



**BRECKENRIDGE TOWN COUNCIL WORK SESSION**

Tuesday, October 08, 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>3:00-3:05pm</b>	<b>I</b>	<b><u>PLANNING COMMISSION DECISIONS</u></b>	<b>2</b>
<b>3:05-3:30pm</b>	<b>II</b>	<b><u>LEGISLATIVE REVIEW*</u></b>	
		Omnibus Ordinance Concerning Marijuana	<b>9</b>
		Residential Growing of Marijuana	<b>27</b>
		Disposable Bag Public Outreach Program Resolution	<b>37</b>
<b>3:30-4:15pm</b>	<b>III</b>	<b><u>OTHER</u></b>	
		BRC Restructure Plan	
<b>4:15-4:45pm</b>	<b>IV</b>	<b><u>MANAGERS REPORT</u></b>	
		Public Projects Update	<b>43</b>
		Housing/Childcare Update	
		Committee Reports	<b>46</b>
<b>4:45-5:30pm</b>	<b>V</b>	<b><u>PLANNING MATTERS</u></b>	
		F-Lot Hotel Fiscal Impact Analysis	<b>48</b>
		Planning Application Classifications	<b>69</b>
		Building Height Calculation Overview	<b>78</b>
<b>5:30-6:30pm</b>	<b>VI</b>	<b><u>OTHER</u></b>	
		Art Fairs Continued Discussion	

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:** October 2, 2013

**Re:** Planning Commission Decisions of the October 1, 2013, Meeting.

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***DECISIONS FROM THE PLANNING COMMISSION AGENDA OF October 1, 2013:***

**CLASS C APPLICATIONS:**

- 1) Smoldt Residence (MGT) PC#2013083, 4 Barney Ford  
Construct a new, single family residence with 5 bedrooms, 4.5 bathrooms, 4,190 sq. ft. of density and 4,809 sq. ft. of mass for a F.A.R. of 1:9.11. Approved.
- 2) Leidal Residence (SG) PC#2013086, 63 Buffalo Terrace  
Construct a new, single family residence with 4 bedrooms, 4.5 bathrooms, 4,312 sq. ft. of density and 5,118 sq. ft. of mass for a F.A.R. of 1:5.16. Approved.

**CLASS B APPLICATIONS:**

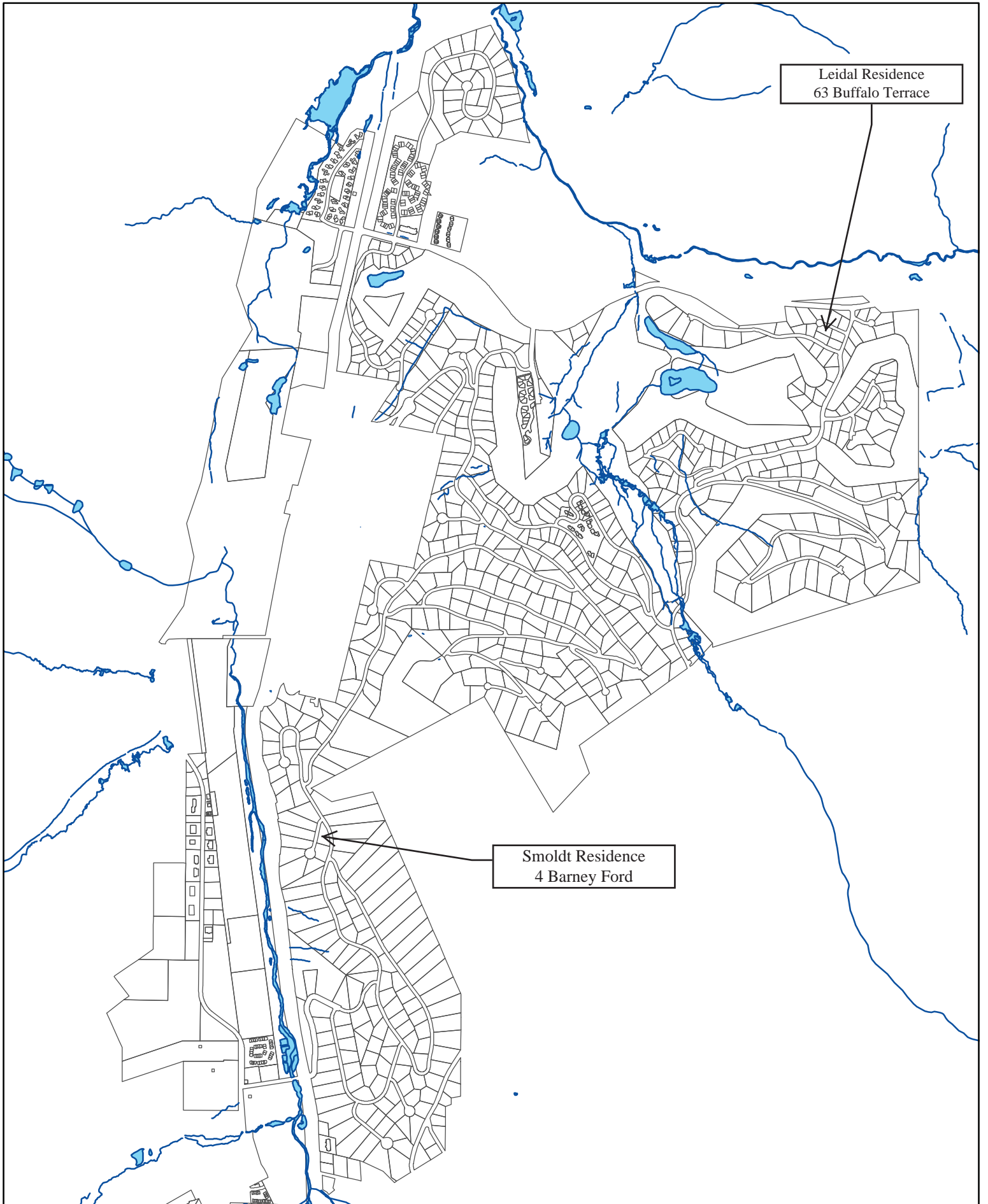
- 1) Lot 7, Abbett Addition / Brown Hotel Resubdivision (MM/JP) PC#2013078, 208 North Ridge Street  
Subdivide Lot 7, Abbett Addition into two lots. An easement for access from French Street and for four parking spaces adjacent to Lot 7 (for the Historic Brown Hotel) will also be created by the plat. Approved.

**CLASS A APPLICATIONS:**

None.

**TOWN PROJECT HEARINGS:**

None.



Leidal Residence  
63 Buffalo Terrace

Smoldt Residence  
4 Barney Ford

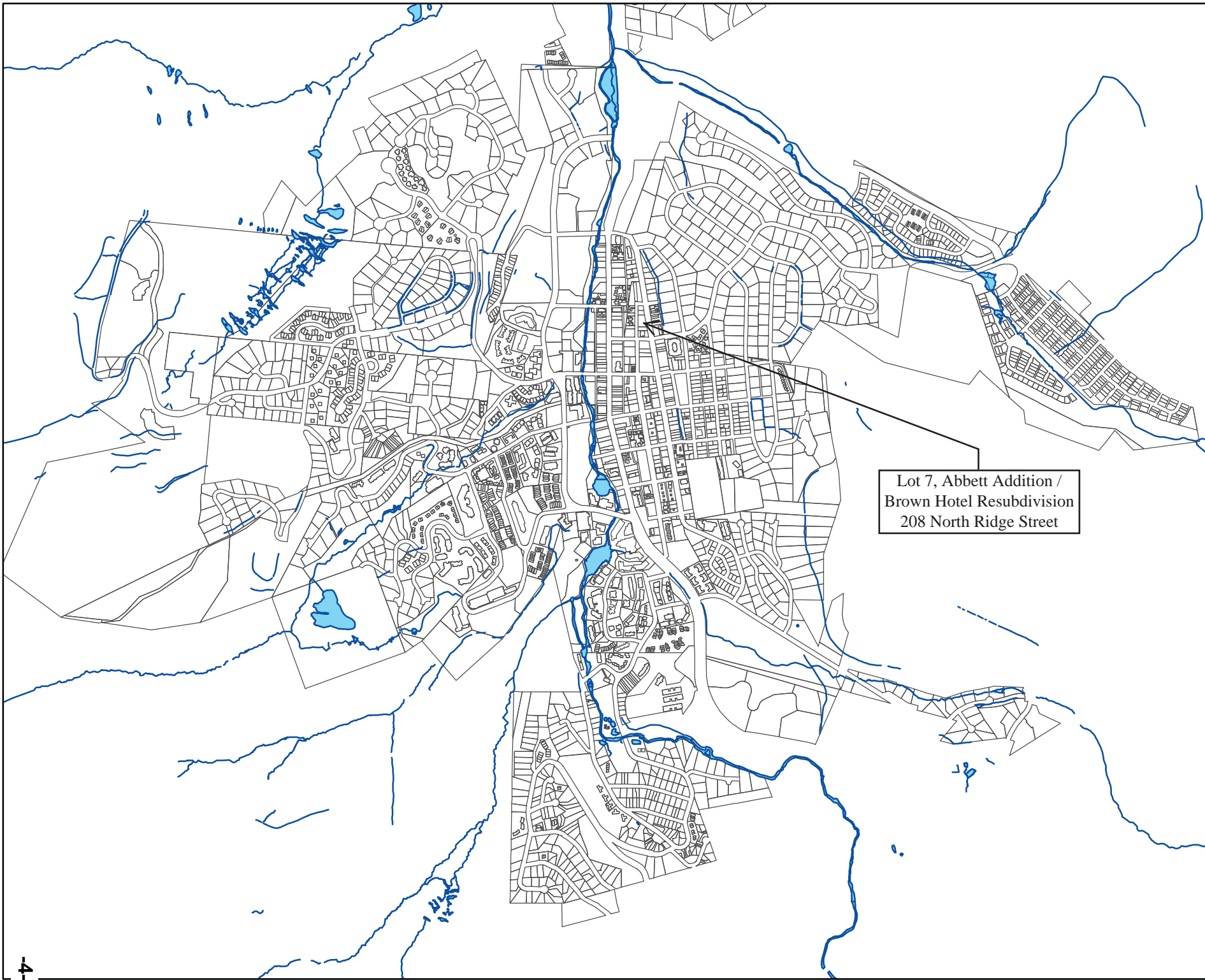


**Breckenridge North**  
Town of Breckenridge and Summit County governments  
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use of the product for any purpose is at user's sole risk.

printed 4/12/2011



NOT TO SCALE -3-

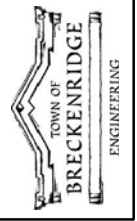


NOT TO SCALE

*printed 4/12/2011*

# Breckenridge South

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



## PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

### ROLL CALL

Kate Christopher            Jim Lamb                            Eric Mamula  
Trip Butler                    Dave Pringle  
Jennifer McAtamney, Town Council Liaison  
Gretchen Dudney and Dan Schroder were absent

### APPROVAL OF AGENDA

Ms. Puester noted an addition under Other Matters: Energy Policy Clarification  
With one change, the October 1, 2013 Planning Commission meeting agenda was approved unanimously (5-0).

### APPROVAL OF MINUTES

With no changes, the September 17, 2013, Planning Commission Minutes were approved as presented.

### CONSENT CALENDAR:

1. Smoldt Residence (MGT) PC#2013083, 4 Barney Ford
2. Leidal Residence (SG) PC#2013086, 63 Buffalo Terrace

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

### TOWN COUNCIL REPORT:

Ms. McAtamney:

Big meeting last week, passed all of the ordinances including subdivisions, but really big topic was the omnibus ordinance (marijuana). It was taking the smoking ordinance and applying it to marijuana, we did decide that people could smoke on private property. We all realized that we are at a different point in time than we've been before and voters approved marijuana use like alcohol use. Also addressed ordinance around growing marijuana residentially. Passed resolution in support of 1-A and 2-B. Resolution on the appropriation of funds for F lot, Harris and Arts. Worked on better loan terms with Corum on housing projects which will come before you soon. We received an update from Vail which was going over master plan and what buildings where in Breckenridge. Vail representative said that it is not unusual to have a sprung structure in the ski industry. It was supposed to just be for one season but with the downturn, these sprung structures have had to stay throughout the industry. I recommend that the Commission listen to tape of this discussion. Vail reported that still have 30 units to sell at One Ski Hill Place. Another topic was a great presentation from kids and adults who are users of the Skate Park who'd like to see the Town demolish current park and build a new park for \$600,000. The current skate park was built in 1999; it has issues yet it is heavily used. They showed a great presentation and showed that Leadville is putting in a park for \$1 million. Art Fair Presentation that has data and they contend that every time we have an art fair it takes away sales from the local businesses. Equity argument that the art fairs come and set up for a short time, like food carts and need to discuss these fairs happening on private property versus public property. Please check out the Heritage Alliance Park, looks great, it is almost completed and it is down by the Engine. The Town Council will be discussing the Wakefield project in November. (Mr. Pringle: Will there be GOCO funds for Skate Park?) There will be an opportunity to put in request for funds for this, we are doing this for the Rugby field. The citizens said that they would be supportive of doing other fundraising to show their support for this project.

### COMINED HEARINGS:

1. Lot 7, Abbett Addition / Brown Hotel Resubdivision (MM/JP) PC#2013078, 208 North Ridge Street

Ms. Puester presented on behalf of Mr. Mosher. Per an approved Development Agreement (dated April 19, 2013), the applicant is proposing to subdivide Lot 7, Abbett Addition into two lots. An easement for access from French Street and for four parking spaces adjacent to Lot 7 (for the historic Brown Hotel) will also be created by this plat.

This review is to create a plat that identifies the proposed lots and easements. There is an Access Easement on Lot 7A benefiting Lot 7B and Lot 6 and an Easement for parking benefiting Lot 6. Access to these properties is now solely off French Street. Per the Development Agreement, due to community benefits such as restoration of the historic Brown Hotel, the future subdivision of the lot was allowed without meeting minimum lot size requirements and without an open space dedication.

This resubdivision of Lot 7 follows the direction from the Development Agreement and site plan. The application has been advertised as a combined hearing. Staff had no concerns with this application, and welcomed any Commissioner comments or questions. Staff recommended approval of Lot 7, Abbett Addition Resubdivision, PC#2013078, with the presented Findings and Conditions.

*Commissioner Questions / Comments:*

Mr. Pringle: Because we are creating two below standard sized lots, is this clear enough for future applicant to understand how much density is available on this lot? (Ms. Puester: Can talk to Town Attorney to make sure that was covered in Agreement.) Not sure if this is enough to show a future applicant what the density should be. It seems loosely written in the agreement and doesn't give specific direction. Do we know what the development plan is going to be that can clarify density? (Mr. Grosshuesch: We don't assign densities to subdivision; it's not part of the process. We understand what your concerns are, we will look into it. Mosh is the project planner and obviously he is not here, he may have the answer off hand. However, they have to meet a lot of the standards of the historic district regardless. But that is not a part of the subdivision review.)

Mr. Mamula: We reference a development plan in the agreement but the plans can change with subsequent owners. It is subject to UPA.

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

*Commissioner Questions / Comments (Continued):*

Mr. Mamula: I agree, I'm fine with it.

Ms. Christopher: I'm fine with it.

Mr. Butler: I'm fine with it.

Mr. Pringle: I'm curious about the language regarding density for development, but I'm fine with it.

Mr. Lamb: I'm fine too.

Mr. Mamula made a motion to approve the Lot 7, Abbett Addition / Brown Hotel Resubdivision, PC#2013078, 208 North Ridge Street, with the presented findings and conditions. Ms. Christopher seconded, and the motion was carried unanimously (5-0).

**OTHER MATTERS:**

Ms. Puester presented. Recently an applicant questioned the energy policy 33R with regard to heated driveways. An application came in for a heated parking pad; however, the driveway would be heated by means of a solar thermal system with direct connection to the pad and no boiler. Wanted to see how the Commission would weigh in on the direct on site renewable system feeding directly into the heating-no net energy consumption. The policy as written allows for the planning commission to give positive points under subsection D other design features which conserve energy. Those positive points could be used to offset

negative points for heated area. An alternative option would be to under subsection F on heated spaces which mentions zero points for well designed plans which take advantage of southern exposure or specific site features. If the Commission is open to consideration for direction exchanges handled onsite, the approach would matter when looking at larger applications. For example if you had a large heated area which received the max -3 points, the offset in the policy is a max of +2. The application would still be -1 under policy 33R.

Looking for direction from the Planning Commission.

*Commissioner Questions / Comments:*

Mr. Lamb: If it is an energy conservation issue and doesn't use any energy that I don't think it is a problem.

Mr. Mamula: How does it work on dark, cloudy days? (Mr. Grosshuesch: The system surprised the Keystone Science School which has a similar system that was surprised that it didn't take much sun to keep it heating, only need 34 degrees. Need to talk about the policy need direction from the planning commission, we could make an argument that if they aren't tap the grid, does it meet the goals.)

Mr. Pringle: What about snow storage if the system goes down or doesn't have enough sun power for a few days? (Ms. Puester: We could continue to look at all the code policies and make sure applications could otherwise meet them, one being snow storage on site; the 25% is still required.)

