

AGENDA

CITY COUNCIL WORK SESSION

February 24, 2020

**4:00 PM, City Council Chambers
130 S Galena Street, Aspen**



4:00 - 4:15 COUNCIL OPEN DISCUSSION

I. WORK SESSION

- I.A. Short Term Rental Update
- I.B. Quarterly Finance Update
- I.C. Council Board Reports

MEMORANDUM

TO: Mayor and City Council
FROM: Pete Strecker, Finance Director
MEETING DATE: February 24, 2020
RE: Vacation Rental Update

Summary: Staff is looking for direction on a few key items related to short-term rental lodging in order to improve compliance with sales and lodging tax remittance and vacation rental permitting. While there are multiple perspectives on how to enforce and who to make exceptions for (if any), the status quo is currently falling short in that it:

- does not provide an even playing field for the lodging community (neither to traditional lodging offerings nor between non-traditional lodging offerings);
- does not provide short term rental market data (how many units, where they are located, value of the market, etc.) that Council will need to make future long-term decisions; and
- allows for unlawful rentals (one room and deed restricted units) to occur due to minimal ability to regulate and enforce current code.

While it is unlikely that all members of the lodging community will agree with how to change current regulations, the need for change is apparent. With this in mind, the following outlines the current environment and presents a few key items for Council consideration.

A. Business License / Taxation

Per title 14¹ of the municipal code, any establishment that resides within City limits and/or does business within the City is required to obtain a business license. Additionally, it denotes that if you are doing business in multiple locations, a unique business license is required for each site².

There are a handful of exemptions³ to the business license requirement – these can be found in Titles 14 (Licenses and Permits) and 23 (Taxation) generally, but one additional exemption was inserted in Title 26 (Land Use) around vacation rentals. The exemptions are noted below:

- non-profits and religious organizations;
- casual sales or one-time deliveries;
- businesses with liquor licenses (liquor license includes the business license); and
- vacation rentals where there is a designated representative that owns or represents multiple rentals.

The municipal code is structured so that a business license holder is also designated as being a tax filer⁴; and thus, the City can identify and search out individuals that have not filed their tax returns as they are registered as holding a unique business license. As the City is a self-

¹ Sec. 14.08.010, Sec. 14.08.040, Sec. 14.08.100

² Sec. 23.44.080

³ Sec. 14.08.050, Sec. 23.44.040, Sec. 26.575.220

⁴ Sec. 23.44.050

collecting municipality, this burden resides on City Staff through its two auditors to ensure that the City is receiving its appropriate tax revenue.

B. Vacation Rental Permit

The Vacation Rental Permit was established to address general safety concerns and residential neighborhood impacts. The vacation rental permit code⁵ specifies the basic requirements around which lodges are exempt from this permit, the responsibility to collect and remit lodging and sales taxes, and the need for local representation.

By requiring more properties to be licensed, there is an opportunity to significantly increase the messaging to business license holders. Part of the registration process for a new business license application for short term rental property will require the applicant to acknowledge that all fire and life safety initiatives within the 2015 International Fire Code must be met and inspection by a certified fire inspector may be required. This message, if changes are made to the current code, could be received by all newly licensed vacation rental properties.

C. Current Compliance Issues (Business Licensing and Vacation Rental Permits)

Approximately 50 business licenses include remittance of sales and lodging tax on short-term rental properties out of the 1000+ properties on the short-term market. It is reasonable to assume only a portion of the total market is remitting tax given this large disparity between licenses and rental properties. While some filings may be happening under an umbrella business license (per the current allowance under Section 26), there is currently no way of knowing whether such filings even included all managed properties for that month. While it is currently not possible to affirm the level of compliance, there is reason to believe tax remittance is not happening.

Additionally, staff looked at the current compliance with obtaining a vacation rental permit. For 2019, there were roughly 70 permits issued. Given that there are 1,000+ short term rentals consistently throughout the City, there is not compliance with current code for a vacation rental permit for every unit being offered. By allowing responsible parties to file a return for an unknown number of properties, there is no cross validation possible to ensure properties are obtaining these permits.

D. Options for Council

Until now, enforcement was restricted due to the inability to consistently identify short term rental properties and the absence of individually licensed properties. With the identification obstacle overcome, Staff is returning to Council to discuss licensing options to address the current compliance issues and improve short term rental market data collection. With these options, Staff hope to remove any remaining obstacles; and in tandem, address Council preferences for regulating specific rental offerings, to then have an initial and agreed upon foundation to proceed with gaining improved compliance.

