



**BRECKENRIDGE TOWN COUNCIL WORK SESSION**

Tuesday, September 24, 2013; 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.*

<b>2:00-3:00pm</b>	<b>I</b>	<b><u>MCCAIN SOLAR GARDEN CEREMONY - 2PM</u></b>	
<b>3:00-3:15pm</b>	<b>II</b>	<b><u>PLANNING COMMISSION DECISIONS</u></b>	<b>2</b>
<b>3:15-4:00pm</b>	<b>III</b>	<b><u>LEGISLATIVE REVIEW*</u></b>	
		Breckenridge Subdivision Standards Ordinance Concerning Rights-of-Way Acquired by Governmental Entities	<b>14</b>
		Revised General Penalty Ordinance	<b>18</b>
		Omnibus Ordinance Concerning Marijuana	<b>22</b>
		Residential Growing of Marijuana	<b>40</b>
		2013 Budget Appropriations Resolution	<b>52</b>
		A Resolution in Support of Ballot Questions 1A and 2B Appearing on the November 2013 Ballot	<b>56</b>
<b>4:00-4:15pm</b>	<b>IV</b>	<b><u>MANAGERS REPORT</u></b>	
		Public Projects Update	<b>60</b>
		Housing/Childcare Update	
		Committee Reports	<b>62</b>
		Financials	<b>63</b>
<b>4:15-5:45pm</b>	<b>V</b>	<b><u>OTHER</u></b>	
		Vail Development Update	
		Skatepark Project	<b>73</b>
		Art Fair Presentation	<b>79</b>
<b>5:45-6:00pm</b>	<b>VI</b>	<b><u>PLANNING MATTERS</u></b>	
		Town Project: Wakefield Site Plan	<b>97</b>
	<b>VII</b>	<b><u>EXECUTIVE SESSION (TENTATIVE)</u></b>	
<b>6:00pm</b>	<b>VIII</b>	<b><u>JOINT MEETING - BRECKENRIDGE HERITAGE ALLIANCE</u></b>	<b>99</b>

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:** Peter Grosshuesch, Director of Community Development

**Date:** September 18, 2013

**Re:** Planning Commission Decisions of the September 17, 2013, Meeting.

---

***DECISIONS FROM THE PLANNING COMMISSION AGENDA OF September 17, 2013:***

**CLASS C APPLICATIONS:**

- 1) Goldreyer Residence (SG) PC#2013076, 422 Timber Trail Road  
Construct a new, single family residence with 7 bedrooms, 8.5 bathrooms, 7,866 sq. ft. of density and 8,999 sq. ft. of mass for a F.A.R. of 1:3.44. Approved.
- 2) Hart Residence (MM) PC#2013077, 201 South Pine Street  
Construct a new, single family residence with 5 bedrooms, 5 bathrooms, 3,620 sq. ft. of density and 4,036 sq. ft. of mass for a F.A.R. of 1:4.53. Approved.
- 3) Hauer Residence (MGT) PC#2013081, 312 Westerman Road  
Construct a new, single family residence with 4 bedrooms, 5 bathrooms, 4,692 sq. ft. of density and 5,722 sq. ft. of mass for a F.A.R. of 1:11.00. Approved.
- 4) Hirsch Retail Building Master Sign Plan (MGT) PC#2013080, 216 South Main Street  
New Master Sign Plan for Hirsch Retail Building. Approved.
- 5) Project X (MGT) PC#2013079, 103 North Pine Street  
Construct a new, single family residence with 4 bedrooms, 4.5 bathrooms, 3,232 sq. ft. of density and 3,443 sq. ft. of mass for a F.A.R. of 1:5.57. Approved.

**CLASS B APPLICATIONS:**

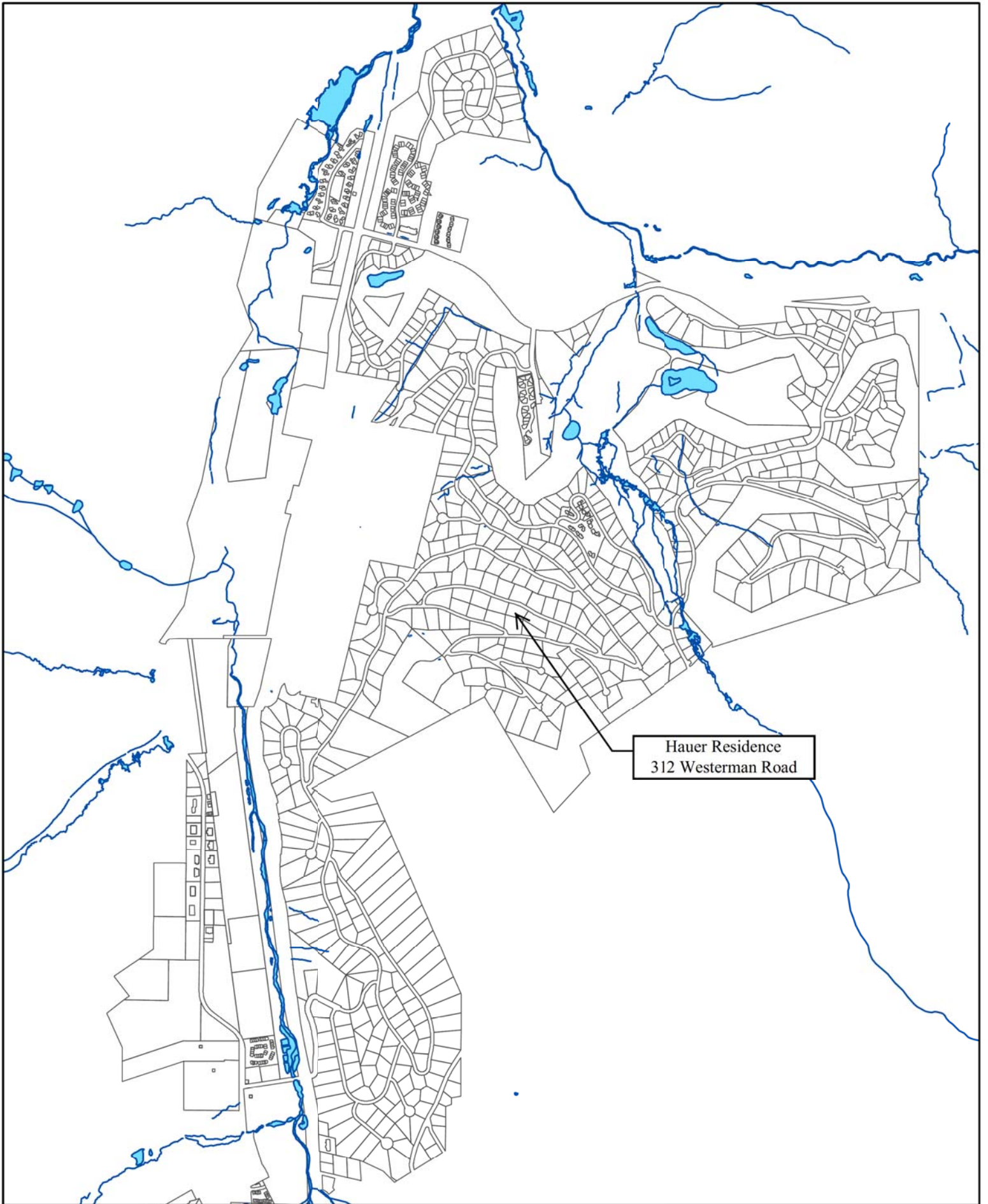
None.

**CLASS A APPLICATIONS:**

None.

**TOWN PROJECT HEARINGS:**

None.



Hauer Residence  
312 Westerman Road



# Breckenridge North

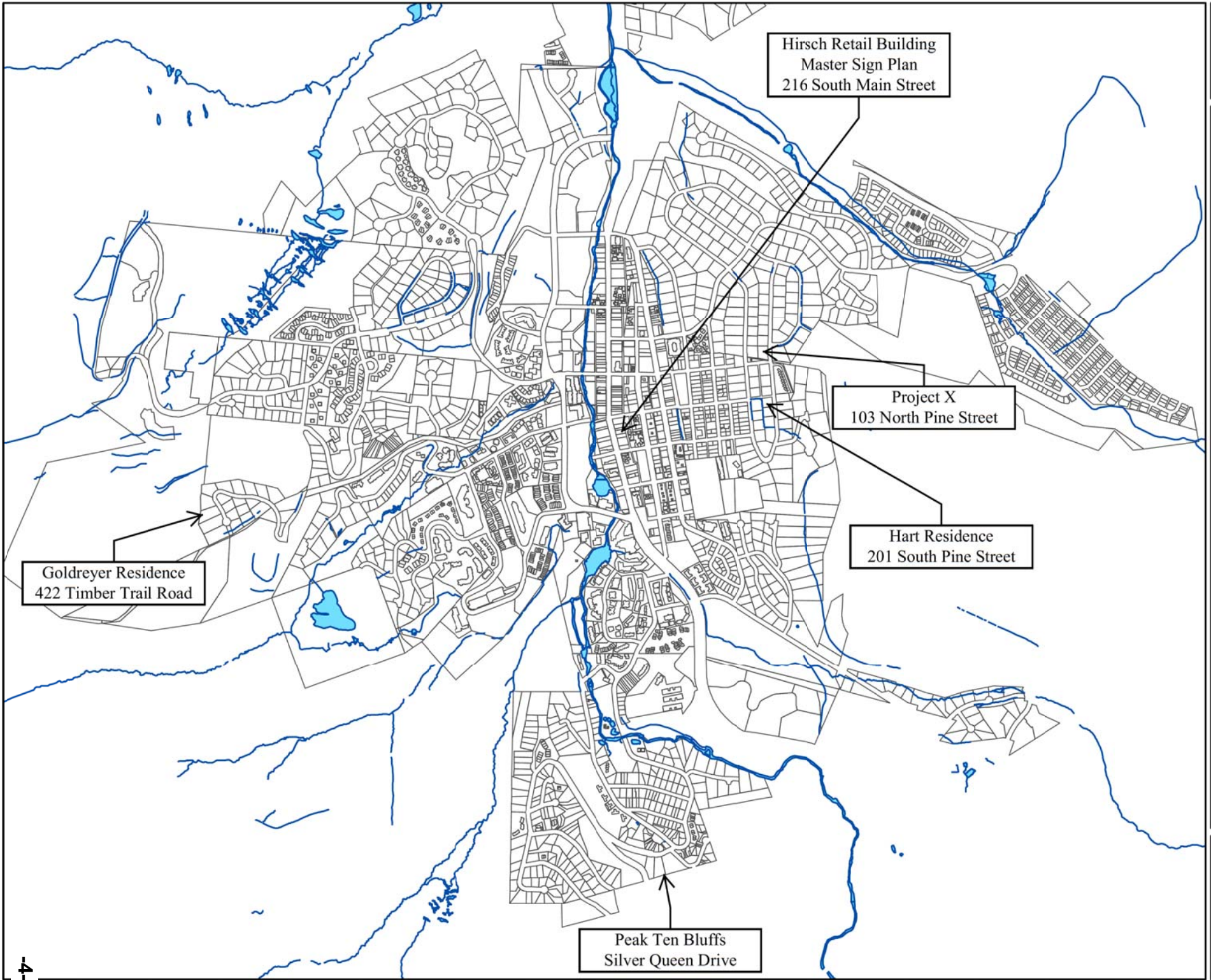
Town of Breckenridge and Summit County governments assume no responsibility for the accuracy of the data, and use of the product for any purpose is at user's sole risk.

printed 4/12/2011



NOT TO SCALE -3-





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            Jim Lamb                    Gretchen Dudney  
Dan Schroder                Eric Mamula                Trip Butler  
Dave Pringle  
Jennifer McAtamney, Town Council Liaison

**APPROVAL OF AGENDA**

With no changes, the September 17, 2013 Planning Commission meeting agenda was approved unanimously (7-0).

**APPROVAL OF MINUTES**

With no changes, the September 3, 2013, Planning Commission Minutes were approved as presented.

**CONSENT CALENDAR:**

1. Goldreyer Residence (SG) PC#2013076, 422 Timber Trail
2. Hart Residence (MM) PC#2013077, 201 South Pine Street
3. Hauer Residence (MGT) PC#2013081, 312 Westerman Road
4. Hirsch Retail Building Master Sign Plan (MGT) PC#2013080, 216 South Main Street
5. Project X (MGT) PC#2013079, 103 North Pine Street

Mr. Mosher: Some members of the HOA of Hart Residence might be present and it is our understanding that the Harts have not come to an understanding with HOA, but that is not the Planning Commission's matter. (Mr. Lamb: Do they not get a permit if not approved by the HOA?) (Mr. Mamula: No, that has nothing to do with the Town of Breckenridge. The issues are between private property owner and HOA.) Nothing in the code that says we have to make a comment in report, but planning staff usually do.

Mr. Mamula: Question on Goldreyer: Steep slope with fairly long driveway and it looks like the driveway has an unusual switch back? (Mr. Greenburg: That was a private drive, but we requested that they improve it.) Ok, I understand. Now that we see really steep lots being developed that the driveways get longer.

Mr. Thompson: Regarding the Hauer residence, to meet the 8% grade they had to keep it that long. (Mr. Mamula: Are we asking for increased landscaping?) Yes, we did ask for extra landscaping.

Mr. Pringle: Please clarify on the Master Sign Plan. (Mr. Thompson: It gives them a few more feet because previously they weren't using everything available with the previous sign plan, so proposal is to use the full signage allowed. The mature trees make it hard to see the upper level signs.)

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

**WORKSESSIONS:**

1. Planning Application Reclassifications (JP)

Ms. Puester presented an update to the memo for the September 3 worksession on Planning Applications. Major changes are:

- Class A:
  - Wireless Towers and Antennas (establish a new permit classification addressing land use, visibility and location).

- Class B: (Minor)
  - Vendor Carts, Large (duration of up to 3 years – no change to existing regulations).
- Class C:
  - Vendor Carts, Small (reclassification-currently a Class B, but public notice still required to adjacent property owners within 300’ of proposed location. These would go on consent calendar.)
  - Temporary Structures (new category added for seasonal structures)
  - Clarify that additions to commercial, office or industrial structures of less than 10% of the existing structure mass and under 1,000 sq ft. require Class C permits.
- Class D:
  - Single family, duplex structure or major remodel outside of the Conservation District, with or without an accessory apartment, except where development a) warrants any negative points (including applications which achieve a passing point analysis); b) is located on a lot, tract or parcel without a platted disturbance envelope outside of the Conservation District as defined in Section 9-1-19 4A (Mass); c) has no Homeowners Association Architectural Review mechanism accepted by the Town.
  - Master Sign Plan Modification (new category added).
  - Substitution or modification to employee unit (modification to floor plans added).
  - Minor remodel definitions (clarify 10% residential mass addition).

*Commissioner Questions / Comments:*

- Mr. Mamula: Class D Single family proposal: can we add that there is no issue with HOA? (Ms. Puester: If we are going to condition that they have something, then we’d have to be responsible to see if the HOA is going to respond. Really can’t hold an applicant up because a third party will not issue an approval. Different if issue is with the code.) It is less about responding and more about responding in the negative situation. (Ms. Puester: Don’t think we can hold it, can ask Tim Berry to confirm.)
- Ms. Dudney: They are going to have to get through the HOA but it is not the town’s responsibility to figure out how the HOA is going to get through it with the individual. Private matter.
- Mr. Mamula: But we are saying that we trust the HOA to not bring an issue to us.
- Ms. Dudney: It will vary by circumstance and the HOA bylaws. (Mr. Grosshuesch: What would we care about if they aren’t objecting to something within the code?) What if the HOA doesn’t believe their style agrees with the HOA? (Mr. Grosshuesch: When it comes to us we look at some different things than they would. We would look at architectural compatibility.)
- Mr. Mamula: When we did the one with the skylight in Miner’s Candle and the HOA came here. How do we handle that? We ended up coming to an agreement with everyone and said that skylight was not compatible. (Ms. Puester: It went through a court process. It’s what we do currently and I can scratch the HOA mechanism part.)
- Mr. Pringle: We must have something in the bylaws/code that the Town does not rely on HOA, could reference if needed.
- Ms. Dudney: It comes down to the Highlands goes through a rigorous process, but if there is not HOA it comes to us. But I think it is well written because there is very few things that get by the HOA and staff. We don’t get in the business of being between the HOA and individual. What does “mechanism accepted by the Town” mean? (Ms. Puester: There could be a subdivision out there without an HOA but you could make one up, not sure on this item. I feel comfortable taking C out.)
- Mr. Lamb: Doesn’t staff still have authority to say that we question it and bring it up to the Commission?
- Ms. Dudney: The issue is that they would be forced to.
- Mr. Pringle: Eliminate C (HOA language).

- Mr. Schroder: Eliminate C.
- Ms. Christopher: Eliminate it.
- Mr. Mamula: Neighborhood preservation; policy 4A Mass applies to those without envelopes. (Ms. Puester: We looked at all neighborhoods that didn't have platted envelopes when we went through that process. When subdivisions are platted with envelopes, we looked at ridgelines, gulch, wetlands setback, any significant environmental features and made sure they were platted through the subdivision process when it went through Planning Commission. At question are those lots without envelopes.) (Mr. Grosshuesch: We looked at driveways at grade issues. In the Highlands, we did fit tests to see if structures would fit in envelope, so a good amount of site planning that have envelopes have already had planning review, so what is left is architecture and landscaping.)
- Ms. Dudney: Are we ok with not forcing it to come to us, just because it is not ridgeline?
- Mr. Pringle: I was opposed to this change and still am. I think it is still the Planning Commission's role to look at single family home development. I would like to have all of them come to Planning Commission except the ones that are no brainers and this list has gotten bigger and I think we need to be more critical. Question on duplex or major remodel: what is a major remodel?
- Ms. Dudney: Add the word "a major remodel to" single family homes. (Ms. Puester: Please see page 77-would be included as a class D, major remodel is defined on page 79 "major remodel". Of 10% or more of the existing structure square footage; this is how its currently defined, no change is proposed. Trying to clarify some language on the minor remodel definition regarding less than 10%. A major remodel would follow suite with new single family. If no, envelope than it goes to us.
- Ms. Dudney: A, B and striking C does this work? I'm ok.
- Mr. Schroder: I'm ok.
- Mr. Pringle: Not ok. Still would like to see everything.
- Mr. Lamb: I'm ok.
- Mr. Christopher: I'm ok.
- Mr. Butler: I'm ok.
- Mr. Mamula: I'm worried about the future with a different planning staff and I'm worried about the worst case of something passing and then I drive by and see it after the fact and then we go through a big process to address it, but it is too late. My concern is that we don't get to see something and then we deal with it after the fact.
- Ms. McAtamney: I'm worried about the future and losing the historic perspective of the staff we have now. And all of sudden a stucco house gets built. If everything is on consent calendar then we might miss things that need to go on the Top 10. We have enough left to do that I don't want to see the Town lose the work we've done on planning.
- Mr. Pringle: If we just wave things through we don't get the moment to talk things through.
- Ms. Dudney: Let me be devil's advocate. The reason they brought this up is that is save significant staff and Commission time and there are very few staff call ups, less than 1% of single family homes and historically we've not had issues and it saves the homeowner 3 weeks time not that that part should matter to us to much but short season.
- Mr. Pringle: I still think that the Planning Commission still should weigh in and have the opportunity to look at things.
- Ms. Dudney: Ultimately the Town Council needs to weigh in on this.
- Mr. Mamula: When we first started seeing hardy board / planks, those were long discussions that led to the way the code was interpreted and we hadn't done this we would have had homes in Sunbeam Estates with terrible looking hardy board siding, if the Planning Commission hadn't brought it up and changed the code.
- Ms. Puester: We do point out the issues we see in the application especially when we see new materials and raise that to the Planning Commission.

- Mr. Mamula: Is it possible to do this for a year or some amount of time to look at projects?
- Ms. McAtamney: In Wellington Neighborhood, there is a lot less variety of homes than there were in phase 1. (Mr. Grosshuesch: We could do an annual retreat that we could go and point out the projects for the year but we have worked hard to get the code to this point. No new issues have been brought up in a while. If we see an issue with something we bring it to the Commission's attention.) (Ms. Puester: Second bullet point gets to this issue: to know all the applications that are in the process, we could put this in administrative rules so that is followed into the future with whatever staff is in place then.)
- Mr. Pringle: I don't know how many current staff have sat through the process before we streamlined it to this. We've streamlined quite a bit. (Mr. Grosshuesch: We have written some good code provisions and know what are the key issues of the Town. It is the ones that we don't review frequently that do need review; historic additions, duplexes, etc. I would ask you to consider that we have a lot of these issues dialed in and the idea of having a Planning Commission retreat for single family so that we can see what we think about them after they were built. After a year, if this isn't working we could change it.) I would caution is the notion that familiarity breeds contempt, if someone reviews same type of homes over and over, we need to worry about the incremental creep and we end. (Mr. Grosshuesch: There are six of us that look at these plans, it isn't just one person who is forgetting something, there is good give and take at the internal meetings and we catch a lot of things.) (Ms. Puester: We would still be doing those full planning staff reviews, even if we don't take it to the Commission.)
- Ms. Dudney: We could take it to the Council with removing section c and say that the 2 most experienced commissioners have some qualms.
- Mr. Mamula: I'm willing to try this concept and have a site visits at the end of a year to see what occurred.
- Ms. McAtamney: I will take this to the Council, but believe you are going into with eyes wide open.

Class D Discussion:

- Mr. Mamula: Can we put a cap on the amount of additional mass? (Ms. Puester: Like the amount of additional square footage?) At some point the neighbors need to know and neither Class C nor Class D require notice. (Ms. Puester: Even if we leave single families we currently don't give notices when there are new houses so require it for new additions?) What if I put an addition of 300 square feet? (Ms. Puester: You would still have to get a building permit and staff would look at that, could bump it to Commission if there was a concern or if there was no envelope.)
- Ms. Dudney: Maybe you are getting back to the definition of "major remodel"?
- Mr. Mamula: It is more about the older neighborhoods that don't have envelopes. (Ms. Puester: If it didn't have an envelope than it would be reviewed by the Commission.)
- Ms. Dudney: It needs both definition of square feet and percentage. (Ms. Puester: I would like to put it at 500 square feet to be consistent with policy 4 mass.) Could this be brought to the Town Council?
- Mr. Schroder: On page 78 of the packet; didn't know what satellite earth station was? (Ms. Puester: It is a giant dish, this is outdated and that is why we are going with Class A reclassification for wireless tower and antennas.)

2. Top Ten List / Council Joint Meeting Prep (JP)

Ms. Puester presented a memo outlining the Planning Commission Top Ten list as suggested topics for the joint meeting with the Town Council, scheduled for November 12.

The items accomplished from the prior Top Ten List are: Moving Historic Structures; Solar Panels in the Historic District; Town Solar Gardens; Arts District Expansion; Energy Policy Modification. Suggested Top Ten list priorities, in no particular order, are: Planning Classification Class A-D Modifications; Transition



Standards Near Carter Park; Condo Hotels Update (Amenity Bonus, Check-In Desks, Shuttles); Mass Policy: Airlock Entries and Other Mass Consuming Energy Conservation Features; Wildlife Policy; Snack Bar / Restaurant Water PIFs; Wireless Communication Towers / Antennas; Employee Housing Annexation Positive Point Allocations; Parking: Residential Parking in Garages (Positive Points); Water Conservation Practices.

*Commissioner Questions / Comments:*

- Ms. Dudney: Is this condo space into saleable space? (Ms. Puester: Previous requirements were check in space and now people are checking in online. This code is outdated, have had inquiries on converting space.)
- Mr. Pringle: There are two different kinds of condo hotels: very small or very large. We don't address the large ones in this code and we need to update this. (Ms. Puester: It needs to be updated.)
- Ms. Dudney: What about marijuana? Is it addressed in the condo hotels? Are people allowed to use it and does this affect our development code? (Mr. Grosshuesch: No, Council is going through this now.) I was worried about private clubs. (Ms. McAtamney: We are not allowing private clubs.)
- Ms. McAtamney: Is the restaurant water PIF issue about paper plates? (Ms. Puester: Yes.) (Mr. Mosher: It is more a council issue and tells us who we see.) Priority on top ten: Employee Housing Positive Point Allocations should be top priority.
- Mr. Mamula: Clarified why we were giving positive points for screened parking when people don't use garage. Staff confirmed this is why this issue is on the list. (Mr. Grosshuesch: Regarding water conservation, there are some jurisdictions that allow only minimal formal landscaping and town could push for more water conserving landscape practices).
- Mr. Lamb: Please clarify the wildlife. (Mr. Truckey: We don't take wildlife into account right now. In certain development applications it may be important to consider negative/positive points. We would need to go through analysis to determine this code.)
- Mr. Lamb: Bear proof trash cans; is this in the wildlife policy issue?
- Mr. Mamula: This is in an enforcement part of the code. We have a law on that. (Mr. Grosshuesch: We could consider wildlife friendly fencing or allow for no fencing. Also, reconsider use of Kentucky blue grass from a habitat compatibility perspective.)
- Ms. Dudney: List of Town Council Retreat: Is this part of this? (Ms. Puester: Should narrow it to discuss the top 2-3 with Council. Employee Housing Annexation. Mass Policy. Condo-hotel?) Need to present info to us about this before November 12. (Ms. Puester: Will do, thanks.)

**TOWN COUNCIL REPORT:**

Ms. McAtamney: Pleased to see John's lengthy report from last meeting. Big meeting, dealt with licensing on how to govern retail marijuana. Regulations must be in place by October 1 to have control. 6-1 vote that it didn't belong on Main Street. We worked through all the situations that let one grandfathered store stay through September 1, 2014. We had different vendors from Airport Road and Main Street and the opinions were very split between the two locations. We will next look at the questions of marijuana use. Clearly, amendment 64 says no use on public property and would like to have a handout for guests on where they can use. (Ms. Dudney: I would think public areas in private property would be a big deal.) We are going to take the smoking ordinance and update that, but marijuana may have issues, like concerts. We got a letter from the Feds that said as long as the state creates and enforces laws then they won't interfere with legalization of marijuana.

We updated our theft ordinance. We approved a long term lease with the Breck Bear people at McCain property. Subdivision standards cleaned up. How much we can fine you in municipal court changed to \$2,650 with an inflation measure.

Public Project: Harris Street project: the trees that came down were impinging on the foundation and there is an extensive landscaping plan.

Pence Miller: one of first Town Ordinance properties that will be looked at, majority of Council liked it, I believe that it is way too big.

Breed specific regulations based on pit bull issue that occurred on Hosier Pass during bike race. Mr. Gallagher thought we should look at other state regulations and the Chief brought information. We would like to have a bigger discussion about dogs and people being irresponsible with their pets. Look for some more conversation in the community. Reviewed the Weber Hut environmental analysis, which is at the end of public comment period, biggest issues are size (16 people), concerns about trails and parking in this letter.

BOSAC: Cucumber gulch channel restoration.

Joint Meeting with Art Commission: Putting out request for a piece of art for the big roundabout. They also asked for a permanent location to put the “bikeffel” tower and put it on a pedestal that could be moved for future pro cycle challenges. This really captures our community, people liked this idea. When the roundabout is finished people could pose by it. It is currently on the Stillson property. The County is going to put it back together. Another statue called the Nest by Mountain Thunder Lodge and they are talking about moving that to Riverwalk near the river. It is a 15’ sculpture. We also spent time on the fact that the Town is looking for a “culture czar” to help bring Riverwalk and Arts district together.