Mr. Mamula: Where the panels are located are important. Do they need to be on a pole? I am fine with the concept but I don't want it to become like the roadway signs that have solar on top. I want to know how the execution goes. (Ms. Puester: Applications would have to meet Policy 5A which contains the regulations for solar installations)

Mr. Pringle: I would like to direct people to solar garden. I'm concerned that the people will need to do something with the snow on days that can't heat. (Ms. Puester: This is solar thermal not solar electric which is not in the garden. We can make sure that the 25% snow storage is required.) It wouldn't be in lieu of snow storage? Because I'm concerned that people will use this as an excuse to get away with not having the snow storage. It's different if they have a heated drive with a boiler, more reliable.

Mr. Lamb: I thought we heard from Ms. Puester that they would be required to have the 25% snow storage. (Ms. Puester: I understand what you are saying. You are right that in other applications that have heated driveway, they get negative points and they don't have to meet the 25%; that being said, this would have a direct tie in. The sun is there, with a solar thermal system or a boiler system, either could break down at any time.)

Mr. Pringle: My guess is that if the boiler went down you would have that fixed immediately, this may not be the case with the solar. Could be down for a few days until it get sunny. We have to be careful when we get into a system that is not as predictably reliable not having the snow storage.

Mr. Lamb: If is going to a zero balance and meets other applicable policies with the town code.

Mr. Pringle: I'm fine with zeroing out for energy, but need to meet other policies. (Ms. Puester: We would review other policies for compliance. Solar policy design under 5A to review how the panels appear and they would go under any other applicable policies like driveway requirements and snow storage.)

Mr. Lamb: One thing to keep in mind that driveway snow storage is 25% is not that much, around 40 sq ft. per parking space. (Ms. Puester: Clarification needed for future applications, if there is a larger area similar application and it meets 5R, would be looking at zero points or a negative point and a positive point? This does make a difference moving forward.)

Mr. Mamula: I like the ability to give negative points. A large project could still come out with negative points. Also needs to be reviewed under Policy 5- the look of the solar must be acceptable. I

- like the opportunity to look at big projects.
- Mr. Lamb: There is a difference between a small single spot and a large driveway.
- Mr. Mamula: Our code is based on positives and negatives, like to keep it that way.
- Ms. Christopher: I would rather go with points rather than 0.
- Mr. Pringle: I'm fine with that. I would like to talk about the array in large parking lots versus single spots. The code may need to be written differently to look at this from those different perspectives. When we get in trouble is when we have a one size fits all.
- Mr. Lamb: I think that the Commissioners agree and support with a negative/positive point situation.
- Ms. Puester: Thank you. Also, next meeting is the chair, vice chair election so think about that. Also, Planning Commission retreat date Friday, October 25 is the majority, 9:00am – 1:00pm.
- Mr. Lamb: It will work for me.
- Mr. Pringle: I will try to make it work, but don't reschedule the meeting for me.
- Ms. Puester: Large portion of that day would be condo hotels in town and tour them. The reason for that date is the joint Town Council / Planning Commission meeting on November 12 and we have the meeting prior to that to discuss the top three.
- Mr. Pringle: Do we have any planning seats up?
- Ms. Puester: No, not until next year.
- Mr. Mamula: Suggest going by my building to see the airlock on the retreat.
- Mr. Pringle: Cementitious fabric has been in place for a few years now. Can we go look at those and see how it is weathering? (Ms. Puester: Should be able to fit that in.)

**ADJOURNMENT:**

The meeting was adjourned at 7:43 pm.

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Jim Lamb, Vice Chair



**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 39 (Amendment 64 Omnibus Ordinance)

DATE: October 2, 2013 (for October 8<sup>th</sup> meeting)

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The second reading of the “Amendment 64 Omnibus Ordinance” is scheduled for your meeting on October 8<sup>th</sup>. You will recall that this ordinance makes numerous amendments to the Town Code related to the implementation of Amendment 64.

At Council’s direction, after the worksession on September 24<sup>th</sup> I amended the definition of “openly and publicly” to take out the reference to “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.” That deletion is carried forward into the ordinance that is included with this memo.

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

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

1 ***FOR WORKSESSION/SECOND READING – OCT. 8***

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

4  
5 COUNCIL BILL NO. 39

6  
7 Series 2013

8  
9 AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE CONCERNING THE  
10 IMPLEMENTATION OF “AMENDMENT 64” TO THE COLORADO CONSTITUTION

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

14  
15 Section 1. Section 5-9-1(A) of the Breckenridge Town Code is amended to read as  
16 follows:

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

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

33  
34 Section 2. Section 5-9-2 of the Breckenridge Town Code is amended by the addition of  
35 the following definition:

OMNIBUS AMENDMENT 64 REGULATION ORDINANCE

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

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

5 ENVIRONMENTAL TOBACCO SMOKE: The complex mixture formed from the  
6 escaping smoke of a burning tobacco or  
7 marijuana, and smoke exhaled by the smoker.

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

9 SMOKING: The burning of a lighted cigarette, cigar, pipe,  
10 or any other matter or substance that contains  
11 tobacco or marijuana.

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

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

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

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

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

25 5-9-4: EXCEPTIONS TO SMOKING RESTRICTIONS: Except as otherwise  
26 expressly provided in this Code, this Chapter shall not apply to:

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

1 follows:

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

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

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

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

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

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

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

18 6-3H-6: POSSESSION OF DRUG PARAPHERNALIA:

19  
20 A. This Section does not apply to the possession, use, display, purchase, transport,  
21 sale or manufacture of marijuana accessories as defined in Section 16(2)(g) of  
22 Article XVIII of the Colorado Constitution by a person age twenty-one years or  
23 older.

24  
25 B. As used in this Section, unless the context otherwise requires:

26  
27 1. "Drug paraphernalia" means all equipment, products, and materials of any kind  
28 which are used, intended for use, or designed for use in planting, propagating,  
29 cultivating, growing, harvesting, manufacturing, compounding, converting,  
30 producing, processing, preparing, testing, analyzing, packaging, repackaging,  
31 storing, containing, concealing, injecting, ingesting, inhaling, or otherwise  
32 introducing into the human body a controlled substance in violation of the laws of  
33 the state of Colorado. "Drug paraphernalia" includes, but is not limited to:  
34

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<sup>1</sup> NOTE: Section6-3H-1 is the Town’s current ordinance on possession of cannabis. [NOT TO BE CODIFIED]

- 1 a. Testing equipment used, intended for use, or designed for use in identifying or  
2 in analyzing the strength, effectiveness, or purity of controlled substances under  
3 circumstances in violation of the laws of the state of Colorado;
- 4
- 5 b. Scales and balances used, intended for use, or designed for use in weighing or  
6 measuring controlled substances;
- 7
- 8 c. Separation gins and sifters used, intended for use, or designed for use in  
9 removing twigs and seeds from or in otherwise cleaning or refining marijuana;
- 10
- 11 d. Blenders, bowls, containers, spoons, and mixing devices used, intended for use,  
12 or designed for use in compounding controlled substances;
- 13
- 14 e. Capsules, balloons, envelopes, and other containers used, intended for use, or  
15 designed for use in packaging small quantities of controlled substances;
- 16
- 17 f. Containers and other objects used, intended for use, or designed for use in  
18 storing or concealing controlled substances; or
- 19
- 20 g. Objects used, intended for use, or designed for use in ingesting, inhaling, or  
21 otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human  
22 body, such as:  
23
  - 24 (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without  
25 screens, permanent screens, hashish heads, or punctured metal bowls;
  - 26
  - 27 (2) Water pipes;
  - 28
  - 29 (3) Carburetion tubes and devices;
  - 30
  - 31 (4) Smoking and carburetion masks;
  - 32
  - 33 (5) Roach clips, meaning objects used to hold burning material, such as a  
34 marijuana cigarette that has become too small or too short to be held in the hand;
  - 35
  - 36 (6) Miniature cocaine spoons and cocaine vials;
  - 37
  - 38 (7) Chamber pipes;
  - 39
  - 40 (8) Carburetor pipes;
  - 41

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

10  
11 C. In determining whether an object is drug paraphernalia, a court, in its  
12 discretion, may consider, in addition to all other relevant factors, the following:

- 13
- 14 1. Statements by an owner or by anyone in control of the object concerning its  
15 use;
- 16
- 17 2. The proximity of the object to controlled substances;
- 18
- 19 3. The existence of any residue of controlled substances on the object;
- 20
- 21 4. Direct or circumstantial evidence of the knowledge of an owner, or of anyone  
22 in control of the object, or evidence that such person reasonably should know, that  
23 it will be delivered to persons who he knows or reasonably should know, could  
24 use the object to facilitate a violation of Subsection E of this Section;
- 25
- 26 5. Instructions, oral or written, provided with the object concerning its use;
- 27
- 28 6. Descriptive materials accompanying the object which explain or depict its use;
- 29
- 30 7. National or local advertising concerning its use;
- 31
- 32 8. The manner in which the object is displayed for sale;
- 33
- 34 9. Whether the owner, or anyone in control of the object, is a supplier of like or  
35 related items to the community for legal purposes, such as an authorized  
36 distributor or dealer of tobacco products;
- 37
- 38 10. The existence and scope of legal uses for the object in the community; and
- 39
- 40 11. Expert testimony concerning its use.
- 41

1 D. In the event a case brought pursuant to this Section is tried before a jury, the  
2 court shall hold an evidentiary hearing on issues raised pursuant to Subsection B  
3 of this Section. Such hearing shall be conducted in camera.  
4

5 E. A person commits possession of drug paraphernalia if he possesses drug  
6 paraphernalia and knows or reasonably should know that the drug paraphernalia  
7 could be used under circumstances in violation of the laws of the Town or the  
8 state of Colorado.  
9

10 F. Any person convicted of having violated Subsection E of this Section shall be  
11 punished by a fine of not more than one hundred dollars (\$100.00).  
12

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

15 CHAPTER 3

16 GENERAL OFFENSES

17 ARTICLE I: OFFENSES CONCERNING MARIJUANA

18 SECTION:  
19

- 20  
21  
22  
23 6-3I-1: Definitions  
24 6-3I-2: Unlawful Possession or Open and Public ~~Display~~, Consumption, Or Use of  
25 Marijuana By An Underage Person  
26 6-3I-3: Unlawful Possession of Marijuana  
27 6-3I-4: Open and Public ~~Display~~, Consumption, or Use of Marijuana  
28 6-3I-5: Unlawful Transfer of Marijuana to Underage Person  
29 6-3I-6: Unlawful Transfer of Marijuana to Person Twenty-One Years of Age or  
30 Older  
31 6-3I-7: Open Containers of Marijuana Prohibited  
32 6-3I-8: Unlawful Acts in Marijuana Consumption Establishment; Public  
33 Nuisance  
34 6-3I-9: Defendant to be Issued Summons and Must Promise to Appear in Court;  
35 When; Penalty Assessment Notice  
36 6-3I-10: Immunity For Persons Who Suffer or Report An Emergency Drug Overdose  
37 Event  
38 6-3I-11: Evidence at Trial  
39 6-3I-12: Constitutional Provisions  
40  
41 6-3I-1: Definitions: As used in this Article the following words have the following meanings:

OMNIBUS AMENDMENT 64 REGULATION ORDINANCE

BUSINESS:	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.
EMERGENCY DRUG OVERDOSE:	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.
FIRST OFFENSE:	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.
MARIJUANA:	Includes all parts of the plant <i>Cannabis sativa L.</i> , 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.
MARIJUANA CONCENTRATE:	Hashish, tetrahydrocannabinols or any alkaloid, salt, derivative, preparation, compound or mixture, whether natural or synthesized, or tetrahydrocannabinols.
MARIJUANA CONSUMPTION ESTABLISHMENT:	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

OMNIBUS AMENDMENT 64 REGULATION ORDINANCE



	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.
MOTOR VEHICLE:	Has the meaning provided in the Town’s Traffic Code adopted in Chapter 1 of Title 7 of this Code.
OPENLY AND PUBLICLY:	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) 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.
OPEN MARIJUANA CONTAINER:	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.
OUTDOOR AREA:	Any area or place outside of a building or other structure.
OWNER:	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

OMNIBUS AMENDMENT 64 REGULATION ORDINANCE

	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.
SECOND OFFENSE:	Means an offense after the person is subject to a first offense.
SUBSEQUENT OFFENSE:	Means an offense after the person is subject to a third offense.
THIRD OFFENSE:	Means an offense after the person is subject to a second offense.

1  
2 6-3I-2: UNLAWFUL POSSESSION OR OPEN AND PUBLIC CONSUMPTION OR USE OF  
3 MARIJUANA BY AN UNDERAGE PERSON:

4  
5 A. Except as described in Section C of this Section and in Section 6-3I-10, it is unlawful for any  
6 person under twenty-one years of age to possess or openly and publicly consume or use  
7 marijuana or marijuana concentrate. Any person convicted of having violated this Section A  
8 shall be punished by a fine as follows:

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

10  
11 B. Pursuant to Rule 210(b)(5) of the Colorado Municipal Court Rules of Procedure the  
12 Municipal Judge shall specify by suitable schedules the amount of the fines to be imposed for a  
13 First Offense or a Second Offense violation of Section A of this Section.

14  
15 C. The possession, consumption, or use of marijuana by any person under twenty-one years of  
16 age shall not constitute a violation of Section A of this Section if such possession, use, or  
17 consumption is lawful under Article 43.3 of Title 12, C.R.S.

18  
19 D. Prima facie evidence of a violation of Section A of this Section shall consist of:  
20

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

4  
5 (2) evidence that the defendant was under twenty-one years of age and manifested any of the  
6 characteristics commonly associated with marijuana intoxication or impairment while present  
7 anywhere within the Town.

8  
9 E. The procedure described in Section 6-3I-9 shall apply to persons charged with a violation of  
10 Section A of this Section.

11  
12 6-3I-3: UNLAWFUL POSSESSION OF MARIJUANA:

13  
14 A. Except as described in Section 6-3I-10, it is unlawful for any person twenty-one years of age  
15 or older to possess more than one ounce but no more than two ounces of marijuana. Any person  
16 convicted of having violated this Section A shall be punished by a fine as follows:  
17

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

18  
19 B. Pursuant to Rule 210(b)(5) of the Colorado Municipal Court Rules of Procedure the  
20 Municipal Judge shall specify by suitable schedules the amount of the fines to be imposed for a  
21 First Offense or a Second Offense violation of Section A of this Section.

22  
23 C. Except as described in Section 6-3I-10, it is unlawful for any person twenty-one years of age  
24 or older to possess more than two ounces of marijuana but no more than twelve ounces of  
25 marijuana, or not more than three ounces of marijuana concentrate. Any person convicted of  
26 having violated this Section C shall be punished as provided in Section 1-4-1 of this Code.

27  
28 D. The procedure described in Section 6-3I-9 shall apply to persons charged with a violation of  
29 either Section A or Section C of this Section.

30  
31 6-3I-4: OPEN AND PUBLIC CONSUMPTION OR USE OF MARIJUANA:

32  
33 A. Except as described in Section 6-3I-10, it is unlawful for any person twenty-one years of age  
34 or older to openly and publicly consume, or use marijuana or marijuana concentrate. Any person  
35 convicted of having violated this Section A shall be punished by a fine as follows:  
36

Offense No.	Fine Amount
-------------	-------------

First Offense	\$100 or less
Second Offense	\$250 or less
Third Offense	\$500

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 for a  
4 First Offense or a Second Offense violation of Section A of this Section.

5  
6 C. Any person convicted of having committed a fourth violation Section A of this Section, or any  
7 violation of Section A of this Section subsequent to a fourth violation, shall punished, at a  
8 minimum, by a fine of not less than one thousand dollars (\$1,000.00) or, at a maximum, by a fine  
9 of not more than two thousand dollars (\$2,000.00) and by fifteen days in the county jail.

10  
11 D. The procedure described in Section 6-3I-9 shall apply to persons charged with a violation of  
12 Section A of this Section; provided, however, the procedure described in Section 6-3I-9 shall not  
13 apply to a person charged with a fourth violation of Section A of this Section, or any violation of  
14 Section A of this Section subsequent to a fourth violation.

15  
16 6-3I-5: UNLAWFUL TRANSFER OF MARIJUANA TO UNDERAGE PERSON:  
17 It is unlawful for any person who is twenty-one years of age or older to transfer any amount of  
18 marijuana to any person who is less than twenty-one years of age. Any person convicted of  
19 having violated this Section shall be punished as provided in Section 1-4-1 of this Code.

20  
21 6-3I-6: UNLAWFUL TRANSFER OF MARIJUANA TO PERSON TWENTY-ONE YEARS  
22 OF AGE OR OLDER:

23  
24 A. It is unlawful for any person who is twenty-one years of ago or older to transfer more than  
25 one ounce but no more than two ounces of marijuana to any person who is twenty-one years of  
26 age or older for no consideration. Any person convicted of having violated this Section A shall  
27 be punished by a fine as follows:

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

28  
29  
30 B. Pursuant to Rule 210(b)(5) of the Colorado Municipal Court Rules of Procedure the  
31 Municipal Judge shall specify by suitable schedules the amount of the fines to be imposed for a  
32 First Offense or a Second Offense violation of Section A of this Section.

33  
34 C. It is unlawful for any person who is twenty-one years of ago or older to transfer more than

1 two ounces but no more than twelve ounces of marijuana to any person who is twenty-one years  
2 of age or older for no consideration. Any person convicted of having violated this Section B  
3 shall be punished as provided in Section 1-4-1 of this Code.