1) Continue under current structure – not recommended

The current structure allows for a “designated representative” to utilize one business license and one tax return to file taxes for an unknown number of properties (which are

⁵ Sec. 26.575.220

not required to be disclosed). It is believed that this allowance (included under the land use code) was an attempt to gain compliance when the vacation rental permit was first introduced. This may have been a manageable approach in 2012; however, the number of short-term rentals have exploded, and it is not feasible to manually monitor 1000+ properties for compliance with licensing, permitting and tax requirements. Pursuing compliance in this manner would require multiple additional full-time staff.

Under this structure, the only mechanism to ensure compliance is to audit every short-term rental tax filer every month which is not a practical or realistic solution. This approach would be extremely labor intensive for both the filer and the City and could be deemed unreasonable and burdensome if challenged. Even if the data was provided voluntarily to the City each month (without the mandate of an audit), current City resources would not be adequate to manually analyze each submission for all properties and to ensure appropriate computation of taxes due.

By continuing under the current structure, it will:

- require additional City manpower to truly enforce as the effort would require routine audits on all filers that submit under an umbrella business license;
- require property representatives or owners to respond to repeated requests for data as the result of periodic audits to ensure there is compliance;
- provide incomplete data on the vacation rental market without significant work to aggregate together ancillary data submissions; and
- not treat different subsets of the short-term rental industry equally given the exemption for properties with personal representatives versus those that do not.

2) Accept Tax Payments From Third Party Vendors – not recommended

Staff has heard from individuals and has discussed with Council in the past about the VRBO and Airbnb standard agreements they offer municipalities in Colorado to collect and remit sales tax on behalf of their clients. The agreement is on their terms and is nonnegotiable. Other municipalities have effectively adopted these agreements as the State of Colorado is the collection agency for those municipalities, but it has come with a price. As the City of Aspen is a self-collecting entity, Aspen has a choice in this matter and has opted not to enter into these agreements. For the reasons noted below, Staff does not recommend this option:

- The agreements do not allow for audit through to the owners.
- The agreements do not allow for identification of the owners.
- Non-identification of owners allows deed restricted units to be used as short term rentals. Most of the deed restrictions do not permit this use as it seriously erodes the local worker housing stock.
- The agreements do not allow for the collection of taxes prior to the date of the agreement – the City forfeits any and all back taxes due.
- The audit period is limited to 12 consecutive month period. Therefore city cannot pick random months for testing over 36-month test period.

- While VRBO and Airbnb are estimated to cover half of the rental market, the City would not have agreements to enforce collections from other rental sites and tax collection would still be incomplete.
- Property owners who may be actively trying to avoid taxation can simply switch to one of the other platforms that are not remitting taxes.

3) Remove single business license allowance for “designated representative” – staff supported option

This would strike through the current reference in the land use code (Sec 26.575.220 D.2) that provides the licensing exemption to Vacation Rentals run by a “designated representative”. This option would require every property/unit operating as a Vacation Rental to obtain a business license and remit taxes individually, just as all other businesses operating in the City are required. Additionally, there would be no change to the current requirements for obtaining a vacation rental permit. Under this option, there would be no exemptions to the business license requirements in Title 14. This puts everyone conducting business in the City on the same level playing field.

In addition to removing this exception, staff would advise adding a requirement for displaying the business license # in all online listings.

By requiring a business license for every short-term rental, it will:

- provide the most readily available detail for compliance and enforcement;
- provide the most complete data on the short-term rental market for Council to utilize in future long-term decisions;
- provide the most level playing field for all short-term rental participants as well as the general lodging/business community (fairness within non-traditional offerings and greater parity with traditional lodging options both);
- only require audit requests when needed and not due to a more scheduled check-in for compliance, which the current situation would require;
- treat unit owners equally through mirroring individual taxation for sales and lodging tax as is done for income and property taxation for all owners; and
- help reduce scam listings by requiring every listing to have a unique business license #.

4) Remove the designated representative exception and replace it with a “condo-tel” exception – staff supported option

This is a targeted exemption to allow for an exemption for properties that truly look and operate like a traditional lodge (i.e. condo-tels). The proposed code amendment is a response to feedback from Council and condo-tel operators. Staff is focused on ensuring that the proposed code amendments and data collection system meet the needs of the City in terms of licensing and tax collection, as well as those of the lodging sector, whose management practices mimic those of a hotel.