Marijuana was very interesting and well vetted. (Mr. Butler: The women presenting for the arts district stated that the budget was way out during the council session, why was that?) We are seeing a 10-15% cost of labor increase and also HVAC was a lot more expensive in the metal arts building. Harris Street: The abatement was difficult with asbestos and the costs went over because of this. There is foundation work and contractor prices have really gone up. Our sales tax monies also increase too on a positive point. We are disappointed by local contractor participation; we have been seeking outside contractors because we aren’t getting local bids. Look forward to seeing you for joint session next Nov 12.

(Ms. Dudney motioned for a five minute recess.)

#### **PRELIMINARY HEARINGS:**

##### **1. Peak Ten Bluffs Master Plan (MM)**

Mr. Mosher presented a proposal to master plan the property previously known as Angel’s Lookout for the development of eight cluster single-family homes on eight individual lots. Two existing private driveways will access the properties. The applicant plans to obtain approval of, and construct, each of these eight cluster single-family homes. Each home will be developed with the Class C Development permit process. With the change from duplex to cluster single-family use, the previously recorded plat, a master plan and a new subdivision must be created first. The purpose of this Master Plan is to review how the proposed cluster single-family development on this property can meet the intent of the Development Code.

Mr. Mosher pointed out the two new additional retaining walls sitting behind the houses and the landscaping with stone retaining walls between each of the units. Homes are being put inside the hillside. Ridgeline hillside development code says that it is discouraged unless there is no alternative, but County already did a variance.

After years of having this as an abandoned development site, Staff was pleased to see a proposal to carry this forward to completion. It is a very difficult site to develop and the applicant has made great efforts to meet all criteria identified in the Development Code. Staff had the following questions for the Planning Commission:

1. Did the Planning Commission support the change from duplex units to cluster single-family home units?
2. Did the Planning Commission have any additional comments regarding the landscaping for this proposal?

Ms. Dudney opened the hearing to public comment.

Mr. Lou Glisan, Applicant: I've been meeting with Mr. Mosher for the last 3 years. I wanted to give you some background on myself and my team, building in the County for 15 years, done 45 real estate transactions, last Breckenridge project was in 2005 and took a downhill lot on 4 O'clock and had it in 2005 Parade of Homes and took the grand prize. 2006 home in Keystone spec home and won Parade of Homes again. We've done difficult projects in the past and have a successful team, Ms. Elena Scott is new as landscape architect, my wife, Julie, is an interior designer and a key player in our success. She also does the exterior color selections and has been very successful. Just completed 20 townhomes in Wildercrest and have been trying to sell them since 2008.

(Ms. Christopher: I'm curious about average distance between units?) (Ms. Elena Scott: The most narrow are 15' between and up to 30-40' between units at the wider parts.) (Mr. Schroder: Page 91 in our packet; the conifers seem to be pushed to steepest part of the area. Why is it so much thinner on conifers on the right side?) (Ms. Scott: Landscaping: Privacy between units was one chief goal, we also want to soften the hillside and there is already a nice existing landscape buffer.) (Mr. Schroder: Minimums were listed for 6' tall trees, is there a way to get taller trees?) (Ms. Scott: Sure, we do have some steep slopes and size of root ball is key starting with 6' as a minimum we will have to hand dig some of the steep slopes. Existing disturbances will allow us to plant larger trees. (Ms. Dudney: What is your plan for materials for pedestrian trail?) (Ms. Scott: We haven't selected any material yet, but we do want switchbacks, buffering and some benches.) (Ms. Dudney: The interim landscaping until it is built out, what will this look like?) (Mr. Glisan: Similar to the poppy fields you see about Town and this will have to be heavily irrigated but can do this temporarily.) (Mr. Mosher: There were two more fire hydrants added to the site per the Fire Department. But, we will need to consider the existing lodge pole and be firewise too and we can do this at next planning session.) (Ms. Dudney: What is time table for construction?) (Mr. Glisan: We are going to build a model and sell that. Hope to start this November and build over the winter and have it ready for Parade of Homes.) (Ms. Christopher: Is there a building plan on what is built first?) (Mr. Glisan: Would like to Build D first as model which is in the middle.)

There was no further comment and the hearing was closed.

*Commissioner Questions / Comments:*

Mr. Mamula: We would never approve this type of development now, back in 2001 the whole development was a mess back then. I would like to see some assurances that we don't get stuck with another eyesore. (Mr. Glisan: I have 15 years of history to get you comfortable.) I would like to go have a look at the steep home that you just built. I do like the single family home vs. the duplex. This is a "fix it" and I'm glad you are going to take on a difficult eyesore project. My main concern is how the height is reading and how the height will read with code and the 35' max which is not a guarantee. Particularly with A, B, C and how they read from the road which may look like a 45-50' building. A few sides of the buildings are very monolithic, almost like towers in particular on A, B the towers of stone on page 98, west elevation on building A. This reads taller than it actually is, from bottom to top. The profiles and columns make it look looming.

Ms. Christopher: It reads as two stories of stone. (Mr. Dave Nakhjovani, Architect: Distances between residences, I had to address it with fire separation and building code, the way the buildings interact they have points of closeness but the further apart I could separate the better. I understand the concern with two much stone which actually costs my client more money, but it is a function of getting them in under 35' on the steep hillside. When you get into the plan the distance up on the other side of the hill it is different. Some of the verticality may be exaggerated with the two dimensionality of the elevation plan.)

Mr. Mamula: In essence this is a 2-story district but some of the renderings look like a 3-story project from below. (Mr. Nakhjovani: I understand. In most of these cases, these residences are next

to each other.) Except for the west side of A. That is the biggest issue with looking like a 3-story elevation on the west. It is reading bigger than Land Use Guidelines suggest. (Mr. Mosher: I think comment is well taken and we need to take special attention on A on this side when it comes up for its Class C submittal.) It is really just A, B, C and I know this is the steepest part of site. It is hard for me to tell what landscaping plan is on computer but I will take the staff's recommendations. I appreciate you doing it well and taking measures to make this a decent project.

Ms. Dudney opened the hearing to Public Comment. There was no public comment, and the hearing was closed.

*Commissioner Questions / Comments (continued):*

Ms. Christopher: I agree with Mr. Mamula, height on stone on some units is a concern of mine liked he pointed out. The landscaping plan: we can't see detail but I would encourage the varied height option and I do understand the challenges with the steep slope. I highly commend breaking up the masses and making cluster single-families versus the original plan of duplexes.

Mr. Butler: I concur and like the single-family homes vs. duplexes.

Ms. Dudney: I agree, like the single-family homes and I agree with Mr. Mamula's point about A building.

Mr. Lamb: I agree with everything said so far. I didn't make the site visit but I did go visit it a few hours ago and I know this will be a steep site and difficult project. Maybe you could break up the one side of A. I like the idea of varying the height of trees. I think we are off to a good start.

Mr. Pringle: With respect to Staff questions, I support the change to single-family. I will reserve any comment on landscaping based on the job of staff working with and I realize the tight relationship between defensible spaces and landscaping needed. I would like to call attention to the elevations, the massive look on west elevation on Building A and the east elevation makes it look like an entirely different building. The incorporation of all the stone adds to the mass of the building. The east side is a real winner. I like Mr. Mamula's struggle with the walk up elevation and the perception of height from far away. This will be critical to address. Difficult to comment on this now. I think this is wonderful application and am excited to see good looking homes on this site.

Mr. Schroder: I support the single-family homes and landscaping will be addressed further next time. I think with what we've seen and the ideas we've given I would be happy to look at this from a final.

Mr. Mamula: One more comment: take building A, top of this building is roughly 70' above White Cloud Drive below and would like to see some more landscaping at the view area as people start heading up the hill, maybe use trees to see how those structures are going to loom. It would be nice to get some buffer to help soften that "looming". (Mr. Mosher: Forgot to mention, the next submittal will show a lot more detail at a larger scale.)

2. Peak Ten Bluffs Subdivision (MM)

Mr. Mosher presented a proposal to re-subdivide the property previously known as Angel's Lookout for the development of eight cluster single-family homes on eight individual lots. Two existing private driveways will access the properties. With a previous owner and with the previous County approved subdivision, this property had been approved by the Planning Commission and Town Council with two development permits, a duplex for Lot 3 (PC#2003079) and a duplex for Lot 4 (PC#2003080). Lot 4 was under construction and then later all development was abandoned by the previous owner. The property remained with no further improvements for several years. The current applicant has since removed the existing foundation and the vertical construction for Lot 4. The development permit for Lot 3 was never started. Since this is a re-subdivision, the proposed improvements must meet the Town standards instead of the County standards.

The applicant has worked closely with planning staff to create a development that has the least amount of impact on this difficult site. The subdivision was previously approved in the County. As currently proposed, each cluster single-family home should be able to be submitted and abide with all applicable policies in the Development Code. At this preliminary review, staff has found no outstanding issues related to policies in the Development Code. Staff welcomed any Commissioner comments related to this application. If possible, the applicant would like to return for final review.

Ms. Dudney opened the hearing to public comment. There was no comment and the hearing was closed.

**OTHER MATTERS:**

Ms. Puester: Will be looking at doing a Planning Commission retreat in October. Would we like to go look at the condo hotels in town and stay in town to do retreat in town. Are there other ideas?

Mr. Pringle: I think some of our best retreats are staying here in town.

Ms. Christopher: Maybe we could include interior space, airlocks, etc.

Mr. Mamula: October will be hard for me; we are doing a big remodel.

Ms. Puester: We will talk about date and timing.

Mr. Pringle: The flooding event in Boulder County, have we learned anything from these big natural disasters? We could be setting ourselves up for this kind of big disaster. Maybe this is more of a town issue, should we be looking at a really big picture?

Ms. Puester: We will be looking to do an RFP on the McCain property, one of the things could looking at what happens with an overflow of the banks. We can definitely look at flooding and we have been doing a lot of options to address fire wise plans in our codes. Talked about rock rings and other materials being used. Watershed protection plan for the Tarn we have contact with communities in Waldo canyon fire. We are working on a plan and running models with mitigation measures could be put in place and working with USFS on this too. We are doing background work on how to protect our community. There are issues with water and fire and we are working on those. We may come back with some development code modifications or we may put some of these on the web site for people to reference. The watershed protection plan won't come to this group but I would be happy to provide it to you. I'm working on it with Tetrattech.

**ADJOURNMENT:**

The meeting was adjourned at 9:23 pm.

---

Gretchen Dudney, Chair



**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 37 (Exempting Right-of-Way Acquisitions From Subdivision Ordinance)

DATE: September 17, 2013 (for September 24<sup>th</sup> meeting)

---

The second reading of the ordinance exempting right-of-way acquisitions by governmental entities from the Town's Subdivision Ordinance is scheduled for your meeting on September 24<sup>th</sup>. 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 – SEPT. 24***

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

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

7  
8 COUNCIL BILL NO. 37

9  
10 Series 2013

11  
12 AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE  
13 TOWN CODE, KNOWN AS THE “BRECKENRIDGE SUBDIVISION STANDARDS,”  
14 CONCERNING RIGHTS-OF-WAY ACQUIRED BY GOVERNMENTAL ENTITIES

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

18  
19 Section 1. The definition of “Subdivision” in Section 9-2-2 of the Breckenridge Town  
20 Code is amended to read in its entirety as follows:

21  
SUBDIVISION: The division of a tract or parcel of land into two (2) or more  
parcels, lots, sites or other division for the purpose, whether  
immediate or future, transfer of ownership or sale, building  
development, including any resubdivision. Subdivision shall  
include, but not be limited to, the following types of  
developments and/or legal interests:

A. Division Of Land: The division of land, whether by deed,  
metes and bounds description, map, plat or other recorded  
instrument.

B. Division Of A Structure: The division of a structure into  
two (2) or more separate interests through division of the fee  
title thereto, whether by conveyance, license, contract for  
sale, or any other method of disposition including, but not  
limited to, the creation of a common interest community  
pursuant to the common interest ownership act, article 33.3,  
title 38, Colorado Revised Statutes.

C. Timeshare Interests: The creation of interval estates,  
timeshare estates, time span estates and other timesharing  
interests as defined by the condominium ownership act,  
article 33, title 38, Colorado Revised Statutes.

D. Cooperative: The creation of a cooperative as defined in the Colorado common interest ownership act, article 33.3, title 38, Colorado Revised Statutes.

E. Exclusions: Unless the method of land disposition is adopted for the purpose of evading this chapter, the term "subdivision", as defined in this section shall not apply to any division of land or interests in land:

1. Which is created by any court in this state pursuant to the law of eminent domain, partition or by operation of law.

2. Which is created by lien, mortgage, deed of trust or any other security instrument or the foreclosure of any such instrument.

3. Which is created by a security or unit of interest in any investment trust regulated under the laws of this state or any other interest in an investment entity.

4. Which creates an interest or interests in oil, gas, minerals or water which are now or hereafter severed from the surface ownership of real property.

5. Which creates a parcel or parcels as a result of the acquisition of land by the town.

**6. Which creates a parcel or parcels as a result of the acquisition of right-of-way by the town or other governmental entity.**

1  
2        Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the  
3 various secondary codes adopted by reference therein, shall continue in full force and effect.  
4

5        Section 3. The Town Council hereby finds, determines and declares that this ordinance is  
6 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and  
7 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants  
8 thereof.  
9

10        Section 4. The Town Council hereby finds, determines and declares that it has the power  
11 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,  
12 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal  
13 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)  
14 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to

1 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers  
2 contained in the Breckenridge Town Charter.

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

6  
7 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
8 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2013. A Public Hearing shall be held at the  
9 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
10 \_\_\_\_\_, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
11 Town.

12  
13 TOWN OF BRECKENRIDGE, a Colorado  
14 municipal corporation

15  
16  
17  
18 By \_\_\_\_\_  
19 John G. Warner, Mayor

20  
21 ATTEST:

22  
23  
24  
25 \_\_\_\_\_  
26 Helen Cospolich, Town Clerk  
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

**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 38 (Amending Town's "General Penalty" Ordinance)

DATE: September 17, 2013 (for September 24<sup>th</sup> meeting)

---

The second reading of the ordinance amending the Town's General Penalty Ordinance is scheduled for your meeting on September 24<sup>th</sup>. You will recall that this ordinance implements a new Colorado statute by authorizing the Municipal Judge to impose a fine of up to \$2,650.00 for a municipal law violation, and also provides for an annual cost of living adjustment to the maximum fine that can be imposed in the Municipal Court.

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 – SEPT. 10***

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

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

7  
8 COUNCIL BILL NO. 38

9  
10 Series 2013

11  
12 AN ORDINANCE AMENDING SECTION 1-4-1 OF THE BRECKENRIDGE TOWN CODE  
13 CONCERNING THE GENERAL PENALTY TO BE IMPOSED FOR VIOLATIONS OF THE  
14 ORDINANCES OF THE TOWN OF BRECKENRIDGE

15  
16 WHEREAS, HB13-1060, which became effective April 18, 2013, increased the  
17 maximum monetary fine that may be assessed by a municipal court of record (such as the  
18 Breckenridge Municipal Court) from One Thousand Dollars (\$1,000.00) to Two Thousand Six  
19 Hundred Fifty Dollars (\$2,650.00), and further provides for an annual cost of living adjustment  
20 to reflect inflation; and

21  
22 WHEREAS, the Town Council of the Town of Breckenridge desires to amend the  
23 Town's "General Penalty Ordinance" to reflect the increase in the maximum monetary fine that  
24 may be assessed by a municipal court under HB13-1060.

25  
26 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF  
27 BRECKENRIDGE, COLORADO:

28  
29 Section 1. Section A of Section 1-4-1 of the Breckenridge Town Code is amended so as  
30 to read in its entirety as follows:

31  
32 A. It is unlawful for any person to violate any ordinance of the town, this code, or  
33 any code adopted by reference. Each violation is a misdemeanor offense, except  
34 those violations specifically classified as infractions in any Town ordinance, this  
35 code, or any code adopted by reference. Any person convicted of a misdemeanor  
36 violation of this code, any ordinance of the town, any code adopted by reference,  
37 or any regulation adopted pursuant to this code or town ordinance shall be  
38 punished by a fine of not more than ~~nine hundred ninety nine dollars (\$999.00)~~  
39 **two thousand six hundred fifty dollars (\$2,650.00)**, or by imprisonment not to  
40 exceed ~~one day less than~~ one year, or by both such fine and imprisonment;  
41 provided, however, that no person under the age of eighteen (18) years as of the  
42 date of the offense for which he is convicted shall be subject to a jail sentence,  
43 except in the case of a conviction of a traffic offense under title 7 of this code.  
44 Any persons found to have committed a violation of an infraction shall be

1 punished as provided in Section 1-4-1-1. **The maximum amount of the fine that**  
2 **may be imposed under this section shall automatically be increased annually**  
3 **as provided in Section 13-10-113(1)(b), C.R.S.**  
4

5 Section 2. Section 1 of this ordinance shall apply to municipal offenses committed on or  
6 after November 1, 2013. Any person convicted of violating a Town ordinance the date of  
7 violation of which was prior to November 1, 2013 shall be punished in accordance with the  
8 provisions of Section 1-4-1 of the Breckenridge Town Code as the same existed at the time of  
9 the commission of such offense.  
10

11 Section 3. 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 4. 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 5. The Town Council hereby finds, determines and declares that it has the power  
20 to adopt this ordinance pursuant to the provisions of Section 13-10-113, C.R.S., and the powers  
21 possessed by home rule municipalities in Colorado.  
22

23 Section 6. The Town Council hereby finds, determines and declares that it has the power  
24 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article  
25 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.  
26

27 Section 7. This ordinance shall be published and become effective as provided by  
28 Section 5.9 of the Breckenridge Town Charter.  
29

30 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
31 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2013. A Public Hearing shall be held at the  
32 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
33 \_\_\_\_\_, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
34 Town.  
35

36 TOWN OF BRECKENRIDGE, a Colorado  
37 municipal corporation  
38

39  
40 By \_\_\_\_\_  
41 John G. Warner, Mayor  
42  
43

1 ATTEST:

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

---

Helen Cospolich  
Town Clerk



## MEMORANDUM

**To:** Mayor and Town Council  
**From:** Shannon Haynes, Chief of Police  
**Date:** September 10, 2013  
**Subject:** Omnibus Amendment 64 Regulation Ordinance

---

In November of 2012 the Colorado voters approved Amendment 64 which allows for the legal sale of marijuana in a retail establishment to those persons 21 years of age and older. Effective July 1, 2013 the State of Colorado, Department of Revenue, provided a number of regulations for use by both the state and municipalities in structuring compliance and enforcement laws and ordinances.

As a result, staff is proposing the implementation of an Omnibus Ordinance concerning the Implementation of Amendment 64. Staff is proposing the Omnibus ordinance to address a variety of changes within a number of different ordinances. These amendments cover the following:

- Modify the Town's Smoking Ordinance to include Marijuana
- Amend the Town's Open Container Ordinance to specifically relate to alcohol as open container marijuana violations are covered elsewhere in code.
- Repeal the Town's current Cannabis Ordinance as provisions are replaced with a new Chapter of Code specific to Marijuana offenses.
- Modify the Drug Paraphernalia Ordinance to accommodate Amendment 64 provisions.
- Creates a new Chapter of Town Code dealing specifically with Marijuana offenses.

The creation of a new Chapter of Town Code related to Marijuana offenses replaces the current Town Code 6-3H-1, Offenses Related to Cannabis, and incorporates the following changes:

- Adds consuming, using, purchasing or transporting marijuana to violations for those under age 21.
- Allows for the open and public display of marijuana by those over age 21.
- Defines and prohibits open or public consumption or use by any person.
- Changes the penalty for open or public consumption or use from a summons to an infraction (mail in fine).
- Prohibits the burning, smoking, inhaling of vapors, or any other form of consumption of marijuana in any place of business.
- Prohibits open containers or consumption of marijuana in a motor vehicle.

I will be available at the Town Council work session and meeting on September 24<sup>th</sup> to answer any questions.

1 ***FOR WORKSESSION/FIRST READING – SEPT. 24***

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

5  
6 COUNCIL BILL NO. \_\_\_\_

7  
8 Series 2013

9  
10 AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE CONCERNING THE  
11 IMPLEMENTATION OF “AMENDMENT 64” TO THE COLORADO CONSTITUTION

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

15  
16 Section 1. Section 5-9-1(A) of the Breckenridge Town Code is amended to read as  
17 follows:

18 A. The Town Council hereby finds and determines as follows:

- 19 1. It is in the best interest of the people of the Town to protect nonsmokers from  
20 involuntary exposure to environmental tobacco **and marijuana** smoke in most  
21 indoor areas open to the public, public meetings, food service establishments, and  
22 places of employment;
- 23 2. A balance should be struck between the health concerns of nonconsumers of  
24 tobacco **and marijuana** products and the need to minimize unwarranted  
25 governmental intrusion into, and regulation of, private spheres of conduct and  
26 choice with respect to the use or nonuse of tobacco **and marijuana** products in  
27 certain designated public areas and in private places;
- 28 3. Smoking should not be prohibited in the entryway of any building or facility, and  
29 such determination is expressly authorized to be made by the Town pursuant to  
30 Section 25-14-207(2)(a), Colorado Revised Statutes; and
- 31 4. “Cigar-tobacco bars,” as defined in Section 25-14-203(4), Colorado Revised  
32 Statutes, should not be exempted from the Town ’s smoking regulations as set  
33 forth in this Chapter.

34  
35 Section 2. Section 5-9-2 of the Breckenridge Town Code is amended by the addition of

OMNIBUS AMENDMENT 64 REGULATION ORDINANCE



1 the following definition:  
2

**MARIJUANA:**

**Has the same meaning as in Section 16(2)(f)  
of Article XVIII of the Colorado  
Constitution.**

3  
4 Section 3. The definition of “Environmental Tobacco Smoke” in Section 5-9-2 of the  
5 Breckenridge Town Code is amended to read as follows:  
6

ENVIRONMENTAL TOBACCO  
SMOKE:

The complex mixture formed from the  
escaping smoke of a burning tobacco **or**  
**marijuana** product, also known as “sidestream  
smoke”, and smoke exhaled by the smoker.

7  
8 Section 4. The definition of “Smoking” in Section 5-9-2 of the Breckenridge Town Code  
9 is amended to read as follows:

SMOKING:

The burning of a lighted cigarette, cigar, pipe,  
or any other matter or substance that contains  
tobacco, or ~~medical marijuana, as defined by~~  
~~Section 12-43.3-104(7), Colorado Revised~~  
~~Statutes.~~

10  
11 Section 5. The introductory portion of Section 5-9-3(A) of the Breckenridge Town Code  
12 is amended to read as follows:

13 A. Except as provided in Section 5-9-4 of this Chapter, and in order to reduce the  
14 levels of exposure to environmental tobacco **and marijuana** smoke, smoking  
15 shall not be permitted and no person shall smoke in any indoor area, including,  
16 but not limited to:

17 Section 6. Section 5-9-3(A)(12) of the Breckenridge Town Code is amended to read as  
18 follows:

19 12. Any place of employment that is not exempted. In the case of employers who own  
20 facilities otherwise exempted from this Chapter, each such employer shall provide  
21 a smoke free work area for each employee requesting not to have to breathe  
22 environmental **tobacco and marijuana** smoke. Every employee shall have a right  
23 to work in an area free of environmental tobacco **and marijuana** smoke;

24 Section 7. The introductory portion of Section 5-9-4 of the Breckenridge Town Code is  
25 amended to read as follows:

OMNIBUS AMENDMENT 64 REGULATION ORDINANCE

1 5-9-4: EXCEPTIONS TO SMOKING RESTRICTIONS: **Except as otherwise**  
2 **expressly provided in this Code.** This Chapter shall not apply to:

3 Section 8. Section 5-9-4(G) of the Breckenridge Town Code is amended to read as  
4 follows:

5 G. A place of employment that is not open to the public and that is under the  
6 control of an employer that employs three (3) or fewer employees; **provided,**  
7 **however, that this exemption does not apply to the smoking of marijuana;** or  
8

9 Section 9. Section 5-9-4 of the Breckenridge Town Code is amended by the addition of a  
10 new Section I, which shall read as follows:

11 **I. The open and public consumption of marijuana in an outdoor area as described**  
12 **in Article I of Chapter 3 of Title 6 of the Breckenridge Town Code.**  
13

14 Section 10. The definitions of “cannabis” and “cannabis concentrate” in Section 6-3-5 of  
15 the Breckenridge Town Code are repealed.

16 Section 11. The title of Section 6-3F-16 of the Breckenridge Town Code is amended to  
17 read “Open Containers Of Alcohol Prohibited.”.