4  
5 D. The procedure described in Section 6-3I-9 shall apply to persons charged with a violation of  
6 Section A of this Section, but not to a persons charged with a violation of Section C of this  
7 Section.

8  
9 6-3I-7: OPEN CONTAINERS OF MARIJUANA PROHIBITED:

10  
11 A. It is unlawful for any person to possess any marijuana in any open marijuana container, or to  
12 consume marijuana, in the interior of a motor vehicle while the motor vehicle is either parked on  
13 a public street, right of way or alley within the Town, or is being operated on a public street,  
14 right of way or alley within the Town. A person convicted of having violated Section A of this  
15 Section shall be punished by a fine as follows:

16

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

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

21  
22 C. Any peace officer is authorized to seize any marijuana or open marijuana container that is  
23 used in the commission of a violation of Section A of this Section. If no summons or notice is  
24 issued for a violation of Section A, and if the circumstances reasonably permit, the peace officer  
25 may require the person who has committed a violation of Section A to abandon the marijuana to  
26 the officer for destruction.

27  
28 D. The procedure described in Section 6-3I-9 shall apply to persons charged with a violation of  
29 Section A of this Section.

30  
31 6-3I-8: UNLAWFUL ACTS IN A MARIJUANA CONSUMPTION ESTABLISHMENT;  
32 DECLARED PUBLIC NUISANCE:

33  
34 A. It is unlawful for any person to burn, smoke, inhale the vapors of, or otherwise consume  
35 marijuana in any form within a marijuana consumption establishment. Any person convicted of  
36 having violated this Section A shall be punished, at a minimum, by a fine of not less than one

1 hundred dollars (\$100.00) or, at a maximum, by a fine of not more than one hundred dollars  
2 (\$100.00) and by fifteen (15) days in the county jail.

3  
4 B. It is unlawful to own or operate a marijuana consumption business within the Town. Any  
5 person convicted of having violated this Section B shall be punished as provided in Section 1-4-1  
6 of this Code. Each day during any portion of which a violation of this Section B occurs shall be a  
7 separate offense, and shall be punished accordingly.

8  
9 C. Any marijuana consumption business that operates within the Town is a nuisance, and is  
10 subject to abatement as provided in Title 5, Chapter 1 of this Code.

11  
12 6-3I-9: DEFENDANT TO BE ISSUED SUMMONS AND MUST PROMISE TO APPEAR IN  
13 COURT; WHEN; PENALTY ASSESSMENT NOTICE:

14  
15 A. Whenever a person is arrested or detained for a violation of any Section of this Article to  
16 which this Section applies, the arresting or detaining officer shall prepare a written notice or  
17 summons for such person to appear in court. The written notice or summons shall contain the  
18 name and address of such arrested or detained person, the date, time, and place where such  
19 person shall appear, and a place for the signature of such person indicating the person's written  
20 promise to appear on the date and at the time and place indicated on the notice or summons. One  
21 copy of said notice or summons shall be given to the person arrested or detained, one copy shall  
22 be sent to the Municipal Court, and such other copies as may be required by the law enforcement  
23 agency employing the arresting or detaining officer shall be sent to the places designated by such  
24 law enforcement agency. The date specified in the notice or summons to appear shall be at least  
25 seven days after such arrest or detention unless the person arrested or detained demands an  
26 earlier hearing. The place specified in the notice or summons to appear shall be the Municipal  
27 Court. The arrested or detained person, in order to secure release from arrest or detention, shall  
28 promise in writing to appear in the Municipal Court by signing the notice or summons prepared  
29 by the arresting or detaining officer. Any person who does not honor such written promise to  
30 appear commits a misdemeanor municipal offense, and upon conviction shall be punished as  
31 provided in Section 1-4-1 of this Code.

32  
33 B. At the time that any person is arrested for the commission of a violation of Section 6-3I-3  
34 (Unlawful Possession of Marijuana), Section 6-3I-4 (Open and Public Consumption or Use of  
35 Marijuana), (6-3I-6 (Unlawful Transfer of Marijuana to Person Twenty-One Years of Age or  
36 Older), or Section 6-3I-7 (Open Containers of Marijuana Prohibited) the arresting officer may  
37 offer to give a penalty assessment notice to the defendant. Such penalty assessment notice shall  
38 contain all the information required of a summons under the Colorado Municipal Court Rules of  
39 Procedure. The fine or penalty specified by the Municipal Judge in the schedules adopted  
40 pursuant to Rule 210(b)(5) of the Colorado Municipal Court Rules of Procedure for the violation  
41 charged and the surcharge thereon may be paid at the office of the Clerk of the Municipal Court,

1 either in person or by postmarking such payment within twenty days from the date the penalty  
2 assessment notice is served upon the defendant. A defendant who does not furnish satisfactory  
3 evidence of identity or who the officer has reasonable and probable grounds to believe will  
4 disregard the summons portion of such notice may be issued a penalty assessment notice only if  
5 the defendant consents to be taken by the officer to the nearest mailbox and to mail the amount  
6 of the fine or penalty and surcharge thereon to the department. Acceptance of a penalty  
7 assessment notice and payment of the prescribed fine or penalty and any applicable surcharge  
8 thereon to the Clerk of the Municipal Court shall be deemed a complete satisfaction for the  
9 violation, and the defendant shall be given a receipt which so states when such fine or penalty  
10 and surcharge thereon is paid in currency or other form of legal tender. Checks tendered by the  
11 defendant to and accepted by the Clerk of the Municipal Court and on which payment is received  
12 by the Clerk of the Municipal Court shall be deemed sufficient receipt.  
13

14 C. The penalty assessment shall not apply when it appears that the offense is a fourth or any  
15 subsequent alleged violation of any of the Sections described in Section A of this Section.  
16

17 D. In no case may an officer issue a penalty assessment notice for a violation of any offense  
18 described in Section B of this Section to a minor under the age of eighteen years. All charges  
19 against minors shall be processed in accordance with Section A of this Section.  
20

21 E. If the defendant refuses to accept service of the penalty assessment notice when such notice is  
22 tendered, the peace officer shall proceed in accordance with Section A of this Section.  
23

24 F. Should the defendant accept service of the penalty assessment notice but fail to post the  
25 prescribed penalty and surcharge thereon within twenty days thereafter, the notice shall be  
26 construed to be a summons and complaint, and the case shall thereafter be heard in the Municipal  
27 Court. The maximum penalty that may be imposed shall not exceed the penalty set forth in the  
28 applicable penalty assessment notice and any applicable surcharge.  
29

30 6-3I-10: IMMUNITY FOR PERSONS WHO SUFFER OR REPORT AN EMERGENCY  
31 DRUG OVERDOSE EVENT:  
32

33 A. A person shall be immune from prosecution for an offense described in Section C of this  
34 Section if:  
35

36 (1) The person reports in good faith an emergency drug overdose event to a law enforcement  
37 officer, to the 911 system, or to a medical provider;  
38

39 (2) The person remains at the scene of the event until a law enforcement officer or an emergency  
40 medical responder arrives, or the person remains at the facilities of the medical provider until a  
41 law enforcement officer arrives;

1  
2 (3) The person identifies himself or herself to, and cooperates with, the law enforcement officer,  
3 emergency medical responder, or medical provider; and  
4

5 (4) The offense arises from the same course of events from which the emergency drug overdose  
6 event arose.  
7

8 B. The immunity described in Section A of this Section also extends to the person who suffered  
9 the emergency drug overdose event if all of the conditions of Section A are satisfied.  
10

11 C. The immunity described in Section A of this Section shall apply to any offense described in  
12 this Article.  
13

14 D. Nothing in this Section shall be interpreted to prohibit the prosecution of a person for an  
15 offense other than an offense listed in Section C of this Section or to limit the ability of the Town  
16 Attorney, municipal prosecutor, or a law enforcement officer to obtain or use evidence obtained  
17 from a report, recording, or any other statement provided pursuant to Section A of this Section to  
18 investigate and prosecute an offense other than an offense listed in Section C of this Section.  
19

20 6-3I-11: EVIDENCE AT TRIAL: If determined by the Municipal Judge to be relevant to the  
21 charge brought against the defendant, during any trial for a violation of any Section of this  
22 Article:  
23

24 A. Any container with labeling indicating the contents of the container is admissible into  
25 evidence, and the information contained on any label on the container is admissible into evidence  
26 and is not hearsay. The Municipal Judge may consider the information upon the label in  
27 determining whether the contents of the container were composed in whole or in part of  
28 marijuana or marijuana concentrate.  
29

30 B. The qualitative result of a drug test or tests performed by or on behalf of a law enforcement  
31 agency with relevant jurisdiction shall be admissible at the trial of any person charged with a  
32 violation of this Section upon a showing that the device or devices used to conduct such test or  
33 tests have been approved as accurate in detecting drugs by the executive director of the Colorado  
34 Department of Public Health and Environment.  
35

36 C. The Municipal Court shall take judicial notice of methods of testing a person's blood or urine  
37 for the presence of marijuana and of the design and operation of devices certified by the  
38 Colorado Department of Public Health and Environment for testing a person's blood or urine for  
39 the presence of marijuana. This Section does not prevent the necessity of establishing during a  
40 trial that the testing devices were working properly and that such testing devices were properly



1 operated. Nothing in this Section precludes a defendant from offering evidence concerning the  
2 accuracy of testing devices.  
3

4 6-3I-12: CONSTITUTIONAL PROVISIONS: The provisions of this Article do not apply to: (i)  
5 a person twenty-one years of age or older acting in conformance with Section 16 of Article  
6 XVIII of the state constitution; and (ii) a person acting in conformance with Section 14 of Article  
7 XVIII of the state constitution.  
8

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

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

15 Section 17. The Town Council hereby finds, determines and declares that it has the  
16 power to adopt this ordinance pursuant to: (i) Section 16 of Article XVIII of the Colorado  
17 Constitution; (ii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iii) Section  
18 31-15-401, C.R.S.(concerning municipal police powers); (iv) the authority granted to home rule  
19 municipalities by Article XX of the Colorado Constitution; and (v) the powers contained in the  
20 Breckenridge Town Charter.

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

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  
27 Town.  
28

29 TOWN OF BRECKENRIDGE, a Colorado  
30 municipal corporation  
31

32  
33  
34 By \_\_\_\_\_  
35 John G. Warner, Mayor  
36  
37

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ATTEST:

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

900-174\Omnibus Amendment 64 Regulation Ordinance \_8 (10-02-13)(Second Reading)

OMNIBUS AMENDMENT 64 REGULATION ORDINANCE

**MEMO**

TO: Town Council  
FROM: Town Attorney  
RE: Council Bill No. 40 (Residential Marijuana Ordinance)  
DATE: October 1, 2013 (for October 8<sup>th</sup> meeting)

---

The second reading of the ordinance revising the Town's rules for the growing of marijuana in a residential setting is scheduled for your meeting on October 8<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/FIRST READING – OCT. 8*

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

4  
5                    COUNCIL BILL NO. 40

6  
7                    Series 2013

8  
9                    AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 13 OF  
10                    TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE RESIDENTIAL  
11                    GROWING OF MARIJUANA

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

15  
16                    Section 1. Chapter 13 of Title 9 of the Breckenridge Town Code is repealed and readopted  
17                    with changes so as to read in its entirety as follows:

18  
19                    CHAPTER 13

20  
21                    RESIDENTIAL GROWING OF MARIJUANA

22  
23                    SECTION:

- 24  
25                    9-13-1: SHORT TITLE  
26                    9-13-2: FINDINGS  
27                    9-13-3: PURPOSE  
28                    9-13-4: AUTHORITY  
29                    9-13-5: DEFINITIONS  
30                    9-13-6: REGULATIONS FOR THE GROWING OF MARIJUANA IN A  
31                    RESIDENTIAL STRUCTURE  
32                    9-13-7: INSPECTION; INSPECTION WARRANT  
33                    9-13-8: APPLICABILITY OF NUISANCE ORDINANCE  
34                    9-13-9: CONDITION PRECEDENT TO CHALLENGE

35  
36                    9-13-1: SHORT TITLE: This Chapter is to be known and may be cited as the “2013 Town Of  
37                    Breckenridge Residential Marijuana Ordinance.”

38  
39                    9-13-2: FINDINGS: The Town Council adopts this Chapter based upon the following findings  
40                    of fact:

- 41  
42                    A.            On November 7, 2000 the voters of the State of Colorado approved Amendment 20.  
43                    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 Section 14 of Article XVIII of the Colorado  
5 Constitution.

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

10 C. On November 6, 2012 the voters of the State of Colorado approved Amendment 64.  
11 Amendment 64 added Section 16 of Article XVIII to the Colorado Constitution.

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

19 E. The growing or processing of marijuana plants in a residential setting can affect the  
20 health, safety, and welfare of both the occupants of the residential structure within  
21 which the marijuana is grown, and persons occupying nearby structures.

22 F. The Town’s experience is that the unregulated residential growing or processing of  
23 marijuana results in a significant number of instances of non-compliance with the  
24 Town’s building and other technical codes. In addition to other potentially serious  
25 problems, non-compliance with the Town’s building and other technical codes has  
26 the potential to result in a fire emanating from the residential structure within which  
27 the marijuana is grown or processed. Such a fire would affect the health, safety,  
28 and welfare of both the occupants of the residential structure within which the  
29 marijuana is grown or processed, and persons occupying nearby structures.

30 G. Nothing in Section 14 or Section 16 of Article XVIII of the Colorado Constitution,  
31 or any other applicable law, immunizes persons who grow or process marijuana in  
32 a residential setting from local regulation.

33 H. The Town is a home rule municipal corporation organized and existing under its  
34 Charter and Article XX, Section 6 of the Colorado Constitution. As such, the Town  
35 possesses all powers granted to home rule municipalities by Colorado law.

36 I. This Chapter is necessary and proper to provide for the safety, preserve the health,  
37 promote the prosperity, and improve the order, comfort, and convenience of the

RESIDENTIAL MARIJUANA ORDINANCE

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

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

7  
8 9-13-4: AUTHORITY: The Town Council finds, determines, and declares that it has the power to  
9 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. The Local Government Land Use Control Enabling Act, Article 20 of Title 29,  
14 C.R.S.;
- 15 D. Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- 16 E. Section 31-15-103, C.R.S. (concerning municipal police powers);
- 17 F. Section 31-15-401, C.R.S. (concerning municipal police powers, including, but not  
18 limited to, the power to declare what is a nuisance and to abate the same);
- 19 G. The authority granted to home rule municipalities by Article XX, Section 6 of the  
20 Colorado Constitution; and
- 21 H. The powers contained in the Breckenridge Town Charter.

22 9-13-5: DEFINITIONS:

- 23  
24 A. The definitions contained in Sections 14 and 16 of Article XVIII of the Colorado  
25 Constitution are incorporated into this Chapter by reference.
- 26 B. As used in this Chapter the following words have the following meanings, unless  
27 the context clearly requires otherwise:

ENCLOSED AND LOCKED SPACE: Means the area within the residential structure where  
marijuana is cultivated pursuant to 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.

## RESIDENTIAL MARIJUANA ORDINANCE

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 the Police Chief's designee.
PUBLICLY:	Means that the area within the residential structure where the residential marijuana is grown is open to general access without restriction.
RESIDENTIAL STRUCTURE:	Means a structure devoted to a residential use.
RESIDENTIAL USE:	Has the meaning provided in Section 9-1-5 of this Code.
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.

