- 24 F. Assist or enable a member of their immediate family in obtaining employment, a
25 gift of substantial value, or an economic benefit tantamount to a gift of substantial
26 value from a person whom the member is in a position to reward with official
27 action or has rewarded with official action in the past.

28 1-16-18: EXEMPTIONS □ MEMBERS OF PLANNING COMMISSION, OPEN SPACE
29 ADVISORY COMMISSION, AND LIQUOR LICENSING AUTHORITY: Section 1-16-17
30 does not prohibit a member of the Planning Commission, Open Space Advisory Commission, or
31 Liquor Licensing Authority from:
32

- 33 A. Accepting or receiving a benefit as an indirect consequence of the performance of
34 an official act.
- 35
- 36 B. Taking official action when the member is similarly situated with other Town
37 residents, or generally acting when the matter involves the common public
38 interest.
- 39
- 40 C. Appearing before the Town Council or Planning Commission in connection with
41 a planning/development matter pertaining to the member's primary residence;
42 provided that the member shall be deemed to have a conflict of interest with
43 respect to the matter.
44

- 1 D. Appearing in municipal court on the member's own behalf, or on behalf of the
2 member's spouse or minor child.
3
- 4 E. Accepting gifts or loans that are:
5
6 1. an occasional nonpecuniary gift, insignificant in value;
7
8 2. a nonpecuniary award publicly presented by a nonprofit organization in
9 recognition of public service;
10
11 3. payment of or reimbursement for actual and necessary expenditures for
12 travel and subsistence for attendance at a convention or other meeting at
13 which the member is scheduled to participate as a speaker or other
14 contributor in his or her capacity as a member if the paying or reimbursing
15 party has no current or anticipated business with the Town. Any
16 honorarium or other monetary compensation received by the member in
17 connection with the convention or meeting shall be turned over to the
18 Town;
19
20 4. reimbursement for or acceptance of an opportunity to participate in a
21 social function or meeting that is not extraordinary when viewed in light
22 of the position held by the member;
23
24 5. items of perishable or nonpermanent value, including, but not limited to,
25 meals and tickets to sporting, recreational, educational, or cultural events;
26
27 6. payment for speeches, debates, or other public events, reported as
28 honorariums to the Town Manager; or
29
30 7. a loan at a rate of interest that is not substantially lower than the
31 commercial rate then currently prevalent for similar loans within the
32 Town.
33
- 34 F. Appearing with respect to any matter of public concern before the town council,
35 or any town board or commission of which the person is not a member, in his or
36 her capacity as a citizen, and neither in such person's official capacity and or
37 counsel, consultant, representative or agent for any person, business or
38 undertaking.
- 39 G. Receiving the compensation for his or her services to the Town as may be fixed
40 by ordinance, pay plan, budget, or other similar official action.
- 41 H. Personally contracting with a Town contractor for the performance of work so
42 long as the contract will not interfere with or delay the contractor's performance
43 of any contract with the Town, and the contractor is paid by the member at

1 substantially the generally prevailing market rate for the services within the
2 Town. Before entering into the contract the member shall notify the Town
3 Manager in writing.

4 1-16-19: CONFLICT OF INTEREST IN ACTION OF PLANNING COMMISSION, OPEN
5 SPACE ADVISORY COMMISSION, AND LIQUOR LICENSING AUTHORITY:
6

7 A. No member of the Planning Commission, Open Space Advisory Commission, or
8 Liquor Licensing Authority may take any official action on a matter as to which
9 he or she is determined by the member's board or commission to have a conflict
10 of interest.

11 B. A member of the Planning Commission, Open Space Advisory Commission, or
12 Liquor Licensing Authority has a conflict of interest with respect to any matter
13 coming before the member's board or commission when the taking of any official
14 action by the member would:

15 1. substantially affect to its economic benefit a business or other undertaking
16 in which the member has a substantial financial interest;

17 2. substantially affect to its economic benefit a business or other undertaking
18 by whom the member is employed, or by whom the member is engaged as
19 counsel, consultant, representative, or agent;

20 3. substantially affect to its economic detriment any business or other
21 undertaking when the member has a substantial financial interest in a
22 competing business or undertaking;

23 4. give rise to the appearance of impropriety on the part of the member; or

24 5. result in a conflict of interest as described in subsection 1-16-18C.