18 Section 12. Section 6-3H-1<sup>1</sup> of the Breckenridge Town Code is repealed.

19 Section 13. Section 6-3H-6 of the Breckenridge Town Code is amended to read as  
20 follows:

21  
22 6-3H-6: POSSESSION OF DRUG PARAPHERNALIA:

23 A. **This Section does not apply to the possession, use, display, purchase,**  
24 **transport, sale or manufacture of marijuana accessories as defined in Section**  
25 **16(2)(g) of Article XVIII of the Colorado Constitution by a person age**  
26 **twenty-one years or older.**  
27

28 **AB.** As used in this Section, unless the context otherwise requires:

29  
30 1. "Drug paraphernalia" means all equipment, products, and materials of any kind  
31 which are used, intended for use, or designed for use in planting, propagating,  
32 cultivating, growing, harvesting, manufacturing, compounding, converting,  
33 producing, processing, preparing, testing, analyzing, packaging, repackaging,

---

<sup>1</sup> NOTE: Section 6-3H-1 is the Town’s current ordinance on possession of cannabis. [NOT TO BE CODIFIED]

1 storing, containing, concealing, injecting, ingesting, inhaling, or otherwise  
2 introducing into the human body a controlled substance in violation of the laws of  
3 the state of Colorado. "Drug paraphernalia" includes, but is not limited to:

4  
5 a. Testing equipment used, intended for use, or designed for use in identifying or  
6 in analyzing the strength, effectiveness, or purity of controlled substances under  
7 circumstances in violation of the laws of the state of Colorado;

8  
9 b. Scales and balances used, intended for use, or designed for use in weighing or  
10 measuring controlled substances;

11  
12 c. Separation gins and sifters used, intended for use, or designed for use in  
13 removing twigs and seeds from or in otherwise cleaning or refining marijuana;

14  
15 d. Blenders, bowls, containers, spoons, and mixing devices used, intended for use,  
16 or designed for use in compounding controlled substances;

17  
18 e. Capsules, balloons, envelopes, and other containers used, intended for use, or  
19 designed for use in packaging small quantities of controlled substances;

20  
21 f. Containers and other objects used, intended for use, or designed for use in  
22 storing or concealing controlled substances; or

23  
24 g. Objects used, intended for use, or designed for use in ingesting, inhaling, or  
25 otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human  
26 body, such as:

27  
28 (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without  
29 screens, permanent screens, hashish heads, or punctured metal bowls;

30  
31 (2) Water pipes;

32  
33 (3) Carburetion tubes and devices;

34  
35 (4) Smoking and carburetion masks;

36  
37 (5) Roach clips, meaning objects used to hold burning material, such as a  
38 marijuana cigarette that has become too small or too short to be held in the hand;

39  
40 (6) Miniature cocaine spoons and cocaine vials;

41

- 1 (7) Chamber pipes;
- 2
- 3 (8) Carburetor pipes;
- 4
- 5 (9) Electric pipes;
- 6
- 7 (10) Air driven pipes;
- 8
- 9 (11) Chillums;
- 10
- 11 (12) Bongs; or
- 12
- 13 (13) Ice pipes or chillers.
- 14

15 BC. In determining whether an object is drug paraphernalia, a court, in its  
16 discretion, may consider, in addition to all other relevant factors, the following:

- 17
- 18 1. Statements by an owner or by anyone in control of the object concerning its
- 19 use;
- 20
- 21 2. The proximity of the object to controlled substances;
- 22
- 23 3. The existence of any residue of controlled substances on the object;
- 24
- 25 4. Direct or circumstantial evidence of the knowledge of an owner, or of anyone
- 26 in control of the object, or evidence that such person reasonably should know, that
- 27 it will be delivered to persons who he knows or reasonably should know, could
- 28 use the object to facilitate a violation of Subsection E of this Section;
- 29
- 30 5. Instructions, oral or written, provided with the object concerning its use;
- 31
- 32 6. Descriptive materials accompanying the object which explain or depict its use;
- 33
- 34 7. National or local advertising concerning its use;
- 35
- 36 8. The manner in which the object is displayed for sale;
- 37
- 38 9. Whether the owner, or anyone in control of the object, is a supplier of like or
- 39 related items to the community for legal purposes, such as an authorized
- 40 distributor or dealer of tobacco products;
- 41

- 1 10. The existence and scope of legal uses for the object in the community; and  
2  
3 11. Expert testimony concerning its use.  
4

5 ED. In the event a case brought pursuant to this Section is tried before a jury, the  
6 court shall hold an evidentiary hearing on issues raised pursuant to Subsection B  
7 of this Section. Such hearing shall be conducted in camera.  
8

9 DE. A person commits possession of drug paraphernalia if he possesses drug  
10 paraphernalia and knows or reasonably should know that the drug paraphernalia  
11 could be used under circumstances in violation of the laws of the Town or the  
12 state of Colorado, ~~unless the person is twenty one (21) years of age or older and~~  
13 ~~the drug paraphernalia is reasonably associated with marijuana.~~  
14

15 EE. Any person convicted of having violated Subsection E of this Section shall  
16 be punished by a fine of not more than one hundred dollars (\$100.00).  
17  
18

19 Section 14. Title 6 of the Breckenridge Town Code is amended by the addition of a new  
20 Chapter 3I, entitled “Offenses Concerning Marijuana”, which shall read as follows:  
21

22 **CHAPTER 3**

23 **GENERAL OFFENSES**

24 **ARTICLE I: OFFENSES CONCERNING MARIJUANA**

25 **SECTION:**

26 **6-3I-1: Definitions**

27 **6-3I-2: Unlawful Possession or Open and Public Display, Consumption, Or Use of**  
28 **Marijuana By An Underage Person**

29 **6-3I-3: Unlawful Possession of Marijuana**

30 **6-3I-4: Open and Public Display, Consumption, or Use of Marijuana**

31 **6-3I-5: Unlawful Transfer of Marijuana to Underage Person**

32 **6-3I-6: Unlawful Transfer of Marijuana to Person Twenty-One Years of Age or**  
33 **Older**

34 **6-3I-7: Open Containers of Marijuana Prohibited**

35 **6-3I-8: Unlawful Acts in Marijuana Consumption Establishment; Public**  
36 **Nuisance**

37 **6-3I-9: Defendant to be Issued Summons and Must Promise to Appear in Court;**  
38 **When; Penalty Assessment Notice**  
39  
40  
41  
42

OMNIBUS AMENDMENT 64 REGULATION ORDINANCE



1 6-3I-10: Immunity For Persons Who Suffer or Report An Emergency Drug Overdose  
2 Event

3 6-3I-11: Evidence at Trial

4 6-3I-12: Constitutional Provisions

5  
6 6-3I-1: Definitions: As used in this Article the following words have the following  
7 meanings:  
8

<u>BUSINESS:</u>	<u>Has the meaning provided in Section 4-1-2 of this Code, but such term also includes any private club or membership club of any kind, regardless of how created, organized or denominated.</u>
<u>EMERGENCY DRUG OVERDOSE:</u>	<u>Means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.</u>
<u>FIRST OFFENSE:</u>	<u>Means that the person has not had a previous conviction, deferred prosecution, or deferred judgment for a violation of the same Section of this Article.</u>
<u>MARIJUANA:</u>	<u>Includes all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative mixture, or preparation of such plant, its seeds, or resin but shall not include the mature stalks of such plant, fiber produced from its stalk, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of its mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.</u>
<u>MARIJUANA</u>	<u>Hashish, tetrahydrocannabinols or any alkaloid,</u>

<b><u>CONCENTRATE:</u></b>	<b><u>salt, derivative, preparation, compound or mixture, whether natural or synthesized, or tetrahydrocannabinols.</u></b>
<b><u>MARIJUANA CONSUMPTION ESTABLISHMENT:</u></b>	<b><u>Means a business that is open to the general public and permits the burning, smoking, inhaling the vapors of, or otherwise consuming marijuana in any form on the premises of the business, even if: (i) admission requires the payment of a charge, admission fee, entry fee, membership fee, or other monetary charge or payment of any kind, or (ii) an entry fee, membership fee, or other monetary charge of any kind is suggested, recommended, or accepted by the operator of the business prior to admission.</u></b>
<b><u>MOTOR VEHICLE:</u></b>	<b><u>Has the meaning provided in the Town’s Traffic Code adopted in Chapter 1 of Title 7 of this Code.</u></b>
<b><u>OPENLY AND PUBLICLY:</u></b>	<b><u>Means the commission of an unlawful act as described in Section 6-3I-2 or Section 6-3I-4 in any of the following places: 1) any land or area owned or controlled by the Town, such as public ways, streets, sidewalks, alleys, parking lots, or playgrounds, 2) public grounds or other outdoor areas owned and operated by any governmental entity other than the Town, 3) the common areas of buildings usually open to the general public, 4) the exterior balconies, decks, lawns, grounds, outdoor recreational areas, and other outdoor portions of residential structures not constituting rooms designed for actual residence if visible from a public street, sidewalk or alley by a person of normal visual acuity, and 5) any other outdoor area open to the general public, which includes a place to which the public or a substantial number of the public have access without restriction, including, without limitation, the exterior areas of buildings and facilities that are generally open or accessible to members of the public without restriction.</u></b>

OMNIBUS AMENDMENT 64 REGULATION ORDINANCE

<b><u>OPEN MARIJUANA CONTAINER:</u></b>	<b><u>A receptacle or marijuana accessory as defined in Section 16(2)(g) of Article XVIII of the Colorado Constitution that contains any amount of marijuana and: (i) that is open or has a broken seal; (ii) the contents of which are partially removed; or (iii) there is evidence that marijuana has been consumed with the interior of the motor vehicle.</u></b>
<b><u>OUTDOOR AREA:</u></b>	<b><u>Any area or place outside of a building or other structure.</u></b>
<b><u>OWNER:</u></b>	<b><u>A sole proprietor if the business is operated as a proprietorship; the owner of the most shares if the business is operated as a corporation; the owner of the largest ownership interest in a limited liability company; a general partner if the business is operated as a general partnership; the general partner if the business is operated as a limited partnership; or the owner of the largest ownership interest in the business if the business is operated in any other form of business entity. If a business has more than one person who meets the definition of “owner”, the term “owner” applies to all such persons.</u></b>
<b><u>SECOND OFFENSE:</u></b> _____	<b><u>Means an offense after the person is subject to a first offense.</u></b>
<b><u>SUBSEQUENT OFFENSE:</u></b>	<b><u>Means an offense after the person is subject to a third offense.</u></b>
<b><u>THIRD OFFENSE:</u></b>	<b><u>Means an offense after the person is subject to a second offense.</u></b>

1  
2  
3  
4  
5  
6

**6-3I-2: UNLAWFUL POSSESSION OR OPEN AND PUBLIC CONSUMPTION OR USE OF MARIJUANA BY AN UNDERAGE PERSON:**

**A. Except as described in Section C of this Section and in Section 6-3I-10, it is unlawful for any person under twenty-one years of age to possess or openly and publicly consume or use**

1 marijuana or marijuana concentrate. Any person convicted of having violated this Section  
2 A shall be punished by a fine as follows:  
3

<u>Offense No.</u>	<u>Fine Amount</u>
<u>First Offense</u>	<u>\$100 or less</u>
<u>Second Offense</u>	<u>\$250 or less</u>
<u>Third Offense and Each Subsequent Offense</u>	<u>\$500</u>

4  
5 B. Pursuant to Rule 210(b)(5) of the Colorado Municipal Court Rules of Procedure the  
6 Municipal Judge shall specify by suitable schedules the amount of the fines to be imposed  
7 for a First Offense or a Second Offense violation of Section A of this Section.  
8

9 C. The possession, consumption, or use of marijuana by any person under twenty-one  
10 years of age shall not constitute a violation of Section A of this Section if such possession,  
11 use, or consumption is lawful under Article 43.3 of Title 12, C.R.S.  
12

13 D. Prima facie evidence of a violation of Section A of this Section shall consist of:  
14

15 (1) evidence that the defendant was under twenty-one years of age and possessed or openly  
16 and publicly displayed, consumed, or used marijuana or marijuana concentrate anywhere  
17 within the Town; or  
18

19 (2) evidence that the defendant was under twenty-one years of age and manifested any of  
20 the characteristics commonly associated with marijuana intoxication or impairment while  
21 present anywhere within the Town.  
22

23 E. The procedure described in Section 6-3I-9 shall apply to persons charged with a  
24 violation of Section A of this Section.  
25

26 6-3I-3: UNLAWFUL POSSESSION OF MARIJUANA:  
27

28 A. Except as described in Section 6-3I-10, it is unlawful for any person twenty-one years of  
29 age or older to possess more than one ounce but no more than two ounces of marijuana.  
30 Any person convicted of having violated this Section A shall be punished by a fine as  
31 follows:  
32

<u>Offense No.</u>	<u>Fine Amount</u>
<u>First Offense</u>	<u>\$100 or less</u>
<u>Second Offense</u>	<u>\$250 or less</u>
<u>Third Offense and Each Subsequent Offense</u>	<u>\$500</u>

1 **B. Pursuant to Rule 210(b)(5) of the Colorado Municipal Court Rules of Procedure the**  
2 **Municipal Judge shall specify by suitable schedules the amount of the fines to be imposed**  
3 **for a First Offense or a Second Offense violation of Section A of this Section.**

4  
5 **C. Except as described in Section 6-3I-10, it is unlawful for any person twenty-one years of**  
6 **age or older to possess more than two ounces of marijuana but no more than twelve ounces**  
7 **of marijuana, or not more than three ounces of marijuana concentrate. Any person**  
8 **convicted of having violated this Section C shall be punished as provided in Section 1-4-1 of**  
9 **this Code.**

10  
11 **D. The procedure described in Section 6-3I-9 shall apply to persons charged with a**  
12 **violation of either Section A or Section C of this Section.**

13  
14 **6-3I-4: OPEN AND PUBLIC CONSUMPTION OR USE OF MARIJUANA:**

15  
16 **A. Except as described in Section 6-3I-10, it is unlawful for any person twenty-one years of**  
17 **age or older to openly and publicly consume, or use marijuana or marijuana concentrate.**  
18 **Any person convicted of having violated this Section A shall be punished by a fine as**  
19 **follows:**

20

<u>Offense No.</u>	<u>Fine Amount</u>
<u>First Offense</u>	<u>\$100 or less</u>
<u>Second Offense</u>	<u>\$250 or less</u>
<u>Third Offense</u>	<u>\$500</u>

21  
22 **B. Pursuant to Rule 210(b)(5) of the Colorado Municipal Court Rules of Procedure the**  
23 **Municipal Judge shall specify by suitable schedules the amount of the fines to be imposed**  
24 **for a First Offense or a Second Offense violation of Section A of this Section.**

25  
26 **C. Any person convicted of having committed a fourth violation Section A of this Section,**  
27 **or any violation of Section A of this Section subsequent to a fourth violation, shall**  
28 **punished, at a minimum, by a fine of not less than one thousand dollars (\$1,000.00) or, at a**  
29 **maximum, by a fine of not more than two thousand dollars (\$2,000.00) and by fifteen days**  
30 **in the county jail.**

31  
32 **D. The procedure described in Section 6-3I-9 shall apply to persons charged with a**  
33 **violation of Section A of this Section; provided, however, the procedure described in**  
34 **Section 6-3I-9 shall not apply to a person charged with a fourth violation of Section A of**  
35 **this Section, or any violation of Section A of this Section subsequent to a fourth violation.**

36  
37 **6-3I-5: UNLAWFUL TRANSFER OF MARIJUANA TO UNDERAGE PERSON:**

1 It is unlawful for any person who is twenty-one years of age or older to transfer any  
2 amount of marijuana to any person who is less than twenty-one years of age. Any person  
3 convicted of having violated this Section shall be punished as provided in Section 1-4-1 of  
4 this Code.

5  
6 **6-3I-6: UNLAWFUL TRANSFER OF MARIJUANA TO PERSON TWENTY-ONE**  
7 **YEARS OF AGE OR OLDER:**

8  
9 A. It is unlawful for any person who is twenty-one years of ago or older to transfer more  
10 than one ounce but no more than two ounces of marijuana to any person who is twenty-one  
11 years of age or older for no consideration. Any person convicted of having violated this  
12 Section A shall be punished by a fine as follows:

<u>Offense No.</u>	<u>Fine Amount</u>
<u>First Offense</u>	<u>\$100 or less</u>
<u>Second Offense</u>	<u>\$250 or less</u>
<u>Third Offense and Each Subsequent Offense</u>	<u>\$500</u>

13  
14  
15 B. Pursuant to Rule 210(b)(5) of the Colorado Municipal Court Rules of Procedure the  
16 Municipal Judge shall specify by suitable schedules the amount of the fines to be imposed  
17 for a First Offense or a Second Offense violation of Section A of this Section.

18  
19 C. It is unlawful for any person who is twenty-one years of ago or older to transfer more  
20 than two ounces but no more than twelve ounces of marijuana to any person who is twenty-  
21 one years of age or older for no consideration. Any person convicted of having violated this  
22 Section B shall be punished as provided in Section 1-4-1 of this Code.

23  
24 D. The procedure described in Section 6-3I-9 shall apply to persons charged with a  
25 violation of Section A of this Section, but not to a persons charged with a violation of  
26 Section C of this Section.

27  
28 **6-3I-7: OPEN CONTAINERS OF MARIJUANA PROHIBITED:**

29  
30 A. It is unlawful for any person to possess any marijuana in any open marijuana container,  
31 or to consume marijuana, in the interior of a motor vehicle while the motor vehicle is either  
32 parked on a public street, right of way or alley within the Town, or is being operated on a  
33 public street, right of way or alley within the Town. A person convicted of having violated  
34 Section A of this Section shall be punished by a fine as follows:

<u>Offense No.</u>	<u>Fine Amount</u>
<u>First Offense</u>	<u>\$100 or less</u>

<u>Second Offense</u>	<u>\$250 or less</u>
<u>Third Offense and Each Subsequent Offense</u>	<u>\$500</u>

1  
2 **B. Pursuant to Rule 210(b)(5) of the Colorado Municipal Court Rules of Procedure the**  
3 **Municipal Judge shall specify by suitable schedules the amount of the fines to be imposed**  
4 **for a First Offense or a Second Offense violation of Section A of this Section.**  
5

6 **C. Any peace officer is authorized to seize any marijuana or open marijuana container**  
7 **that is used in the commission of a violation of Section A of this Section. If no summons or**  
8 **notice is issued for a violation of Section A, and if the circumstances reasonably permit, the**  
9 **peace officer may require the person who has committed a violation of Section A to**  
10 **abandon the marijuana to the officer for destruction.**  
11

12 **D. The procedure described in Section 6-3I-9 shall apply to persons charged with a**  
13 **violation of Section A of this Section.**  
14

15 **6-3I-8: UNLAWFUL ACTS IN A MARIJUANA CONSUMPTION ESTABLISHMENT;**  
16 **DECLARED PUBLIC NUISANCE;**  
17

18 **A. It is unlawful for any person to burn, smoke, inhale the vapors of, or otherwise consume**  
19 **marijuana in any form within a marijuana consumption establishment. Any person**  
20 **convicted of having violated this Section A shall be punished, at a minimum, by a fine of**  
21 **not less than one hundred dollars (\$100.00) or, at a maximum, by a fine of not more than**  
22 **one hundred dollars (\$100.00) and by fifteen (15) days in the county jail.**  
23

24 **B. It is unlawful to own or operate a marijuana consumption business within the Town.**  
25 **Any person convicted of having violated this Section B shall be punished as provided in**  
26 **Section 1-4-1 of this Code. Each day during any portion of which a violation of this Section**  
27 **B occurs shall be a separate offense, and shall be punished accordingly.**  
28

29 **C. Any marijuana consumption business that operates within the Town is a nuisance, and**  
30 **is subject to abatement as provided in Title 5, Chapter 1 of this Code.**  
31

32 **6-3I-9: DEFENDANT TO BE ISSUED SUMMONS AND MUST PROMISE TO APPEAR**  
33 **IN COURT; WHEN; PENALTY ASSESSMENT NOTICE;**  
34

35 **A. Whenever a person is arrested or detained for a violation of any Section of this Article**  
36 **to which this Section applies, the arresting or detaining officer shall prepare a written**  
37 **notice or summons for such person to appear in court. The written notice or summons shall**  
38 **contain the name and address of such arrested or detained person, the date, time, and place**  
39 **where such person shall appear, and a place for the signature of such person indicating the**

1 person's written promise to appear on the date and at the time and place indicated on the  
2 notice or summons. One copy of said notice or summons shall be given to the person  
3 arrested or detained, one copy shall be sent to the Municipal Court, and such other copies  
4 as may be required by the law enforcement agency employing the arresting or detaining  
5 officer shall be sent to the places designated by such law enforcement agency. The date  
6 specified in the notice or summons to appear shall be at least seven days after such arrest  
7 or detention unless the person arrested or detained demands an earlier hearing. The place  
8 specified in the notice or summons to appear shall be the Municipal Court. The arrested or  
9 detained person, in order to secure release from arrest or detention, shall promise in  
10 writing to appear in the Municipal Court by signing the notice or summons prepared by  
11 the arresting or detaining officer. Any person who does not honor such written promise to  
12 appear commits a misdemeanor municipal offense, and upon conviction shall be punished  
13 as provided in Section 1-4-1 of this Code.

14  
15 **B. At the time that any person is arrested for the commission of a violation of Section 6-3I-**  
16 **3 (Unlawful Possession of Marijuana), Section 6-3I-4 (Open and Public Consumption or**  
17 **Use of Marijuana), (6-3I-6 (Unlawful Transfer of Marijuana to Person Twenty-One Years**  
18 **of Age or Older), or Section 6-3I-7 (Open Containers of Marijuana Prohibited) the**  
19 **arresting officer may offer to give a penalty assessment notice to the defendant. Such**  
20 **penalty assessment notice shall contain all the information required of a summons under**  
21 **the Colorado Municipal Court Rules of Procedure. The fine or penalty specified by the**  
22 **Municipal Judge in the schedules adopted pursuant to Rule 210(b)(5) of the Colorado**  
23 **Municipal Court Rules of Procedure for the violation charged and the surcharge thereon**  
24 **may be paid at the office of the Clerk of the Municipal Court, either in person or by**  
25 **postmarking such payment within twenty days from the date the penalty assessment notice**  
26 **is served upon the defendant. A defendant who does not furnish satisfactory evidence of**  
27 **identity or who the officer has reasonable and probable grounds to believe will disregard**  
28 **the summons portion of such notice may be issued a penalty assessment notice only if the**  
29 **defendant consents to be taken by the officer to the nearest mailbox and to mail the amount**  
30 **of the fine or penalty and surcharge thereon to the department. Acceptance of a penalty**  
31 **assessment notice and payment of the prescribed fine or penalty and any applicable**  
32 **surcharge thereon to the Clerk of the Municipal Court shall be deemed a complete**  
33 **satisfaction for the violation, and the defendant shall be given a receipt which so states**  
34 **when such fine or penalty and surcharge thereon is paid in currency or other form of legal**  
35 **tender. Checks tendered by the defendant to and accepted by the Clerk of the Municipal**  
36 **Court and on which payment is received by the Clerk of the Municipal Court shall be**  
37 **deemed sufficient receipt.**

38  
39 **C. The penalty assessment shall not apply when it appears that the offense is a fourth or**  
40 **any subsequent alleged violation of any of the Sections described in Section A of this**  
41 **Section.**



1  
2 **D. In no case may an officer issue a penalty assessment notice for a violation of any offense**  
3 **described in Section B of this Section to a minor under the age of eighteen years. All**  
4 **charges against minors shall be processed in accordance with Section A of this Section.**  
5

6 **E. If the defendant refuses to accept service of the penalty assessment notice when such**  
7 **notice is tendered, the peace officer shall proceed in accordance with Section A of this**  
8 **Section.**  
9

10 **F. Should the defendant accept service of the penalty assessment notice but fail to post the**  
11 **prescribed penalty and surcharge thereon within twenty days thereafter, the notice shall be**  
12 **construed to be a summons and complaint, and the case shall thereafter be heard in the**  
13 **Municipal Court. The maximum penalty that may be imposed shall not exceed the penalty**  
14 **set forth in the applicable penalty assessment notice and any applicable surcharge.**  
15

16 **6-3I-10: IMMUNITY FOR PERSONS WHO SUFFER OR REPORT AN EMERGENCY**  
17 **DRUG OVERDOSE EVENT:**  
18

19 **A. A person shall be immune from prosecution for an offense described in Section C of this**  
20 **Section if:**  
21

22 **(1) The person reports in good faith an emergency drug overdose event to a law**  
23 **enforcement officer, to the 911 system, or to a medical provider;**  
24

25 **(2) The person remains at the scene of the event until a law enforcement officer or an**  
26 **emergency medical responder arrives, or the person remains at the facilities of the medical**  
27 **provider until a law enforcement officer arrives;**  
28

29 **(3) The person identifies himself or herself to, and cooperates with, the law enforcement**  
30 **officer, emergency medical responder, or medical provider; and**  
31

32 **(4) The offense arises from the same course of events from which the emergency drug**  
33 **overdose event arose.**  
34

35 **B. The immunity described in Section A of this Section also extends to the person who**  
36 **suffered the emergency drug overdose event if all of the conditions of Section A are**  
37 **satisfied.**  
38

39 **C. The immunity described in Section A of this Section shall apply to any offense described**  
40 **in this Article.**  
41

1 **D. Nothing in this Section shall be interpreted to prohibit the prosecution of a person for an**  
2 **offense other than an offense listed in Section C of this Section or to limit the ability of the**  
3 **Town Attorney, municipal prosecutor, or a law enforcement officer to obtain or use**  
4 **evidence obtained from a report, recording, or any other statement provided pursuant to**  
5 **Section A of this Section to investigate and prosecute an offense other than an offense listed**  
6 **in Section C of this Section.**

7  
8 **6-3I-11: EVIDENCE AT TRIAL: If determined by the Municipal Judge to be relevant to**  
9 **the charge brought against the defendant, during any trial for a violation of any Section of**  
10 **this Article:**

11  
12 **A. Any container with labeling indicating the contents of the container is admissible into**  
13 **evidence, and the information contained on any label on the container is admissible into**  
14 **evidence and is not hearsay. The Municipal Judge may consider the information upon the**  
15 **label in determining whether the contents of the container were composed in whole or in**  
16 **part of marijuana or marijuana concentrate.**

17  
18 **B. The qualitative result of a drug test or tests performed by or on behalf of a law**  
19 **enforcement agency with relevant jurisdiction shall be admissible at the trial of any person**  
20 **charged with a violation of this Section upon a showing that the device or devices used to**  
21 **conduct such test or tests have been approved as accurate in detecting drugs by the**  
22 **executive director of the Colorado Department of Public Health and Environment.**

23  
24 **C. The Municipal Court shall take judicial notice of methods of testing a person's blood or**  
25 **urine for the presence of marijuana and of the design and operation of devices certified by**  
26 **the Colorado Department of Public Health and Environment for testing a person's blood**  
27 **or urine for the presence of marijuana. This Section does not prevent the necessity of**  
28 **establishing during a trial that the testing devices were working properly and that such**  
29 **testing devices were properly operated. Nothing in this Section precludes a defendant from**  
30 **offering evidence concerning the accuracy of testing devices.**

31  
32 **6-3I-12: CONSTITUTIONAL PROVISIONS: The provisions of this Article do not apply**  
33 **to: (i) a person twenty-one years of age or older acting in conformance with Section 16 of**  
34 **Article XVIII of the state constitution; and (ii) a person acting in conformance with Section**  
35 **14 of Article XVIII of the state constitution.**

36  
37 Section 15. Except as specifically amended hereby, the Breckenridge Town Code, and  
38 the various secondary Codes adopted by reference therein, shall continue in full force and effect.

39 Section 16. The Town Council hereby finds, determines and declares that this ordinance  
40 is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and  
41 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants

1 thereof.

2 Section 17. The Town Council hereby finds, determines and declares that it has the  
3 power to adopt this ordinance pursuant to: (i) Section 16 of Article XVIII of the Colorado  
4 Constitution; (ii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iii) Section  
5 31-15-401, C.R.S.(concerning municipal police powers); (iv) the authority granted to home rule  
6 municipalities by Article XX of the Colorado Constitution; and (v) the powers contained in the  
7 Breckenridge Town Charter.

8 Section 18. This ordinance shall be published and become effective as provided by  
9 Section 5.9 of the Breckenridge Town Charter.

10 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
11 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2013. A Public Hearing shall be held at the  
12 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
13 \_\_\_\_\_, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
14 Town.

15  
16 TOWN OF BRECKENRIDGE, a Colorado  
17 municipal corporation  
18

19  
20  
21 By \_\_\_\_\_  
22 John G. Warner, Mayor  
23

24 ATTEST:  
25  
26  
27

28 \_\_\_\_\_  
29 Helen Cospolich, Town Clerk  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43



## MEMORANDUM

**To:** Mayor and Town Council  
**From:** Shannon Haynes, Chief of Police  
**Date:** September 10, 2013  
**Subject:** Residential Growing of Marijuana Ordinance

---

As a result of the approval of Amendment 64 by Colorado voters in November 2012 staff has reviewed the current Town of Breckenridge Residential Growing of Marijuana ordinance to ensure compliance.

We are proposing a limited number of edits to the current Chapter 13, Title 9, Residential Growing Ordinance. Essentially, the changes do not change the intent or implementation of the current ordinance and serve primarily to clean up the current language.