Language to allow for an exemption in this area would look something to the effect of:

Any person who owns or represents one or more Vacation Rentals shall obtain an annual City of Aspen business license pursuant to Chapter 14.08, Business Licenses, of the municipal code. However, if a Vacation Rental unit is marketed and managed by an on-site property management team with an on-site 24/7 front desk, only one business license and vacation rental permit shall be required for all managed units.
[DRAFT LANGUAGE – MAY NOT BE FINAL CRITERIA]

In addition to altering this exception, staff again advise adding a requirement for displaying the business license # in all online listings.

This would allow the “condo-tel” units to continue to remit taxes on a single return and single vacation rental permit for all units under their management. Units within these properties that are rented, advertised or marketed by anyone other than the on-site management are required to obtain an individual business license and vacation rental permit for each individually addressed unit.

By adopting this proposed amendment, it will:

- improve tax compliance over current situation as the business license exemption would be for only a small portion of the short-term lodging industry and would be manageable for City staff to partner with those organizations for additional delineation of covered units under the umbrella license;
- provide a savings to the owners within the condo-tel as there would be a single umbrella business license for which all units would file under – this would reflect the operation of the rentals more closely with traditional lodging offerings;
- still provide a large portion of the data on the short-term rental market and allow Council the tools it would need to evaluate other long-term change

5) Provide an allowance for fractional ownership rentals – staff supported option

This provision would permit units that have fractional ownership structures to file for a zero-dollar business license. This exemption would still trigger a tax filing given that a license has been issued; and thus, provide for transparency around these units. But the \$150 annual business license fee would be waived as a way to treat these partial ownership units more closely to the “occasional filer” that we have in other industries that receive this similar allowance.

E. Property Types

There is currently no identifiable metric to encapsulate all of the various “condo-tel” properties. Some are residential by definition, some are fractional and some are a lodge/hotel. Based on feedback from the lodging community and council it is the properties that look like and operate like a traditional lodge/hotel that are targeted to be exempt from obtaining a license a permit and an individual tax return for each managed unit. Thus, we have propped the property identification requirements in D.4. above.

F. Lodging Community

While there are still conflicting opinions on how to increase regulation by some in the lodging community this first regulatory step is essential to achieving the universal goal of increased compliance that staff and the lodging community have been seeking. That said, while this need not be the final action by Council on this topic, taking some action for greater compliance will at least start addressing the issues around compliance of tax remittance, identification of the short-term lodging inventory, and provide for greater enforcement around unlawful rentals.

Staff advertised this work session topic in two consecutive community development newsletters and provided a contact for any public questions or comments. Additionally, staff directly reached out to and personally met with various representatives of the short-term rental industry, including Frias Properties, The Gant, Aspen Luxury Vacation Rentals, and Aspen Alps. Feedback from these individuals can be summarized by the following:

- Consistent support to get the vacation rental market under control, collect data and monitor the short-term rental market.
- Widespread agreement that unregulated rentals are negative to the Aspen experience
 - One party commented they would like to see a requirement for properties to be professionally managed, see too many people being under-served
- See real value in getting a full picture on the short-term market (data) – this is needed to help further decision making around infrastructure needs for the community and to ensure a quality product that guests expect, without negatively impacting neighbors.
- One party was clear they wanted to see costs that are fair and equitable for all various properties; others supported some form of exemption for the condo-tel and/or fractional ownership units.
- Some parties see the additional cost and work from increased regulation as worthwhile to get the compliance and market data that is currently missing.

Summary

Vacation Rentals are administered under the City of Aspen land use code Section 26.575.220. This code section was created via Ord. No.34-2011, §2 and was adopted on March 26, 2012, and remains in effect with no subsequent changes. The Vacation rental market has since expanded beyond what could be imaged at the time. What is clear and what has been demonstrated is that the status quo is not working and is not a feasible path forward.

The regulations adopted in 2012 are not adequate to provide the City with compliance enforcement mechanisms. Further, by making one of these recommended changes, the City can take the first step to providing the City with the data it needs to make informed policy decisions on other aspects of this issue which council may feel are needed.

By increasing business licensing requirements, there may be future opportunities for agreements with websites to require all listing to be licensed. Portland, OR and Santa Monica, CA both recently adopted ordinances requiring this licensing requirement. This approach was

only just recently implemented, and effectiveness is not yet known. Additionally, these agreements currently only exist with AIRBNB, and not all marketplace facilitators.