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

RESIDENTIAL MARIJUANA ORDINANCE

- 1 A. The possession, growing, and transportation of marijuana plants within a  
2 residential structure shall be done in full compliance with all applicable provisions  
3 of Section 14 and Section 16 of Article XVIII of the Colorado Constitution.
- 4 B. Marijuana may be possessed, grown, or processed within a residential structure  
5 only by a person twenty-one years of age or older.
- 6 C. One person twenty-one years of age or older may not possess, grow, process, or  
7 transport more than six marijuana plants within a residential structure at any one  
8 time. Not more than three of the plants may be mature flowering plants.
- 9 D. The owner of the marijuana plants described in Section C may lawfully possess the  
10 marijuana produced by the six marijuana plants described in Section C on the  
11 premises where the plants were grown.
- 12 E. None of the marijuana plants or the marijuana described in Section C or D may be  
13 sold or offered for sale.
- 14 F. Marijuana may not be grown openly or publicly, or in any area that is located  
15 outside of the exterior walls of a residential structure.
- 16 G. If a person under twenty-one years of age lives at the residential structure, the  
17 cultivation area for the marijuana plants must be enclosed and locked.
- 18 H. If no person under twenty-one years of age lives at the residential structure, the  
19 external locks of the residential structure constitute an enclosed and locked space  
20 but if a person under twenty-one years of age enters the residential structure, the  
21 person must ensure that access to the marijuana cultivation site is reasonably  
22 restricted for the duration of that person's presence in the residential structure.
- 23 I. The possession, growing, processing, or transportation of marijuana plants shall be  
24 limited to the following areas within a residential structure:
- 25 1. Within a detached single-family residential unit, marijuana may be grown,  
26 cultivated, or processed only within a defined and contiguous 150 square  
27 foot area;
- 28 2. Within any residential structure other than a detached single-family  
29 residential unit, marijuana may be grown, cultivated, or processed only  
30 within a defined and contiguous 100 square feet area;
- 31 3. Marijuana shall not be possessed, grown, processed, or transported within  
32 the common area of any real property that is devoted to a residential use;  
33 and

## RESIDENTIAL MARIJUANA ORDINANCE



- 1                   4.     Not more than twelve marijuana plants may be growing within a residential  
2                             structure at any one time, regardless of the number of persons twenty-one  
3                             years of age or older who then occupy the residential structure.
- 4           J.     The growing, cultivation, and processing of marijuana shall not be perceptible  
5                     from the exterior of the residential structure where the plants are grown, including,  
6                     but not limited to:
- 7                   1.     Common visual observation;
- 8                   2.     Light pollution, glare, or brightness that disturbs the repose of another;
- 9                   3.     Undue vehicular or foot traffic, including unusually heavy parking in front  
10                            of the residential structure; and
- 11                  4.     Noise from an exhaust fan in excess of the maximum permissible noise  
12                            level described in Section 5-8-5 of this Code.
- 13           K.     The smell or odor of marijuana growing within a residential structure shall not be  
14                     capable of being detected by a person with a normal sense of smell from any  
15                     adjoining lot, parcel, or tract of land not owned by the owner of the residential  
16                     structure, or from any adjoining public right of way.
- 17           L.     The space within the residential structure where marijuana is grown, cultivated, or  
18                     processed shall meet all applicable requirements of the Town's building and  
19                     technical codes adopted in Chapter 1 of Title 8 of this Code.
- 20           M.     If a person grows, cultivates, or processes marijuana within a residential structure  
21                     that he or she does not own, he or she shall obtain the written consent of the  
22                     property owner before commencing to grow, cultivate or process marijuana on the  
23                     property.
- 24           N.     No chemical shall be used to enhance or extract THC from marijuana that is grown  
25                     in a residential structure.
- 26           O.     Compressed, flammable gas shall not be used in a residential structure as a solvent  
27                     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                     marijuana is being grown, cultivated, or processed during reasonable hours for the  
33                     purpose of conducting a physical inspection of the premises to determine if the  
34                     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

RESIDENTIAL MARIJUANA ORDINANCE

1 without either the permission of the landowner or occupant, or without an  
2 inspection warrant issued pursuant to this section.

3 B. If verbal permission to inspect the residential structure from the affected landowner  
4 or occupant is not obtained, or if the residential structure is locked and the Police  
5 Chief has been unable to obtain permission of the landowners or occupant, the  
6 Police Chief may request that an inspection warrant be issued by the municipal  
7 court judge pursuant to Rule 241 of the Colorado Municipal Court Rules of  
8 Procedure.

9 C. In case of an emergency involving imminent danger to public health, safety, or  
10 welfare, the Police Chief may enter any residential structure within the Town to  
11 conduct an emergency inspection for the growing, cultivation, or processing of  
12 marijuana without a warrant and without complying with the requirements of  
13 section.

14 D. The Town Council declares that this Chapter is an ordinance involving a serious  
15 threat to the public safety or order within the meaning of Rule 241(a)(1) of the  
16 Colorado Municipal Court Rules of Procedure.

17 E. The municipal court judge may issue an inspection warrant authorizing the  
18 inspection of a residential structure for the growing, cultivation, or processing of  
19 marijuana in accordance with Rule 241(b) of the Colorado Municipal Court Rules  
20 of Procedure. Any inspection warrant issued pursuant to this section shall fully  
21 comply with the applicable provisions of Rule 241 of the Colorado Municipal  
22 Court Rules of Procedure.

23 F. The municipal judge may impose such conditions on an inspection warrant as may  
24 be necessary in the judge's opinion to protect the private property rights of the  
25 landowner of the property to be inspected, or to otherwise make the warrant comply  
26 with applicable law.

27 G. It shall be unlawful and a misdemeanor offense for any landowner or occupant to  
28 deny the Police Chief or other authorized person access to the property owned or  
29 occupied by such landowner or occupant if the Police Chief or other authorized  
30 person presents an inspection warrant issued pursuant to this Section.

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

37  
38 9-13-9: CONDITION PRECEDENT TO CHALLENGE: It is a condition precedent to any legal  
39 challenge to any portion of this chapter, or the application of any portion of this chapter to any

RESIDENTIAL MARIJUANA ORDINANCE

1 specific property, that the person initiating such challenge shall have first given the Town written  
2 notice of intent to bring such challenge not less than ninety days before filing any legal proceeding.  
3 Such notice shall be sent to the Town Council of the Town of Breckenridge by certified mail,  
4 return receipt requested, at P.O. Box 168, Breckenridge, Colorado 80424, and shall set forth: (i)  
5 the name and address of the claimant and the claimant's attorney, if any; and (ii) a concise  
6 statement of the factual and legal basis for the claimant's challenge to the this chapter, or the  
7 application of this chapter to the claimant's property. To the extent that the provisions of this  
8 section conflict with the notification requirements of section 24-10-109, C.R.S., or any other  
9 applicable law, the provisions of such statute or other applicable law shall control.

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

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

22  
23 Section 4. This ordinance shall be published and become effective as provided by Section  
24 5.9 of the Breckenridge Town Charter.

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

30  
31 TOWN OF BRECKENRIDGE, a Colorado  
32 municipal corporation

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

38  
39 ATTEST:

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

RESIDENTIAL MARIJUANA ORDINANCE

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900-174\Residential Marijuana Ordinance\_2 (10-01-13)(Second Reading)

RESIDENTIAL MARIJUANA ORDINANCE

**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Resolution Approving “Disposable Bag Outreach Plan”

DATE: October 1, 2013 (for October 8<sup>th</sup> meeting)

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The Town’s Disposable Bag Fee Ordinance was adopted by the Council on April 9, 2013. The ordinance provides that it is to become effective date on October 1, 2013:

provided, however, that the Disposable Bag Public Outreach Plan has been approved by the Town Council and implemented not later than October 1, 2013. If the Disposable Bag Public Outreach Plan has not been approved and implemented prior to October 1, 2013, then the collection of the Disposable Bag Fee and required store signage provisions of this ordinance shall not take effect until the Town Manager certifies that (the) Disposable Bag Public Outreach Plan has been approved and implemented by the Town.

Although the Town Council reviewed a proposed Disposable Bag Public Outreach Plan at its retreat on May 17, 2013, it appears that the Council never formally approved the Plan. In addition, the Plan has not yet been fully implemented. As a result, the disposable bag fee and required store signage provisions of the Disposable Bag Fee Ordinance did not go into effect on October 1<sup>st</sup>.

Enclosed is the proposed final form of the Disposable Bag Public Outreach Plan, together with a proposed resolution approving the Plan. If the resolution is adopted, the Town Manager will take the required action to certify the effective date of the disposable bag fee and required store signage provisions of the Disposable Bag Fee Ordinance to be October 15, 2013.

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

1 ***FOR WORKSESSION/ADOPTION – OCT. 8***

2  
3 A RESOLUTION

4  
5 SERIES 2013

6  
7 A RESOLUTION APPROVING THE TOWN OF BRECKENRIDGE “DISPOSABLE BAG  
8 PUBLIC OUTREACH PLAN”

9  
10 WHEREAS, the Town Council adopted Ordinance No. 6, Series 2013 on April 9, 2013;  
11 and

12  
13 WHEREAS, Ordinance No. 6, Series 2013 is entitled “An Ordinance Adopting Chapter  
14 12 Of Title 5 Of The Breckenridge Town Code; Establishing A “Disposable Bag Fee”; Providing  
15 For The Payment And Collection Of Such Fee; And Providing Other Details Related To The  
16 Disposable Bag Fee”; and

17  
18 WHEREAS, Section 5 of Ordinance No. 6, Series 2013 provides as follows:

19  
20 Section 5. This ordinance shall be published and become effective October 1,  
21 2013; provided, however, that the Disposable Bag Public Outreach Plan has been  
22 approved by the Town Council and implemented not later than October 1, 2013.  
23 If the Disposable Bag Public Outreach Plan has not been approved and  
24 implemented prior to October 1, 2013, then the collection of the Disposable Bag  
25 Fee and required store signage provisions of this ordinance shall not take effect  
26 until the Town Manager certifies that (the) Disposable Bag Public Outreach Plan  
27 has been approved and implemented by the Town.

28  
29 ; and

30  
31 WHEREAS, the Town’s “Disposable Bag Public Outreach Plan” referenced in Section 5  
32 of Ordinance No. 6, Series 2013 was reviewed and informally approved by the Town Council at  
33 its May 7, 2013 Town Council Retreat; and

34  
35 WHEREAS, it is necessary for the Town Council to formally approve the Town’s  
36 “Disposable Bag Public Outreach Plan” so that the Town’s collection of the Disposable Bag Fee  
37 and the required store signage provisions of Ordinance No. 6, Series 2013 will become effective;  
38 and

39  
40 WHEREAS, the Town Council has received and reviewed the document entitled  
41 “Reducing Disposable Bags – Town of Breckenridge Disposable Bag Public Outreach Plan  
42 October 2013,” a copy of which is marked Exhibit “A”, attached hereto, and incorporated herein  
43 by reference; and

44  
45 WHEREAS, Exhibit “A” is the “Disposable Bag Public Outreach Plan” referenced and  
46 required by Section 5 of Ordinance No. 6, Series 2013; and

1  
2 WHEREAS, the Town Council finds and determines that the document entitled  
3 “Reducing Disposable Bags – Town of Breckenridge Disposable Bag Public Outreach Plan  
4 October 2013” (Exhibit “A” to this resolution) should be approved by the Town Council and  
5 implemented by the Town.  
6

7 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF  
8 BRECKENRIDGE, COLORADO, as follows:  
9

10 Section 1. The document entitled “Reducing Disposable Bags – Town of Breckenridge  
11 Disposable Bag Public Outreach Plan October 2013” (Exhibit “A” to this resolution) is  
12 approved.  
13

14 Section 2. The Town Manager is directed, and all other appropriate officers and  
15 employees of the Town are authorized, to forthwith take such action as may be required to fully  
16 implement the approved Disposable Bag Public Outreach Plan.  
17

18 Section 3. The date of the implementation of the approved Disposable Bag Public  
19 Outreach Plan required by Section 5 of Ordinance No. 6, Series 2013 is the date of the adoption  
20 of this resolution.  
21

22 Section 4. The Town Manager may, by appropriate certification, establish the effective  
23 date for the Town’s collection of the Disposable Bag Fee and the required store signage  
24 provisions of Ordinance No. 6, Series 2013.  
25

26 Section 5. All action previously taken by the officers and employees of the Town with  
27 respect to the approved Disposable Bag Public Outreach Plan is ratified, confirmed, and  
28 approved.  
29

30 Section 6. This resolution is effective upon adoption.  
31

32 RESOLUTION APPROVED AND ADOPTED this 8<sup>th</sup> day of October 2013.  
33

34 TOWN OF BRECKENRIDGE  
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38 By \_\_\_\_\_  
39 John G. Warner, Mayor  
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ATTEST:

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

APPROVED IN FORM

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



# REDUCING DISPOSABLE BAGS

## TOWN OF BRECKENRIDGE DISPOSABLE BAG PUBLIC OUTREACH PLAN October 2013

Situation Analysis: After 3+ years of researching, evaluating and discussing ways to reduce single-use bags, the Breckenridge Town Council passed the Disposable Bag Fee Ordinance on April 9, 2013, with implementation on October 1. To facilitate the success of this bag fee to locals and visitors alike (and to further the goals of the SustainableBreck Action Plan), the Council directed staff to put into action a Public Outreach/Communications Plan. One of the elements is the creation and distribution of an inaugural, signature ‘Breck Bag’. Another element is educating the locals and business owners of the bag fee, and the third aspect is educating our guests – before and during their visit.

### Desired Outcomes/Goals

- REDUCE disposable bags in our community
- Provide consistent messaging and information on why this is being implemented
- Provide training on how it will work

### Target Audiences

- Guests
- Residents – Full and Part-time
- Lodging/Property management company owners, managers & employees
- Retail business owners, managers & employees
- Restaurant owners, managers & employees
- Service businesses (incl. Welcome Center) owners, managers & employees
- Breckenridge schools
- Media

### Objectives/Strategies (All dates are in 2013)

- By July, design the iconic ‘Breck Bag’
- By mid-Oct., distribute ‘Breck Bag’
- By mid-Oct., develop a Tool Kit for businesses in collaboration with Breckenridge Resort Chamber
- By Oct., develop Marketing Plan (print, video, radio, social media, public relations, etc.)
- By early Sept., develop Training Plan
- On Oct. 15 – implementation of the Breckenridge Bag Fee

### Key Messages

#### ❖ Breck Bag:

- Breckenridge Branding: two main panels – ‘community’ logo (one developed for USAPCC Breck Stages), strong visual representation of Breck community; two side panels – call to action, why are we doing this (see Public Outreach below), SustainableBreck logo & web address, GoBreck.com logo/web address (NOTE: this has been requested by various members of the business community as the desired ‘call to action’ website for tourism).

- ❖ Public Outreach: *consistent with “Breck Bag” message*
  - Changing the World, One Bag at a Time / Choose to Reuse

#### Key Tactics

- video featurette (2 mins.) and ad (:30) – *produced by Town of Breckenridge, Breckenridge Resort Chamber & SCTV-10* – to be used on TV-8, TV-10, VisitorChannel, YouTube, at the Town’s Welcome Center; on various websites (Town of Breckenridge, Breckenridge Resort Chamber, High Country Conservation Center); provided to Lodging/Property Management Companies for their websites, and email confirmations
- print advertising
- radio advertising
- ‘Breck Bag Monster mascot’ for various presentations & events
- ‘Breck Bag’ giveaways & promotions
- Presentations to various groups (GM Roundtable, Breckenridge Resort Chamber Annual meeting, Restaurant Association, Lodging Association, etc.)
- Info table at various events (Green Team’s Bike Valet at Town Party)
- PR pitches by Town of Breckenridge and Breckenridge Resort Chamber on Sustainable efforts
- Info/ad in the InRoom Directories
- Consistent messaging and appropriate signage provided with lodging front desks, concierges, and on shuttles
- Consistent messaging and signage for all Retail stores
- Messaging on Restaurant menus and in Breckenridge Dining Guide
- Mayor Proclamation of Oct. 15, 2013 as “Breckenridge Bag Free Day”

## Memorandum

**TO:** TOWN COUNCIL  
**FROM:** Dale Stein, Assistant Town Engineer  
**DATE:** October 2, 2013  
**RE:** Public Projects Update

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### Andorra Alley Realignment Project

The work to realign the alley at French Street will continue through mid-October as scheduled. The Contractor has removed the old alley alignment and has placed new concrete pans redefining the new approach to French Street. Weather permitting the alley realignment will be paved with new asphalt during the week of October 7<sup>th</sup>, followed by the reconstruction of the Andorra Condos dumpster building and final landscape clean-up.

### Breckenridge Nordic Center

The new parking lot for the Nordic Center is scheduled to be paved on October 5<sup>th</sup> with the first installation of landscaping, focusing on buffering the parking lot, in the following weeks. The Dayton's plan to have the new lodge ready for occupancy in late February. Final grading and landscaping will happen next year, once the old lodge is decommissioned and moved from the property.

### Arts District

With the recent good weather, we have finally begun pouring foundations for both the Mikolitis barn and the Robert Whyte house. Work also continues on underground utility installation. Throughout the month of October we will be excavating and pouring foundations for the remaining structures.

### Old Masonic Hall

The programming and structural assessment for the Old Masonic Hall is nearly completed. Staff will present the initial cost estimate and programming options to Council at the October 22<sup>nd</sup> work session.

### Breckenridge Grand Vacation Community Center

Work on the rehabilitation of the historic school building on Harris Street, now known as the "Breckenridge Grand Vacation Community Center", continues this week and next with the demolition of the existing interior partition walls and demolition and shoring of the mechanical rooms on the south side of the building. Work will also begin the week of October 7<sup>th</sup> on the installation of the new water and sewer services for the building. This work will include ties to existing utility mains in Lincoln Avenue requiring flagging operations. This work should not impact traffic flows. The Contractor is available at Noon, Friday October 11<sup>th</sup> to provide a progress tour of the building to Council.

## Asphalt Surfacing Update

On July 2<sup>nd</sup> Council attended a tour of the Town's streets and their condition. In addition, Council was provided the 2012 Streets Evaluation Criteria and Data (see attached). At that time members of council requested information on the cost associated with improving road conditions to certain ratings. Since that time, staff has completed the 2013 Streets evaluation.

A summary of the 2013 evaluation is provided below:

Surface Rating	Sq Ft. of roadway surface	% of total Town roadway surface area	Cumulative cost to restore roads to a 10 rating *
1-Failed	0	0%	0
2-Very Poor	12,990	0.04%	\$22,733
3-Poor	0	0%	\$22,733
4-Fair	29,843	0.7%	\$74,958
5-Fair	119,807	2.5%	\$284,620
6-Good	261,866	7.2%	\$742,886
7-Good	1,873,766	30.4%	\$4,021,977
8-Very Good	4,000,720	43.5%	\$11,023,237
9-Excellent	945,593	12.7%	\$12,678,025
10-Excellent	132,530	2.5%	\$12,678,025

The average Town road is rated a 7.7 or in Good/Very Good condition. Approximately 10% of the Town's roads scored below the good value.

\*Cost is cumulative, and is based on historic data of an average \$1.75 cost per square foot for a 2" overlay (including associated items such as minor patching and traffic control).