The residential growing ordinance will continue to:

- Allow for possessing, growing, or processing of marijuana in a residence by persons twenty-one years old or older.
- Allow for possessing, growing, processing or transporting of not more than 6 plants by an individual.
- Prohibit the growing of marijuana openly or publicly or in an area outside of a residential structure.
- Require any residential cultivation area to be enclosed and locked.
- Limit the location of marijuana plants to specific areas within a residential structure.
- Allow for not more than twelve marijuana plants to be growing within a residential structure at any one time, regardless of the number of persons occupying the residence.
- Prohibit any perception of growing marijuana from the exterior of the residence.
- Require written consent from the property owner for growing, cultivating or processing on a property the individual does not own.
- Prohibits the use of chemicals to extract THC and the use of compressed, flammable gases as solvents for the extraction of THC.
- Provides for inspections by Town staff.

I will be available at the Town Council work session and meeting on September 24<sup>th</sup> to answer any questions.

1 *FOR WORKSESSION/FIRST READING – SEPT. 24*

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

5  
6 COUNCIL BILL NO. \_\_\_\_\_

7  
8 Series 2013

9  
10 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 13 OF  
11 TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE RESIDENTIAL  
12 GROWING OF MARIJUANA

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

16  
17 Section 1. Chapter 13 of Title 9 of the Breckenridge Town Code is repealed and readopted  
18 with changes so as to read in its entirety as follows:

19  
20 CHAPTER 13

21  
22 RESIDENTIAL GROWING OF ~~MEDICAL~~ MARIJUANA

23  
24 SECTION:

- 25  
26 9-13-1: SHORT TITLE  
27 9-13-2: FINDINGS  
28 9-13-3: PURPOSE  
29 9-13-4: AUTHORITY  
30 9-13-5: DEFINITIONS  
31 9-13-6: REGULATIONS FOR THE GROWING OF ~~MEDICAL~~ MARIJUANA IN A  
32 RESIDENTIAL STRUCTURE  
33 9-13-7: INSPECTION; INSPECTION WARRANT  
34 9-13-8: APPLICABILITY OF NUISANCE ORDINANCE  
35 9-13-9: CONDITION PRECEDENT TO CHALLENGE

36  
37 9-13-1: SHORT TITLE: This Chapter is to be known and may be cited as the “2013 Town Of  
38 Breckenridge Residential ~~Medical~~ Marijuana Ordinance.”

39  
40 9-13-2: FINDINGS: The Town Council adopts this Chapter based upon the following findings  
41 of fact:

- 42  
43 A. On November 7, 2000 the voters of the State of Colorado approved Amendment 20.  
44 Amendment 20 added Section 14 of Article XVIII to the Colorado Constitution,

RESIDENTIAL MARIJUANA ORDINANCE

1 and created a limited exception from criminal liability under Colorado law (as  
2 opposed to federal law) for seriously ill persons who are in need of marijuana for  
3 specified medical purposes and who obtain and use medical marijuana under the  
4 limited circumstances described in ~~Amendment 20~~ **Section 14 of Article XVIII of**  
5 **the Colorado Constitution.**

6 B. The Colorado legislature recently passed and the governor signed into law  
7 HB10-1284, entitled “An Act Concerning Regulation of Medical Marijuana, and  
8 Making an Appropriation Therefor.” HB10-1284 adopted the “Colorado Medical  
9 Marijuana Code.” HB10-1284 became effective July 1, 2010.

10 C. ~~The growing of marijuana plants in a residential setting presents significant~~  
11 ~~regulatory challenges not currently addressed by Town ordinances.~~ **On November**  
12 **6, 2012 the voters of the State of Colorado approved Amendment 64.**  
13 **Amendment 64 added Section 16 of Article XVIII to the Colorado**  
14 **Constitution.**

15 **D. Section 16(3)(b) of Article XVIII of the Colorado Constitution provides that it**  
16 **is not unlawful under Colorado law for a person twenty-one years of age or**  
17 **older to possess, grow, process, or transport not more than six marijuana**  
18 **plants, with three or fewer being mature, flowering plants, and to possess the**  
19 **marijuana produced by the plants on the premises where the plants were**  
20 **grown, provided that the growing takes place in an enclosed, locked space, is**  
21 **not conducted open or publicly, and is not made available for sale.**

22 **E.** ~~D.~~ ~~The growing~~ **or processing** of marijuana plants in a residential setting can affect  
23 the health, safety, and welfare of both the occupants of the residential  
24 ~~building~~ **structure** within which the marijuana is grown **or processed**, and of  
25 persons occupying nearby ~~buildings~~ **structures**.

26 **F.** ~~E.~~ ~~The Town has about a year’s worth of experience with the unregulated growing~~  
27 ~~of marijuana in a residential setting. To date, the Town’s experience is that the~~  
28 ~~unregulated growing of residential medical~~ **growing or processing of** marijuana  
29 results in a significant number of instances of non-compliance with the Town’s  
30 building and other technical codes. In addition to other potentially serious  
31 problems, non-compliance with the Town’s building and other technical codes has  
32 the potential to result in a fire emanating from the residential structure within which  
33 the ~~medical~~ marijuana is grown **or processed**. Such a fire would affect the health,  
34 safety, and welfare of both the occupants of the residential ~~building~~ **structure**  
35 within which the marijuana is grown **or processed**, and of persons occupying  
36 nearby ~~buildings~~ **structures**.

37 ~~F.~~ ~~Neither Amendment 20 nor HB10-1284 specifically address the growing of~~  
38 ~~medical marijuana in a residential setting, or the local regulation of such activity.~~

- 1 G. Nothing in ~~Amendment 20, HB10-1284,~~ Section 14 or Section 16 of Article  
2 XVIII of the Colorado Constitution, or any other applicable law,  
3 ~~immunize~~immunizes persons who grow ~~medical~~or process marijuana in a  
4 residential setting from local regulation, ~~or establish a fundamental legal right to~~  
5 ~~grow medical marijuana within a residence or its curtilage.~~
- 6 ~~H. Section 12-43.3-103(2)(a), C.R.S., which is part of the Colorado Medical~~  
7 ~~Marijuana Code, provides that prior to July 1, 2011 a municipality may adopt and~~  
8 ~~enforce an ordinance regulating the cultivation of medical marijuana. The~~  
9 ~~provisions of this Chapter are such an ordinance.~~
- 10 ~~I. The Colorado Medical Marijuana Code further recognizes the power of a~~  
11 ~~municipality to adopt and enforce its own rules and regulations within respect to the~~  
12 ~~growing of medical marijuana within its jurisdiction. Specifically, the Colorado~~  
13 ~~Medical Marijuana Code authorizes municipalities to:~~
- 14 1. ~~Enact ordinances or resolutions concerning matters authorized to local~~  
15 ~~governments (Section 12-43.3-305(3), C.R.S.); and~~
- 16 2. ~~Enact reasonable regulations or other restrictions based on local~~  
17 ~~government zoning, health, safety and public welfare laws for the~~  
18 ~~distribution of medical marijuana that are more restrictive than the~~  
19 ~~Colorado Medical Marijuana Code (Section 12-43.3-310(1), C.R.S.);~~
- 20 ~~J. Section 12-43.3-305(3), C.R.S., further specifically provides that nothing in the~~  
21 ~~Colorado Medical Marijuana Code preempts or otherwise impairs the power of a~~  
22 ~~local government to enact an ordinance concerning matters authorized to local~~  
23 ~~governments.~~
- 24 ~~K. The Town Council finds, determines, and declares that to the extent the~~  
25 ~~requirements of this Chapter differ from the requirements of the Colorado Medical~~  
26 ~~Marijuana Code, the requirements of this Chapter are more restrictive than the~~  
27 ~~Colorado Medical Marijuana Code.~~
- 28 ~~L. As of the date of the adoption of this Chapter there are numerous licensed retail~~  
29 ~~medical marijuana outlets within the Town. As a result, medical marijuana is~~  
30 ~~readily available for purchase within the Town by those persons licensed to~~  
31 ~~purchase and possess it.~~
- 32 H. ~~M.~~ The Town is a home rule municipal corporation organized and existing under its  
33 Charter and Article XX, Section 6 of the Colorado Constitution. As such, the Town  
34 possesses all powers granted to home rule municipalities by Colorado law.
- 35 I. ~~N.~~ This Chapter is necessary and proper to provide for the safety, preserve the  
36 health, promote the prosperity, and improve the order, comfort, and convenience of

RESIDENTIAL MARIJUANA ORDINANCE

1 the Town and the inhabitants thereof, and to reduce the number of public nuisances  
2 that exist within the Town.

3 9-13-3: PURPOSE: It is the purpose of this Chapter to require that persons growing ~~medical~~  
4 **processing** marijuana in a residential setting within the Town **pursuant to Sections 14 or 16 of**  
5 **Article XVIII of the Colorado Constitution** do so in a safe manner that does not endanger the  
6 public health, safety, and welfare, or create a public nuisance.

7  
8 9-13-4: AUTHORITY: The Town Council ~~hereby~~ finds, determines, and declares that it has the  
9 power to adopt this Chapter pursuant to:

10  
11 A. The Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S.;

12 **B. Section 16 of Article XVIII to the Colorado Constitution;**

13 **C.** ~~B.~~The Local Government Land Use Control Enabling Act, Article 20 of Title 29,  
14 C.R.S.;

15 **D.** ~~C.~~Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);

16 **E.** ~~D.~~Section 31-15-103, C.R.S. (concerning municipal police powers);

17 **F.** ~~E.~~Section 31-15-401, C.R.S. (concerning municipal police powers, including, but  
18 not limited to, the power to declare what is a nuisance and to abate the same);

19 **G.** ~~F.~~The authority granted to home rule municipalities by Article XX, Section 6 of  
20 the Colorado Constitution; and

21 **H.** ~~G.~~The powers contained in the Breckenridge Town Charter.

22 9-13-5: DEFINITIONS:

23  
24 A. The definitions contained in ~~Amendment 20, the Colorado Medical Marijuana~~  
25 ~~Code, Sections 14 and 16 of Article XVIII of the Colorado Medical Marijuana~~  
26 ~~Program, all as amended from time to time,~~**Constitution** are incorporated into this  
27 Chapter by reference.

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

~~—AMENDMENT 20:~~

~~The voter-initiated amendment to the Colorado~~  
~~Constitution adopted November 7, 2000.~~  
~~Amendment 20. Amendment 20 added Article~~  
~~XVIII to the Colorado Constitution.~~

**ENCLOSED AND LOCKED**  
**SPACE:**

**Means the area within the residential structure**  
**where marijuana is cultivated pursuant to**

RESIDENTIAL MARIJUANA ORDINANCE



Sections 14 and 16 of Article XVIII of the Colorado Constitution, and that is secured at all points of ingress or egress with a locking mechanism such as a key or combination lock designed to limit access.

MARIJUANA:

Has the same meaning as in Section 16(2)(f) of Article XVIII of the Colorado Constitution.

~~COLORADO MEDICAL MARIJUANA CODE:~~

~~Article 43.3 of Title 12, C.R.S., as amended from time to time.~~

~~COLORADO MEDICAL MARIJUANA PROGRAM:~~

~~Section 25-1.5-106, C.R.S., as amended from time to time.~~

~~MEDICAL MARIJUANA PLANT:~~

~~A marijuana plant that is grown, cultivated, or processed pursuant to the provisions of Amendment 20, the Colorado Medical Marijuana Code, the Colorado Medical Marijuana Program, or other applicable law regulating the growing or cultivation of medical marijuana.~~

~~MULTI-UNIT RESIDENTIAL USE:~~

~~Has the meaning provided in Section 9-1-5 of this Code.~~

OPENLY:

Means that the area within the residential structure where the marijuana is grown is not protected from unaided observation lawfully made from outside the perimeter of the residential structure not involving physical intrusion.

~~PERSON:~~

~~Has the meaning provided in Section 1-3-2 of this Code.~~

~~POLICE CHIEF:~~

~~The Police Chief of the Town, or his~~ the Police Chief's designee.

~~PRIMARY RESIDENCE~~

~~The place that a person, by custom and practice, makes his or her principal domicile and address and to which the person intends to return following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address for domestic purposes;~~

~~such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery (if available), vehicle and voter registration, or credit, water and other utility billing. a person shall have only one primary residence. A primary residence must be within a residential structure. A primary residence does not include any accessory buildings.~~

**PUBLICLY:**

**Means that the area within the residential structure where the residential marijuana is grown is open to general access without restriction.**

RESIDENTIAL STRUCTURE:

~~A~~**Means a** structure devoted to a residential use.

RESIDENTIAL USE:

Has the meaning provided in Section 9-1-5 of this Code.

SECURE:

~~An area within a primary residence that is accessible only to the patient or primary caregiver. Secure premises shall be located or partitioned off to prevent access by children, visitors, passersby, thieves or anyone else not licensed to possess medical marijuana.~~

SINGLE-FAMILY RESIDENTIAL UNIT:

Has the meaning provided in Section 9-1-5 of this Code.

STRUCTURE:

Has the meaning provided in Section 9-1-5 of this Code.

**THC:**

**Means tetrahydrocannabinol.**

TOWN:

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

1  
2 9-13-6: REGULATIONS FOR THE GROWING OF MEDICAL MARIJUANA IN A  
3 RESIDENTIAL STRUCTURE: ~~Medical marijuana may~~**Marijuana plants shall** not be  
4 **possessed, grown, cultivated, or processed, or transported** in or around any residential structure  
5 within the Town except in compliance with the following regulations: **It is unlawful and a**  
6 **misdemeanor offense for a person to violate any provision of this Section. In accordance**  
7 **with Section 1-4-1(B) of this Code, a person shall be guilty of a separate offense for each and**  
8 **every day during any portion of which any violation of the requirements of this section is**  
9 **committed, continued, or permitted by such person.**  
10

- 1 A. The possession, growing, cultivation, or processing and transportation of  
2 medical marijuana plants within a residential structure shall be done in full  
3 compliance with all applicable provisions of Amendment 20, the Colorado Medical  
4 Marijuana Code, the Medical Marijuana Program, and other applicable law. Section  
5 14 and Section 16 of Article XVIII of the Colorado Constitution.
- 6 B. Medical marijuana may be grown, cultivated, or processed only within a patient's  
7 or his or her primary caregiver's primary residence. Medical marijuana may not be  
8 grown, cultivated, or process in the yard, curtilage, or other area outside of the  
9 patient's or his or her primary caregiver's primary residence. Marijuana may be  
10 possessed, grown, or processed within a residential structure only by a person  
11 twenty-one years of age or older.
- 12 C. Medical marijuana may be grown, cultivated, or processed within a primary  
13 residence only by a primary caregiver for his or her patients, or a patient for himself  
14 or herself. A primary caregiver may not lawfully grow, cultivate, or process  
15 medical marijuana for a patient who does not reside at the primary residence where  
16 the growing, cultivating, or processing occurs. One person twenty-one years of  
17 age or older may not possess, grow, process, or transport more than six  
18 marijuana plants within a residential structure at any one time. Not more  
19 than three of the plants may be mature flowering plants.
- 20 D. The owner of the marijuana plants described in Section C may lawfully  
21 possess the marijuana produced by the six marijuana plants described in  
22 Section C on the premises where the plants were grown.
- 23 E. None of the marijuana plants or the marijuana described in Section C or D  
24 may be sold or offered for sale.
- 25 F. Marijuana may not be grown openly or publicly, or in any area that is located  
26 outside of the exterior walls of a residential structure.
- 27 G. If a person under twenty-one years of age lives at the residential structure, the  
28 cultivation area for the marijuana plants must be enclosed and locked.
- 29 H. D. Not more than six medical marijuana plants may be grown, cultivated, or  
30 processed within a primary residence; provided, however, that up to twelve medical  
31 marijuana plants may be grown, cultivated, or processed within a primary residence  
32 if more than one patient or primary caregiver resides within the primary  
33 residence. If no person under twenty-one years of age lives at the residential  
34 structure, the external locks of the residential structure constitute an enclosed  
35 and locked space but if a person under twenty-one years of age enters the  
36 residential structure, the person must ensure that access to the marijuana  
37 cultivation site is reasonably restricted for the duration of that person's  
38 presence in the residential structure.

1 **I.** ~~E.~~ The **possession, growing, cultivation, and processing, or transportation** of  
2 ~~medical~~ marijuana plants shall be limited to the following areas within a patient's  
3 or primary caregiver's primary residence **residential structure**:

- 4 1. Within a detached single-family residential unit, ~~medical~~ marijuana may be  
5 grown, cultivated, or processed only within a ~~secure, defined,~~ **and**  
6 contiguous 150 square foot area;
- 7 2. Within any residential structure other than a detached single-family  
8 residential unit, ~~medical~~ marijuana may be grown, cultivated, or processed  
9 only within a ~~secure, defined,~~ **and** contiguous 100 square feet area; ~~and~~
- 10 3. ~~Medical marijuana~~ **Marijuana** shall not be **possessed, grown, cultivated, or**  
11 **processed, or transported** within the common area of any real property  
12 that is devoted to a residential use; **and**
- 13 4. **Not more than twelve marijuana plants may be growing within a**  
14 **residential structure at any one time, regardless of the number of**  
15 **persons twenty-one years of age or older who then occupy the**  
16 **residential structure.**

17 ~~F.~~ If a patient or primary caregiver is authorized by law to grow, cultivate, and process  
18 quantities of medical marijuana requiring more than the square footage or number  
19 of plant limitations set forth above, such patient or primary caregiver must act in  
20 full compliance with all applicable laws, and:

- 21 1. ~~Such patient or caregiver may grow, cultivate, and process medical~~  
22 ~~marijuana plants in excess of the square footage limitation and plant~~  
23 ~~number limitations set forth above only in those locations where a medical~~  
24 ~~marijuana center may be licensed under Chapter 14 of Title 1 of this Code;~~  
25 ~~and~~
- 26 2. ~~Such patient or caregiver must ensure that such premises are secure, and~~  
27 ~~that no children, visitors, passersby, thieves or anyone else not licensed to~~  
28 ~~possess medical marijuana may access the premises.~~
- 29 3. ~~Such growing is subject to the requirements of subsections G and H of this~~  
30 ~~section.~~

31 **J.** ~~G.~~ The growing, cultivation, and processing of ~~medical~~ marijuana shall not be  
32 perceptible from the exterior of the primary residence **residential structure where**  
33 **the plants are grown**, including, but not limited to:

- 34 1. Common visual observation;
- 35 2. Light pollution, glare, or brightness that disturbs the repose of another;

## RESIDENTIAL MARIJUANA ORDINANCE

1 3. Undue vehicular or foot traffic, including unusually heavy parking in front  
2 of the ~~primary residence~~residential structure; and

3 4. Noise from an exhaust fan in excess of the maximum permissible noise  
4 level described in Section 5-8-5 of this Code.

5 K. ~~H.~~ The smell or odor of marijuana growing within the ~~primary residence~~a  
6 residential structure shall not be capable of being detected by a person with a  
7 normal sense of smell from any adjoining lot, parcel, or tract of land not owned by  
8 the owner of the ~~primary residence~~residential structure, or from any adjoining  
9 public right of way.

10 L. ~~I.~~ The space within the ~~primary residence~~residential structure where ~~medical~~  
11 marijuana is grown, cultivated, or processed shall meet all applicable requirements  
12 of the Town's building and technical codes adopted in Chapter 1 of Title 8 of this  
13 Code.

14 M. ~~J.~~ If a ~~patient or primary caregiver~~person grows, cultivates, or processes ~~medical~~  
15 marijuana within a ~~primary residence~~residential structure that he or she does not  
16 own, ~~the primary caregiver~~he or ~~patients~~she shall obtain the written consent of the  
17 property owner before commencing to grow, cultivate or process ~~medical~~  
18 marijuana on the property.

19 N. ~~K.~~ No chemical shall be used by a ~~patient or primary caregiver~~ to enhance or extract  
20 tetrahydrocannabinol (THC) from ~~medical~~ marijuana that is grown in a ~~primary~~  
21 ~~residence~~residential structure.

22 O. ~~L.~~ It is unlawful and a misdemeanor offense for a person to violate any provision of  
23 this section. In accordance with Section 1-4-1(B) of this Code, a person shall be  
24 guilty of a separate offense for each and every day during any portion of which any  
25 violation of the requirements of this section is committed, continued, or permitted  
26 by such person. Compressed, flammable gas shall not be used in a residential  
27 structure as a solvent for the extraction of THC or other cannabinoids.

28 9-13-7: INSPECTION; INSPECTION WARRANT:  
29

30 A. Subject to the requirements and limitations of this section, the Police Chief shall  
31 have the right to enter upon any residential structure within the Town where  
32 ~~medical~~ marijuana is being grown, cultivated, or processed during reasonable hours  
33 for the purpose of conducting a physical inspection of the premises to determine if  
34 the premises comply with the requirements of this Chapter. However, no agent or  
35 employee of the Town shall enter upon any property to conduct such an inspection  
36 without either the permission of the landowner or occupant, or without an  
37 inspection warrant issued pursuant to this section.

- 1 B. If verbal permission to inspect the residential structure from the affected landowner  
 2 or occupant is not obtained, or if the residential structure is locked and the Police  
 3 Chief has been unable to obtain permission of the landowners or occupant, the  
 4 Police Chief may request that an inspection warrant be issued by the municipal  
 5 court judge pursuant to Rule 241 of the Colorado Municipal Court Rules of  
 6 Procedure.
- 7 C. In case of an emergency involving imminent danger to public health, safety, or  
 8 welfare, the Police Chief may enter any residential structure within the Town to  
 9 conduct an emergency inspection for the growing, cultivation, or processing of  
 10 ~~medical~~ marijuana without a warrant and without complying with the requirements  
 11 of section.
- 12 D. The Town Council declares that this Chapter is an ordinance involving a serious  
 13 threat to the public safety or order within the meaning of Rule 241(a)(1) of the  
 14 Colorado Municipal Court Rules of Procedure.
- 15 E. The municipal court judge may issue an inspection warrant authorizing the  
 16 inspection of a residential structure for the growing, cultivation, or processing of  
 17 ~~medical~~ marijuana in accordance with Rule 241(b) of the Colorado Municipal  
 18 Court Rules of Procedure. Any inspection warrant issued pursuant to this section  
 19 shall fully comply with the applicable provisions of Rule 241 of the Colorado  
 20 Municipal Court Rules of Procedure.
- 21 F. The municipal judge may impose such conditions on an inspection warrant as may  
 22 be necessary in the judge’s opinion to protect the private property rights of the  
 23 landowner of the property to be inspected, or to otherwise make the warrant comply  
 24 with applicable law.
- 25 G. It shall be unlawful and a misdemeanor offense for any landowner or occupant to  
 26 deny the Police Chief or other authorized person access to the property owned or  
 27 occupied by such landowner or occupant if the Police Chief or other authorized  
 28 person presents an inspection warrant issued pursuant to this Section.

29 9-13-8: APPLICABILITY OF NUISANCE ORDINANCE: The ~~cultivation~~**growing or**  
 30 **processing** of ~~medical~~ marijuana within a residential structure in the Town in any manner that is  
 31 not in compliance with the requirements of Section 9-13-6 is declared to be a public nuisance, and  
 32 may be abated in the manner provided in Chapter 1 of Title 5 of this Code. Section 5-1-12 of this  
 33 Code concerning the non-exclusivity of the nuisance abatement procedure described in Chapter 1  
 34 of Title 5 of this code applies with respect to the enforcement of this Chapter as well.

35  
 36 9-13-9: CONDITION PRECEDENT TO CHALLENGE: It is a condition precedent to any legal  
 37 challenge to any portion of this chapter, or the application of any portion of this chapter to any  
 38 specific property, that the person initiating such challenge shall have first given the Town written  
 39 notice of intent to bring such challenge not less than ninety days before filing any legal proceeding.  
 40 Such notice shall be sent to the Town Council of the Town of Breckenridge by certified mail,

RESIDENTIAL MARIJUANA ORDINANCE

1 return receipt requested, at P.O. Box 168, Breckenridge, Colorado 80424, and shall set forth: (i)  
2 the name and address of the claimant and the claimant's attorney, if any; and (ii) a concise  
3 statement of the factual and legal basis for the claimant's challenge to the this chapter, or the  
4 application of this chapter to the claimant's property. To the extent that the provisions of this  
5 section conflict with the notification requirements of section 24-10-109, C.R.S., or any other  
6 applicable law, the provisions of such statute or other applicable law shall control.  
7

8 Section 2. Except as specifically amended by this ordinance, the Breckenridge Town  
9 Code, and the various secondary codes adopted by reference therein, continue in full force and  
10 effect.  
11

12 Section 3. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any  
13 reason held to be unconstitutional or otherwise invalid or ineffective by the final, nonappealable  
14 order or judgment of any court of competent jurisdiction, such decision will not affect the validity  
15 or effectiveness of the remaining portions of this ordinance. The Town Council hereby declares  
16 that it would have adopted each section, paragraph, sentence, clause and phrase of this ordinance  
17 irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases  
18 may be declared unconstitutional, invalid or ineffective.  
19

20 Section 4. This ordinance shall be published and become effective as provided by Section  
21 5.9 of the Breckenridge Town Charter.  
22

23 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
24 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2013. A Public Hearing shall be held at the  
25 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of  
26 \_\_\_\_\_, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.  
27

28 TOWN OF BRECKENRIDGE, a Colorado  
29 municipal corporation  
30

31  
32  
33 By \_\_\_\_\_  
34 John G. Warner, Mayor  
35

36 ATTEST:  
37  
38  
39  
40

41 \_\_\_\_\_  
42 Helen Cospolich,  
43 Town Clerk  
44  
45

900-174\Residential Marijuana Ordinance\_2 (09-18-13)(Blacklined vs. current ordinance)(First Reading)

RESIDENTIAL MARIJUANA ORDINANCE



## MEMORANDUM

**To:** Mayor & Town Council  
**From:** Finance and Municipal Services Dept.  
**Date:** September 18, 2013  
**Subject:** *Mid-year Supplemental Appropriations Resolution*

---

Throughout the fiscal year, it is not unusual for the Council to OK additional spending for various reasons. These changes impact the available Fund Balances. To support a more informed budget retreat by including this information in the budget and financial reports, staff has prepared a mid-year Supplemental Appropriation Resolution. This mid-year resolution recognizes the YTD budget changes including any unexpected revenue such as grants that the Town has received since the approval of the 2013 budget. A final Supplemental Appropriation Resolution for any additional items or changes to the below amounts will be presented to Council for approval in January 2014.