25 C. A member of the Planning Commission, Open Space Advisory Commission, or
26 Liquor Licensing Authority does not have a conflict of interest with respect to any
27 matter determined by the member's board or commission to involve the common
28 public interest.
29

30 D. Each member of the Planning Commission, Open Space Advisory Commission,
31 and Liquor Licensing Authority must carefully consider whether a he or she may
32 have a conflict of interest before taking official action on a matter.
33

34 E. A member of the Planning Commission, Open Space Advisory Commission, or
35 Liquor Licensing Authority who may have a conflict of interest on a particular
36 matter must disclose the potential conflict of interest before the member's board
37 or commission begins its consideration of the matter.
38

- 1 F. Any member of the Planning Commission, Open Space Advisory Commission, or
 2 Liquor Licensing Authority who believes that another member of the member's
 3 board or commission has a conflict of interest may, but is not required to, bring
 4 the issue to the attention of the board or commission before the board or
 5 commission begins its consideration of the matter.
 6
- 7 G. The Planning Commission, Open Space Advisory Commission, or Liquor
 8 Licensing Authority will determine whether a member has a conflict of interest
 9 applying the standards set forth in this Chapter.
 10
- 11 H. If the Planning Commission, Open Space Advisory Commission, or Liquor
 12 Licensing Authority determines that an actual conflict of interest exists on a
 13 particular matter:
 14
- 15 1. the member with the conflict may not attempt to influence other members
 16 of the Town board or commission in connection with the matter;
 - 17 2. except as provided in Section 1-16-20, the member with the conflict may
 18 not vote upon the matter; and
 - 19 3. the member with the conflict must leave the table during the board or
 20 commission's discussion and action on the matter, and may return only
 21 when the board or commission has taken up the next agenda item.

22 1-16-20: WHEN MEMBER OF PLANNING COMMISSION, OPEN SPACE ADVISORY
 23 COMMISSION, OR LIQUOR LICENSING AUTHORITY WITH CONFLICT OF INTEREST
 24 MAY VOTE: Notwithstanding Section 1-16-19, a member of the Planning Commission, Open
 25 Space Advisory Commission, or Liquor Licensing Authority may vote upon a matter as to which
 26 the member has a conflict of interest if:
 27

- 28 A. his or her participation is necessary to obtain a quorum or to otherwise enable the
 29 member's board or commission to act; and
- 30 B. not later than seventy two (72) hours before voting the member gives written
 31 notice to both the Colorado Secretary of State and to the member's board or
 32 commission. The notice must clearly state the nature of his or her conflict of
 33 interest.

34 1-16-21: PROHIBITED CONDUCT □ MEMBER OF TEMPORARY BOARDS,
 35 COMMISSIONS AND ADVISORY BODIES: A member of a temporary Town board,
 36 commission, or advisory body shall not perform an official act that may have a direct economic
 37 benefit on a business or undertaking in which such member has a direct or substantial financial
 38 interest. Except as provided in this Section, the provisions of this Chapter do not apply to the
 39 member of any temporary Town board, commission, or advisory body.
 40

41 [1-16-22 through 1-16-23: reserved]

1
2 **PART E □ TOWN EMPLOYEES**
3

4 1-16-24: PROHIBITED CONDUCT □ TOWN EMPLOYEE: A Town employee shall not:
5

- 6 A. Disclose or use confidential information acquired in the course of the employee's
7 duties in order to further a business or other undertaking in which the employee
8 has a substantial financial interest.
9
- 10 B. Disclose any confidential information acquired in the course of the employee's
11 duties to any person under circumstances where the employee knows, or
12 reasonably should know, that the person to whom the confidential information is
13 disclosed will use the confidential information in order to further a private
14 business or undertaking.
15
- 16 C. Engage in a substantial financial transaction for the employee's private business
17 purposes with a person whom the employee inspects or supervises in the course of
18 his or her employment with the Town.
19
- 20 D. Perform an official act that directly and substantially affects to its economic
21 benefit a business or other undertaking in which the employee has a substantial
22 financial interest.
23
- 24 E. Acquire or hold an interest in any business or undertaking that the employee has
25 reason to believe may be directly and substantially affected to its economic
26 benefit by official action to be taken by the agency over which he or she has
27 substantive authority.
28
- 29 F. Perform an official act directly and substantially affecting to its economic
30 detriment any business or other undertaking when the employee has a substantial
31 financial interest in a competing business or undertaking.
32
- 33 G. Solicit or accept a present or future gift, favor, loan, service or thing of value from
34 a person under circumstances that would lead a reasonably prudent person to
35 believe that the gift, favor, loan, service or thing of value was made or given
36 primarily for the purpose of influencing or attempting to influence the employee
37 in connection with an official act, or as a reward for official action he or she has
38 previously taken.
39
- 40 H. Perform any official act under circumstances that give rise to an appearance of
41 impropriety on the part of the employee.
42
- 43 I. Appear, except as authorized in Section 1-16-25B, Section 1-16-25C, and Section
44 1-16-25E, with respect to any matter before the Town Council, any Town board
45 or commission, or the municipal court.