## Streets Evaluation Manual –Surface Rating

Surface Rating	Visible Distress	General Condition/ Treatment Measures
<b>10</b> Excellent	None.	New construction.
<b>9</b> Excellent	None.	Recent overlay. Like New.
<b>8</b> Very Good	No longitudinal cracks except reflection of paving joints. Occasional transverse cracks, widely spaced (40' or greater). All cracks sealed or tight (open less than ¼").	Recent sealcoat or new cold mix. Little or no maintenance required.
<b>7</b> Good	Very slight or no raveling, surface shows some traffic wear. Longitudinal cracks (open ¼") due to reflection or paving joints. Transverse cracks (open ¼") spaced 10 feet or more apart. No patching or very few patches in excellent condition.	First signs of aging. Maintain with routine crack filling.
<b>6</b> Good	Slight raveling (loss of lines) and traffic wear. Longitudinal cracks (open ¼" – ½") due to reflection or paving joints. Transverse cracking (open ¼" – ½") some spaced less than 10 feet. Slight to moderate flushing or polishing. Occasional patching in good condition.	Shows signs of aging, sound structural condition. Could extend life with sealcoat.
<b>5</b> Fair	Moderate to severe raveling (loss of lines and course aggregate). Longitudinal cracks (open ½") show some slight raveling and secondary cracks. First signs of longitudinal cracks near wheel path or edge. Transverse cracking and first signs of block cracking. Slight crack raveling (open ½"). Extensive to severe flushing or polishing. Some patching or edge wedging in good condition.	Surface aging. Sound structural condition. Needs sealcoat or thin non-structural overlay (less than 2")
<b>4</b> Fair	Severe surface raveling. Multiple longitudinal and transverse cracking with slight raveling. Block cracking (over 25 – 50% of surface). Patching in fair condition. Slight rutting or distortions (1" deep or less).	Significant aging and first signs of need for strengthening. Would benefit from recycling or overlay.
<b>3</b> Poor	Closely spaced longitudinal and transverse cracks often showing raveling and crack erosion. Block cracking over 50% of surface. Some alligator cracking (less than 25% of surface). Patches in fair to poor condition. Moderate rutting or distortion (1" or 2" deep). Occasional potholes.	Need patching and major overlay or complete recycling.
<b>2</b> Very Poor	Alligator cracking (over 25% of surface). Severe distortions (over 2" deep). Extensive patching in poor condition. Potholes.	Severe deterioration. Need reconstruction with extensive base repair.
<b>1</b> Failed	Severe distress with extensive loss of surface integrity.	Failed. Needs total reconstruction.

**MEMO**

**TO:** Mayor & Town Council  
**FROM:** Tim Gagen, Town Manager  
**DATE:** October 3, 2013  
**SUBJECT:** Committee Reports for 10-8-2013 Council Packet

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**Summit Stage Advisory Board Meeting** **September 18, 2013** **James Phelps**

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Old Business – The advisory board was informed that a decision to not contract out the Summit Stage operations had been made. This decision was determined after review of (3) proposals. Kent Wills – Chair put forward a memo requesting an Amendment to the Governing Resolution for Board representation. The memo formalizes an action that the BOCC has previously agreed to. As result the Board will have 12 members (previously 11). The proposed 2014 budget is currently \$70K positive. A question for consideration was made to look at raising sales tax in future for increasing budgets.

New Business – The Advisory Board extended the letter of interest period for new advisory board membership. The results of which will be discussed at the next Oct. meeting. Summit Stage will be soliciting requests for proposals for bus advertising (interior and exterior). Bus advertising has been discussed by the board as an additional revenue stream for the stage. Exact net revenues are still being determined based on available panel areas on 27 Summit Stage buses.

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**CMC Advisory Committee Meeting** **September 12, 2013** **Tim Gagen**

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In Attendance: Dave Askeland, Patty Theobald, Paul Chodkowski, Lee Zimmerman, Julie McCluskie, Kristy Johnson, Brian Taylor, Karn Stiegelmeier, Terry King, Bob Taylor, Bill Efting, Dan Gibbs, Tamara Drangstveit, Tim Gagen, Marilyn Hogan, Heidi Pace, Heidi Kunzek

Early Childhood Ballot Initiative (Kristy Johnson)- Kristy shared a story of a child who through early childhood intervention and education was able to learn to manage his anger and behavior and garner confidence. The bills emphasize the importance of prevention and promoting school success for our community.

Campus Updates-

- Enrollment Trends- the National trend shows that there are less students coming out of High School.
- Presidential Search update- the search has been narrowed down to 5 candidates. All candidates they have been through an interview process. Open forums were on September 11<sup>th</sup>.
  - Bob Taylor- Saturday will be an information gathering day. The Colorado Community College BOT is performing a background check for all the finalists. The trustees will meet on Monday to discuss the outcomes of the information that has been gathered.
    - Question -Karn- how are you gathering input from the community?
    - Answer-Dave- We can send you a link so you can provide your feedback. If you would like more information we can send you a packet as well as the link to the videos of the candidates open forum.
- Board of Trustee Updates (Bob Taylor)-
  - We are on the tail end of the Strategic Planning process which is a tough time to bring in a new president the candidates were on board with the responsibility of implementing the Strategic Plan and aligning strategies with action steps.
  - September 20<sup>th</sup> is the Strategic Planning Symposium in Edwards
- Dave introduced Julie McCluskie who replaced Phyllis Martinez as our Regional Development Officer.
  - Julie handed out invitations to the Donor Wall Unveiling and Outdoor Classroom Dedication on Friday, September 27<sup>th</sup> at 4:00pm
- New Student Initiatives (Dave)-
  - Internship program-Dave shared a student success story. A student who was having a hard time fitting in and finding his niche. He signed up for the internship program at CMC and was paired with a community partner that turned out to be a perfect match. The Internship developed into a job and the student was so excited that he came in to have his picture taken with Robert Cartelli his professor and his first paycheck.
  - Summer Institute of Technology was a great success for our second year. We continue to plan for next year's camp.
- WEMS (Brian Taylor)-Wilderness Emergency Medical Services is a 15 credit program that offers a rescue component which helps with getting jobs. WEMT Wilderness EMT includes many classes such as outdoor leadership, orienteering, wilderness survival, swift water rescue, high angel rescue, alpine rescue etc. EMT is a 12 credit class and the most difficult course we offer. There are many certificates that can be obtained to add to a student's portfolio which helps students with marketability.
  - Dan- It seems that this would be a great beginning to a BA in outdoor studies

- Dave- We are open to opportunities for growth. We do have limitation such as places for students to work their clinical rotations, Instructors to teach, and programs we can offer. We need to make sure we are not competing with other campuses. We have made contact with a group from South Africa who wants to partner with CMC and we are looking into the logistics of this possibility.
- Mentoring Program (Dave)-
  - Student mentoring- We had two community member who came to us who wanted to offer support to a student as a mentor. From this initial meeting the mentorship has taken shape. We are working with the school district to target the pre-collegiate students who would be first generation college students. We have 11 mentors and 9 students who are being mentored. If you are interested in this program please contact Debbie Devine ddevine@coloradomtn.edu
    - Dan- Mentorship would be a great model for the whole CMC System
    - Patty-scholarships help many of the first generation students. The foundation is also developing small scholarships to help specifically with purchasing books.
  - Faculty peer mentoring- We are also creating a mentorship program for instructors. Current faculty members are mentoring new faculty members. We have 12 new faces each with a mentor this semester.
- New Summit Initiatives (Dave)-
  - We hosted the Collective Biofuels conference August 16-18<sup>th</sup> it was a great success especially for our community partner Summit Greasecycling. Many new connections and plans were developed from the conference.
  - We've been talking with HC3 Garden Network and we are considering building a community greenhouse.
  - Nursing program-looking at offering a BA in nursing we just hires a faculty member Liz Kruger who has over 20 years' experience. She is also going to help with accreditation approval process to offer the BA program.
- Questions
  - Patty-give us a brief overview of how CMC is implementing the Asset Bill (in state tuition for undocumented students).
    - Bob- CMC is looking at offering in-district tuition for undocumented students. In-district tuition is \$56/credit hour as compared to \$95/credit hour for in-state tuition.
    - Dave-it is part of our mission to serve the community and offering in-district tuition is in line with our CMC values.
  - Dan-Assessed valuation is down what does that mean for the budget at CMC?
    - Dave- The College as a whole pools the money. We are down about 15% as a college however, the costs have been absorbed through reserves and our budget has stayed flat. The college was still able to give raises and absorb health insurance costs.
    - Bob-CMC has been fortunate and has a large reserve. 25% of revenues have been reserved. We have a successful foundation and we are not as dependent as other colleges on state funding. We are 8% dependent on State funding instead of 60%.

The next meeting of this Committee is January 16, 2014.

<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	Included
Police Advisory Committee	Chief Haynes	No Meeting/Report
Housing/Childcare Committee	Laurie Best	Verbal Report
CMC Advisory Committee	Tim Gagen	Included

*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.*



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MEMORANDUM

To: Town Council  
From: Peter Grosshuesch, Director of Community Development  
Subject: F-Lot Hotel Fiscal Impact Analysis  
Date: 10/1/13

Attached is the follow up Fiscal Impact Analysis to the recent Mike Tande/HVS study of the feasibility of a Hotel on F-Lot. This follow up study was requested by the Council at the conclusion of your discussion of the Mike Tande/HVS study so that you could assess the financial benefits that would accrue to the community from the construction and operation of the hotel modeled in the Tande report.

Ford Frick, of BBC Consulting, will be in attendance to present the major findings and answer any questions you may have.



# Breckenridge Hotel Economic Benefits Supplemental Analysis

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Town of Breckenridge, Colorado



**Report**

September 26, 2013

# **Breckenridge Hotel Economic Benefits Supplemental Analysis**

**Prepared for**

Town of Breckenridge  
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Breckenridge, Colorado 80424

**Prepared by**

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# SECTION I.

## Introduction

This report addresses certain financing and policy issues surrounding the prospective public involvement in the development of a new hotel in Breckenridge, Colorado (Hotel). This introductory section describes study background, the specific objectives of this analysis, and the report's organization. This report is prepared in anticipation of a future discussion session with the Breckenridge City Council (Council).

### Background

In January, 2013, the Town of Breckenridge (Town) contracted with a consulting team comprising a developer (Lowe Enterprises), architects (Oz Architecture) and a hotel feasibility expert (HVS Consulting Services) to determine if a new upscale hotel was a feasible venture at a specified site in the core of Breckenridge. The consultant team issued their analysis (HVS Hotel Study) in May 2013. The Hotel Study recommended a full service, 214-room, conference-oriented facility with an “upper-upscale brand” and the potential to integrate operations with the existing performing arts-oriented Riverwalk Center. The authors concluded that the project would need a \$26 million equity infusion—essentially a capital subsidy—above and beyond standard equity and borrowing practices in order to supplement the financial return necessary to attract a private developer (HVS Hotel Study pg.15). The results are discussed in greater detail elsewhere in this report.

In addition to some form of capital subsidy, the Town would be required to provide a no-cost, long-term ground lease on the subject 7.5-acre property and find an alternative means of replicating the parking currently occupying the site, presumably by developing off-site parking or construction of an adjoining structure.

### Study Objectives

The HVS Hotel Study did not address how this parking/funding gap might be filled or if the Town would be justified in continuing to pursue this project with public support.

The purpose of this study is to address these questions, specifically:

What new economic benefits and new tax receipts would be generated by the new Breckenridge Hotel project?

- Are the economic benefits and new tax receipts associated with this project sufficient to justify some form of public financial participation?
- What form of public participation or financial support might be considered (free land, build parking, tax increment financing, etc.) to help support this project?

This analysis is offered as a preliminary investigation and is intended to serve as a stimulant to a larger discussion with the Town Council about community options for stimulating hotel development.

## **Report Organization**

Section II of this study presents a summary of the key HVS Hotel Study assumptions and findings underlying this supplemental analysis. Section III documents project-associated public tax revenues. Section IV describes possible mechanisms for public participation in stimulating or supporting hotel development. The final Section V offers observations and discussion points for further community consideration.

## SECTION II.

# HVS Findings

The HVS Hotel Study offers an examination of the regional hotel market, analysis of overnight accommodation trends (tourism and conference business), and forecasts of the prospective financial performance of the recommended 214-room conference hotel facility. This section highlights those HVS assumptions, conclusions, and forecasts that underlie BBC's projections of associated visitation and tax revenue.

### Methodology

**Current Marketplace.** The HVS Hotel Study recognizes three levels of regional hotel competition:

- *Primary competition*, which includes four similar conference-oriented facilities in Breckenridge and Keystone (Figure 5-8).
- *Secondary competition*, which includes eight additional properties in Breckenridge, Keystone, Beaver Creek, and Vail (Figure 5-15).
- *Aggregate competition*, which includes 2,600 additional units that offer a minor competitive influence (Figure 5-15).

There are 2,304 hotel rooms in the first two categories, which constitutes the 12 properties that would most directly compare and/or compete with the new Breckenridge Hotel. As shown in Figure II-1 (also HVS Figure I-1) on the following page, these rooms are in Breckenridge (44%); Vail (29%); Keystone (11%); and Beaver Creek (16%). These competitive hotels currently garner about 450,000 occupied room nights (ORN) at an annual occupancy rate of about 53 percent. Notably, only two of these properties have been constructed in the last 20 years, perhaps in corroboration of the financial challenges associated with developing resort lodging.

Among this subset, occupied room nights have grown at an annual rate of 1.3 percent and revenue per room at 2.6 percent per year since 2000; the latter is basically the rate of inflation, suggesting little or no overall growth in the market over the past 13 years.

Figure II-1.

<b>FIGURE 1-1 HISTORICAL SUPPLY AND DEMAND TRENDS (STR)</b>							
Year	Average Daily	Available Room		Occupied Room		Occupancy	Average Rate
	Room Count	Nights	Change	Nights	Change		
2002	2,126	775,815	3.2 %	400,656	1.9 %	51.6	177.27
2003	2,407	878,555	13.2	430,436	7.4	49.0	188.30
2004	2,407	878,555	0.0	469,508	9.1	53.4	193.16
2005	2,407	878,555	0.0	490,476	4.5	55.8	204.49
2006	2,342	854,662	(2.7)	519,782	6.0	60.8	207.21
2007	2,174	793,505	(7.2)	493,571	(5.0)	62.2	229.68
2008	2,146	783,433	(1.3)	430,436	(12.8)	54.9	249.08
2009	2,253	822,345	5.0	374,082	(13.1)	45.5	221.45
2010	2,225	812,230	(1.2)	404,071	8.0	49.7	215.94
2011	2,304	840,960	3.5	417,577	3.3	49.7	222.02
2012	2,304	840,960	0.0	450,852	8.0	53.6	222.93
Average Annual Compounded Change:							
2001-2012			1.0 %		1.3 %		
<b>Year-to-Date Through February</b>							
2012	2,304	135,936	—	96,202	—	70.8 %	\$299.79
2013	2,304	135,936	0.0 %	106,456	10.7 %	78.3	313.14
<b>Hotels Included in Sample</b>					<b>Number</b>	<b>Year</b>	<b>Year</b>
					<b>of Rooms</b>	<b>Affiliated</b>	<b>Opened</b>
Manor Vail Resort					128	Nov-08	Jun 1966
Keystone Lodge & Spa					152	Jun-74	Jun 1974
Village @ Breckenridge Hotel					60	Dec-10	Jun 1979
Marriott Vail Mountain Resort					344	Oct-94	Nov 1980
Vail Cascade Resort					292	Mar-96	Jun 1982
Doubletree Breckenridge					208	Nov-11	Jun 1985
Beaver Run Resort & Conference Center					550	Jun-86	Jun 1986
The Inn @ Keystone					103	Jan-08	Dec 1989
Park Hyatt Beaver Creek Resort & Spa					190	Dec-89	Dec 1989
Lodge @ Breckenridge					47	Jun-92	Jun 1992
Ritz-Carlton Bachelor Gulch					180	Nov-02	Nov 2002
RockResorts One Ski Hill Place					50	Jun-10	Jun 2010
<b>Total</b>					<b>2,304</b>		

Source: STR Global

Source: HVS Hotel Study 2013.

**Market forecasts.** HVS forecasts growth in the base market and unaccommodated demand for both FIT (Free Independent Traveler) business and group business. The representative HVS figure is shown on the following page as Figure II-2.

Figure II-2.