The proposed options address a large portion of the compliance issues while also considering some of the issue heard from the lodging community. These methods also provide staff and Council with additional short-term rental market data and opportunities to message and manage these properties that the current landscape does not provide.

Municipal Code Citations

1 – Title 14 Licensing and Permitting

Sec. 14.08.010. Purpose. The purpose of this Chapter shall be to require the licensing and regulation of business activities and enterprises conducted within the City and provide the City with necessary information concerning the business activities within the City, the nature of the business operation, number of employees, place of business and such other information relating to businesses and professions operating within the City in order to protect the health, welfare and safety of its inhabitants.

Sec. 14.08.040. Required. It shall be unlawful for any person, whether as principal or agent, clerk or employee, either for himself or for any other person or for anybody, corporation or otherwise to commence or carry on any kind of lawful business, profession, vocation or occupation in the City, without first having procured a license from the City so to do or without complying with any and all regulations of such business, profession, vocation or occupation, contained in this Chapter.

Sec. 14.08.050. Exemptions from Chapter. The provisions of this Chapter shall not be deemed or construed to require the procurement of a license to conduct, manage or carry on, any business, occupation or activity or require the payment of any license from any institution or organization which is conducted, managed or carried on wholly for the benefit of charitable, municipal or public purposes from which profit is not derived, either directly or indirectly, by any individual, firm or corporation. Nor shall any license be required for the conducting of any entertainment, dance, concert, exhibition or lecture on scientific, historical, literary, religious or moral subjects, whenever the entire receipts from the same are to be appropriated to or such projects are conducted under the auspices of any church or school or any religious, nonprofit or benevolent organization. Nor shall any license be required for the conducting of any entertainment, dance, concert, exhibition or lecture, whenever the receipts from the same are to be appropriated for the purposes and objects for which such association or organization was formed and from which profit is not derived, either directly or indirectly, by any individual firm or corporation. Nor shall a license be required of any person for any mere delivery in the City where no intent by such person is shown to exist to evade the provisions of this Chapter. No newsboy selling magazines or newspapers on the public streets or in public places shall be required to obtain a license. Nor shall a license be required for a casual sale, as defined in Section 14.08.020 above.

Sec. 14.08.100. Separate license for each place of business. A separate license must be obtained for each branch, establishment or separate place of business in which the business is carried on.

2 - Taxation

Sec. 23.44.040 Exemptions: The following are exempt from the payment of an occupation tax:

- (a) An employee;
- (b) Any business exempted by federal or state law;
- (c) Any business subject to the liquor occupation tax assessed under Title 5 of this Code;

(d) Any business or enterprise specifically described in Section 14.08.050 of this Code as being exempt from the requirement of procuring a business license.

23.44.050 Business Tax Return: Every person engaged in business in the City, unless exempt from the occupation tax by law, shall make and file a business tax return with the Finance Director on a form provided by the City. The return shall show the name and address of the place of business, the number of employees and persons engaged in the operation of the business, together with such other information as may be required by the Finance Director. The return shall be filed and the tax paid on or before January 1st of each year. However, a new business shall file its first return prior to the starting of the business and thereafter on or prior to January 1st of each year.

Sec. 23.44.080. Separate Tax for Separate Place of Business: Every person doing business in more than one (1) store, stand or other place of business shall pay a separate tax for each place of business unless such places of business are contiguous to each other. The business may be transferred from one (1) location to another without the payment of additional tax, after giving written notice to the Finance Director.

3 – Land Use Code

Sec. 26.575.220 Vacation Rentals (Subsection B.2 Prohibitions): This section shall not apply to leases or other rental arrangements in Lodges, Timeshare Lodges, Bed and Breakfasts and Hotels. (See Section 26.104.100, Definitions, for definitions of these terms.)

Sec. 26.575.220 Vacation Rentals (Subsection D.2 Business License): Any person who owns or represents one or more Vacation Rentals shall obtain an annual City of Aspen business license pursuant to Chapter 14.08, Business Licenses, of the Municipal Code. If an individual or business entity acts as a designated representative of one or more Vacation Rentals, only one business license shall be required. However, each residential unit shall obtain a Vacation Rental Permit.