Below are the appropriations to date affecting the 2013 budget:

### General Fund:

Revenue: \$779,286 in grants received and sale of property that were not budgeted

- Municipal Services \$ 9,672
- Transit Admin. \$ 15,000
- Transit Services \$ 113,000
- Public Safety \$ 10,155
- Transfer from Open Space-Main St. Park \$ 200,000
- Sale of Property 308 N. French St. \$ 431,459

Expenses: total of \$3,123,514

- Acquisitions:
  - Abby Hall \$1,100,000
  - Theobald Lot \$ 950,264
- Solar garden purchase \$ 972,000
- F-Lot Study/Lowe Enterprises \$ 42,000
- Fiscal impact study for hotel development on F-Lot \$ 9,250
- Reusable bag purchase \$ 50,000

**Excise Fund:** additional expenses; total of \$4,905,500

- Transfer to Capital Fund: \$ 4,720,000
- Transfer to Special Projects Fund: \$ 125,000



**Capital Fund:**

Revenue:

- o Transfer from Excise Fund: \$4,902,500

Expenses: total of \$4,902,500

- o Town Hall renovation \$ 700,000
- o Harris St. \$1,557,500
- o Abby Hall Architectural Assessment \$ 50,000
- o Nordic Center Infrastructure/Parking Lot \$ 100,000
- o Arts District acceleration \$2,350,000
- o Backstage Theater Design Fee \$ 120,000
- o Highway 9/Roundabout Median Design Fee \$ 25,000

**Special Projects:**

- Revenue: transfer from Excise: \$ 125,000

Expenses:

- o Flight for Life Grant \$ 25,000
- o BHA Railroad Park \$ 100,000

The following items are for note purposes only as the fund balances are fully appropriated each year:

**Affordable Housing Fund:**

- Expense: Corum Financing \$7,200,000
- Revenue: Repayment of Corum financing \$7,200,000

**Marketing Fund**

- Expense: Events Evaluation study \$ 15,000

**Open Space:**

- Expense: Transfer to General Fund Main St. Park. \$ 200,000

Staff will be available at the September 24 Council work session to answer questions on the above items.

A RESOLUTION

SERIES 2013

A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2013 TOWN BUDGET

WHEREAS, the Town Council of the Town of Breckenridge desires to amend the Town's 2013 budget by making supplemental appropriations in the amount of \$5,806,786 in revenues and \$13,178,514 in expenditures; and

WHEREAS, pursuant to Section 10.12(a) of the Breckenridge Town Charter, the Finance Department, on behalf of the Town Manager, has certified that there are available for appropriation revenues in excess of those estimated in the Town's 2013 budget or revenues not previously appropriated in an amount sufficient for the proposed supplemental appropriations; and

WHEREAS, a public hearing on the proposed supplemental appropriations was held on September 24, 2013, in accordance with the requirements of Section 10.12(a) of the Breckenridge Town Charter.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO that the 2013 budget is amended, and supplemental appropriations for the amended 2013 Town budget are made as follows:

**General Fund Revenues (001):**

• Municipal Services grant	\$ 9,672
• Transit Admin. grant	\$ 15,000
• Transit Services grant	\$ 113,000
• Public Safety grant	\$ 10,155
• Transfer from Open Space-Main St. Park	\$ 200,000
• Sale of Property 308 N. French St.	\$ 431,459
<b>Total General Fund Revenue Increase:</b>	<b>\$ 779,286</b>

**General Fund Expense (001):**

• Acquisitions:	
o Abby Hall	\$1,100,000
o Theobald Lot	\$ 950,264
• Solar garden purchase	\$ 972,000
• F-Lot Study/Lowe Enterprises	\$ 42,000
• Fiscal impact study for hotel development on F-Lot	\$ 9,250
• Reusable bag purchase	\$ 50,000
<b>Total General Fund Expenditure Increase:</b>	<b>\$3,123,514</b>

**Excise Fund Expense (006):**

• Transfer to Capital Fund:	\$4,902,500
• Transfer to Special Projects Fund:	\$ 125,000
<b>Total Excise Fund Expenditure Increase:</b>	<b>\$5,027,500</b>

**Capital Fund Revenue (003):**

• Transfer from Excise Fund:	\$4,902,500
<b>Total Capital Fund Revenue Increase:</b>	<b>\$4,902,500</b>

**Capital Fund Expense (003):**

• Town Hall renovation	\$ 700,000
• Harris St.	\$1,557,500
• Abby Hall Architectural Assessment	\$ 50,000
• Nordic Center Infrastructure/Parking Lot	\$ 100,000
• Arts District acceleration	\$2,350,000
• Backstage Theater Design Fee	\$ 120,000
• Highway 9/Roundabout Median Design Fee	\$ 25,000
<b>Total Capital Fund Expenditure Increase:</b>	<b>\$4,902,500</b>

**Special Projects Revenue (013):**

• Transfer from Excise:	\$ 125,000
<b>Total Special Project Fund Revenue Increase:</b>	<b>\$ 125,000</b>

**Special Projects Expense (013):**

• Flight for Life Grant	\$ 25,000
• BHA Railroad Park	\$ 100,000
<b>Total Special Project Fund Expense Increase:</b>	<b>\$ 125,000</b>

This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 24th DAY OF SEPTEMBER 2013.

ATTEST

TOWN OF BRECKENRIDGE

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

By \_\_\_\_\_  
John G. Warner, Mayor

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Date

MEMO

TO: Breckenridge Town Council

FROM: Laurie Best-Community Development Department

RE: A RESOLUTION IN SUPPORT OF BALLOT QUESTIONS 1A AND 2B APPEARING ON THE NOVEMBER 2013 BALLOT (Childcare)

DATE: September 24, 2013

---

The local campaign organization (Locals for Early Care & Learning) has asked the Town Council to take a position of advocacy on the two childcare ballot measures that have been submitted to the vote of the registered electors on November 5, 2013. A resolution has been prepared in support of both 1A (Summit County Right Start Renewal) and 2B (Breckenridge Childcare Assistance). Summit County Right Start programs and the Breckenridge Childcare programs improve the quality, availability, and affordability of childcare and early education in the community. Access to quality care promotes school readiness and success, and is also important to retaining a stable workforce and a diverse community.

The Resolution has been drafted in accordance with the Fair Campaign Practices Act and is scheduled for your consideration on September 24<sup>th</sup>. Staff will also attend your meeting to discuss the resolution and answer questions.

1 **FOR WORKSESSION/ADOPTION – SEPT. 24**

2  
3 A RESOLUTION

4  
5 SERIES 2013

6  
7 A RESOLUTION IN SUPPORT OF BALLOT QUESTIONS 1A AND 2B APPEARING ON  
8 THE NOVEMBER 2013 BALLOT  
9

10 WHEREAS, the Town Council has submitted to the vote of the registered electors of the  
11 Town, as a referred measured under Article X, Section 20 of the Colorado Constitution and  
12 Section 31-11-111(2), C.R.S., the following question:  
13

14 SHALL TOWN OF BRECKENRIDGE TAXES BE INCREASED BY \$800,000,  
15 IN 2013 FOR COLLECTION IN 2014, AND BY SUCH AMOUNT AS MAY  
16 BE DERIVED ANNUALLY THEREAFTER BY THE IMPOSITION OF AN  
17 ADDITIONAL AD VALOREM MILL LEVY OF 1.653 MILLS; AND SHALL  
18 THE REVENUES COLLECTED BY THE TOWN AS A RESULT OF SUCH  
19 MILL LEVY BE USED TO OFFSET THE COST OF PROVIDING CHILD  
20 CARE ASSISTANCE AND EARLY CHILDHOOD EDUCATION FOR  
21 QUALIFIED RECIPIENTS, INCLUDING, BUT NOT LIMITED TO,  
22 PROVIDING SCHOLARSHIPS TO OFFSET A PORTION OF THE COST OF  
23 CHILD CARE FOR QUALIFIED RECIPIENTS AND GRANTS FOR  
24 EQUIPMENT AND OTHER CAPITAL EXPENDITURES FOR QUALIFIED  
25 PROVIDERS OF CHILD CARE ASSISTANCE AND EARLY CHILDHOOD  
26 EDUCATION; AND SHALL THE PROCEEDS OF SUCH TAXES AND  
27 INVESTMENT INCOME THEREON BE COLLECTED AND SPENT BY THE  
28 TOWN AS A VOTER-APPROVED REVENUE CHANGE WITHOUT  
29 REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER  
30 LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE  
31 COLORADO CONSTITUTION , OR ANY OTHER LAW?  
32

33 ; and  
34

35 Whereas the Town Council’s ballot question will be “Question 2B” on the November 5,  
36 2013 coordinated election ballot; and  
37

38 WHEREAS, the Board of County Commissioners of Summit County submitted to the  
39 vote of the registered electors of the County, as a referred measured under Article X, Section 20  
40 of the Colorado Constitution, the following question:

41 WITHOUT RAISING ANY ADDITIONAL TAXES, SHALL THE EXISTING  
42 EARLY CHILDHOOD CARE AND LEARNING LEVY BE EXTENDED  
43 COMMENCING JANUARY 1, 2016, TO IMPROVE THE QUALITY,  
44 AVAILABILITY AND AFFORDABILITY OF EARLY CHILDHOOD CARE  
45 AND LEARNING FOR LOCAL SUMMIT COUNTY FAMILIES BY THE

1 ONGOING EXTENSION OF THE EXISTING ONE-HALF MILL PROPERTY  
2 TAX LEVY AS A VOTER-APPROVED REVENUE CHANGE  
3 NOTWITHSTANDING THE LIMITATIONS IN ARTICLE X, SECTION 20 OF  
4 THE COLORADO CONSTITUTION OR ANY OTHER LAW?  
5

6 ; and  
7

8 WHEREAS, the Board of County Commissioner's ballot question will be "Question 1A"  
9 on the November 5, 2013 coordinated election ballot; and  
10

11 WHEREAS, approval of Questions 1A and 2B will increase the number of residents who  
12 will have access to quality early childhood care that is affordable; and  
13

14 WHEREAS, approval of Questions 1A and 2B will promote school success by preparing  
15 children for learning when they start school; and  
16

17 WHEREAS, approval of Questions 1A and 2B will ensure that local families have safe,  
18 quality care for their children by attracting and retaining the best early childhood teachers who  
19 will prepare local children for future academic success; and  
20

21 WHEREAS, approval of Questions 1A and 2B will result in lasting educational benefits  
22 for qualified children and families by providing early childhood learning programs; and  
23

24 WHEREAS, approval of Questions 1A and 2B will provide affordable quality early  
25 childhood care and learning program capacity to meet the needs of local families; and  
26

27 WHEREAS, approval of Questions 1A and 2B will better enable Summit County and the  
28 Town of Breckenridge to retain the character of our communities by enabling local families to  
29 live, work, and raise their families in the communities; and  
30

31 WHEREAS, approval of Questions 1A and 2B will support our local economy by  
32 increasing access to safe, affordable, quality childcare for working families.  
33

34 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF  
35 BRECKENRIDGE, COLORADO, as follows:  
36

37 Section 1. The Town Council of the Town of Breckenridge unanimously supports both  
38 Ballot Question 1A and Ballot Question 2B that will appear on the November 5, 2013  
39 coordinated election ballot, and strongly urges the electors of the Town to vote in favor of both  
40 ballot questions.

41 Section 2. This resolution is effective upon adoption.  
42

43 RESOLUTION APPROVED AND ADOPTED this \_\_\_ day of \_\_\_, 2013.  
44  
45  
46

TOWN OF BRECKENRIDGE

By \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:

\_\_\_\_\_  
Helen Cospolich  
Town Clerk

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney                      Date

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

## Memorandum

**TO:** TOWN COUNCIL  
**FROM:** Dale Stein, Assistant Town Engineer  
**DATE:** September 18, 2013  
**RE:** Public Projects Update

---

### Andorra Alley Realignment Project

Construction for the Andorra Alley Realignment Project has been rescheduled to begin Monday, September 23<sup>rd</sup>, 2013. Staff solicited additional local contractors and received a reasonable bid that would allow the project to be awarded. It is now expected that the project will be completed in its entirety this fall, which will include realigning the alley to the east, adding a concrete island near Gold Creek Condos to define Town ROW, constructing a new dumpster enclosure away from the intersection, new landscaping, and improved drainage. During construction, the north end of Andorra Alley will be closed to through traffic near French Street. Road construction is scheduled to be completed by mid-October 2013.

### Arts District

Work is continuing on the Arts District build out project. The continuous rain has slowed down the site work, but we are still making forward progress. This week we are completing the waterline tap on Ridge Street for the Robert Whyte House, storm-water pipe installation, and water and sewer lines to the Burro Barn restroom and the new Metal Smithing building. Prep work for foundations has started and we plan to be pouring the foundation for Mikolitis barn the week of September 23rd.

### Old Masonic Hall

The programming, initial cost estimate and building assessment project for the Old Masonic Hall (aka Abby Hall) is nearing completion. Staff will bring a presentation on the programming of the building to Council at the October 22<sup>nd</sup> work session.

### Harris Street Community Building

The contract with Spectrum General Contractors has been executed this week for the rehabilitation of the building. Work on the project over the next few weeks will include mobilization of equipment and trailers, demolition of the interior of the building, removal of the trees along the foundation of the building and installation of the new utility services on the north side of the building. The overall project is scheduled to be completed the Fall of 2014.

### Lincoln Avenue Heated Sidewalk

Staff recently opened bids for the proposed heated sidewalk project on Lincoln Avenue from Main Street to Ridge Street. Unfortunately the Town only received one bid for the project, and that bid received was substantially higher in cost than Staff believes is reasonable. Staff will



advertise the project again in early 2014, when there may be a better bidding environment, and schedule the construction of this project for the Spring of 2014.

### Riverwalk Center Phase 1 Update

The Riverwalk Center Phase 1 Taskforce made up of representatives from the Backstage Theatre, Breckenridge Festival of Film, Breckenridge Music Festival, National Repertory Orchestra and Town of Breckenridge Riverwalk staff first met in late spring and prioritized and clarified possible improvements and then reached out to AV companies for site tours and bids. Subsequently, two AV companies were interviewed in late August and a projector demo with both AV companies and the projector manufacturer occurred on September 17. Provider reference checks will be completed by September 20 and the taskforce will make a decision on a provider by September 25. Improvements will include motorized blackout shades, a cinema quality 35,000 lumen projector, 2 screens (1 upstage and 1 midstage) and sound upgrades. The taskforce is confident that these improvements will meet the needs of many users with flexible, easy to use and world class quality equipment and improvements. Once a contract is signed with a provider, it will take 7-8 weeks to receive materials (many are custom made) and installation will take 2 consecutive weeks and will be scheduled around existing bookings.

**MEMO**

**TO:** Mayor & Town Council  
**FROM:** Tim Gagen, Town Manager  
**DATE:** September 19, 2013  
**SUBJECT:** Committee Reports for 09-24-2013 Council Packet

*No committee reports were submitted at this time.*

<b>Committees</b>	<b>Representative</b>	<b>Report Status</b>
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*	Taryn Power	No Meeting/Report
Wildfire Council	Matt Thompson	No Meeting/Report
Public Art Commission*	Jenn Cram	No Meeting/Report
Summit Stage Advisory Board*	James Phelps	No Meeting/Report
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.*



## August 31, 2013 Financial Report



Rainy Days

Finance & Municipal Services Division

# Executive Summary

August 31, 2013

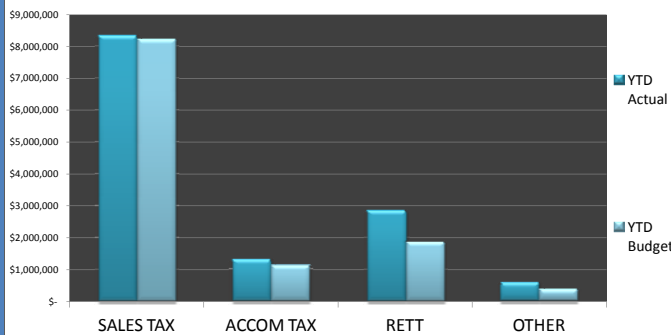
Our results thus far this year continue to be very strong. At the end of August, we were at 113% of budgeted revenue in the Excise fund (\$1.4M over budget). July sales taxes (received in August) were up from the prior year in all categories except Bar/Restaurant. RETT continues to be strong (see Tax Basics); we are at 77% of the prior year's total RETT revenue at 8/31/13.

The General Fund revenues are at 104% of budget and expenses slightly above budget at 109%. The overage is primarily due to the purchase of Abby Hall and the Theobald lot.

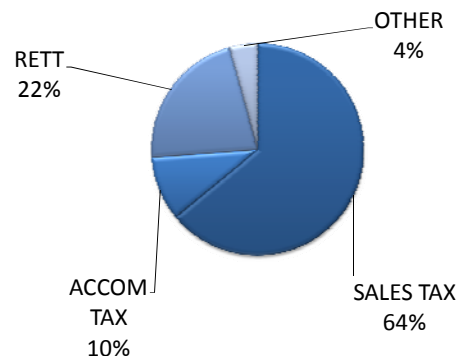
Other funds continue to perform according to budget with exceptions noted in the All Funds report narrative.

Graph below shows the YTD revenue (both sales and accommodation taxes) from the Lodging Sector as compared to the Sales Tax revenues received from all other sectors for the YTD 2006-2013

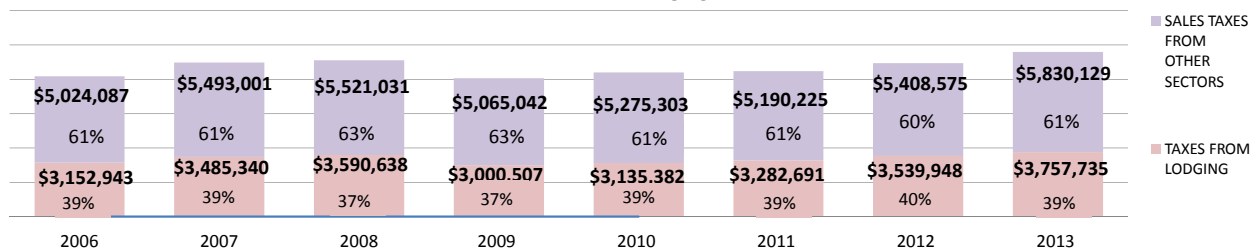
**Excise YTD Actual vs. Budget - by Source**



**YTD Actual Revenues - Excise**



**YTD Taxes Received from Lodging Sector - Excise**



	YTD Actual	YTD Budget	% of Budget	Annual Budget	Prior YTD Actual	Prior Annual Actual
SALES TAX	\$ 8,305,360	\$ 8,204,463	101%	\$ 13,887,999	\$ 7,740,350	\$ 13,369,549
ACCOMMODATIONS TAX	1,282,503	1,099,911	117%	1,757,401	1,208,174	1,774,359
REAL ESTATE TRANSFER	2,839,538	1,864,745	152%	3,000,501	1,841,579	3,691,087
OTHER*	560,539	363,553	154%	648,101	486,568	841,322
<b>TOTAL</b>	<b>\$ 12,987,941</b>	<b>\$ 11,532,672</b>	<b>113%</b>	<b>\$ 19,294,002</b>	<b>\$ 11,276,671</b>	<b>\$ 19,676,316</b>

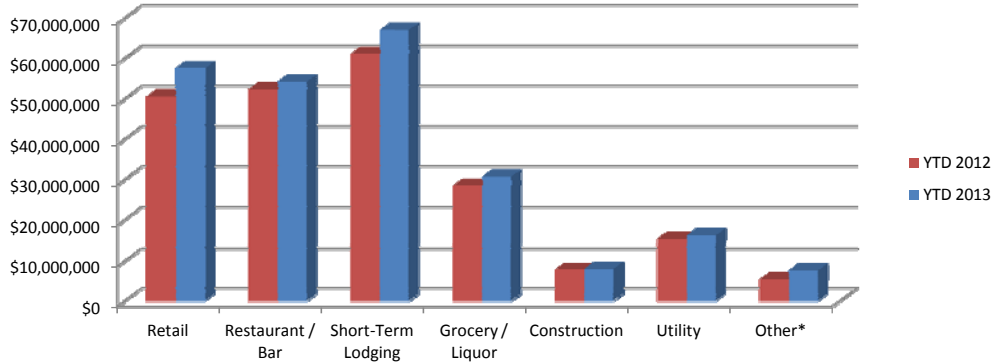
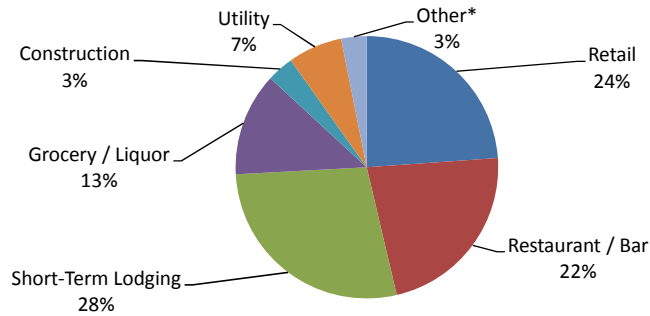
\* Other includes Franchise Fees (Telephone, Public Service and Cable), Cigarette Tax, and Investment Income

## The Tax Basics

### Net Taxable Sales by Industry-YTD

Description	YTD 2012	YTD 2013	\$ Change	% Change	% of Total
Retail	\$50,459,077	\$57,544,009	\$7,084,932	14.04%	23.86%
Restaurant / Bar	\$52,274,228	\$54,256,834	\$1,982,606	3.79%	22.50%
Short-Term Lodging	\$61,040,866	\$66,998,264	\$5,957,398	9.76%	27.78%
Grocery / Liquor	\$28,406,371	\$30,644,973	\$2,238,602	7.88%	12.71%
Construction	\$7,785,386	\$8,031,904	\$246,518	3.17%	3.33%
Utility	\$15,277,743	\$16,123,513	\$845,770	5.54%	6.69%
Other*	\$5,337,302	\$7,575,708	\$2,238,406	41.94%	3.14%
<b>Total</b>	<b>\$220,580,974</b>	<b>\$241,175,205</b>	<b>\$20,594,231</b>	<b>9.34%</b>	<b>100.00%</b>

\* Other includes activities in Automobiles and Undefined Sales.



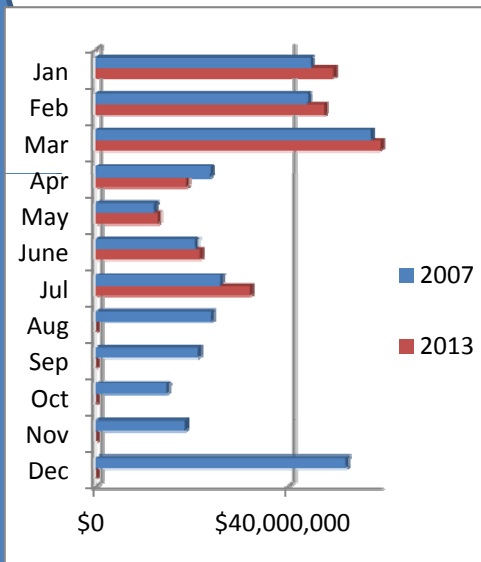
#### New Items of Note:

- July net taxable sales are currently up from 2012 by 6.06% for the month. We are also ahead of 2007 for monthly sales by 23.93%.
- The Bar/Restaurant sector was down slightly from the prior year. This is a result of an unusually strong July 2012 in this sector. The sector was up over 27% from 2007.
- Retail and Grocery/Liquor sectors were each up over 8% and Construction up 39% over July 2012.
- Construction was the only sector still lagging behind 2007.

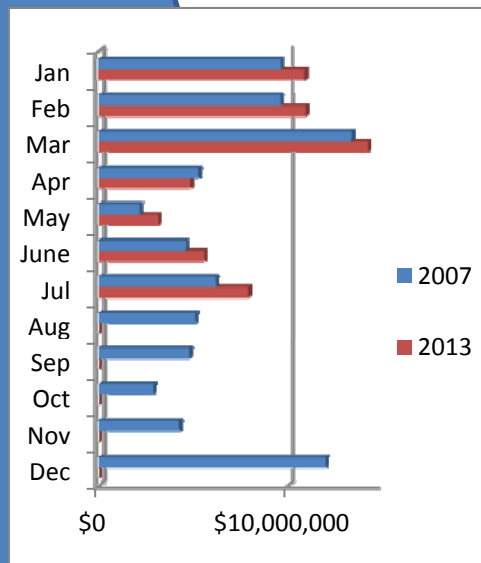
#### Continuing Items of Note:

- Taxes collected from the customer by the vendor are remitted to the Town on the 20<sup>th</sup> 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 included 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.