- 1
- 2 J. Seek or accept election, nomination, or appointment to the governing board of any
- 3 unit of local government operating in Summit County, Colorado, whose
- 4 boundaries overlap with the boundaries of the Town.
- 5
- 6 K. Assist or enable a member of his or her immediate family in obtaining
- 7 employment, a gift of substantial value, or an economic benefit tantamount to a
- 8 gift of substantial value, from a person whom the employee is in a position to
- 9 reward with official action or has rewarded with official action in the past.

10 1-16-25: EXEMPTIONS TOWN EMPLOYEE: Section 1-16-24 does not prohibit a Town
 11 employee from:

- 12
- 13 A. Accepting or receiving a benefit as an indirect consequence of the performance of
- 14 an official act.
- 15
- 16 B. Appearing before the Town Council, any Town board or commission, or the
- 17 municipal court in the course of the performance of the employee's duties for the
- 18 Town.
- 19
- 20 C. Appearing before the Town Council or the Planning Commission in connection
- 21 with planning/development matters pertaining to the employee's primary
- 22 residence.
- 23
- 24 D. Appearing in municipal court on the employee's own behalf, or on behalf of the
- 25 employee's spouse or minor child.
- 26
- 27 E. Appear with respect to any matter of public concern before the town council,
- 28 planning commission, or any town board in such employee's capacity as a citizen,
- 29 and neither in such person's capacity as an employee, nor as counsel, consultant,
- 30 representative or agent for any person, business or undertaking.
- 31
- 32 F. Accepting gifts or loans that are:
- 33
- 34 1. an occasional nonpecuniary gift, insignificant in value;
- 35
- 36 2. a nonpecuniary award publicly presented by a nonprofit organization in
- 37 recognition of public service;
- 38
- 39 3. payment of or reimbursement for actual and necessary expenditures for
- 40 travel and subsistence for attendance at a convention or other meeting at
- 41 which the employee is scheduled to participate as a speaker or other
- 42 contributor in his or her capacity as a Town employee if the paying of
- 43 reimbursing party has no current or anticipated business with the Town. If
- 44 the employee is paid by the Town while attending the convention or

1 meeting, any honorarium or other monetary compensation received by the
2 employee in connection with the convention or meeting must be turned
3 over to the Town;

- 4
- 5 4. reimbursement for or acceptance of an opportunity to participate in a
6 social function or meeting that is not extraordinary when viewed in light
7 of the position held by the employee;
- 8
- 9 5. items of perishable or nonpermanent value, including, but not limited to,
10 meals and tickets to sporting, recreational, educational, or cultural events,
11 unless prohibited by applicable departmental rule or regulation;
- 12
- 13 6. payment of speeches, debates, or other public events, reported as
14 honorariums to the Town Manager; or
- 15
- 16 7. a loan at a rate of interest that is not substantially lower than the
17 commercial rate then currently prevalent for similar loans within the
18 Town.

19

20 G. Receiving the compensation for his or her services to the Town as may be fixed
21 by ordinance, pay plan, budget, or other similar official action; or

22 H. Personally contracting with a Town contractor for the performance of work so
23 long as the contract will not interfere with or delay the contractor's performance
24 of any contract with the Town, and the contract is paid by the employee at
25 substantially the generally prevailing market rate for the services within the
26 Town. Before entering into the contract the employee shall notify the Town
27 Manager in writing.

28 1-16-26: TOWN EMPLOYEE RESTRICTION ON REPRESENTATION AFTER
29 LEAVING TOWN EMPLOYMENT: No former Town employee may personally represent
30 another person or entity for compensation before the Town Council, or any Town board,
31 commission, or department, with respect to any matter that the former employee worked on
32 while employed by the Town.