Sec. 26.575.220 Vacation Rentals (Subsection D.3 Local Owner Representation): The owner of a Vacation Rental, if residing in the Roaring Fork Valley or a designated representative of the owner residing within the Roaring Fork Valley, shall be on call to manage the Vacation Rental during any period within which the Vacation Rental is occupied. The name, phone number and address of the local owner or the local owner representative shall be provided to the Community Development Department at time of application for a Vacation Rental Permit. It is recommended, but not required, that a sign identifying the representative's name and number be posted on the property pursuant to Section 26.510.030.B.17 Property Management / Timeshare identification signs. It is the responsibility of the owner representative to inform Vacation Rental occupants about all relevant City of Aspen ordinances including, but not limited to parking, trash and noise. It is the responsibility of the owner to notify the City if there is a change in local owner representative within a reasonable timeframe.

Sec. 26.575.220 Vacation Rentals (Subsection D.4 Lodging and Sales Taxes): Lodging and sales taxes. Vacation Rentals shall be subject to all taxpayer responsibilities set forth at Chapter 23.08, Taxpayer's Responsibilities, particularly the responsibility to collect and to remit all applicable sales and lodging taxes.

Sec. 26.575.220 Vacation Rentals (Subsection E.1 Applications): Applications for a Vacation Rental Permit shall be submitted to the Community Development Department. A Vacation Rental Permit may be obtained by an authorized representative of the property owner. The application for a Vacation Rental Permit shall contain the following:

- a. If applicable, confirmation that notice was provided to the HOA.
- b. A City of Aspen business license or application.
- c. The name, phone # and address of the owner or local owner representative.

Sec. 26.575.220 Vacation Rentals (Subsection E.3 Exceptions for Multi-family dwelling units): Multi-family dwelling units within the same complex have the option to submit a consolidated Vacation Rental Permit application for multiple units managed by one local owner representative. If multi-family dwelling units use different owner representatives, separate applications shall be required.

Short-Term Rental Property Ordinance Matrix-March 2019

City	Taxes Required	License Required	Fees	# of listings (Est.)
Beaver Creek	Yes	Yes	\$200 annually	1200
Breckenridge	Yes	Yes	BOLT: \$75 - \$175 annually & Admin Fee: \$25-\$150 annually	3781
Crested Butte	4.5% Lodging Sales Tax & 5% Vacation Rental Excise Tax (funds affordable housing)	Vacation Rental License & Business License required	Unlimited Vacation Rental License fee: \$750/yr. Primary Residence License fee: \$200/yr max 60 nights	209 unlimited licenses. 17 primary residence licenses
Durango	sales/lodging	Yes	\$750 first time and annual business license fees of approx. \$100	93
Estes Park	Yes	Yes	\$200 base fee plus \$50 per bedroom for properties inside Town limits	588 resident, 190 com. resident cap met May 2018, waiting list at 37
Fort Collins	3.85% sales tax 3% lodging tax	Tax license, STR license	\$150, annual renewal is \$100	643
Silverthorne	Yes. Annual STR license & sales & lodging tax to town	Yes	Tiered fee: Studio \$100 , 1 BR \$150, 2BR \$200, 3BR \$250 4BR+ \$300	100
Snowmass Village	Yes	Yes	No	
Steamboat Springs	Yes (Sales & Lodging)	Sales Tax License Required; VHR permit required in most zones	\$50 Sales Tax Fee (one time); \$500 VHR permit fee, \$75 annual renewal fee	171 active permits. Approx 2386 listings in area.
Telluride	Yes	Yes	\$165 & \$22 per bedroom	
Vail	Yes sales/lodging	Yes Effective 3/1/19 STR Registration required per unit.	\$150 per unit for unmanaged properties, \$10 per unit for managed, \$5 per unit for "condo-tel" managed (24x7 front desk)	1650

Credits: Colorado Association of Ski Towns; Colorado Municipal League; City of Fort Collins