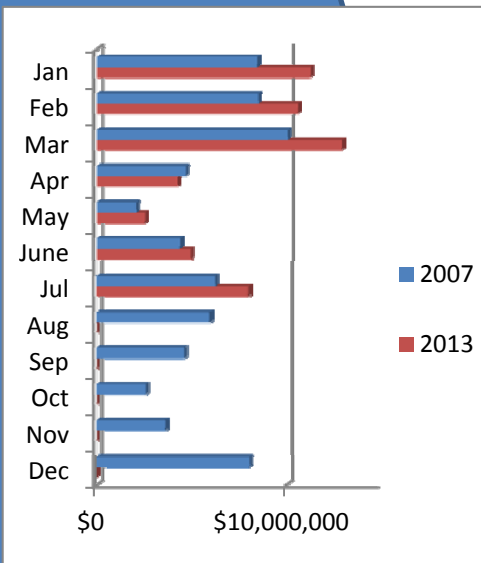
## Net Taxable Sales by Sector - Town of Breckenridge Tax Base



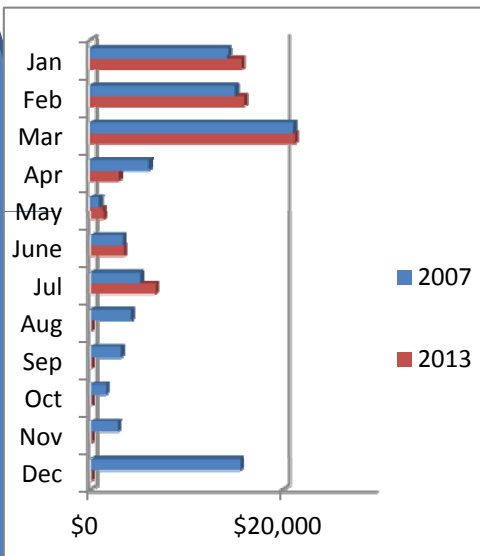
Total Net Taxable Sales					
	2010	2011	2012	2013	% change
					from PY
Jan	\$40,110,228	\$39,458,390	\$41,710,862	\$49,188,178	17.93%
Feb	\$39,472,293	\$39,800,228	\$43,263,471	\$47,476,828	9.74%
Mar	\$50,006,174	\$51,130,458	\$53,057,483	\$58,964,100	11.13%
Apr	\$19,917,465	\$19,743,401	\$20,546,924	\$18,825,690	-8.38%
May	\$11,425,462	\$9,611,782	\$11,552,299	\$12,974,610	12.31%
Jun	\$16,219,027	\$17,062,992	\$20,147,361	\$21,607,832	7.25%
Jul	\$23,624,523	\$27,602,363	\$30,302,574	\$32,137,966	6.06%
Aug	\$20,834,028	\$24,678,734	\$26,375,678	\$0	n/a
Sep	\$17,062,327	\$20,248,599	\$23,532,677	\$0	n/a
Oct	\$11,637,368	\$13,185,469	\$14,052,163	\$0	n/a
Nov	\$14,957,071	\$17,669,724	\$17,498,068	\$0	n/a
Dec	\$46,198,390	\$51,587,451	\$50,185,322	\$0	n/a
<b>Total</b>	<b>\$311,464,356</b>	<b>\$331,779,590</b>	<b>\$352,224,882</b>	<b>\$241,175,205</b>	



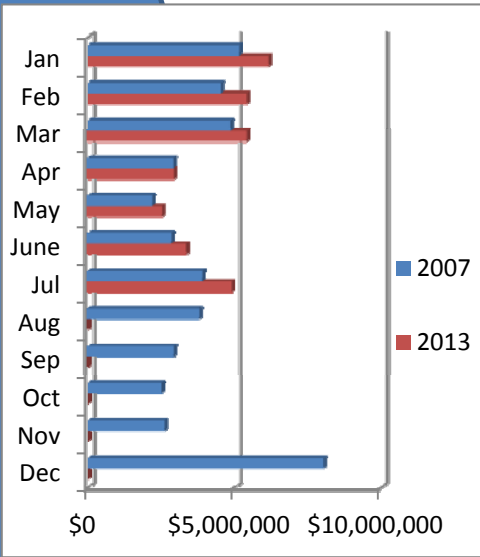
Retail					
	2010	2011	2012	2013	% change
					from PY
Jan	\$8,530,276	\$8,804,920	\$9,220,717	\$10,908,256	18.30%
Feb	\$8,378,341	\$8,972,613	\$9,459,511	\$10,924,034	15.48%
Mar	\$12,850,864	\$12,184,150	\$12,638,060	\$14,259,302	12.83%
Apr	\$4,031,843	\$4,299,060	\$4,564,888	\$4,855,632	6.37%
May	\$3,251,038	\$1,876,216	\$2,444,796	\$3,130,391	28.04%
Jun	\$3,895,330	\$3,973,630	\$4,864,310	\$5,580,065	14.71%
Jul	\$5,582,057	\$6,407,381	\$7,266,795	\$7,886,330	8.53%
Aug	\$4,301,609	\$5,207,972	\$6,113,573	\$0	n/a
Sep	\$3,847,858	\$4,344,035	\$5,528,806	\$0	n/a
Oct	\$2,452,634	\$2,946,071	\$3,274,787	\$0	n/a
Nov	\$3,763,526	\$4,370,374	\$4,709,433	\$0	n/a
Dec	\$10,823,585	\$12,275,994	\$12,776,009	\$0	n/a
<b>Total</b>	<b>\$71,708,960</b>	<b>\$75,662,415</b>	<b>\$82,861,684</b>	<b>\$57,544,009</b>	



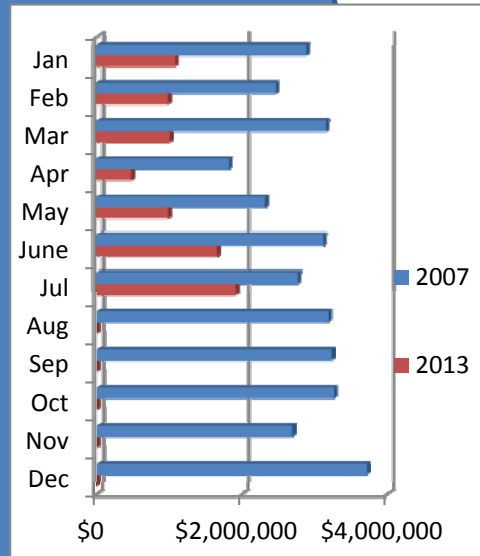
Restaurant / Bar					
	2010	2011	2012	2013	% change
					from PY
Jan	\$8,514,996	\$9,083,327	\$10,000,475	\$11,210,890	12.10%
Feb	\$8,342,961	\$8,660,328	\$10,578,852	\$10,529,654	-0.47%
Mar	\$9,185,595	\$10,169,762	\$12,086,391	\$12,880,787	6.57%
Apr	\$4,041,861	\$4,204,314	\$4,662,012	\$4,235,116	-9.16%
May	\$1,811,793	\$1,618,782	\$1,975,658	\$2,494,464	26.26%
Jun	\$3,397,497	\$3,724,982	\$5,006,301	\$4,950,071	-1.12%
Jul	\$6,222,078	\$7,106,056	\$7,964,540	\$7,955,851	-0.11%
Aug	\$5,728,881	\$6,594,385	\$6,905,724	\$0	n/a
Sep	\$3,882,885	\$4,683,989	\$5,423,426	\$0	n/a
Oct	\$2,420,192	\$2,662,113	\$2,924,663	\$0	n/a
Nov	\$3,006,237	\$3,476,935	\$3,613,665	\$0	n/a
Dec	\$8,351,439	\$9,776,293	\$9,534,760	\$0	n/a
<b>Total</b>	<b>\$64,906,415</b>	<b>\$71,761,267</b>	<b>\$80,676,467</b>	<b>\$54,256,834</b>	



Short-Term Lodging					% change
	2010	2011	2012	2013	from PY
Jan	\$12,493,479	\$12,273,406	\$12,972,568	\$15,721,484	21.19%
Feb	\$12,368,672	\$12,861,701	\$14,088,331	\$15,886,985	12.77%
Mar	\$16,099,458	\$18,399,939	\$18,317,924	\$21,129,954	15.35%
Apr	\$4,079,901	\$4,053,070	\$4,473,786	\$2,982,723	-33.33%
May	\$773,209	\$832,715	\$1,088,058	\$1,252,768	15.14%
Jun	\$2,010,085	\$2,532,271	\$3,483,556	\$3,383,345	-2.88%
Jul	\$4,188,735	\$5,513,083	\$6,616,644	\$6,641,006	0.37%
Aug	\$3,229,826	\$4,612,218	\$5,170,416	\$0	n/a
Sep	\$2,162,726	\$3,118,560	\$3,499,692	\$0	n/a
Oct	\$1,270,196	\$1,351,146	\$1,494,911	\$0	n/a
Nov	\$2,298,412	\$2,981,024	\$2,761,865	\$0	n/a
Dec	\$14,187,765	\$16,009,018	\$15,239,457	\$0	n/a
Total	\$75,162,464	\$84,538,151	\$89,207,207	\$66,998,264	



Grocery / Liquor					% change
	2010	2011	2012	2013	from PY
Jan	\$4,472,454	\$4,853,813	\$4,857,276	\$6,142,115	26.45%
Feb	\$4,590,195	\$4,803,009	\$4,962,402	\$5,407,026	8.96%
Mar	\$4,877,466	\$5,179,766	\$5,219,990	\$5,386,799	3.20%
Apr	\$3,186,035	\$3,261,348	\$3,469,430	\$2,938,151	-15.31%
May	\$2,023,538	\$2,053,046	\$2,309,947	\$2,511,410	8.72%
Jun	\$2,682,462	\$2,757,191	\$3,097,820	\$3,351,678	8.19%
Jul	\$3,999,077	\$4,219,220	\$4,489,506	\$4,907,793	9.32%
Aug	\$3,896,409	\$4,271,490	\$4,540,829	\$0	n/a
Sep	\$2,955,420	\$3,278,161	\$3,404,220	\$0	n/a
Oct	\$2,487,769	\$2,647,930	\$2,855,324	\$0	n/a
Nov	\$2,422,067	\$2,598,982	\$2,778,270	\$0	n/a
Dec	\$7,431,683	\$7,776,073	\$7,705,640	\$0	n/a
Total	\$45,024,575	\$47,700,028	\$49,690,652	\$30,644,973	



Construction					% change
	2010	2011	2012	2013	from PY
Jan	\$1,094,954	\$561,988	\$752,255	\$1,072,239	42.54%
Feb	\$1,111,091	\$619,675	\$703,811	\$964,673	37.06%
Mar	\$1,469,445	\$903,899	\$881,518	\$996,930	13.09%
Apr	\$1,005,902	\$721,817	\$779,206	\$464,575	-40.38%
May	\$1,138,209	\$752,424	\$1,761,256	\$978,334	-44.45%
Jun	\$1,569,090	\$1,552,324	\$1,540,822	\$1,653,588	7.32%
Jul	\$1,351,864	\$1,500,224	\$1,366,520	\$1,901,564	39.15%
Aug	\$1,444,489	\$1,450,106	\$1,670,785	\$0	n/a
Sep	\$1,468,840	\$1,697,142	\$2,297,356	\$0	n/a
Oct	\$1,594,643	\$1,486,042	\$1,521,388	\$0	n/a
Nov	\$1,495,098	\$1,339,040	\$1,482,393	\$0	n/a
Dec	\$1,211,382	\$1,435,591	\$1,226,412	\$0	n/a
Total	\$15,955,006	\$14,020,272	\$15,983,720	\$8,031,904	

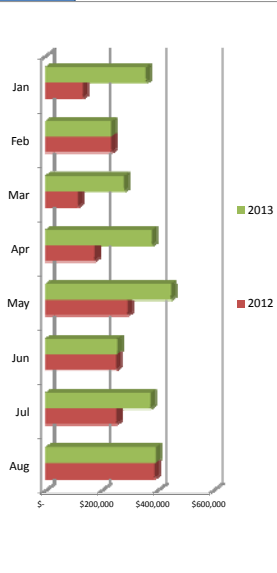
## Real Estate Transfer Tax

### New Items of Note:

- Revenue for the month of August surpassed prior year by 1.14%, and we surpassed the monthly budget by \$78,962.
- YTD Collections are up 51.89% from prior year and ahead of budget by \$858,769 (through 8/31).
- We exceeded the prior year churn by an even greater amount - resulting in an increase of 78.01% in the churn year to date.
- Vacant Land continues to track quite well, up 104.74% from prior year.
- Single Family homes account for the majority of the sales (27.26%), with condominiums coming in second (27.07%).

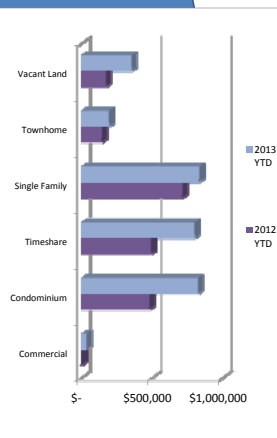
### Continuing Items of Note:

- 2013 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."

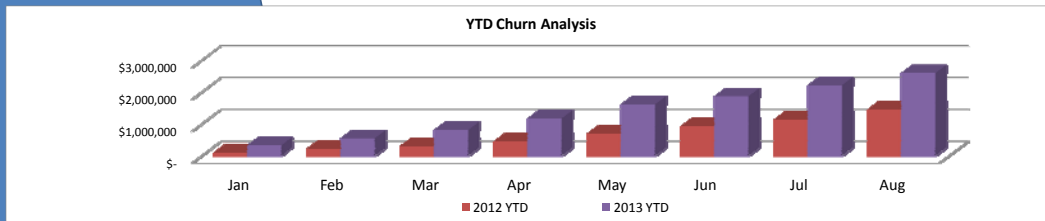


Total RETT							
	2010	2011	2012	2013	% change from PY	2013 Budget	+/- Budget
Jan	\$588,874	\$436,605	\$132,557	\$358,948	170.79%	\$186,609	\$172,339
Feb	\$149,303	\$350,866	\$234,630	\$234,357	-0.12%	\$181,342	\$53,015
Mar	\$175,161	\$250,986	\$114,921	\$281,202	144.69%	\$143,710	\$137,492
Apr	\$167,038	\$333,424	\$174,514	\$380,279	117.91%	\$298,517	\$81,761
May	\$484,618	\$337,577	\$292,708	\$446,840	52.66%	\$282,157	\$164,682
Jun	\$326,779	\$251,806	\$251,397	\$255,184	1.51%	\$276,510	-\$21,326
Jul	\$186,067	\$83,522	\$252,104	\$373,510	48.16%	\$181,667	\$191,843
Aug	\$404,004	\$350,730	\$388,749	\$393,194	1.14%	\$314,232	\$78,962
Sep	\$227,440	\$276,774	\$311,285	\$324,055	4.10%	\$376,433	-\$52,377
Oct	\$297,809	\$208,831	\$387,028	\$0	n/a	\$207,648	n/a
Nov	\$249,583	\$223,271	\$389,275	\$0	n/a	\$242,751	n/a
Dec	\$406,078	\$301,397	\$761,919	\$0	n/a	\$308,924	n/a
Total	\$3,662,755	\$3,405,788	\$3,691,087	\$3,047,568		\$3,000,501	\$806,391

*\*September #'s are as of 09/16/2013*



by Category					
Description	2012 YTD	2013 YTD	\$ Change from PY	% change	% of Total
Commercial	\$ 2,120	\$ 36,620	34,500	1627.36%	1.20%
Condominium	480,820	826,052	345,232	71.80%	27.07%
Timeshare	495,178	802,500	307,322	62.06%	26.29%
Single Family	712,960	832,003	119,044	16.70%	27.26%
Townhome	143,479	197,007	53,528	37.31%	6.45%
Vacant Land	174,810	357,910	183,100	104.74%	11.73%
Total	\$ 2,009,366	\$ 3,052,093	1,042,727	51.89%	100.00%





# General Fund Revenues Summary

August 31, 2013

**General Fund Revenue:** 104% of YTD budget (total of \$15.9M vs. \$15.4M budget). Results are consistent with prior year and budget. The variances explained below are all fairly minor.

**Variance Explanations:**

Special Events over budget due to timing-NRO/BMF

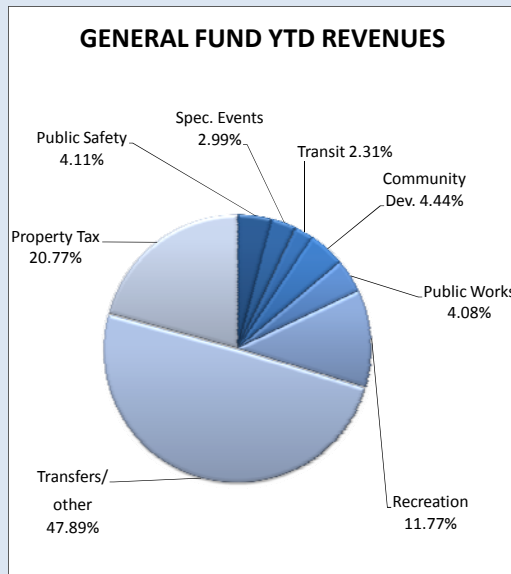
Transit over budget due to grants received.

Public Safety over budget due to Grants and Parking Tickets.

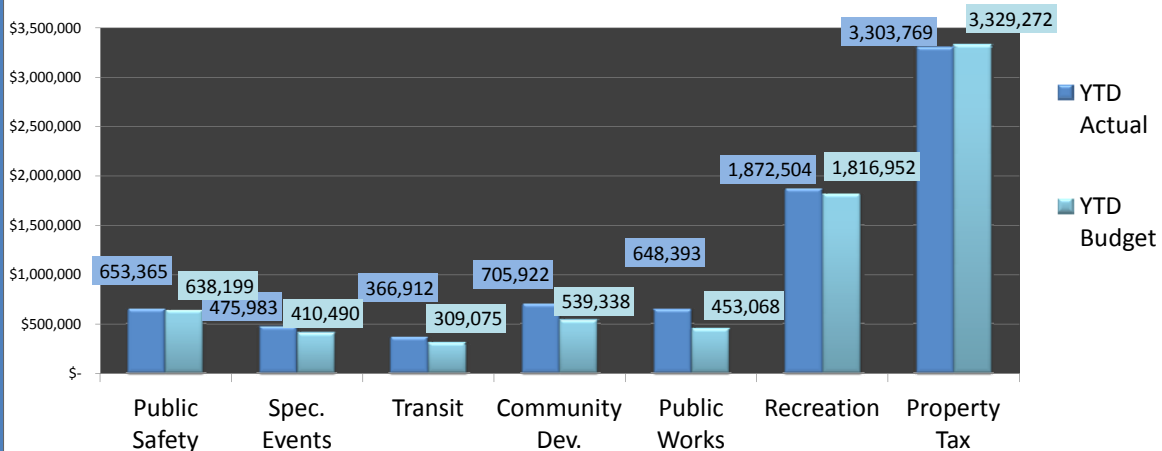
Comm. Dev. over budget due to permits, plan check and Planning Fees (Class A, B, C, etc.).

Public Works over budget due to Insurance Recoveries and the sale of crushed asphalt.

Recreation over budget due to ice leagues, climbing programs, and tennis lessons.



Gen. Fund YTD Revenue Act vs. Bud - by Program



General Fund Expenditures Summary

August 31, 2013

General Fund expenses are over budget for the YTD ending August 31 at 109% or \$16.1M vs. budgeted expenses of \$14.9M due to the Abby Hall and Theobald Lot purchase. There are some favorable expense variations in Public Safety, Admin, Special Events, Transit, and Recreation.

**Variance Explanations:**

Public Safety: staffing

Administration under budget due to staff turnover/wages.

Special Events: over budget due to timing.

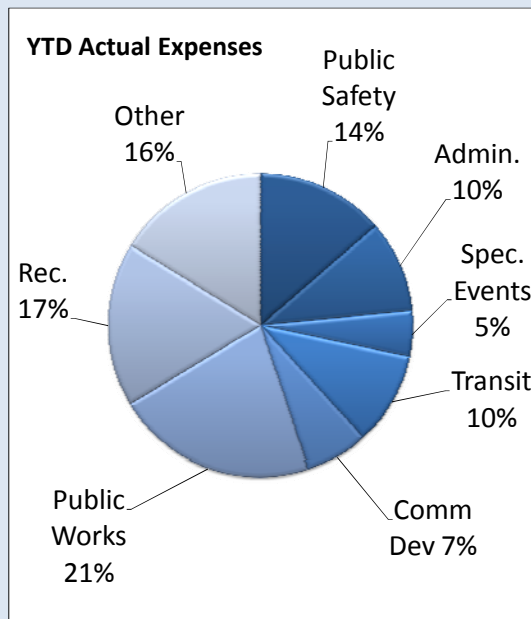
Transit: under budget due to wages

Comm. Dev.-under budget due to staff turnover.

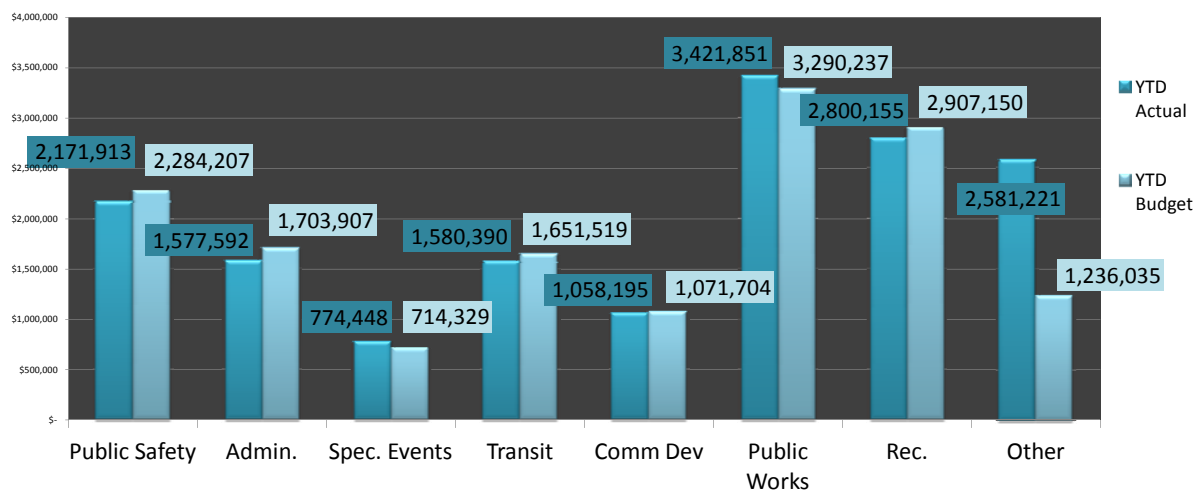
Public Works: timing of purchases. Should "catch up" to budget by year-end.

Recreation: under budget primarily due to wages.

Other: over budget due to Abby Hall and Theobald Lot purchases-budget will be



**Gen. Fund YTD Expenditures Act. vs. Bud. - by Program**



# Combined Statement of Revenues and Expenditures

## All Funds August 31, 2013

REVENUE	YTD Actual	YTD Budget	% of YTD Bud.	Annual Bud.
<b>General Governmental</b>				
1 General and Excise Fund	\$ 21,120,875	\$ 19,097,656	111%	\$ 28,669,757
2 Special Revenue	3,348,031	3,196,873	105%	5,141,167
3 Internal Service	2,275,381	2,239,754	102%	3,362,045
<b>4 Subtotal General Governmental</b>	<b>\$ 26,744,287</b>	<b>\$ 24,534,283</b>	<b>109%</b>	<b>\$ 37,172,969</b>
5 Capital Projects	137,043	3,188,026	4%	5,133,004
<b>Enterprise Funds</b>				
6 Utility Fund	2,214,387	2,176,049	102%	3,129,541
7 Golf	1,759,759	1,753,615	100%	2,097,780
<b>8 Subtotal Enterprise Funds</b>	<b>\$ 3,974,146</b>	<b>\$ 3,929,664</b>	<b>101%</b>	<b>\$ 5,227,321</b>
<b>9 TOTAL REVENUE</b>	<b>30,855,477</b>	<b>31,651,973</b>	<b>97%</b>	<b>47,533,294</b>
10 Internal Transfers	14,226,746	14,205,781	100%	21,337,966
<b>11 TOTAL REVENUE incl. x-fers</b>	<b>\$ 45,082,222</b>	<b>\$ 45,857,754</b>	<b>98%</b>	<b>\$ 68,871,260</b>
<b>EXPENDITURES</b>				
	YTD Actual	YTD Budget	% of Bud.	Annual Bud.
<b>General Governmental</b>				
1 General and Excise Fund	\$ 17,111,391	\$ 15,786,237	108%	\$ 23,811,770
2 Special Revenue	10,601,306	12,924,123	82%	15,215,588
3 Internal Service	2,057,444	1,649,400	125%	2,612,717
<b>4 Subtotal General Governmental</b>	<b>\$ 29,770,141</b>	<b>\$ 30,359,760</b>	<b>98%</b>	<b>\$ 41,640,075</b>
5 Capital Projects	2,378,663	6,990,000	34%	10,485,000
<b>Enterprise Funds</b>				
6 Utility Fund	1,599,329	2,194,292	73%	3,387,385
7 Golf	1,359,257	1,328,281	102%	2,296,912
<b>8 Subtotal Enterprise Funds</b>	<b>\$ 2,958,586</b>	<b>\$ 3,522,573</b>	<b>84%</b>	<b>\$ 5,684,297</b>
<b>9 TOTAL EXPENDITURES</b>	<b>35,107,390</b>	<b>40,872,334</b>	<b>86%</b>	<b>57,809,373</b>
10 Internal Transfers	14,226,746	14,205,781	100%	21,337,966
<b>11 TOTAL EXPENDITURES incl. x-fers</b>	<b>\$ 49,334,136</b>	<b>\$ 55,078,115</b>	<b>90%</b>	<b>\$ 79,147,339</b>
<b>12 TOTAL REVENUE less EXPEND.</b>	<b>\$ (4,251,913)</b>	<b>\$ (9,220,361)</b>	<b>N/A</b>	<b>\$ (10,276,079)</b>

**General Governmental Funds** - General, Excise and Special Projects  
**Special Revenue Funds** - Marketing, Affordable Housing, Open Space, Conservation Trust, and Medical Marijuana  
**Internal Service Funds** - Garage, Information Technology (IT), and Facilities

## ALL FUNDS REPORT

August 31, 2013

As stated in the Executive Summary section of this month's report, tax revenues are performing ahead of budget. Most other revenue variances are due to timing.

Expense variations are primarily from timing and will typically "catch up" to budget over the course of the year. The exception is in the General Fund where significant expense variations due to purchases of land and buildings will persist.

### **Special Revenue Funds:**

- Revenues at 105% of budget
- Expenditures at 82% of budget. Open Space and Affordable Housing have budgeted for acquisitions which have not yet taken place.
- As noted in prior month, under fund accounting rules, the Corum loan amount is considered an expense. The supplemental budget appropriation has been included in the financials so as not to skew the graphs (right).

### **Capital Fund:**

- Revenue: under budget due to County contribution budgeted for Harris Street building (timing).
- Expense: under budget due to timing of capital expenditures.

### **Utility:**

- Expense: under budget due to timing of capital expenditures.

### **Fund Descriptions:**

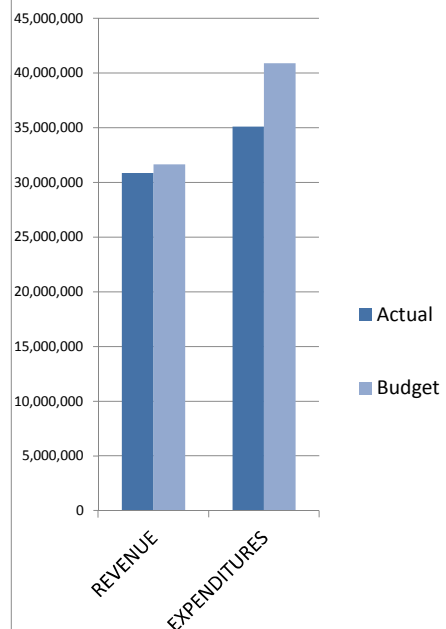
General Governmental -  
General, Excise and Special  
Projects

Special Revenue Funds -  
Marketing, Affordable Housing,  
Open Space, Conservation Trust,  
and Medical Marijuana

Enterprise Funds: Golf, Utility

Internal Service Funds - Garage,  
Information Technology (IT), and  
Facilities

YTD Actual Revenues and  
Expenditures vs. Budget



# Memo

To: Town Council  
CC: Tim Gagen, Rick Holman  
From: Michael Barney, Director of Recreation  
Date: 9/18/2013  
**Re: *Citizen Request for Skatepark Renovation***

---

The purpose of this MEMO is to make the Town Council members aware that there is a group of residents that have expressed their desire for the existing skatepark at Kingdom Park to be removed and replaced with an updated skatepark facility. This MEMO will provide the history of the skatepark, introduce the local residents leading this initiative, and present some preliminary preferences the group has expressed to date. Lastly it will request that Town Council include the skatepark renovation project for consideration as a funded capital improvement project in the 2014 budget.

## History of the Skatepark

The existing skatepark within Kingdom Park was built in 1999, and is now approaching 15 years of age. It was designed and constructed by Team Pain, a Florida based company, widely considered one of the premiere designers and builders of skateparks in the United States. The skatepark encompasses an area of about 12,000 square feet and consists of a street section with a variety of ramps and rails as well as a large single bowl. Lights were added to the skatepark about two years after its opening. The park has been routinely inspected and maintained by the Parks Division of Public Works since that time and while no major repairs have been needed, the crew has patched concrete as needed and made slight repairs to elements of the street course. Presently, the skatepark is in fair shape, though showing significant signs of aging such as broken or chipped off concrete in sections of the bowl, particularly near the coping or top of the bowl, as well as increasingly uneven or cracked sections of concrete in the street section of the park. In addition, there are a few areas within the bowl where the concrete has been repeatedly patched and the patch material has not effectively adhered. These vertical sections of cracked / chipped concrete present unique challenges that staff have been unable to effectively and permanently remedy. While these areas do not appear to be presenting significant risk to park users at this time, they are getting worse each year and will require significant repairs in the near future in order to ensure the facility is being maintained at an acceptable level. See pictures below:



Looking east at bowl section



looking south at street section



Problem area along coping in bowl that has been repeatedly patched



ineffective drain in bowl



Metal quarter pipe box in street section



patched area in bottom of bowl and ineffective drainage

In 2006, the Recreation Department hired Ballard and King, a Parks and Recreation consulting firm, to conduct an assessment of the recreation center and other amenities within Kingdom Park. It was recommended in that assessment, that the Town allocate funds for a renovation of the skatepark to occur in 2012. In 2012, this renovation project was listed in the capital improvement project budget as a "B" priority with an associated expense of \$400,000. Staff recommended to Town Council at the 2011 budget retreat that this project could be deferred to the future. The project was again discussed for inclusion as a funded capital improvement project at the 2012 budget retreat, with staff advising council to again defer the project to the future and focus on any needed repairs / maintenance that was needed to maintain the amenity at an acceptable level. Council agreed with this approach.