33

34 [1-16-27 through 1-16-28: reserved]

35

36 **PART F TOWN CONTRACTORS**

37 1-16-29: PROHIBITED CONDUCT TOWN CONTRACTORS: A Town contractor may not
38 offer, give, or arrange to give to a member of the Town Council, a member of a Town board or
39 commission, or a Town employee a present or future gift, favor, loan, service or thing of value
40 under circumstances that would lead a reasonably prudent person to believe that the gift, favor,
41 loan, service or thing of value was offered or given primarily for the purpose of influencing or
42 attempting to influence the member of the Town Council, member of a Town board or

1 commission, or Town employee in connection with an official act, or as a reward for official
2 action he or she has previously taken. Nothing in this Chapter prevents a Town contractor from
3 accepting tips or gratuities for services provided if the acceptance of tips or gratuities is
4 authorized by the Town contractor's contract, or by the Town Manager.

5 **PART G □ TOWN CONTRACTS**

6
7 1-16-30: PUBLIC CONTRACTS:
8

- 9 A. Except as provided in subsection C of this Section, no member of the Town
10 Council, member of a Town board or commission, or Town employee may have
11 an interest in any contract made by the Town.
- 12 B. Every contract made in violation of this Section is voidable at the request of any
13 party to the contract, except the member of the Town Council, member of a Town
14 board or commission, or Town employee interested in such contract.
- 15 C. Subsection A of this Section does not apply to:
- 16 1. contracts awarded to the lowest responsible bidder based on competitive
17 bidding procedures;
- 18 2. merchandise sold to the highest bidder at public auction;
- 19 3. investments or deposits in financial institutions that are in the business of
20 loaning or receiving monies;
- 21 4. a contract between the Town and a member of the Town Council, member
22 of a Town board or commission, or Town employee if, because of
23 geographic restrictions, the Town could not otherwise reasonably afford
24 itself of the subject of contract. It is presumed that the Town could not
25 otherwise reasonably afford itself of the subject of a contract if the
26 additional cost to the Town is greater than ten percent (10%) of a contract
27 with a member of the Town Council, member of a Town board or
28 commission, or Town employee, or if the contract is for services that must
29 be performed within a limited time period and no other contractor can
30 provide those services within that time period. If the contract involves a
31 Council member, the Council member shall disclose his or her interest to
32 the Town Council before the contract is signed; or
- 33 5. a contract between the Town and a then-current member of the Town
34 Council if:
- 35 a. the Town Council member disclosed a personal interest in the
36 proposed contract to the Town Council on the record before the
37 approval of the contract;

- 1 b. the Town Council itself (and not the Town Manager or other Town
2 employee) approved the contract at a public meeting; and
- 3 c. the Town Council member did not vote on the question of the
4 approval of the contract. Note: Section 1-16-13 does not apply to a
5 Town Council member voting to approve a contract that he or she
6 has a personal interest in.

7 **PART H □ ENFORCEMENT**

8
9 1-16-31: ENFORCEMENT:

- 10
11 A. The Town Manager has the responsibility for the enforcement of this Chapter as
12 to all Town employees, other than those Town employees appointed or hired by
13 the Town Council. The Town Manager may investigate any complaint, and direct
14 the filing of appropriate legal action against any person as to whom he has
15 enforcement authority if the Town Manager believes such action is appropriate.
16 The Town Manager may exempt from the provisions of this Chapter the conduct
17 of a person as to whom he has enforcement authority upon the finding that the
18 enforcement of this Chapter with respect to the employee’s conduct would not be
19 in the public interest.
- 20 B. The Town Council has the responsibility for the enforcement of this Chapter as to
21 all other persons who are subject to the provisions of this Chapter. The Town
22 Council may investigate any complaint, and direct the filing of appropriate legal
23 action against any person as to whom it has enforcement authority if the Town
24 Council believes such action is appropriate. The Town Council may exempt from
25 the provisions of this Chapter the conduct of a any person as to whom it has
26 enforcement authority upon the finding that the enforcement of this Chapter with
27 respect to such person’s conduct would not be in the public interest.
- 28 C. The Town Manager or Town Council, as the case may be, may direct the Town
29 Attorney to investigate or prosecute any apparent violation of this Chapter, or the
30 Town Manager or Town Council may employ or appoint any qualified attorney to
31 investigate or prosecute any violation or series of violations by one or more
32 persons of this Chapter.
- 33 D. Any person who believes that a violation of any portion of this Chapter has
34 occurred may file a complaint with the Town Manager or Town Council, as the
35 case may be, which complaint will be promptly investigated and such action taken
36 thereon as the Town Manager or Town Council determines to be appropriate.