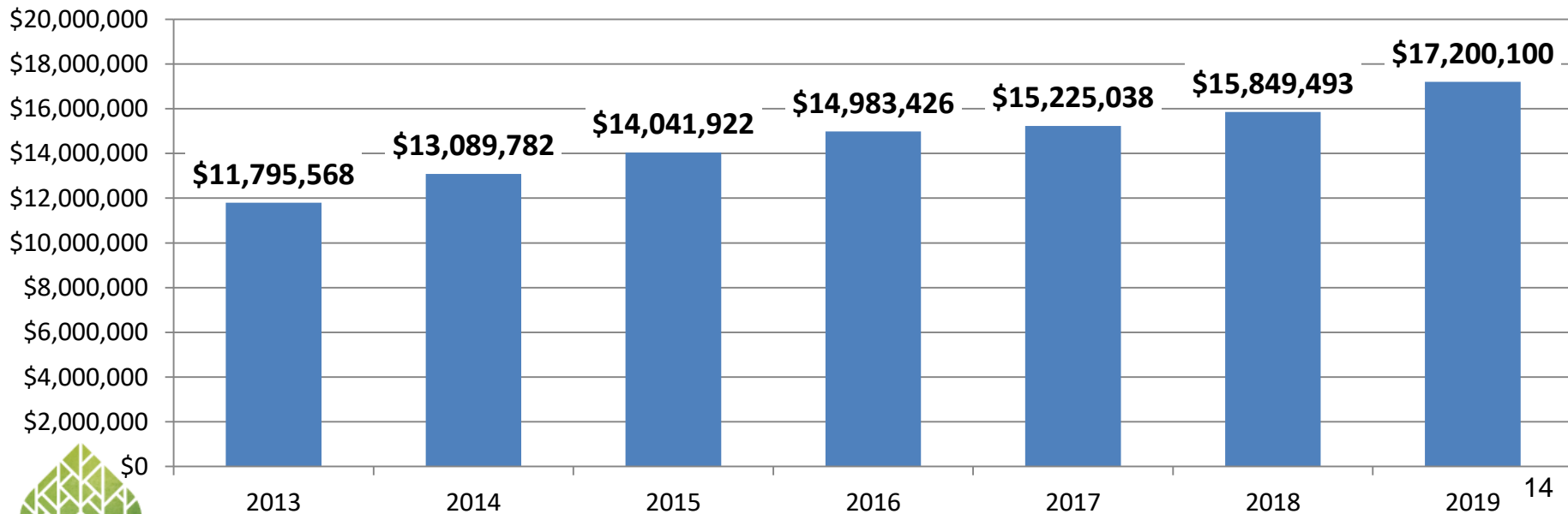
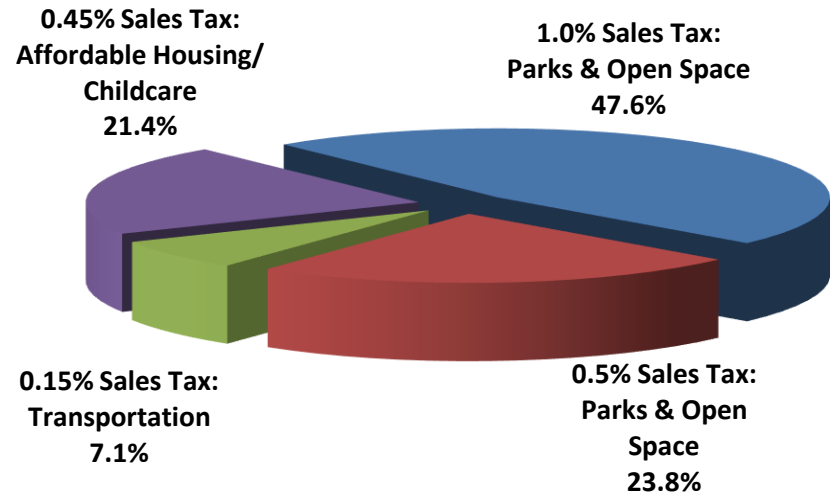