Town staff first learned of a public desire to address the skatepark at the Independence Day parade in 2013. A group of local citizens and skateboarding enthusiasts entered a float in the parade that was focused on raising awareness of their perceived need for improvements / renovation to the existing skatepark in Town as well as the possibility of developing a second skatepark in Breckenridge. Later in the summer, Council Member Ben Brewer was approached by some of the residents that assisted in organizing the parade float to express their desire to work with the Town to address the skatepark. Council Member Brewer directed the individuals to contact me to assist them in formally expressing their request. I was then contacted by Tricia Hyon, who is the mother of two youth skateboarders and we began to identify stakeholders and then conducted meetings to discuss the group's desires. The other stakeholders participating in the process are Jason Smith and Dave Wagner, long time Summit County residents and skaters, Morrison Seith, Breckenridge resident and a manager at Woodward at Copper, Joseph Destefano, local skater representing the young adult skater group, JJ Hyon,



father of two young skaters, Jimmy Leaphart, a volunteer youth skate instructor with the Recreation Department, and Colin Hyon, 10 year old son of Tricia and JJ.

After several discussions and assessing the potential options for improving / expanding the skateboarding amenities in Breckenridge, the group came to consensus that the best option for improving the skateboarding amenities in Breckenridge at the present time is to remove / demolish the existing skatepark and construct a new one in its place.

#### Current Skatepark Design Options and the Vision of the Stakeholder Group

In discussions with the stakeholders, two skateparks were frequently brought up as examples of parks that contained the types of elements and features that should be included in the design of a new skatepark in Breckenridge. The first skatepark is located in Fairplay, pictured below. The group liked the design of the bowl and the varied options that it provides for skaters depending upon their skill level. They felt the street section surrounding the bowl however was woefully inadequate and that it appeared to be an afterthought in the design of the park. The group expressed that they want a new skatepark in Breckenridge to have a strong focus on the street section, and commented that while having a bowl or bowls is important, the majority of skaters prefer to skate well designed street sections.



The Fairplay skatepark was designed and built in 2009 by Grindline, a Washington based firm. Grindline worked with the community to utilize many local volunteers and contractors who provided labor and equipment during construction and as a result, project expenses were under \$200,000 for the 8000 square foot facility.

The second skatepark that the group felt included elements that should be included in a new Breckenridge facility is the Arvada skatepark. This park was described as one of the best and biggest in the state and the group felt the mix of bowl and street elements were very well balanced, offering something for every type of skater at any skill level. The Arvada skatepark is a 40,000 square foot facility that was built at an expense of \$2.1M. The facility opened in 2011. The skatepark was designed and built by Team Pain, a Florida based company, the firm that also designed and built the Breckenridge skatepark. As you can see from the pictures below, it is as much a skatepark as it is a display of public art with unique curvilinear features, expressive color palettes, landscaped beds, and intricate archways. It was Arvada's goal to create a premiere, signature skatepark that would be a regional attraction and would complement the larger community park in which it is located.







In drawing inspiration from both the Fairplay and Arvada facilities, the group created their desired vision for a new Breckenridge skatepark. This vision is based on the following:

- Due to the linear orientation of the current bowl area, the group would like that area to be designed as the street section in the new skatepark and place the bowl(s) where the street section is currently located
- The surface area of the new skatepark should expand to include existing grass surrounding the skatepark as possible, allowing the skatepark to grow in size from 12,000 to approximately 14,000 square feet
- The bowl(s) should be diverse in depth and shape, providing opportunities for progressive skill development
- Deep bowls are utilized by a small percentage of skaters, and therefore, the resources spent on a deep bowl should correspond to that level of usage
- The park should be all concrete, as opposed to using metal ramps / features that currently exist in the skatepark
- The street section should have transitions around three sides, and include diverse features such as stairs, rails, curbs, and benches that will keep skaters in the park rather than seeking street skating features throughout town
- The park should include a flat section for instruction to beginners

- The feasibility of building in a snow melt system should be explored and included if project budget allows for it
- Some type of shelter or other shade system should be included as a part of the project
- Drainage should be well engineered and effective
- The park should have lights
- The park should include some type of unique feature or element such as a cradle (archway) that is visually attractive and draws attention to the facility from a distance

#### Staff Input and Points for Consideration by Town Council

The existing skatepark in Breckenridge is a recreational amenity that receives heavy and consistent usage from early summer through the time when snow begins to fall. On any given day during this time period, the park may see up to 100 users or more based on informal staff observations. At times, it is even used in the winter by creative snowboarders / skiers. The skatepark also hosts the Recreation Department's summer skateboarding camps and after school skateboarding program, both of which are very popular and often have waiting lists of youth wanting to participate due to the programs being at maximum enrollment. Jason Smith, local skater and member of the stakeholder group, organizes a skateboarding competition each August, which is the only formal competition held at the facility. The skatepark is a free-use facility, and other than registration fees for the programs offered, the facility does not generate revenue for the Town. The Parks Division of Public Works is responsible for inspection, clean up, and repairs as needed and expends approximately \$4279 annually on these tasks.

Locally, there are two other skateparks in Summit County. Frisco has a skatepark at its Frisco Adventure Park, and the Town of Silverthorne has a skatepark adjacent to its recreation center. As mentioned previously, Fairplay also has a skatepark.

It is the opinion of staff that the existing skatepark should either be renovated or replaced in the near future due to deteriorating concrete and the metal ramps and the associated potential risks to users. There is another option available however other than completely removing the existing skatepark and building a new one. That option is to pour concrete into the existing bowl and reshaping it to some degree along with replacing the metal features in the street area. This would essentially give the facility a facelift and improve it without the expense of demolition. It should be noted that the stakeholder group did not support this option.

As council is aware, construction costs have consistently been higher than anticipated over the last year, and it is unknown if this trend will continue into 2014. In particular, concrete work has seemed to be attracting an even higher premium and some Town projects were not able to be completed this year due to the unavailability of contractors. In attempting to project the cost of the project which the stakeholder group is proposing, I contacted Team Pain and was informed that the current average cost of skatepark construction is about \$30 / square foot. The proposed footprint for a new skatepark, as indicated above is 14,000 square feet, which would equate to a budget of \$420,000. It should be noted however, that the Arvada skatepark discussed previously cost \$52.50 per square foot in 2011. It should also be noted that the estimated project cost of \$420,000 does not include the cost of demolition of the existing skatepark, so it is reasonable to believe that the project which the stakeholder group is proposing would range from \$420,000 to \$600,000. In discussions with the stakeholder group, they did express a desire and willingness to initiate a fund raising effort to assist in funding the project. The Recreation Department would also look into grant opportunities, though a preliminary search revealed that funders such as the Tony Hawk Foundation prefer to fund projects in areas of low-income that have no existing skateboard facilities.

#### Stakeholder Group Request

The stakeholder group is requesting that Town Council consider listing this project as an "A" priority in the 2014 Capital Improvement Project fund budget at its upcoming budget retreat. The stakeholder group will work with the Recreation Department over the next few weeks to attempt to provide council with a firmer project cost estimate prior to the retreat, so that an informed decision can be made. This process will include the development of detailed drawings through working with skatepark design and build firms and solicitation of cost projections. The projected cost of demolition will also be identified, and the cost of any site amenities to be included in the project will be identified as well so as to present the total cost of the project.



# MEMO

**TO:** Town Council  
**CC:** Town Manager & Assistant Town Manager  
**FROM:** Kim Dykstra-DiLallo, Director of Communications  
**DATE:** September 18, 2013 (*for 9.24.13 work session*)  
**RE:** Art Galleries & Art Fairs

At the July 19<sup>th</sup> Coffee Talk, Mayor Warner was approached by an art gallery owner regarding the negative effect that the art fairs were having on the Breckenridge galleries. Mayor Warner brought this up for discussion at the July 23<sup>rd</sup> Town Council work session. As a result, Council directed staff to contact Dena Raitman of Art on a Whim to invite the galleries to present factual data that the art fairs are detrimental.

***Following this memo is the information provided by the gallery group. Ross and/or Brian Raitman will be presenting to the Council at the work session.***

As there are Council members that have not been a part of the past discussions, and this has been a controversial issue, I am providing a brief background.

## Background/Timeline:

The Town became involved when the Bell Tower Mall lot was eliminated, and the organizer (Mark Beling of Mountain Art Festivals/MAF) contacted the Town looking for land to lease for the two existing festivals (July 4<sup>th</sup> and Labor Day weekends). The Town conducted a merchant survey in 2000; 14 responses were received with 12 in favor of the fairs, so beginning in 2001 the Town leased the Wellington and East Sawmill lots to MAF.

Beginning in 2002, at the Main Street Station (MSS) merchants' request, MAF started producing an art festival at MSS at the end of July; as it is private property, the Town's involvement is the issuance of a Class D permit and collection of sales tax.

In the fall of 2003, in response to a complaint from a merchant, Council directed staff to meet with the merchant/gallery group and MAF to determine if a compromise could be found. Meetings were held and surveys were conducted; however, compromise could not be achieved between the two entities, and based on the data, Council decided that there were no compelling reasons not to continue annual agreements with MAF.

The issue came up again in January of 2005, and action items included then-Mayor Blake conducting one-on-one meetings with merchants, CAST and CFEA (Colorado Festivals & Events Association) surveys, and a Visitor Intercept Survey during the July 4<sup>th</sup> weekend regarding the art fair. Data gathered indicated that about 22% of out-of-area visitors stated that the arts festival was "critical" or "very important" in their decision to come to Breckenridge over the 7/4 weekend, and that many mountain communities found art fairs positive for attracting visitors. After much discussion, Council formally voted to allow MAF to lease Town lots in 2006 for the July 4<sup>th</sup> and Labor Day weekends.

In the fall of 2006, Council revisited this issue, and felt that the congestion during the July 4<sup>th</sup> holiday was not desirable and that they preferred that the art fair move to a less crowded weekend, and thus voted to disallow Town lots to be rented for the July 4<sup>th</sup> period. Starting in 2007, MAF has leased Town lots for art festivals at the end of July and Labor Day weekend; in addition, MAF has produced the July 4<sup>th</sup> event at MSS.

# **GALLERIES OF BRECKENRIDGE REPORT ON ART FESTIVALS**

**PRESENTED TO BRECKENRIDGE TOWN  
COUNCIL**

**SEPTEMBER 18, 2013**

**IN PREPARATION OF WORKSHOP ON  
SEPTEMBER 24, 2013**

## **Table of Contents**

Art Festivals in Breckenridge .....	1
Gallery Sales vs. Art Tent Sales .....	2
Effect of Festivals on Holiday Weekends .....	4
Loss of Galleries in Breckenridge.....	4
Alternate Dates for Festivals .....	6
Alternate Events, not Vendors .....	7
Conclusion .....	7
Addendum A – Closed Gallery Testimonials .....	8
Addendum B – Client Testimonials .....	11

## **List of Figures**

Figure 1 – Summer Occupancy Data for 2011 & 2012 .....	1
Figure 2 - Daily Sales Totals vs. Percent Occupancy for Summer 2011 .....	3
Figure 3 - Daily Sales Totals vs. Percent Occupancy for Summer 2012 .....	3
Figure 4 - April to June 2012 & 2013 Occupancy Data.....	6
Figure 5 – 2011 & 2012 Occupancy after Labor Day.....	6

## Art Festivals in Breckenridge

According to data provided by the Mountain Travel Research Program, as obtained and distributed by the Breckenridge Resort Chamber, the only weekends in the summer that meet or exceed 60 percent occupancy in Breckenridge hotel and condo rentals occur between the closest weekend to the July 4<sup>th</sup> holiday and ends with Labor Day weekend. This creates a peak summer season in Breckenridge lasting only 10 weekends (bracketed in black in Figure 1). During these 10 weekends, the town of Breckenridge hosts four to five art festivals in which retail art is sold. In 2013 alone, the following art festivals were held in Breckenridge:

- Three Mountain Arts Festivals
  - July 4<sup>th</sup> Weekend (July 5-7)
  - Breckenridge Main Street Art Festival (July 26-28)
  - Labor Day Weekend (August 31, September 1-2)
- Meet the Artists fair by the Summit County Arts Council
  - Last weekend in June
- Wild About Colorado Art Festival
  - August 14<sup>th</sup> – 17<sup>th</sup>

An important thing to note, as can be seen in Figure 1, is that the average weekday occupancy is typically 20% less than the peak occupancy of weekends. The only uptick in occupancy outside of the peak summer season is Oktoberfest weekend – an event including local restaurants and bars.

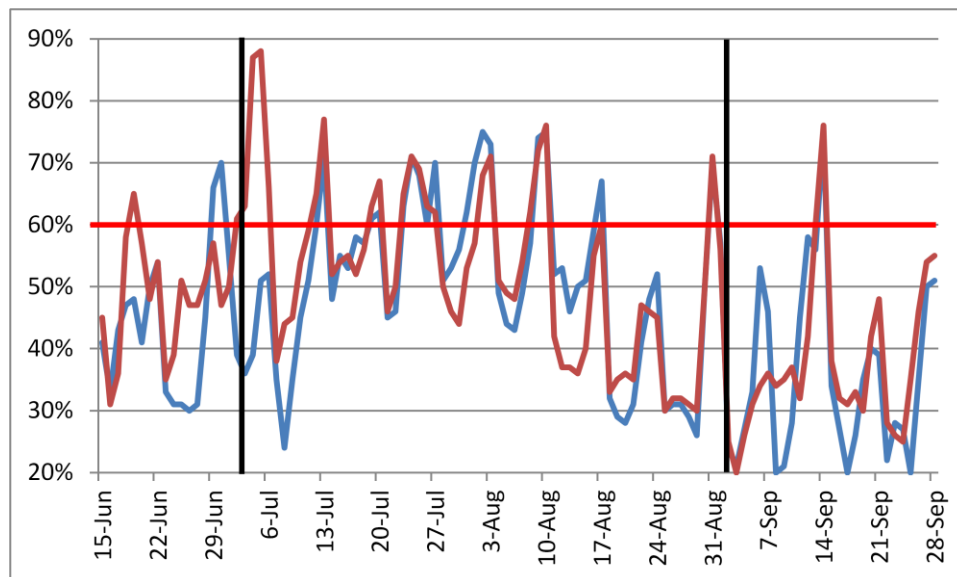


Figure 1 – Summer Occupancy Data for 2011 & 2012

During the three biggest festivals, the Mountain Arts Festivals held on the major weekends throughout the summer, artists represented by the local galleries of Breckenridge are not allowed to show work in the festival. The selection process for these festivals precludes any locally represented artist from purchasing tent space at the festival. The last time a gallery represented artist showed at the festival and

had sales support from a gallery representative, the gallery representative was told to leave and the artist was not allowed to return for future shows.

Local galleries have been allowed a presence at these festivals on only a few occasions, the last being a few years ago. While the artists and vendors at the show were allowed to show original work, the galleries were restricted to only showing advertising posters in their shared tent space. The limited display space and lack of original artwork in the booth led to almost no festival visitors frequenting the galleries' booth. A frequent phrase among the few who did visit was, "Why should I buy from a gallery when I can buy directly from an artist here and get a great deal?"

### **Gallery Sales vs. Art Tent Sales**

Art sales in galleries are typically based on relationships between the gallery and the patron. Galleries often cultivate customers for long stretches of time, sometimes up to five to ten years, before the customer will purchase an initial piece from the gallery. This relationship develops because the client feels the gallery is a permanent fixture and they can purchase when they have thoroughly thought about what they will buy and the expense it incurs. As a result of the galleries being seen as fixtures in Breckenridge, people feel no urgency to buy right away. As we will demonstrate, this train of thought has attributed to the closing of many Breckenridge galleries in the past few years.

Galleries attempt to cultivate relationships with clients to build sales partially as a result as a lack of being able to create a sense of immediacy with their clients. The client sees a brick and mortar art gallery and assumes they will be able to make their purchase at a later date if they choose. Impermanent art fair tents create an opposite feeling in clientele: a sense of urgency. A festival artist will say something along the lines of, "Hey I'm leaving tomorrow and taking all my work with me – you better buy it now before I'm gone." A similar sales tactic in a gallery is met with a rolling of eyes and a quick stroll out the front door. This sense of urgency leads to additional immediate sales for the tent artists, while the galleries are left hanging in a lurch. This is a huge disadvantage for galleries. Unlike clothing, which is often discarded or phased out after only a few years, or food or drink, which is consumed multiple times a day, artwork is typically rarely replaced. Wall space is an exhaustible resource, and once filled, is almost never replaced. This is especially true in Summit County homes, where most home sales include furniture and artwork.

The development of the gallery/client relationship leads to a somewhat unexpected sales distribution for art galleries. While most businesses in a resort town like Breckenridge would expect a strong positive correlation between the occupancy of town and sales, galleries do not experience this. As can be seen in Figures 2 and 3, there is a very weak correlation between sales totals and percent occupancy. The coefficient of determination,  $R^2$ , is less than 0.1 for both 2011 and 2012 sales. An  $R^2$  value of 1 denotes a very strong correlation; an  $R^2$  value of 0 denotes no correlation. As previously stated, a sale may take months to develop, leading a wide distribution of when sales take place. The important thing for businesses like art galleries is the number of opportunities to develop new relationships with clients.

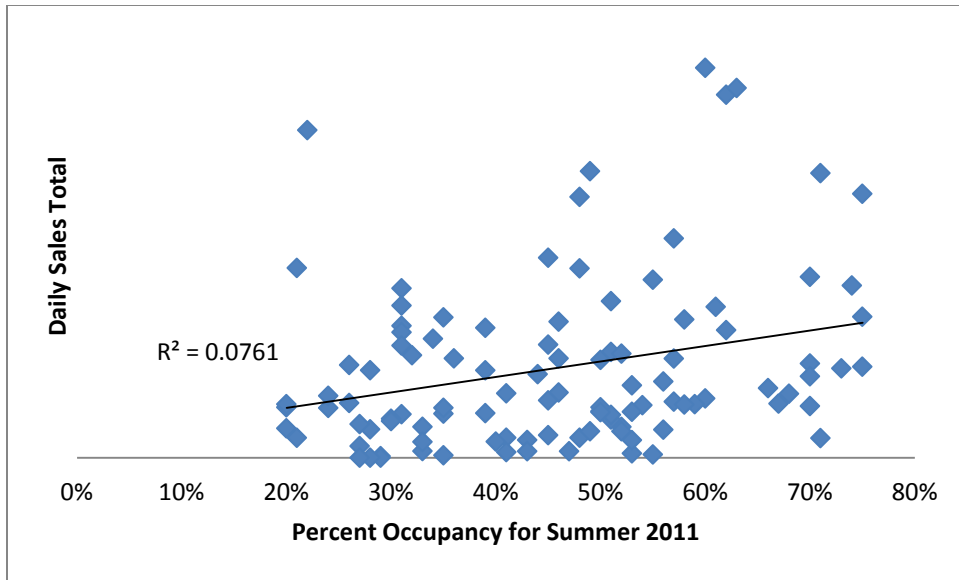


Figure 2 - Daily Sales Totals vs. Percent Occupancy for Summer 2011

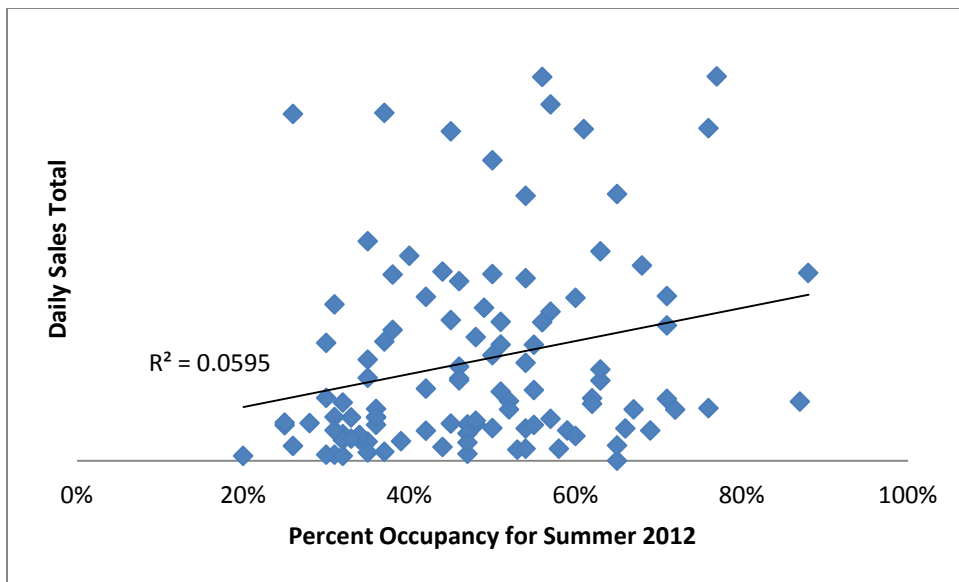


Figure 3 - Daily Sales Totals vs. Percent Occupancy for Summer 2012

Another disadvantage of hosting art festivals in Breckenridge is the loss of the cyclical nature of a small town economy. When consumers buy from a locally owned store or galley, those locals turn around and pump that money back into the local economy. Locals eat at restaurants in town, drink in local bars, and shop at local stores. This generates additional sales tax revenue for town throughout the entire year. Tent vendors are only here for a few days and rarely contribute to the local economy. Many tent vendors bring campers to stay in and pack food with them to reduce their expenditures while in Breckenridge.

In addition to the loss of sales tax revenue generated from the cyclical nature of a small town economy, there is the loss of actual sales tax revenue generated by sales. On multiple occasions visitors to the tent



vendors have been told they do not have to pay sales tax if they pay in cash. See Addendum A for testimonials to this effect. During this time, galleries generate on average over \$2,000 in sales tax revenue per month.

### **Effect of Festivals on Holiday Weekends**

The holiday weekends of July 4<sup>th</sup> and Labor Day are historically two of the busiest weekends in Breckenridge. According to the Breckenridge Daily Occupancy Report supplied by the BRC, the only weekends in the 2013 Summer to approach 80% occupancy occurred on the two weekends bookending the July 4<sup>th</sup> holiday and Labor Day weekend. Data provided by the Colorado Department of Transportation shows the average traffic count through the Eisenhower Tunnel is 36,523 cars per day. On Wednesday July 3 the count was 43,771 and on Friday July 5<sup>th</sup> it was 42,856. This is an increase of 19.85% and 17.34%, respectively, over the average daily traffic through Eisenhower Tunnel. The traffic through the tunnel on Labor Day weekend averaged 40,938 cars per day, an 18.82% increase over the average August day.

In addition to the holiday weekends being more crowded than a typical summer weekend, Breckenridge already hosts a fantastic event during 4<sup>th</sup> of July weekend: the Independence Day parade and fireworks show. This parade, while a good draw for the town, eliminates public parking up and down Main Street. Combined with the 91 artists showing this year at the 4<sup>th</sup> of July Art Festival, this is over 150 premium downtown Breckenridge parking spaces that are unavailable during one of the busiest weekends of the summer. Over Labor Day weekend 114 artists displayed at the art festival held in the Wellington Lot, eliminating 46 public parking spaces, plus the 114 or more taken up by the festival vendors and their trailers.

This crowding of downtown and lack of parking due to vendors, not visitors, has a negative effect on the overall town. See Addendum B for testimonials from locals and second home owners for additional information. When Breckenridge is this crowded and accessible parking is unavailable, many visitors will either avoid downtown Breckenridge or limit their Main Street shopping due to difficulty navigating through crowds. Vendor events on busy weekends contribute to more congestion and less parking near Main Street, drawing people further away from downtown and the local businesses.

### **Loss of Galleries in Breckenridge**

As has been discussed, art gallery sales are dependent on meeting potential clients, developing relationships with those clients, and making a sale, which typically occurs at a later date. Introducing 90 to 125 new competitors (The late July festival had 125 vendors) during the peak time for galleries to cultivate new and old relationships with clients puts galleries at a distinct disadvantage. Art fairs on busy weekends lead to a loss of a greater number of new collectors. Putting galleries at a disadvantage when town is more crowded increases lost sales opportunities in the present and the future.

In the past six years alone, the following galleries have closed in Breckenridge:

1. Hibbard McGrath Gallery

2. Altitude Gallery
3. Hang Time Gallery
4. Fox Ridge Gallery
5. Teal Gallery
6. Summit Galleries
7. Belleville Galerie
8. Galili Design & Gallery
9. Ski Hill Framing
10. Tony Newlin Photography
11. Thomas Mangelsen Photography
12. Paint Horse Gallery

This is an average of losing two galleries per year. If the galleries averaged \$2,000 a month in sales tax revenue, that is \$24,000 per month in lost revenue for the state of Colorado, Summit County and the Town of Breckenridge.

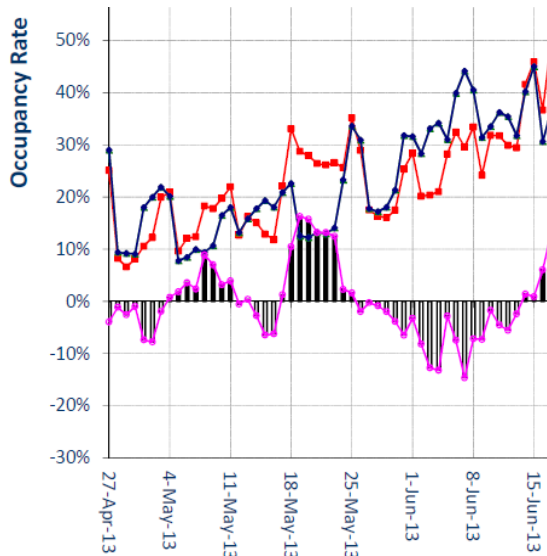
An important fact to note is that most visitors to Breckenridge come with a set budget planned out in advance. They only have a certain amount of money to spend while they are in Breckenridge. If they spend those funds at the art festival, those funds are no longer available to be spent at the local businesses in town.

In addition to the lost revenue for the town and local businesses, the loss of galleries has a negative overall effect on the sustainability of Breckenridge Main Street as a destination for tourists. Of the most recent galleries to close, Hibberd McGrath has been replaced by another ski shop, Altitude Fine Art Gallery has been replaced by another t-shirt shop, Teal Gallery has been replaced by another real estate office, and the spaces that housed Fox Ridge Glass Gallery and Tony Newlin Photography Gallery are vacant. There already exist an abundance of this kind of retail, and the addition of more results in a lack of unique shops on Main Street. Recent surveys have shown that Breckenridge's "charming Main Street" is one of, if not the top reason, for visitors coming to Breckenridge over other mountain towns and villages. Losing this uniqueness will drastically reduce the sustainability of Breckenridge as a prime destination location moving forward.