**FIGURE 5-19 FORECAST OF MARKET OCCUPANCY**

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
<b>FIT</b>											
Base Demand	272,803	286,443	295,036	297,986	299,476	300,974	302,479	303,991	305,511	307,039	308,574
Unaccommodated Demand	18,661	19,221	19,413	19,510	19,607	19,705	19,804	19,903	20,003	20,103	20,103
Total Demand	305,104	314,257	317,399	318,986	320,581	322,184	323,795	325,414	327,041	328,676	328,676
Growth Rate		11.8 %	3.0 %	1.0 %	0.5 %	0.5 %	0.5 %	0.5 %	0.5 %	0.5 %	0.5 %
<b>Meeting and Group</b>											
Base Demand	144,823	147,720	149,197	150,689	151,442	152,199	158,287	163,036	166,297	167,128	167,964
Unaccommodated Demand	8,859	8,947	9,037	9,082	9,127	9,492	9,777	9,973	10,022	10,073	10,073
Total Demand	156,578	158,144	159,725	160,524	161,327	167,780	172,813	176,269	177,151	178,036	178,036
Growth Rate		8.1 %	1.0 %	1.0 %	0.5 %	0.5 %	4.0 %	3.0 %	2.0 %	0.5 %	0.5 %
<b>Totals</b>											
Base Demand	417,626	434,162	444,233	448,675	450,919	453,173	460,766	467,027	471,808	474,167	476,538
Unaccommodated Demand		27,519	28,168	28,449	28,592	28,735	29,198	29,581	29,876	30,025	30,175
Total Demand		461,682	472,401	477,125	479,510	481,908	489,964	496,608	501,683	504,192	506,713
less: Residual Demand		28,784	30,763	31,974	30,577	30,042	11,191	9,450	8,006	3,993	4,650
Total Accommodated Demand		432,898	441,638	445,150	448,934	451,866	478,773	487,158	493,677	500,199	502,063
Overall Demand Growth		3.7 %	2.0 %	0.8 %	0.8 %	0.7 %	6.0 %	1.8 %	1.3 %	1.3 %	0.4 %
<b>Market Mix</b>											
FIT	65.3 %	66.1 %	66.5 %	66.5 %	66.5 %	66.5 %	65.8 %	65.2 %	64.9 %	64.9 %	64.9 %
Meeting and Group	34.7	33.9	33.5	33.5	33.5	33.5	34.2	34.8	35.1	35.1	35.1
Existing Hotel Supply	2,386	2,386	2,386	2,386	2,386	2,386	2,386	2,386	2,387	2,386	2,386
<b>Proposed Hotels</b>											
Proposed Hotel Breckenridge	1						214	214	214	214	214
North Breckenridge Timeshare	2				13	13	13	13	13	13	13
Peak 8 Timeshare	3				7	8	8	8	8	8	8
Gondola Turn Station Condo/Timeshare/Hotel	4					11	11	11	11	11	11
Peak 8 Condo/Hotel/Timeshare	5							35	35	35	35
Gondola Condo Hotel	6							40	80	80	80
Breckenridge Mountain Lodge	7										4
Peak 9 Condo Hotel	8										
Available Rooms per Night	871,054	871,054	871,054	871,054	878,391	882,552	960,662	973,437	988,157	1,002,637	1,003,943
Nights per Year	365	365	365	365	365	365	365	365	365	365	365
Total Supply	2,386	2,386	2,386	2,386	2,407	2,418	2,632	2,667	2,707	2,747	2,751
Rooms Supply Growth	—	0.0 %	0.0 %	0.0 %	0.8 %	0.5 %	8.9 %	1.3 %	1.5 %	1.5 %	0.1 %
Marketwide Occupancy	47.9 %	49.7 %	50.7 %	51.1 %	51.1 %	51.2 %	49.8 %	50.0 %	50.0 %	49.9 %	50.0 %

Source: HVS Hotel Study 2013.



Some new hotel supply is expected over the next decade, although the new Breckenridge Hotel is the largest single project.

Sufficient market growth is foreseen to suggest that the new Breckenridge Hotel could be accommodated without causing a significant impact to other hotels and never allowing overall (hotel competitive set) occupancy rates to drop below the current 47.9 percent annual level.

**Hotel financial projections.** Attached BBC Figure II-3 (HVS 8-7) summarizes hotel occupancy expectations, room rates and financial performance of the proposed hotel. With expected strong market penetration (59% occupancy rates) and room rates in excess of competitive hotel averages, the new project has considerable net income and operating margins near 20 percent. It is notable that occupied room nights do not grow after the fourth year of operations.

**Project feasibility.** The desired project will cost about \$341,000 per room or \$73 million. Based on various financing assumptions and estimates of required investor returns, HVS concludes that this development is too expensive to attract private investment. In fact, the project costs would have to be reduced by \$28 million in order to attract investors.

## Summary

The HVS study foresees sufficient overall regional market growth to accommodate the new Breckenridge Hotel. HVS expects that the new project will have a high penetration rate (more capture of the market than “fair share”), relatively high occupancy (59%) and relatively high realized room rates (\$285 in 2018). The project will be profitable with net income near 20 percent of annual revenues at a stabilized year. This financial performance will not generate sufficient revenue to justify the high construction costs. HVS calculates that the project would require a \$26 million equity infusion, or roughly a near one-third reduction in construction costs, in order to attract investor interest.

Figure II-3.

**FIGURE 8-7 TEN-YEAR FORECAST OF INCOME AND EXPENSE**

	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
<b>Number of Rooms:</b>	<b>214</b>	<b>214</b>	<b>214</b>	<b>214</b>	<b>214</b>	<b>214</b>	<b>214</b>	<b>214</b>	<b>214</b>	<b>214</b>
<b>Occupied Rooms:</b>	<b>39,836</b>	<b>43,742</b>	<b>45,304</b>	<b>46,085</b>	<b>46,085</b>	<b>46,085</b>	<b>46,085</b>	<b>46,085</b>	<b>46,085</b>	<b>46,085</b>
<b>Occupancy:</b>	<b>51%</b>	<b>56%</b>	<b>58%</b>	<b>59%</b>	<b>59%</b>	<b>59%</b>	<b>59%</b>	<b>59%</b>	<b>59%</b>	<b>59%</b>
<b>Average Rate:</b>	<b>\$279.06</b>	<b>\$295.00</b>	<b>\$306.93</b>	<b>\$316.14</b>	<b>\$325.63</b>	<b>\$335.36</b>	<b>\$346.05</b>	<b>\$355.87</b>	<b>\$366.09</b>	<b>\$373.08</b>
<b>RevPAR:</b>	<b>\$142.52</b>	<b>\$165.21</b>	<b>\$178.02</b>	<b>\$186.52</b>	<b>\$192.12</b>	<b>\$197.88</b>	<b>\$203.82</b>	<b>\$209.93</b>	<b>\$216.23</b>	<b>\$222.72</b>
<b>REVENUE</b>										
Rooms	\$33,132	\$32,969	\$33,905	\$33,969	\$35,006	\$35,457	\$35,920	\$36,398	\$36,890	\$37,396
Food	5,385	5,939	6,279	6,550	6,747	6,949	7,158	7,372	7,594	7,821
Beverage	1,510	1,636	1,718	1,786	1,840	1,895	1,952	2,011	2,071	2,133
Other Operated Departments	941	995	1,035	1,072	1,104	1,137	1,171	1,206	1,243	1,280
Garage/Parking	254	274	287	298	307	316	325	335	345	356
Rentals & Other Income	627	663	690	715	736	758	781	804	828	853
<b>Total</b>	<b>39,849</b>	<b>42,410</b>	<b>43,914</b>	<b>44,990</b>	<b>45,740</b>	<b>46,513</b>	<b>47,307</b>	<b>48,127</b>	<b>48,971</b>	<b>49,839</b>
<b>DEPARTMENTAL EXPENSES*</b>										
Rooms	3,279	3,498	3,653	3,788	3,902	4,019	4,139	4,263	4,391	4,523
Food & Beverage	5,255	5,566	5,796	5,902	6,183	6,368	6,559	6,756	6,958	7,167
Other Operated Departments	775	805	831	857	883	910	937	965	994	1,024
Garage/Parking	174	181	187	194	198	205	211	218	224	231
<b>Total</b>	<b>9,482</b>	<b>10,050</b>	<b>10,467</b>	<b>10,841</b>	<b>11,167</b>	<b>11,502</b>	<b>11,847</b>	<b>12,202</b>	<b>12,568</b>	<b>12,945</b>
<b>DEPARTMENTAL INCOME</b>	<b>30,367</b>	<b>32,361</b>	<b>33,447</b>	<b>34,148</b>	<b>34,573</b>	<b>35,011</b>	<b>35,460</b>	<b>35,925</b>	<b>36,402</b>	<b>36,894</b>
<b>UNDISTRIBUTED OPERATING EXPENSES</b>										
Administrative & General	1,762	1,854	1,926	1,991	2,051	2,112	2,176	2,241	2,308	2,377
Marketing	1,223	1,287	1,337	1,383	1,424	1,467	1,511	1,556	1,603	1,651
Franchise Fee	1,209	1,389	1,491	1,561	1,608	1,656	1,706	1,757	1,810	1,864
Prop. Operations & Maint.	861	927	963	995	1,025	1,056	1,088	1,120	1,154	1,189
Utilities	783	824	856	885	911	939	967	996	1,026	1,057
<b>Total</b>	<b>5,858</b>	<b>6,281</b>	<b>6,574</b>	<b>6,815</b>	<b>7,020</b>	<b>7,230</b>	<b>7,447</b>	<b>7,671</b>	<b>7,901</b>	<b>8,138</b>
<b>HOUSE PROFIT</b>	<b>4,509</b>	<b>6,080</b>	<b>6,872</b>	<b>7,333</b>	<b>7,553</b>	<b>7,781</b>	<b>8,013</b>	<b>8,254</b>	<b>8,507</b>	<b>8,756</b>
Management Fee	595	672	717	750	772	795	819	844	869	895
<b>INCOME BEFORE FIXED CHARGES</b>	<b>3,913</b>	<b>5,408</b>	<b>6,155</b>	<b>6,583</b>	<b>6,781</b>	<b>6,985</b>	<b>7,194</b>	<b>7,410</b>	<b>7,633</b>	<b>7,861</b>
<b>FIXED EXPENSES</b>										
Property Taxes	592	601	613	631	650	670	690	711	732	754
Insurance	164	169	175	180	185	191	196	202	208	215
Reserve for Replacement	397	672	957	1,000	1,030	1,061	1,092	1,125	1,159	1,194
<b>Total</b>	<b>1,154</b>	<b>1,443</b>	<b>1,744</b>	<b>1,811</b>	<b>1,865</b>	<b>1,921</b>	<b>1,979</b>	<b>2,038</b>	<b>2,099</b>	<b>2,162</b>
<b>NET INCOME</b>	<b>\$2,760</b>	<b>\$3,965</b>	<b>\$4,411</b>	<b>\$4,773</b>	<b>\$4,916</b>	<b>\$5,064</b>	<b>\$5,216</b>	<b>\$5,372</b>	<b>\$5,533</b>	<b>\$5,699</b>

\*Departmental expenses are expressed as a percentage of departmental revenues.

Source: HVS Hotel Study 2013.

## Observations

Perhaps the best argument for the potential market success of an upscale hotel in Breckenridge is the relative absence of *Luxury* or *Upper Upscale* properties in the Breckenridge market in comparison with other resorts of similar size and market orientation. This imbalance occurs despite the resort's demonstrated success in both winter and summer and rich mix of mountain the community amenities.

Figure II-4 from the HVS study shows the imbalance between Vail/Beaver Creek and Breckenridge in the distribution of lodging between properties qualifying as Luxury/Upper Upscale versus properties with lesser rankings.

Figure II-4.

LODGING INVENTORY COMPARISON – ROOMS									
Market	# of Rooms	Luxury	% of Total	Upper Upscale	% of Total	Upscale	% of Total	Midscale or Below	% of Total
Breckenridge	3516	50	1%	1167	33%	1600	46%	699	20%
Vail/Beavercreek	5204	1326	25%	1945	37%	1257	24%	676	13%

Source: Bookings.com, Hotels.Com, STR, HVS

Source: HVS Hotel Study

Whether this suggests an untapped market niche for Breckenridge, or reflects a fundamental market demand difference between the respective resorts, is a topic for debate.

Other assumptions that are worth discussing in relationship to these forecasts of Hotel performance include:

- What share of this projected occupancy will be Breckenridge guests who move from other properties (cannibalization)?
- Is it reasonable to view the three resorts (Beaver Creek, Vail, and Breckenridge) as interchangeable offerings, such that new regional market growth would be content with any of these resorts if comparable lodging were available?
- Is there evidence that the conference market is growing? Or is there evidence that the existing conference facilities are constrained, implying group business is lost because of conference space limitations?
- Does Breckenridge conference business compete with Denver Metro area facilities?
- Could the \$341,000 per room be reduced in some manner?
- Are there elements of this project that are suitable for public investment? If so, what elements?
- The HVS Study mentions physical improvements to the Riverwalk Center, which are included in overall costs, but it is unclear how operating synergies affect financial results. Could the community invest in the Riverwalk Center in a manner that reduces Hotel costs,

or conversely improves operating performance? Or, have Riverwalk synergies already been included in Hotel performance expectations?

## SECTION III.

# Project-Associated Public Revenues

This section provides forecasts of incremental new tax revenues associated with the Breckenridge Hotel and tests whether these new receipts could support bonds in the amounts necessary to support this venture.

### Fiscal Impacts

Figure III-1 displays key projections from the HVS study and translates these data into onsite and offsite town tax revenue collections.

**Onsite revenue.** As noted in Figure III-1, HVS foresees nearly \$24.0 million in total annual Hotel revenues (2020), which are subject to town and county sales tax<sup>1</sup>. Of the total annual Hotel revenues HVS forecasts \$13.9 million in room revenue (2020), which is subject to town accommodation taxes in addition to town and county sales taxes. By the third year of new Hotel operations, total onsite sales and accommodation revenue accruing to the town's excise tax fund will exceed \$1.2 million annually. These sales would also stimulate additional revenues for funds dedicated to housing, open space, and marketing.

In addition, the Town's 5.07 mill levy will add nearly \$60,000 per year (year 2020)<sup>2</sup>.

**Offsite revenue.** Certain expenditures associated with prospective new hotel visitation will occur off site.

Persons staying at the new Breckenridge Hotel will also spend retail and entertainment dollars offsite in the community, stimulating an additional \$4.5 million per year mostly in downtown retail sales.

Conference/group business generated by the new Hotel, (approximately one-third of annual business) will induce additional visitors who stay in other Breckenridge lodging in association with conference business at the subject property ("spillover room nights"). We've assumed 10 percent additional conference-associated room nights will be captured off site.<sup>3</sup> These "spillover" room nights will add about \$475,000 in additional spending (rooms and retail) to the Town's businesses. A

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<sup>1</sup> Retail sales in Breckenridge are taxed at 8.275 percent. The state collects 2.9 percent and the local housing authority 0.125 percent. The county collects 0.75 percent for transit services and levies a 2.0 percent charge receipts from which are rebated to the town after vendor fees. The town's municipal tax is 2.5 percent, making the town's full local sales tax rate 4.5 percent. Of this total fee, certain portions are dedicated for Open Space (0.5%) and marketing. Vendors retain about 3.3 percent of their collections as a vendors' fee. The town's "excise tax fund," essentially the general fund, garners an effective rate of 3.86 percent. Sales taxes are levied on lodging in addition to accommodation taxes.

<sup>2</sup> The town's current mill levy of 6.945 is schedule to decline to 5.07 in 2014, as certain debt service payments are retired.

<sup>3</sup> In our experience, mountain conference business often stimulates business in a diverse collection of lodging. In this instance, some conferees are likely to seek lower-cost lodging while attending Hotel conferences and events, in some instances in communities outside of the subject town or in private accommodations that do not pay accommodation taxes.

portion of these sales is subject to room tax, while all sales are subject to sales tax. BBC estimates that off-site sales generated by activities associated with the new Hotel will add about \$199,000 per year to the Town's excise tax coffers by year three.

All, or a portion, of these project-associated revenue streams might be dedicated to support the new Hotel project. Receipts dedicated to marketing, open space, and housing will be in addition to these revenues.

On-site revenues from accommodations tax, sales tax, and town property taxes are expected to stabilize in the fourth year of operations (2021). These on-site sources, typically the funds that a community uses for financial partnerships, will total about \$1.3 million per year. Off-site project-associated revenues, which are typically left for broader community benefit and to pay for necessary public services, will total about \$200,000 per year.