CITY OF ASPEN

Tax Revenue

Revenues: 2.1% City Sales Tax

2019 Finished Better
Than Expected



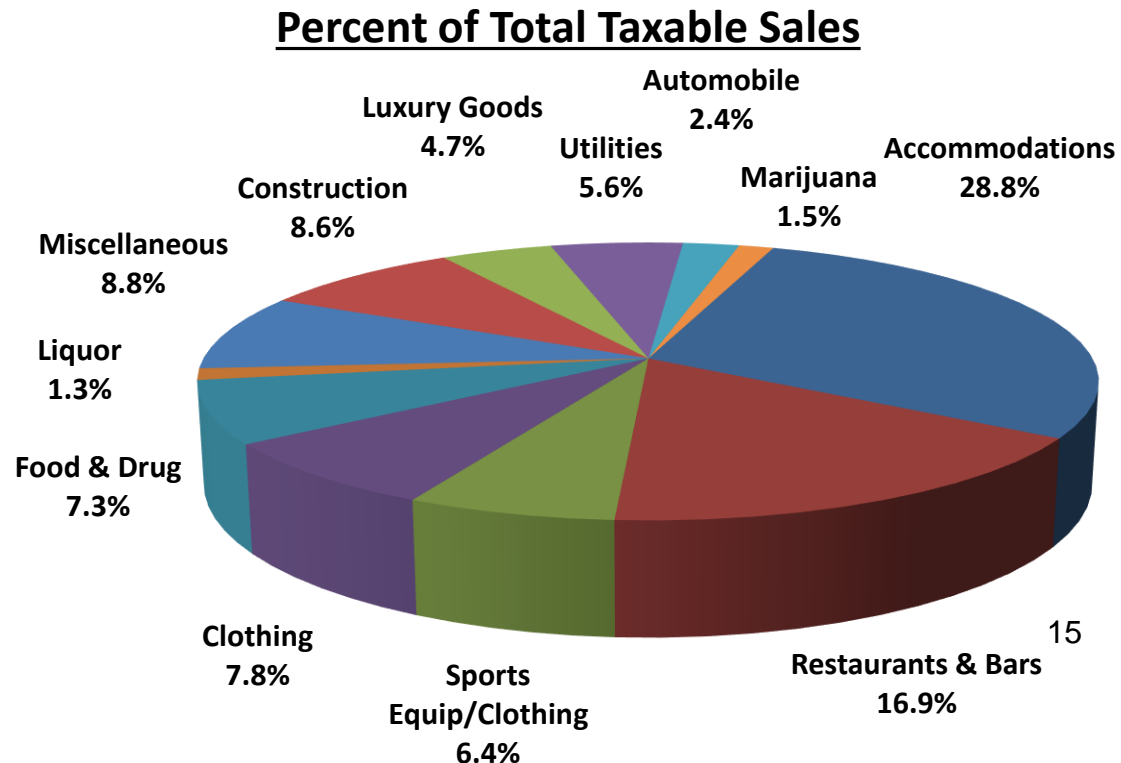
Revenues: 2.1% City Sales Tax

New Tool
Coming...

Only 2 Sectors
Experienced Declines

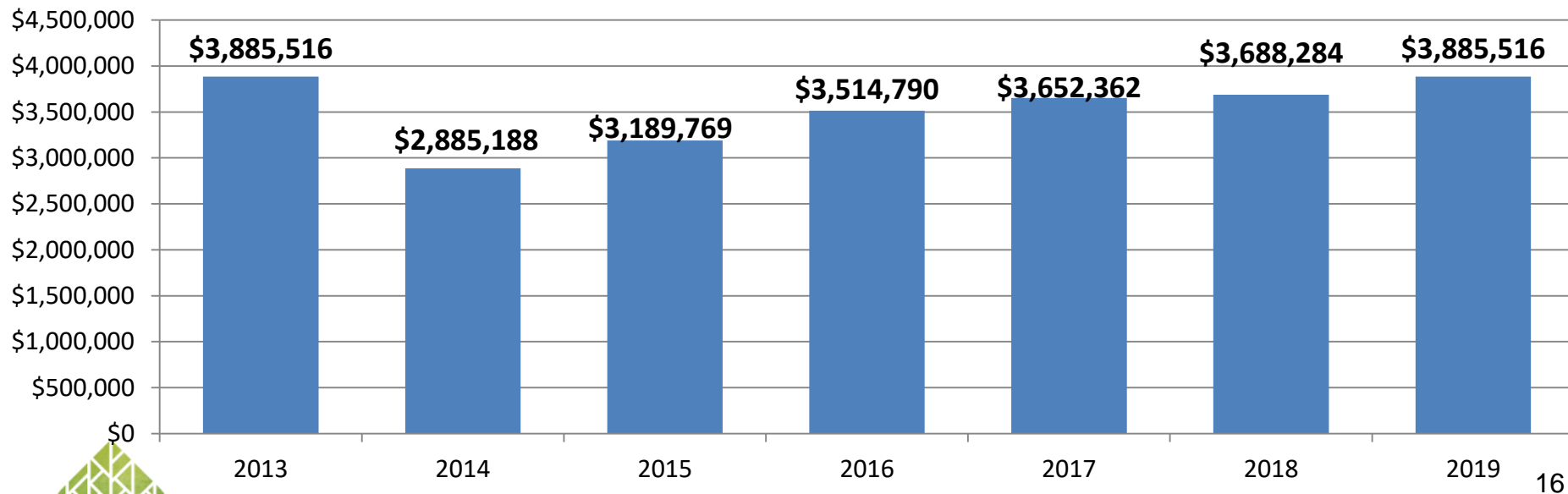
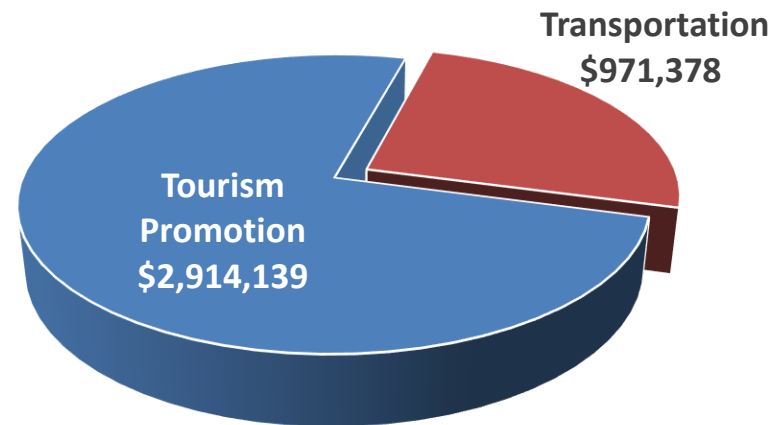
Category	YTD Retail Sales	% Change
Accommodations	\$236,022,348	6.8%
Restaurants & Bars	\$138,933,322	5.4%
Sports Equip/Clothing	\$52,764,596	4.5%
Clothing	\$63,878,204	5.8%
Food & Drug	\$59,563,090	4.2%
Liquor	\$10,937,381	1.8%
Miscellaneous	\$71,906,367	11.2%
Construction	\$70,270,949	20.6%
Luxury Goods	\$38,479,956	28.1%
Utilities	\$45,623,028	(1.0%)
Automobile	\$19,433,589	(3.0%)
Marijuana	\$11,944,810	1.6%
Total	\$819,757,641	7.5%