The loss of art galleries in Breckenridge will substantially harm the viability of the expensive arts district currently being constructed in town. Art connoisseurs travel to destinations with a vibrant, thriving arts community. Without local galleries to supplement the arts shown in the town-run arts district, visitors will have a limited selection of arts-related locations to explore. A sentiment expressed by a recent visitor to Breckenridge was, "There's not enough in Breckenridge to make a day of shopping – I'd rather take my friends to Vail."

## Alternate Dates for Festivals

A simple solution for the overcrowding, lack of parking, and large number of outside competitors on what should be the biggest sales weekends of the summer for local businesses would be to move the festivals. The festival organizers claim the festivals draw 10,000 visitors to Breckenridge. If this is true, the town of Breckenridge should use this to its advantage. Prevent the festivals from coming on what are already the busiest weekends of the summer and instead use them to draw people to town in the shoulder seasons. Historically, occupancy in the time period between the middle of April and the 4<sup>th</sup> of July holiday weekend rarely hits 30% until the beginning of June, and doesn't climb over 50% until the Kingdom Days Festival in mid June (see Figure 4). The same holds true for the weeks after Labor Day Weekend (see Figure 5). With the exception of



Octoberfest weekend, occupancies struggle to reach 50% starting from Labor Day until

Figure 4 - April to June 2012 & 2013 Occupancy Data

Thanksgiving.

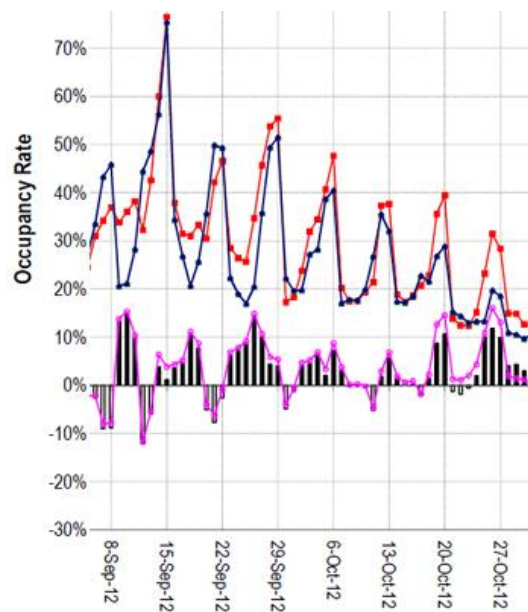


Figure 5 – 2011 & 2012 Occupancy after Labor Day

Moving the art festivals to just before and just after the peak season (weekend or two before 4<sup>th</sup> of July and the weekend after Labor Day or the weekend after Octoberfest) would help extend the peak season in Breckenridge. The festivals are advertising heavily on weekends when Breckenridge needs little advertisement; Breckenridge is a popular holiday destination as it is. The festival's advertising will go much further toward drawing visitors on weekends the town does not typically see an abundance of people. It will also help to spread out sales tax revenue for the town. Bringing people to town will increase shopping and restaurant visits when town shops typically struggle to maintain viable sales figures. Town already has a large amount of local sales during holiday weekends. Why is there a need to bring in outside vendors on these busy weekends?

## **Alternate Events, not Vendors**

Another option for the Town of Breckenridge to consider is to host more events in the summer, rather than bringing in vendors. Events such as Kingdom Days, the USA Pro Cycling Challenge and to a lesser extent, Oktoberfest, bring in visitors without bringing vendors who compete with the local businesses of Breckenridge. The top event of the year in Breckenridge from a visitor and local business standpoint is the International Snow Sculpting Competition. This event draws thousands of visitors to Breckenridge for a two to three week period while not drawing any business from local restaurants or retailers. It helps fill hotel rooms, restaurants, and boost retail sales throughout the town. A comparable summer event to the snow sculptures would be a boon to the town and its businesses alike. Many of the competitors in the snow sculpture competition compete in wood carving events in the summer. An event like this could be held during peak season or in the shoulder season. The sculptures could become a part of the new arts district as well, as a fun expansion of the current development. A similar event is currently held in August in Eau Claire, Wisconsin. For more information visit their site at <http://uschainsawchamps.com/>.

Other events the Town of Breckenridge could host include car shows, restaurant weeks, food and wine tasting events, jazz and blues festivals, large scale concerts, and architectural shows. Each of these events would either bring in a unique event to draw visitors while not competing with local businesses for sales, or could incorporate local businesses in the festivals (local restaurants in food and wine events, local architects and home builders in architectural shows). These events would boost the local economy rather than drawing away from it.

## **Conclusion**

The current art festivals in town not only compete with the local businesses for sales, but they are also held on some of the most crowded weekends of the year. This creates an overcrowding of Breckenridge, loss of parking, and drives some visitors away. These issues could be somewhat resolved if the festivals are moved outside of the peak summer season. Moving the festivals could potential extend the peak season in Breckenridge, drawing more visitors at times when the town is not always busy. It will also help the viability of Breckenridge's art galleries and other specialty retailers, helping to sustain Breckenridge as a popular, unique town to visit.

## **Addendum A – Closed Gallery Testimonials**

To whom it may concern:

My name is Steve Sutter and I owned Ski Hill Picture Framing and Gallery from 2003 to 2010. My dad is a retired art teacher and when I was a kid I used to work a couple art fairs a year with him. I understand that it's important to those people to have outlets for their work, but I also understand what it does to the gallery owners during those times.

I used to use the expression "it's the art fair. It ain't art and it ain't fair!" The galleries in Breck add a lot to the community. It's a hard business in any community and especially in a resort town where you rely on a few good weekends to survive. To bring in 200 competitors and let them set up right next to your business on the busiest weekends of the year is just plain insulting. No business would want that, not just gallery owners.

As a gallery owner I saw my friends misquoted and beaten up in the paper whenever they approached the subject but, as a former gallery owner I guess I'm not so worried about that anymore. One final thought every year during the art fair weekend I would have at least one customer say "why do you have to charge me tax? I wasn't charged tax out back?" It's a really insulting question to someone who is struggling and paying thousands a year in sales tax...Thanks for the chance to address a long standing issue that affects a lot of long standing locals!

Steve Sutter

-----

To whom it Concerns:

The art fairs in town did affect our business in a negative way. If people buy art, say once a year, and they buy it from the temporary vendors with no more commitment to our town and community other than their booth fee, then we miss out on a potential sale. Food events are different, as folks generally eat 3 or more times a day. But art purchases are more thoughtful and far more less often.

When Frisco hosts art fairs, we often lose our parking around our gallery for an entire weekend. My regular customers then have difficulty getting into my door. The art fairgoers seem to only stop in to use our restroom.

But the main reason we decided to close is because of the off seasons. For six months of the year, the numbers are good. But the shoulder seasons are what kills the overall picture. The expenses in the off season are too high, and the good months aren't good enough to carry through.

Sue Feldmann

Hang Time Custom Framing & Gallery  
711 Granite St.

Frisco, Co 80443

[970-668-0705](tel:970-668-0705)

[www.Buffalomountaingallery.com](http://www.Buffalomountaingallery.com)

-----

To whom it Concerns:

I tried to find all the data I had from my gallery, but I think it was on an old computer that I no longer have. However, I do remember that we saw a 50-70% decrease in traffic on art sale weekends compared to the rest of the year. Our sales on those days were pretty much nonexistent. I can't say that the Art Shows were the only factor that put us out of business, but they certainly contributed.

I will also add this. On several occasions walking through the shows vendors told me that if I could pay in cash that I would not have to pay sales tax.

Next, the town is bringing in unfair competition with not only the Art Shows, but with the Arts District. The Arts District uses our tax dollars to subsidize expenses by providing free rent to artists who act as retailers that directly compete with the galleries. The Arts Festivals also do the same thing. The gypsies at the art shows not only have no rent, but they also pay less in sales tax since they often don't bother collecting it on cash sales.

Lastly, even when they do bother to follow the law and collect sales taxes, they are taking their revenue and spending it back in whatever town or state they live in. Local retailers are much more likely to spend their money locally. The art festivals are driving money out of the community. Their presence is short sighted.

Timothy Faust  
Altitude Fine Art Gallery

-----

Statement from Breckenridge Gallery:

Ten to twelve galleries have closed or left Breckenridge in the past 2-3 years. This is not a sustainable arts community. In fact, it is a declining arts community that faces further challenges including competition with the arts district and insufficient marketing by the town to attract our target audience.

The town has validated the arts fairs by partnering with the arts district in the past. The community base of primary and secondary home owners have been reprogrammed to support the growing arts fairs due to these actions.

The town "gives away" our public parking during peak summer weekends at the expense of retail businesses, allowing a for profit operator to sublet it for approximately 20 fold of what they paid for it. This event is then further reinforced by the mass marketing of the BRC promoting the arts fairs.

This fair was a 20 booth Mom and Pop operation that was contained on private property back when no one visited in the summer. Back when Fatty's held golf tournaments down Main St. The fair has grown 6 fold on primarily public property with the support of this staff and council and without the support of the declining galleries and specialty stores. Move the fairs and give our galleries a chance to sustain and grow. Allow our second home owners time and space to support our arts community. Help reduce the I-70 corridor gridlock. Help reduce the potential catastrophic impact of our over-crowded town during the height of the extreme fire danger. Consider extending our 10 week summer season by scheduling the fairs in June and mid-September. Please consider reprogramming the event.

If this does not make rational sense then it is time for the galleries to organize the following:

1. A Time Share Fair inviting time share vendors from all over the southwest to have tents and products for sale in public parking lots over the 4th of July and Labor Day and one other prime summer weekend. We can make great money renting those tents for \$400-\$500 a piece. We will ask to see the sales revenues of the local time share vendors for only those busy weekends. This should not affect the local timeshare operators at all.
2. Five Dental Days inviting semi-retired dentists to offer check-ups and dental cleaning services to primary and secondary home owners. These will be held on weekdays during the busy season. This will give our community nice dental options. We will compare our local dentists' revenues on those days with those of the traveling dentists. This should not affect the local dentists at all.

Our next project will be to bring in realtors from across the state.

Gary Freese

**Addendum B – Client Testimonials**

We enjoy a second home in Summit County and have supported The Breckenridge Art Gallery for years. We no longer desire to drive over to Breck on the summer holiday weekends. The art fairs jam up the town beyond our comfort level. If the intent is to draw crowds, why not move them off the busy weekends?

The Ewings

-----

As clients of Breckenridge Gallery and homeowners in Summit County, we do not appreciate the art fairs. We consider the fairs to be overkill. Breckenridge is already busy, so why add to the congestion.

Don Craig

-----

We are writing in support of the position of the local art galleries re moving the two art fairs from the two critical holiday weekends. We have been property owners in Summit County since 1999 and have enjoyed these fairs, but probably haven't spent over \$1000 total in that period. In contrast we have spent in excess of \$200,000 at locally owned art galleries. We don't shop at them all, but enjoy the variety. We are dismayed by the numbers of galleries closing over the last several years. We certainly can't attribute direct cause and effect to the art fairs, but would guess they contributed.

A bigger issue for us is that these two fairs aren't really needed to attract visitors on these two busy weekends - the town would be full without them. Moving them to the following weekend would either attract visitors to come to town for the shows or prove that the shows themselves are not the attraction on the two weekends in question. We believe Breckenridge ought to be looking at ways to extend the season, not cram more people into popular weeks.

Tom and Marilyn Gales

-----

We have been home owners in Breckenridge since 1991, living here part time during that time. We have been long time supporter of the arts in Breckenridge and have seen over the past few years many of the local art galleries closing their doors. We certainly do not know all the reasons for this but think one of the causes may be the annual Art Walk Galleries that have become annual venues over the past few years.

We appreciate the towns desire to attract visitors through a variety of activities in town, but have questioned the dates selected for this event. We would suggest, if the art walk is to continue, it be held on weekends other than the July 4 weekend and Labor Day weekend. It simply is too large for these weekends when the town is already busy and parking is at a premium. Maybe having the event the



weekend before or after those holidays might be better for all involved, including the local merchants, who we believe often have less business during these holiday periods because of all the congestion. Thank you for considering our thoughts.

Tom and Joyce Fisher

-----

We could not agree more that these travelling art fairs are truly a distraction and disruptor for our local business owners! The July 4th and Labor Day holidays are key for our local business as many visitors stay beyond just the weekend. Our local art galleries should be featured and supported during this time. The local businesses also support each other through recommendations for restaurants and other shopping interests. (i.e. incremental revenue for the town).

It is also concerning that these travelling art fairs take away valuable parking spaces located close to town. While adequate, the gondola lots can be perceived as too long of a walk from the businesses located at the south end of town. It seems that it would be better to schedule these travelling shows on non-peak weekends to generate traffic into town and extend the summer season beyond Labor Day, maybe even to coincide with the Parade of Homes.

Maureen & Joe Lawer

-----

My name is John Schlipf. My wife and I live in Summit County and have been strong supporters of Breckenridge Gallery for over 30 years. We dislike the fact that Breckenridge continues to host art fairs during the summer. We prefer to buy from established businesses. If we have a problem with a purchase, there is limited recourse with a street vendor. The parking and road congestion on these busy weekends has become too difficult to deal with.

-----

To Breckenridge City Council

September 15, 2013

Regarding: Breckenridge Art Festivals

I am a resident and property owner in Breckenridge. I believe if you don't support your local shops and services, you deserve to lose them. We need to do what it takes to keep our local galleries. That means that we need to make sure that the visitors to our community help support the community. Having outside art shows during our high tourist season does not make sense. Let's keep the high traffic times for our local business.

Thank you for your attention to this matter.

Laurie Raicer  
93 Pelican Circle #805  
Breckenridge, CO 80424

-----

Our long and growing relationship with Breckenridge has been stimulated in part by the growing gallery scene in our community. Our diverse galleries enable us to present a well-rounded spectrum of shopping and buying opportunities throughout the seasons, year in and year out. While each business or group of businesses needs to succeed on their own merits, it's incumbent on the greater community to provide the encouragement and incubation within their power for that growth. That growth seems to be hindered when temporary sellers are invited to town in Art Shows during some of our busiest periods, and 'skimming' potential sales from those galleries, who invest in our communities by paying rent and taxes. No other business sector seems to suffer this ill to this extent, as evidenced by the recent gallery closings in town.

Whether as a primary focus or additional attraction, positioning the Art Shows on our shoulder periods will allow local galleries to experience robust sales during our peak periods, like our other businesses. The strength of our gallery offerings will add to the attraction of Art Shows during the shoulder weekends, and the combined strength plus promotion around such an event will bring further interest and focus to weekends that will benefit overall from the increased traffic. We look to our local galleries to continue to bring a constant stream of stimulating art to our community and provide a reliable consistent presence on which to base further growth.

Randy Valenta  
[630-640-3863](tel:630-640-3863)

-----

As a local Arts enthusiast, I enjoy browsing the galleries of Breckenridge, especially Second Saturdays, and the occasional Arts Festival. I would think the town would embrace the suggestion to extend the 4th

of July & Labor Day seasons by shifting the Arts Fests to the weekend before or after--simply because there is already enough visitor attractions during the holiday weekends. For a 'real town', I'd like to see the 'real people', including retail establishments, better integrated into the activities and events of that town.

Stephen Henderson

-----

To the Breckenridge City Council.

September 15, 2013

Re: Breckenridge Art Festivals

I am a property owner in Breckenridge, and I try to give my business to the local merchants. I love to browse and buy art in local galleries. It makes me sad that some of my favorite galleries have closed. The Art Festivals are fun to visit, however, they take business away from local galleries. It would be wonderful to put the Festivals on the shoulder seasons to bring more people to the area. During the peak holiday weekends our local galleries would draw more customers.

Let's keep a healthy economy booming in Breckenridge.

Thank you,

Jean Ellis

115 Pelican Circle #901

Breckenridge, CO. 80424

-----

To Breckenridge City Council

14 September 2013

Regarding: Breckenridge Art Festivals

As a local property owner and resident I try to support local Breckenridge businesses and services. In particular I try to purchase art from locally owned and operated art galleries or directly from local artists.

Doing business with local merchants means I'm supporting my neighbors and helping to sustain a healthy economy in Breckenridge. I also get personal and ongoing service and attention due to having a relationship with the owners. I would like to help these galleries and stores stay in businesses

As the art festivals are direct competition for our local galleries I believe we are diverting customers away from our local galleries - you know - our tax base!

Although I enjoy the art festivals I believe we need to make sure that local businesses get the best shot at engaging our visitors during peak season.

Please help keep our galleries thriving by hosting the art festivals during the shoulder season when we need to bring more people into town.

Thank you for your consideration of this important matter.

  
Diane Brown

233 Pelican Circle #1503

Breckenridge, CO 80424

## **Memorandum**

**TO:** Town Council

**FROM:** Chris Kulick, AICP, Open Space & Trails Planner II

**DATE:** September 11, 2013 (for the September 24<sup>th</sup> Council meeting)

**SUBJECT:** Town Projects Worksession- Wakefield Sawmill Interpretive Site Overview

---

As permitted under the 2013 Town Project ordinance, staff is presenting Town Council with a worksession for the Wakefield Sawmill Interpretive Site project located on Town-owned property, proposed to be completed in 2014.

Staff intends to pursue this project in conjunction with the Breckenridge Heritage Alliance and welcomes any Council input or feedback.

### **History of the Wakefield Sawmill:**

The Wakefield Sawmill on Boreas Pass Road was built in 1938 by Marion Wakefield and operated until the fall of 1959. "Wakey", as he was known to locals during that period, came west from St. Louis during the Depression with his wife Zella. He worked as a carpenter on the construction of the Green Mountain Reservoir and built the sawmill in the late 1930s. He also attempted to develop some small mines on the site. The mill closed down in 1959, shortly before Wakefield's death. Within several hundred yards of the Wakefield site, another important sawmill - the Jacot mill - operated in the early 1900s.

### **Project Purpose:**

The Breckenridge Heritage Alliance plans to restore the Wakefield site as a hands-on historical exhibit to interpret the history of sawmilling and its relationship to our local mining history. Nationwide, very few sawmill exhibits exist to tell the story of the vital (but nearly forgotten) part sawmills played in early frontier history, such as providing lumber for homes, commercial, and mining buildings, lumber for gold mining, sluice boxes, and flumes, and underground support timbers. Specifically, the project includes restoring the original sawmill, installing interpretive outdoor signs. Once it is complete, the Wakefield site will be staffed by Heritage Alliance employees during the summer season (mid-June to Labor Day). Like the Rotary Snowplow Park outdoor display, the Wakefield site will be accessible to the public year round.

### **Project Outreach**

The Wakefield descendants are in support of the project and have been kept apprised of the Alliance's plans. A number of family members have visited the site and are enthusiastic about the restoration. The Alliance and Town staff has been in touch with neighboring property owner Jay Monroe through his representative Jon Gunson. Mr. Monroe is generally supportive of the project but did share some concerns with staff. Below is a list of the items Mr. Monroe desired the Alliance consider in designing the project.

- Keep the driveway narrow to reduce speed and minimize the footprint of the site.
- Minimize the amount of parking to reduce site impacts from visitors and reduce the footprint of the site.
- Move the parking area further to the east, preferably off of Boreas Pass Road.

- Removal of snow on the driveway, parking areas and turn around to be the responsibility of the Town.

Staff believes we have accommodated most of the requests Mr. Monroe has made but cannot realistically change the parking due to the historic context of the displays and for safety and circulation reasons on Boreas Pass Road. The Town has no intentions of conducting snow removal at the site in the winter or shoulder seasons and suggests snow removal of the driveway should be managed by Mr. Monroe. Mr. Monroe has expressed some concerns about the potential for vehicles unaware of the site's snow removal plan may become stuck, enter his property to turn around or block his access. We understand his concerns but are unwilling to take on the significant financial responsibility to remove snow from a site that would receive a limited amount of visitation outside of the warmer months. To help address Mr. Monroe's concerns staff suggests installing a seasonal sign at the entrance to the driveway stating the prohibition of vehicular access when snow is present. It is the goal of the Alliance and staff to construct and manage the Wakefield site in a manner that it is not only harmonious with the Mr. Monroe's property but actually improves the appearance of his property entrance.

### **Compliance Town Development Code**

Staff has informally reviewed the project against the Town's development code and is comfortable that it will have a passing point analysis. However, the project as it is proposed fails policy 18/A-*Parking* as the driveway and parking proposed consists of recycled asphalt millings and aggregate base material to maintain the site's rustic appearance. Policy 18/A requires all off-street parking and driveways be paved (section 9-3-9 (L)). Planning staff has spoken with the Town's Engineering and Streets Department regarding the potential use of asphalt and aggregate base materials and they were generally comfortable using it for this specific application. Staff however does acknowledge proposing non-paved parking and driveway surfaces usually results in failing Policy 18/A.

Additionally the current driveway access is within the 25' wetland setback. The proposed driveway would be in relatively the same location, still within the 25' wetland setback. This will require a wetland setback waiver from the Town Engineer. We have been working with the Town Engineer on this plan, and they have indicated a preliminary approval of a wetlands setback variance for the portions within 25' of delineated wetlands. One of the reasons that the Town Engineer may allow this variance or waiver is that the area will not be paved, and it is not anticipated to cause a significant increase in water runoff.

With Council's agreement, this project would be presented in detail to both the Planning Commission (October 1<sup>st</sup>) and Town Council (October 8<sup>th</sup>) for final approval through the Town Project process.

Staff will be available at the September 24<sup>th</sup> Council meeting to answer any questions.



## **Agenda**

### **Town Council Joint Meeting**

**September 24, 2013**

- I. Current Projects Update
  - a. Playground
  - b. Wakefield
  - c. Jessie
  - d. Reiling Dredge
  - e. Other projects
  
- II. 2014 Proposed Capital Projects
  - a. High Line Railroad Park Phase II
  - b. Archive
  - c. Other projects
  
- III. 2014 Operating Budget request
  
- IV. Harris Street Building
  - a. Fundraising update

Breckenridge Heritage Alliance  
Capital Improvement Five-Year Plan

Project	Description	2013	2014	2015	2016	2017	2018
High Line Railroad Park	Playground park completion in 2013. 2014 funds to go toward interpretive "buildout" including: additional rolling stock and dioramas, overhaul of Luethe Cabin exhibit, interpretive walking path around playground park, sign and iconic symbol at the corner of Boreas Pass Road and Hwy 9, and additional video surveillance. Long-range goals (estimated 2017) include a master plan for/development of the entire Rodeo grounds parcel behind the Ice Arena.	\$350,000	\$300,000			\$100,000	
Wakefield Sawmill Exhibit	2013 funds dedicated to mill equipment purchase, site prep (wetland delineation, survey), mill construction, mill shelter, public walking path, interpretive signs, re-grading and widening roadway, creating parking spaces, installing exhibits in cabin. \$35,000 in other funds has been raised for the project (includes \$5k from Town in 2012, in-kind support and other grants and donations). The Alliance will seek additional in-kind support from contractors and suppliers. Project work to continue in 2014 with funds from 2013. Construction of up to three sheds/outbuildings in 2015.	\$100,000		\$50,000			
Jessie Mill Site	2013 funds dedicated to stabilizing the Jessie Mill. This is the best example we have of a mill site, and the Jessie is also located in a popular, easily-accessed area on Gold Run Road. 2014 funds to go toward making the ore chute surfaces weather tight, improving drainage to prevent further deterioration, treating wood, capping the stamp mill bases and placing concrete pads under sleepers to shore them up.	\$25,000	\$25,000				
Lincoln City stabilization	In a partnership with the US Forest Service, preserve historically relevant buildings in the former townsite of Lincoln City. The Forest Service has completed a Cultural Resource Survey of Lincoln City and invested funds to remove contemporary structures, leaving five historically relevant buildings. 2013 funds will be used to 1) complete an Historic Structure Assessment (HSA) with a \$10k match from the State Historical Fund, and 2) implement the report's recommendations for preservation. 2015 funds refer to additional preservation work recommended in the HSA report. Lincoln City is an important part of the story we can tell in French Gulch and is eligible for listing on the National Register of Historic Places.	\$25,000		\$50,000			
Town of Breckenridge Historic District	2013 funds dedicated to National Historic District sign toppers for street signs in the historic district. There are approximately 90 street signs in the district. In 2014, funds will be used to fabricate additional building plaques for contributing historic structures.	\$15,000	\$10,000				
Interpretive Signs	2013 funds dedicated to research, fabrication and installation of interpretive signs in French Gulch, on other town trails as well as important in-town locations. OSAC contributed \$5,000 to the 2013 sign project. 2016 funds refer to the third phase of interpretive signs.	\$20,000			\$20,000		
Breckenridge Archive	Design and install Breckenridge archive at Harris St. building, including purchase/installation of proper archival storage and display cases, transfer of archives from other facilities and operations preparation (i.e. archival supplies, scanners). Request includes funding for an archive design consultant. The Summit Historical Society board will complete an MOU with BHA to move selected archival materials from their Dillon facility to the community center.		\$75,000				
Reiling Dredge Stabilization & Interpretation	Complete preservation master plan and condition assessment/recommendations for stabilization of the dredge (2013/2014). Total project cost is \$56,000 (\$35,000 of which comes from a State Historical Fund Grant and remainder from Town and County rollover funds from 2011). In 2015/2016, Implement master plan recommendations (with a matching grant from SHF). Recommendations will include options for dredge stabilization/restoration and interpretation.			\$100,000	\$100,000		
Carter Museum/Property	Historic structure assessment of Carter shed and update to museum exhibits in 2014. Restore interior and exterior of shed behind Carter Museum in 2015 (reportedly where Carter completed much of his taxidermy work) and install exhibit. Of note, the Alliance would like to include the Carter property in the Main Street pocket park analysis/planning process to identify 1) opportunities to link the two sites and 2) improvements to the Carter property.		\$20,000	\$100,000			



Breckenridge Heritage Alliance  
Capital Improvement Five-Year Plan

Project	Description	2013	2014	2015	2016	2017	2018
<b>Eberline House Restoration</b>	Historic Structure Assessment in 2015. Restore to 1870s status, use for public tours along with other buildings in Milne Park (Milne House, Briggie House).			\$10,000	\$100,000		
<b>Welcome Center Museum</b>	Refresh museum exhibits. The museum has not been updated since it opened in 2005.			\$50,000			
<b>Klack Cabin</b>	One of the oldest dwellings in Breckenridge, located on the Klack Placer. Stabilized in 2010. Complete historic structure assessment, and exterior and interior restoration.					\$10,000	\$75,000
<b>Modern Outdoor/Backcountry Museum</b>	Research, find a location and design a museum dedicated to modern/backcountry sports and recreation culture in Breckenridge.				\$40,000		\$150,000
<b>Gold Pan Mining Company Dipping Station</b>	Continue stone work restoration at the Dipping Station, which started in 2008. Remove excess riverstone and plant material from inside the structure, re-mortar loose stones, complete a dry stone retaining wall and replace a portion of the firebox arch. The Dipping Station is all that remains of the Gold Pan Shops.		\$10,000		\$10,000		
<b>Valley Brook Cemetery Monument Restoration</b>	Ongoing monument restoration program that was started in 2001 to repair damage from the 1997 blowdown. Nearly all damaged monuments have been repaired. To date, 154 monuments have been treated. Continued work refers to maintenance/restoration caused by exposure to the elements.			\$10,000		\$10,000	
		\$535,000	\$440,000	\$370,000	\$270,000	\$120,000	\$225,000