**Figure III-1.  
Breckenridge Hotel Fiscal Impacts**

	2018	2019	2020	2021	2022	2023	2024	2025
<b>Breckenridge Hotel performance</b>								
New hotel rooms (214)								
Occupied room nights (HVS)	39,836	43,742	45,304	46,085	46,085	46,085	46,085	46,085
Room revenues (HVS)	\$11,132,000	\$12,904,000	\$13,905,000	\$14,569,000	\$15,006,000	\$15,457,000	\$15,920,000	\$16,393,000
<b>Total hotel revenues</b>	<b>\$19,849,000</b>	<b>\$22,410,000</b>	<b>\$23,914,000</b>	<b>\$24,990,000</b>	<b>\$25,740,000</b>	<b>\$26,513,000</b>	<b>\$27,307,000</b>	<b>\$28,127,000</b>
<b>Onsite Tax Generation</b>								
Excise Fund sales tax	\$766,171	\$865,026	\$923,080	\$964,614	\$993,564	\$1,023,402	\$1,054,050	\$1,085,702
Excise Fund accommodation tax	\$222,640	\$258,080	\$278,100	\$291,380	\$300,120	\$309,140	\$318,400	\$327,860
<b>Total sales and accomodation tax</b>	<b>\$988,811</b>	<b>\$1,123,106</b>	<b>\$1,201,180</b>	<b>\$1,255,994</b>	<b>\$1,293,684</b>	<b>\$1,332,542</b>	<b>\$1,372,450</b>	<b>\$1,413,562</b>
All property tax (53.19 mills) (HVS)	\$590,000	\$601,000	\$613,000	\$631,000	\$650,000	\$670,000	\$690,000	\$711,000
Town property tax (5.07mills)	\$56,238	\$57,287	\$58,430	\$60,146	\$61,957	\$63,864	\$65,770	\$67,772
<b>Offsite Tax Generation</b>								
Spill over occupied room nights	1,195	1,312	1,359	1,383	1,383	1,383	1,383	1,383
Spill over occupied room revenues	\$217,074	\$251,628	\$271,148	\$284,096	\$292,617	\$301,412	\$310,440	\$319,664
Spill over visitor spending (\$150/ORN)	\$179,262	\$196,839	\$203,868	\$207,383	\$207,383	\$207,383	\$207,383	\$207,383
Hotel guest offsite spending (\$100/ORN)	\$3,983,600	\$4,374,200	\$4,530,400	\$4,608,500	\$4,608,500	\$4,608,500	\$4,608,500	\$4,608,500
<b>Total offsite spending</b>	<b>\$4,379,936</b>	<b>\$4,822,667</b>	<b>\$5,005,416</b>	<b>\$5,099,978</b>	<b>\$5,108,500</b>	<b>\$5,117,294</b>	<b>\$5,126,323</b>	<b>\$5,135,546</b>
Sales tax on offsite spending	\$169,066	\$186,155	\$193,209	\$196,859	\$197,188	\$197,528	\$197,876	\$198,232
Accommodation tax on offsite ORN	\$4,341	\$5,033	\$5,423	\$5,682	\$5,852	\$6,028	\$6,209	\$6,393
<b>Total offsite tax revenues</b>	<b>\$173,407</b>	<b>\$191,188</b>	<b>\$198,632</b>	<b>\$202,541</b>	<b>\$203,040</b>	<b>\$203,556</b>	<b>\$204,085</b>	<b>\$204,625</b>
<b>Employment Impacts</b>								
Onsite jobs (0.8/room)	171	171	171	171	171	171	171	171
Offsite jobs (1 job/\$70,000 spending)	44	48	50	51	51	51	51	51
Induced jobs (0.2/direct job)	43	44	44	44	44	44	44	45
<b>Total</b>	<b>258</b>	<b>263</b>	<b>265</b>	<b>266</b>	<b>266</b>	<b>266</b>	<b>266</b>	<b>267</b>

Note: Assumes all occupied room nights (ORN) are new business to Breckenridge. Sales tax rate includes municipal fee and rebate of county fee net of dedications (marketing and open space) and net of vendors' fee. Accommodation tax includes county rebate.

Source: BBC Research & Consulting and HVS where identified.

## Bond Requirements

Figure III-2 summarizes assumptions underlying a prospective bond offering that could generate municipal funds to support this project.

### Figure III-2. Bond Assumptions and Annual Payment

Source: BBC Research & Consulting 2013.

20-year Municipal Bond
\$26.0 Million Project Requirements
35% Capital Reserve @4.0% (\$9.1 million)
5% Underwriter's Discount (\$1.3 million)
\$36.4 Million Issuance
4.5% Coupon Rate
<b>Annual Payment: \$2.9 Million</b>

In order to generate the \$26.0 million necessary to address the identified “equity gap,” the Town would have to pursue a larger bond amount with coverage for capital reserve and underwriter’s fees. We assumed a total issuance of approximately \$36 million.

The annual payments required to support this issuance would be about \$2.9 million per year (20-year obligation). We have estimated that the Town will have about \$1.3 million in new on-site excise tax revenues. Even with a full dedication of all associated revenues, it would appear that prospective annual revenue generated by the project is less than required to support the necessary bonds.

A few caveats should be noted:

- Bonding assumptions are subject to market conditions that can significantly affect interest rates and reserve requirements.
- The amount of capital reserve required is a particularly sensitive assumption and would depend on how the market perceives the risks associated with this kind of offering. Depending on what other funds are pledged against these bonds, reserve requirement may be larger or smaller than indicated here.
- It should also be noted that the Town cannot invest in, or directly support, a private project (see following section). Instead, a municipality traditionally builds associated public infrastructure that has broad public benefit as well as improving conditions for the project. In this instance, participation in the parking garage is a prospective candidate for this kind of investment but still represents a problematic investment if the Hotel is a disproportionate beneficiary.



- Bonds, presumably for capital investment, would have to be issued in advance of Hotel development and considerably in advance of associated Hotel revenues. This suggests that the bond issuance would have multiple years of capitalized interest which would add to costs.
- In considering cost benefit issues, the Town should recognize that in addition to attempting to find a means to support the Hotel's capital requirement, the HVS model assumes a full donation of land. This property has considerable private value, which ultimately should be part of a cost benefit equation.
- The Hotel concept suggests integration of the Riverwalk facility. It is unclear whether that implies additional revenues for the project. Some additional activity and additional town tax receipts are a possibility as a result of more activity in a revitalized and better functioning venue.

## **Employment**

Prior Figure II-1 also offers estimates of employment associated with the project. Hotel employment is generally calculated as employees (FTE) per room. Luxury hotels and conference hotels have relatively high employee counts, although event-related positions may be part time and seasonal. In our view, a project such as described here will require about 0.8 employees per room but will undoubtedly have high employment seasonality. Hotel-associated visitor spending in the community will support additional positions at local restaurants and retailers. All of these jobs, approximately 250 positions, are forms of "direct" employment because they are new positions supported by revenues from outside of the community. Direct employment will produce secondary or induced and indirect employment as these new dollars circulate through and eventually out of the community. Because Breckenridge is a relatively small community with a large commuting workforce (employees living elsewhere), the secondary multiplier is small, about 0.2 indirect jobs for every direct position.

In our estimation, the proposed Hotel and related visitor spending will support about 300 jobs in the Breckenridge community.

Only a small share of employees will live in Breckenridge and induce additional sales taxes. Hotel employee local retail expenditures are modest, in keeping with wages, and residents will require town services.

## SECTION IV.

# Institutional Support Mechanisms

According to the HVS Hotel Study, the market appropriate hotel for Breckenridge would require discounted land, \$26 million of equity infusion (or equivalent subsidy), and a public replacement strategy for lost parking. This section details strategies and specific mechanisms for possible Town participation in supporting this venture.

### Town Participation Options

There are two basic options available to the Town in supporting the recommended Breckenridge Hotel venture:

- A Partnership in which the project is owned privately and the Town supports the project by way of land donations, tax abatements, tax increment financing or other revenue dedication to support associated investment in public infrastructure, such as parking or utility extension. This is the most common form of public support for desirable land uses.
- Public development, in which a new agency would be created to own and develop the project. Presumably, the Town would issue revenue bonds to construct the project supported by dedicated project associated revenues, typically tax revenues from the project. Credit enhancements will likely be required, suggesting town pledges of general fund revenues to support the bonds.

The HVS analysis suggests that the project requires \$26 million of additional equity. A municipality cannot be an equity investor in a private project and there are strict limitations on how and how much a public entity can invest public funds in private projects. In most “public private partnerships” the public role involves the dedication of targeted funds to certain purposes (marketing efforts, events, or public infrastructure), which broadly support the desired venture but have legitimate public purpose.

Any aggressive subsidy, clearly a requirement of this project, will likely require a third party legal opinion regarding the use of public funds. Bond financing for a project of this scale and uncertainty will also require: (1) substantial reserve accounts; (2) a high debt service coverage ratio; (3) a high interest rate and perhaps Town general obligation support; and (4) third party construction completion guarantees. Our prior revenue projection suggests that even aggressive dedication of project-associated revenues to support this venture would not be sufficient.

In past years, many cities, including Denver, have used public agencies for hotel development or hotel/conference center support. This strategy is open to Breckenridge although it doesn’t solve the basic problem that the project is considered infeasible. Municipal and state stimulation of conference center and related hotel supply is one reason the conference market is overbuilt and why private conference center projects are now increasingly rare.

Since the economic downturn, credit markets and municipal credit rating agencies are more risk averse than in prior years. All participants in the credit markets are looking for guarantees and ways to shed risk. The cost of meeting current credit expectations may overwhelm the basic value (lower cost financing) of municipal participation.

Related strategies that have been used in supporting similar projects:

- A parking structure bond where the revenue from a portion of the lodging tax or other revenue stream pays back the bond's principal and interest. Once the bonds are paid off, the lodging tax reverts to the town.
- Creation of a special district and bond with a special property or sales tax assessment.
- Formation of an urban renewal authority and use of tax increment financing (TIF) funds to support public infrastructure investment.
- Favorable ground lease rate and terms (already considered in current).

It is important to note that none of these techniques solves the basic problem identified in the HVS study—the project is infeasible without a grant of \$26 million.

### **Ground Lease Structure**

It is our understanding that the HVS model already assumes no ground lease expense, thus there is not an opportunity for a reduced creative ground lease. Typically ground leases are based on a percentage of a development's estimated or actual gross revenue. The amount of the lease depends on its length, perception of the development's risk, and prevailing bond interest rates. Lease payments may be deferred until operations are back end loaded in order to provide a greater length of time for the project to perform. There may be base rents (guaranteed) with a smaller percentage of revenues. Ground leases can undermine or complicate other financing.

### **Another Option: Reconsider Hotel /Conference Scale**

The Town could allow the project to shrink its hotel/conference amenity and include private for-sale condominiums. This was a common approach during the building boom of 2000-2008 to enable additional hotel rooms. Assuming improved market conditions over the next few years, this strategy would add a substantial revenue element (sale of private units) and thus reduce the financial burden of the hotel operations. The project costs would be reduced with the inclusion of a smaller conference center and associated space. Project risks would be also reduced.

Obviously, the downside of this strategy is the loss of the market expansions and the broader economic stimulation associated with a substantive hotel conference center. The Town should consider if there is a lesser scale project with compromises on conference and hotel investment that might still be sufficiently beneficial to merit some form of town support.

Finally, the Town could accept the financial infeasibility of a hotel even with private support, and consider other uses of this high value site that might still provide broad community value.

## SECTION V.

# Observations and Discussion Points

We look forward to discussing the following key points with the Breckenridge Town Council at our upcoming works session:

- The HVS Study finds that an upper upscale hotel in Breckenridge is financially infeasible because rental seasonality, high construction costs, and low average room rates combine to produce inadequate return to investors. The \$70 million construction would require a subsidy of \$26 million in order to attract an investor seeking appropriate financial return commensurate with risk.
- The Town has a number of tools available to support the project's development, but the anticipated Town revenue streams directly associated with this project are less than the \$2.9 million per year needed to raise \$26 million by municipal bond receipts.
- The Town is restricted in how it can participate with a private owner on a private project. The proposed Hotel already includes a substantial free land dedication and does not include replacement parking for the current lots lost to development. It is unclear what investment the town could make to support this venture that wouldn't violate the necessary separation of public and private investment.
- The project's cost is the fundamental impediment: \$341,000 per room. Are there any elements in this cost that would qualify for public funding? Could the Town fund some form of shared parking?
- Would the Town consider a significantly smaller hotel project with additional private development, which would reduce costs and provide additional revenues?



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## MEMORANDUM

**TO: Mayor and Town Council**

**FROM: Julia Puester, AICP, Senior Planner**

**DATE: October 1, 2013 for meeting of October 8, 2013**

**SUBJECT: Planning Application Classifications Worksession**

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Staff has recently reviewed the Development Code and identified some potential modifications that could assist with efficiencies in the development review process. Staff presented this as a worksession item at the September 3 and September 17 Planning Commission meeting. The Commission was generally supportive of changes proposed and recommended that staff to proceed to the Town Council.

For the purpose of our discussion, staff has provided a brief synopsis of the major changes to Section 9-1-5 *Definitions* of the Development Code below, and attached a draft of the ordinance revision for this agenda item.

### Class A

- *Wireless towers and antennas.*
  - This is a new use under Class A applications. This will define a process for staff and applicants where none currently exists in the Code. Staff believes that a more stringent review process is warranted to address potential issues such as land use, visibility and location which have presented concerns in past applications. The Commission gave direction at the worksession to proceed with a more detailed policy. Staff has begun researching other jurisdictions and will come back before the Commission at another worksession.

### Class B - Minor

- *Vendor Carts, Large.*
  - Currently all Vendor Carts are reviewed as Class B Minor Applications. No changes are proposed for Large Vendor Carts, but Small Vendor Carts would be reclassified to a Class C. A Large Vendor Cart remains in place for a duration of up to 3 years and thus, a more detailed report and discussion at Planning Commission would occur under a Class B Minor (see Class C changes below).

### Class C

- *Vendor Carts, Small.*
  - Small Vendor Carts would be reclassified to a Class C with the stipulation that public notice is still required in accordance with the Class B development permit application guidelines. This will allow for notice to adjacent property owners and posting of the property.
- *Temporary seasonal structures.*
  - A new category for seasonal structures will address many issues that staff has seen in the past. A majority of applicants look for seasonal structures which are currently not accommodated by the Code (i.e. ski area sprung structures).
- Commercial and industrial uses and additions which are less than one thousand (1,000) square feet in size *or 10% of the existing square footage (unless classified as a Class A development).* The 10% part is the proposed new language.
  - This clarification is a code clean up which specifies the size of addition.

#### 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 building or disturbance envelope outside of the conservation district as defined in Section 9-1-19 4A (Mass);*

*A Class D development- Major permit application with conditions contained in subsections a or b above, shall be reclassified as a class C development permit application.*

- Based on our research on Class C projects over the past 8 years, only 2% of single family home applications have been called-up by the Commission. The majority of those stemmed from concerns raised by staff. Of those called up, even fewer resulted in changes to the applications. The two applications which were called up and denied in the past 8 years, (0.35% of total applications) were not single family but condo remodel applications and were also denied by staff. The proposed change applies only to single family and duplexes, not exterior condo remodels which would remain a Class C development.
  - Statistics: Since 2006, Staff has processed
    - **579** Class C permits processed
    - **46** of those have been called up by the Planning Commission.
      - **16 Single Family**
      - 7 Condo Remodels
      - 3 Solar PV
      - 1 Duplex
      - 19 Various (i.e. food trucks, ped cabs, temporary uses, fences)

- 4 applications have been withdrawn by the applicant
- 2 denied by the Planning Commission.

In both applications denied by the Planning Commission, Staff also denied the applications in the staff reports (Ski Hill Condo Exterior Remodel and Miners Candle Dormer Addition).

- The Planning Commission had a lot of discussion regarding what type of applications should be reviewed on the Commission’s consent calendar. The proposed subsections (a) and (b) (negative points assigned by staff; or lack of a building or disturbance envelope) would trigger elevating an application to Class C, and therefore be added to the Planning Commission consent calendar in order. This is in response to the Commission’s comments and concerns. Should there be a questionable application which does not fall under (a) or (b), staff would elevate the application to the Commission as has been done in the past with other types of development applications. (Under the Development Code, the Director is also able to elevate an application to a higher classification). The Commission was generally supportive of this (one Commissioner was opposed, one was comfortable with the proposal if there was an annual review/site visit).

Staff and the majority of Commissioners agreed to have an annual site visit to review some of the homes processed as Class Ds (no Planning Commission review) and make changes to the process or codes if needed. Further, staff would inform the Planning Commission of applications in process.

Note that application fees would remain the same or similar to the Class C application fees currently charged.

- *Master Sign Plan Modification*

- The Commission was supportive of a Master Sign Plan modification category which the code currently lacks. As a Class D, all modifications would be required to meet the requirements for new Master Sign Plans within the Sign Code (Section 8-2-11).

- *Substitution or modification to employee unit*

- The proposal is to add “modification to the employee unit floor plan” to this application category. This would allow staff to have a formal check on any changes to employee housing units to identify any potential issues such as change in floor plan (unit size, kitchen, number of bedrooms, etc) which may affect the quality of the unit.

- *Additional residential square footage of ten percent (10%) or less of the existing structure's square footage ~~and no change to the exterior of the structure.~~*

- Located in a footnote following the Class D classification section, this definition is referenced throughout this section. This is a clean up item. Staff is proposing to clarify that a 10% or less residential mass addition is a Class D permit and remove the conflicting language addressing the “no change to the exterior of the structure” (as any addition would change to the exterior of the structure).

We would like to receive input from the Council on modifications attached. Staff will be available for any questions at the meeting.



Proposed Development Code Modifications  
October 8, 2013

**Section 9-1-5 Definitions:**

**CLASS A DEVELOPMENT:** Any development which includes any of the following activities or elements:

- A. Residential uses which include three (3) units or more.
- B. Lodging and hotel uses.
- C. Any site work or landscaping which is in excess of two hundred thousand dollars (\$200,000.00) in value, to include ski lifts and parking lots.
- D. Commercial and industrial uses, additions and remodels **thereto** which are one thousand (1,000) square feet in size or greater.
- E. Approval of a master plan on a site five (5) acres or more in size.
- F. Major amendment to a master plan pursuant to section 9-1-19-39A, "Policy 39 (Absolute) Master Plan", subsection L, of this chapter.

**G. Wireless Towers and Antennas.**

**CLASS B DEVELOPMENT:** Any development which includes any of the following activities or elements:

Class B - Major: A. **New** single-family **non historic** residential within the historic district or the conservation district.

- B. **New** duplex residential within the historic district **or conservation district**.
- C. Bed and breakfasts, and boarding houses.
- D. Commercial and industrial uses and additions which are less than one thousand (1,000) square feet in size **or 10% of the existing square footage (unless classified as a Class A development)**.
- E. Approval of a master plan on a site of less than five (5) acres.
- F. Demolition or moving of a landmark or historic structure (including any portion of the structure).