37 1-16-32: PENALTIES AND REMEDIES:
38

- 1 A. It is unlawful and a misdemeanor offense for any person to knowingly violate any
2 provision of this Chapter. “Knowingly” has the meaning provided in Section 6-3-
3 5 of this Code.
- 4 B. Any person convicted of violating any provision of this Chapter shall be punished
5 as provided in Chapter 4 of this Title. Additionally, upon conviction such person
6 is liable to the Town for such damages as may have been suffered or incurred as a
7 result of the violation, together with any costs (including, but not limited to,
8 attorneys’ fees and expert witness fees) incurred by the Town in the investigation
9 and prosecution of the violation.
- 10 C. Any court of competent jurisdiction called upon to enforce the provisions of this
11 Chapter may, with the consent of the Town Council or the Town Manager
12 (whichever has enforcement authority over the person pursuant to Section 1-16-
13 31) exempt from the provisions of this Chapter the conduct of any person upon
14 the finding that the enforcement of this Chapter with respect to such person’s
15 conduct would not be in the public interest.

16 1-16-33: AUTHORITY OF TOWN ATTORNEY TO ISSUE OPINIONS:

- 17 A. Notwithstanding anything contained in this Chapter to the contrary, no person
18 who is subject to the provisions of this Chapter may be convicted of violating any
19 of the provisions of this Chapter if, prior to engaging in the conduct that would
20 otherwise have resulted in a violation of this Chapter, such person obtains a
21 written opinion from the Town Attorney that the particular conduct in question
22 would not violate the provisions of this Chapter, and such person acts in
23 accordance with the opinion of the Town Attorney.
- 24 B. The Town Attorney must promptly render an opinion as to legality of proposed
25 conduct or action under this Chapter upon request.
- 26 C. The Town Attorney has no authority to finally determine whether a conflict of
27 interest exists with respect to a member of the Town Council or a member of a
28 Town board or commission; such determination may only be made by the Town
29 Council or applicable Town board or commission.

30 1-16-34: DISTRIBUTION OF CODE OF ETHICS:

- 31 A. Within thirty (30) days after the effective date of the ordinance adopting this
32 Chapter, the Town Clerk shall notify the following persons of the adoption of the
33 ordinance and provide such persons with a link to this Chapter on the Town’s web
34 site:
- 35 1. each current member of the Town Council;
- 36 2. each current member of all Town boards and commissions;

- 1 3. each current member of any Town temporary board, commission and
 2 advisory board.
- 3 B. Within thirty (30) days after they assume office the Town Clerk shall provide the
 4 following persons with a link to this Chapter on the Town’s web site:
- 5 1. each new member of the Town Council;
- 6 2. each new member of all Town boards and commissions; and
- 7 3. each new member of any Town temporary board, commission and
 8 advisory board.
- 9 C. Within thirty (30) days after their appointment or hiring the Town Clerk shall
 10 provide each newly hired Town employee with a link to this Chapter on the
 11 Town’s web site.
- 12 D. Not later than the date of the contractor’s commencement of work for the Town,
 13 the Town Clerk shall provide each Town contractor with a link to this Chapter on
 14 the Town’s web site.

15 Section 2. Except as specifically amended by this ordinance, the Breckenridge Town
 16 Code, and the various secondary Codes adopted by reference therein, shall continue in full force
 17 and effect.

18
 19 Section 3. The Town Council finds, determines, and declares that this ordinance is
 20 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
 21 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
 22 thereof.

23
 24 Section 4. This ordinance shall be published and become effective as provided by
 25 Section 5.9 of the Breckenridge Town Charter.

26
 27 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
 28 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
 29 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
 30 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
 31 Town.

32
 33 TOWN OF BRECKENRIDGE, a Colorado
 34 municipal corporation

35
 36
 37
 38 By _____
 39 John G. Warner, Mayor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62

ATTEST:

Town Clerk

500-13\Revised Ethics Ordinance (10-03-12)(worksession on 10-09-12)