**Class B - Minor:** A. New or major remodel<sup>1</sup> of any historic residential structure within the historic district or the conservation district.

B. Change of use within a residential district.

C. Site work, landscaping, grading, and utility installations on steep slopes (greater than 15 percent) or within environmentally sensitive areas.

D. Operation of a home childcare business.

E. Vendor carts, Large (~~large vendor carts and small vendor carts~~). ~~Because a small vendor cart development permit is valid for only one year, the application fee for a small vendor cart development permit shall be one-third ( $\frac{1}{3}$ ) of the normal class B—minor application fee.~~

F. Application for exempt large vendor cart designation.

Class B development is divided into major and minor categories for purposes of payment of application fees<sup>2</sup> only. The procedures set forth in the development code for the processing of class B development permit applications apply to both major and minor categories.

**CLASS C DEVELOPMENT:** Any development which includes any of the following activities or elements:

~~Class C—Major: A. Single family structure outside of the historic district, with or without an accessory apartment, except where development occurs on a steep slope or within an environmentally sensitive area, in which case the project may be reclassified as a class B—major.~~

~~B. Duplex residential outside of the historic district.~~

~~Class C—Minor:~~

~~A. Change of use outside of a residential district.~~

~~B. Master sign plans.~~

~~C. Temporary seasonal structures or uses greater than three (3) days in duration.~~

~~D. Minor remodels<sup>3</sup> and Additions to commercial, office or industrial structures of less than 10% of the existing square footage.~~

~~E. Matters relating to nonconforming uses.~~

~~F. Minor amendment to a master plan pursuant to section 9-1-19-39A, subsection L, of this chapter.~~

G. Installation of solar device within the conservation district.

H. **Vendor Carts, Small. A Small Vendor Cart shall be processed as a Class C development permit with public notice requirements per a Class B development permit.**

**I. Major remodel to residential condo, lodging, or hotel structure.**

Class C development is divided into major and minor categories for purposes of payment of application fees<sup>4</sup> only. The procedures set forth in the development code for the processing of class C development permit applications apply to both major and minor categories.

**CLASS D DEVELOPMENT:** Any development which includes any of the following activities and elements:

**Class D- Major:**

**1. New single-family, duplex structure or major remodel outside of the historic 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 building or disturbance envelope outside of the conservation district as defined in Section 9-1-19 4A (Mass);**

**A Class D development- Major permit application with conditions contained in subsection a or b above, shall be reclassified as a Class C development permit application.**

A. Banners and sponsor banners (all).

B. Individual signs (all).

C. Demolition or moving of any structure outside of the historic **or conservation** district.

D. Demolition of nonhistoric structure within the historic **or conservation** district.

E. Fencing (all).

F. Home occupation.

G. Minor remodel<sup>5</sup> of any residential structure.

H. Temporary structures ~~or events~~ of three (3) days or less in duration.

I. Operation of a chalet house.

- J. Any painting of a structure within the historic **or conservation** district, except for paint maintenance.
- K. Any painting of a structure with a commercial or lodging use outside of the historic district in land use districts 3, 4, 5, 6, 9, 13, 20, 23, 25, 28, 31, 32, 33, 35 or 39; except for paint maintenance.
- L. The painting of a contemporary landmark as provided in section 9-1-19-5A, "Policy 5 (Absolute) Architectural Compatibility", subsection A(2), of this chapter.
- M. The placement of a commercial handbill dispenser outside of a fully enclosed building as provided in section 11-5-6 of this code.
- N. Construction of approved trash dumpster enclosure or conversion of nonconforming trash dumpster enclosure to approved trash dumpster enclosure.
- O. Placement of public art.
- P. Substitution of employee housing unit **or modification to unit floor plan**.
- Q. Summer seasonal occupancy of employee housing unit as provided in section 9-1-19-24R, "Policy 24 (Relative) Social Community", subsection A(5), of this chapter.
- R. Placement of a satellite earth station larger than two meters (2 m) in diameter in land use districts where industrial or commercial uses are recommended, or larger than one meter (1 m) in diameter in land use districts where any other use is recommended.
- S. Repealed.
- T. Site work, landscaping, grading, and utility installations unless done on steep slopes or within environmentally sensitive areas.
- U. The outdoor display or storage of bicycles as provided in subsection 9-7-6C of this title.
- V. Any other development described as a class D development in any town ordinance.
- W. Installation of swimming pool, spa or hot tub.
- X. Seasonal noncommercial greenhouse.
- Y. Installation of solar device outside the conservation district.
- Z. Creation of voluntary defensible space around a building or structure, or on a parcel of land.
- AA. Application for a renewable energy mechanical system under section 9-1-19-4A of this chapter.

**BB. Master Sign Plan Modification.**

**Class D development is divided into major and minor categories for purposes of payment of application fees only. The procedures set forth in the development code for the processing of Class D development permit applications apply to both major and minor categories.**

\*Major remodel - Additional residential square footage of more than ten percent (10%) of existing structure square footage and/or change of character to the exterior of the structure.

\*Minor remodel - Additional residential square footage of ten percent (10%) or less of the existing structure's square footage ~~and no change to the exterior of the structure.~~



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## MEMORANDUM

**TO: Mayor and Town Council**

**FROM: Julia Puester, AICP, Senior Planner**

**DATE: October 1, 2013 for meeting of October 8, 2013**

**SUBJECT: Building Height Worksession**

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At the September 24 Town Council meeting, staff was directed to prepare a worksession to review how building height is calculated and how negative points are assigned for exceeding building height per the Town's Development Code.

### **How Building Height is Measured**

Building height is measured from a point on the roof to a point on the grade directly below. Measurement is taken from any point within the foundation or around the outside edge of the building's perimeter to natural or proposed grade, whichever yields a greater dimension. Where the measurement is taken is primarily dependant on the type of roof (with the exception of single family and duplex uses outside of the historic district).

1. A flat or mansard roof is measured to the highest point.
2. A sloped roof is measured to a point between the ridge and the eave edge (halfway between the eave and roof ridge).
3. Sloped roofs for single family and duplexes outside of the Historic District are measured to the roof ridge, the highest point of the roof.

A structure's building height is evaluated against the Town Development Code Policy 6 (Absolute) and Policy 6 (Relative).

### **Evaluating Policy 6 Building Height**

#### Policy 6 (Absolute) Building Height

Applications must comply with Policy 6 (Absolute) or the project fails an absolute policy. Absolute building height is further determined by the type of structure (single family, duplex, multifamily or nonresidential) as well as whether the property is located Within or Outside the Historic District.

Properties within the Historic District as well as single family residence and duplex units outside of the district have set absolute building height limitations called out in the policy.

All other types of structures (multifamily and nonresidential) outside of the Historic District are allowed a maximum of two stories above the recommended building height in the Land Use Guidelines.

#### Policy 6 (Relative) Building Height

The relative policy for building height, assigns negative points based on location within or outside of the Historic District. The taller a building is compared to the recommended building height, the more negative points are warranted.

*Within the Historic District:* The Land Use Districts within the historic district call out specific recommended building heights relating to the Land Use District and Character Area. Points are assigned on developments exceeding the recommended height on a sliding scale.

*Outside of the Historic District:* All structures (except for single family and duplex units outside of the historic district) are assessed negative points in relation to the recommendation in the Land Use Guidelines. Points are on a sliding scale, warranting negative five (-5) points for every ½ story above the land use guideline recommendation. Story to height conversion is 13 feet for the first two stories and 12 feet for each subsequent story, with a half story equaling 6 feet.

#### **Putting it Together**

For example, a multifamily or nonresidential building outside of the historic district would be calculated to the mean of the roof, halfway between the eave edge and ridgeline, from existing or proposed grade, whichever provides the greatest dimension. The building height is then reviewed against the absolute policy-no greater than two stories above the recommended land use guidelines.

The relative policy determines if any negative points are warranted. If the building height exceeds the land use guidelines by one story, negative ten (-10) points are assessed. If the building is two stories above the land use guidelines, negative twenty (-20) are assessed. If negative points are assessed, the application must make those up with positive points elsewhere in the Development Code to come to at least a zero (0) point analysis to achieve a passing point analysis. However, should the height exceed two stories beyond the land use guidelines, the application fails an absolute policy and the project is denied.

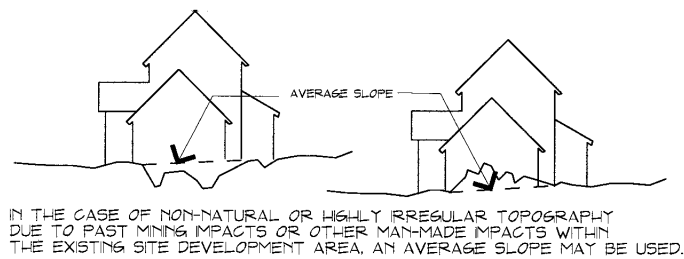
There are many different examples, depending on site location specifics, on how height is calculated as referenced above. Staff will be available for any questions at the meeting and would be happy to go through different height calculation examples the Council may have.

Staff has also attached applicable Development Code sections to the memo for additional information and diagrams.

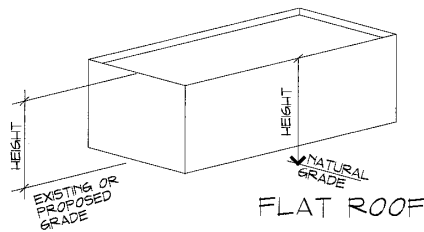
## **Building Height Definitions (Section 9-1-5)**

**BUILDING HEIGHT:** The height of a building as measured from any point from within a building's foundation or around a building's foundation perimeter, and is based on the methods described under the definition of "building height measurement" in this section.

**BUILDING HEIGHT MEASUREMENT:** Building height is measured in one of the following three (3) ways (A, B or C); all are measured from a point on the roof to a point on the grade directly below. Measurement is taken from points around the outside edge of the building's perimeter to natural or proposed grade, whichever yields a greater dimension, and from within the building's foundation perimeter to natural grade. In the case of nonnatural or highly irregular topography due to past mining impacts or other man-made impacts within the existing site development area (see illustration below), an average slope may be used.

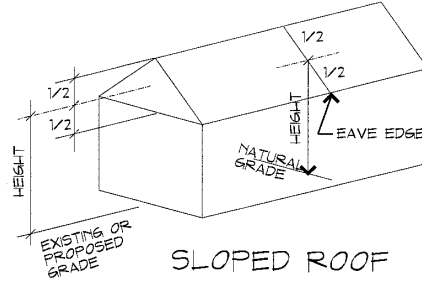


All buildings with flat roofs are measured per method A. All multi-family buildings, commercial buildings and all buildings within the historic district are measured per method B. All single-family residences and duplex units outside the historic district are measured per method C (unless a flat roof is proposed, then method A would be used).

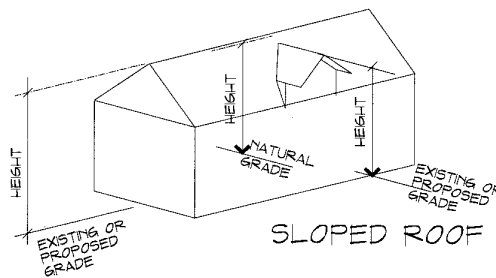


- A. Measurement to the highest point of a flat or mansard roof: The greatest dimension, measured vertically, of a building between the highest point of a flat or mansard roof, including the cap of parapet, to a point measured directly below as described above.
- B. Measurement to the mean elevation of a sloped roof: The greatest dimension, measured vertically, to a point between the ridge and the eave edge of a sloped roof, to a point measured directly below as described below:





C. Measurement to the highest element of a sloped roof: The highest point of any roof element to a point measured directly below as described below:



On any lot exhibiting evidence of cut or fill grade not authorized by the town, the applicant may be required to provide a professional soil analysis to determine the natural grade. No excessive fill, excavation or other artificial methods of grade manipulation will be permitted to create an exaggerated building site to manipulate the building height measurement.

**STORY TO HEIGHT CONVERSION:** A conversion factor used in determining allowed building heights outside the historic district for all structures except single-family residences and duplexes, where the first two (2) stories of a building are allocated thirteen feet (13') in height each, and all subsequent stories are each allocated twelve feet (12') in height. One-half ( $1/2$ ) story equals six feet (6').

**9-1-19-6A: POLICY 6 (ABSOLUTE) BUILDING HEIGHT:**

The maximum allowed height for structures shall be as follows:

**A. Within The Historic District:**

(1) Building height measurement shall be to the highest point of a flat or mansard roof or to the mean elevation of a sloped roof.

(2) Maximum building height for all nonresidential, multi-family, duplex and single-family structures:

a. In land use districts 11, 17 and 18, and in those portions of land use districts 18<sub>2</sub> and 19 north of Lincoln Avenue or south of Washington Street, building height shall not exceed twenty six feet (26').

b. In those portions of land use districts 18<sub>2</sub> and 19 that lie between Lincoln Avenue and Washington Street, building height shall not exceed thirty feet (30').

**B. Outside The Historic District:**

- (1) For all single-family residences or duplex units: Measurement shall be to the highest point of any roof element and shall not exceed thirty five feet (35').
- (2) For all structures except single-family and duplex units outside the historic district: No building shall exceed the land use guidelines recommendation by more than two (2) full stories. (Ord. 22, Series 2006)

**9-1-19-6R: POLICY 6 (RELATIVE) BUILDING HEIGHT:**

1 (-2,+2)	The height of a building has many impacts on the community. Building heights that exceed the land use guidelines can block views, light, air, and solar radiation; they can also disrupt off site vistas, impact scenic backdrop and penetrate tree canopies that provide screening to maintain a mountain forest character. It is encouraged that the height of new buildings be controlled to minimize any negative impacts on the community.
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A. For all structures except single-family and duplex units outside the historic district:

- (1) Within The Historic District: The impact of building heights within the historic district is critical to the building's compatibility with the historic district guidelines and neighboring existing historic structures. In most instances the taller a building is, the greater its impact will be on adjacent buildings and the district in general. The town desires to keep negative impacts to a minimum and has established the following policies aimed at controlling the height of new construction within the historic district:

1 x (0/-3)	a. In land use districts 11, 17 and 18, and those portions of 18 <sub>2</sub> and 19 which lie north of Lincoln Avenue or south of Washington Street, a maximum height of twenty three feet (23') is strongly encouraged. For buildings with heights greater than twenty three feet (23'), points shall be deducted based on the following table:
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<u>Building Height</u>	<u>Point Deductions</u>
23.01 - 24 feet	-1
24.01 - 25 feet	-2
25.01 - 26 feet	-3

1 x (0/-5)	b. In those portions of land use districts 18 <sub>2</sub> and 19, which lie between Lincoln Avenue and Washington Street, a maximum height of twenty five feet (25'), is strongly encouraged. For buildings with heights greater than twenty five feet (25'), points shall be deducted based on the following table:
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<u>Building Height</u>	<u>Point Deductions</u>
25.01 - 26 feet	-1
26.01 - 27 feet	-2
27.01 - 28 feet	-3
28.01 - 29 feet	-4

29.01 - 30 feet	-5
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(2) Outside The Historic District:

a. For all structures except single-family and duplex units outside the historic district: Negative points under this subsection shall be assessed based upon a project's relative compliance with the building height recommendations contained in the land use guidelines, as follows:

-5 points		Buildings that exceed the building height recommended in the land use guidelines, but are no more than one-half (1/2) story over the land use guidelines recommendation.
-10 points		Buildings that are more than one-half (1/2) story over the land use guidelines recommendation, but are no more than one story over the land use guidelines recommendation.
-15 points		Buildings that are more than one story over the land use guidelines recommendation, but are no more than one and one-half (1 1/2) stories over the land use guidelines recommendation.
-20 points		Buildings that are more than one and one-half (1 1/2) stories over the land use guidelines recommendation, but are no more than two (2) stories over the land use guidelines recommendation.
		Any structure exceeding two (2) stories over the land use guidelines recommendation will be deemed to have failed absolute policy 6, building height.
		b. For all structures except single-family and duplex units outside the historic district: Additional negative or positive points may be assessed or awarded based upon the planning commission's findings of compliance with the following:
1 x (-1/+1)		1. It is encouraged that buildings incorporate the uppermost story density into the roof of the structure, where no additional height impacts are created.
1 x (-1/+1)		2. Buildings are encouraged to provide broken, interesting roof forms that step down at the edges. Long, unbroken ridgelines, fifty feet (50') or longer, are discouraged.
	B.	For all single-family and duplex units outside the historic district:
		(1) Additional negative or positive points may be assessed or awarded based upon the planning commission's findings of compliance with the following:
1 x (-1/+1)		a. It is encouraged that buildings incorporate the uppermost story of density into the roof of the structure, where no additional height impacts are created.
1 x (-1/+1)		b. Buildings are encouraged to provide broken, interesting roof forms that step down at the edges. Long, unbroken ridgelines, fifty feet (50') or longer, are discouraged.
1 x (0/+1)		c. Roof forms are encouraged to have a minimum pitch of eight in twelve (8:12) to a maximum pitch of twelve in twelve (12:12) over ninety percent (90%) of the roof area (measured in plan); however, up to ten percent (10%) of the roof area may be flatter than an eight in twelve (8:12) pitch. (Ord. 22, Series 2006)