Largest Industries
Unchanged



Revenues: Lodging Tax

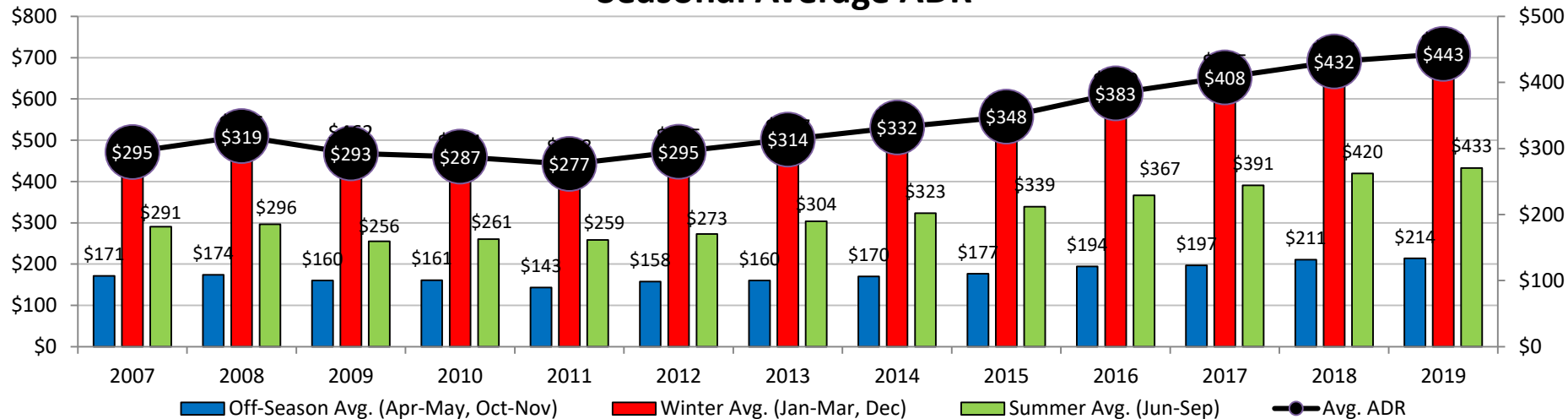
Lodging Tax Closely
Mirrors Accommodations
Sales Tax Change...



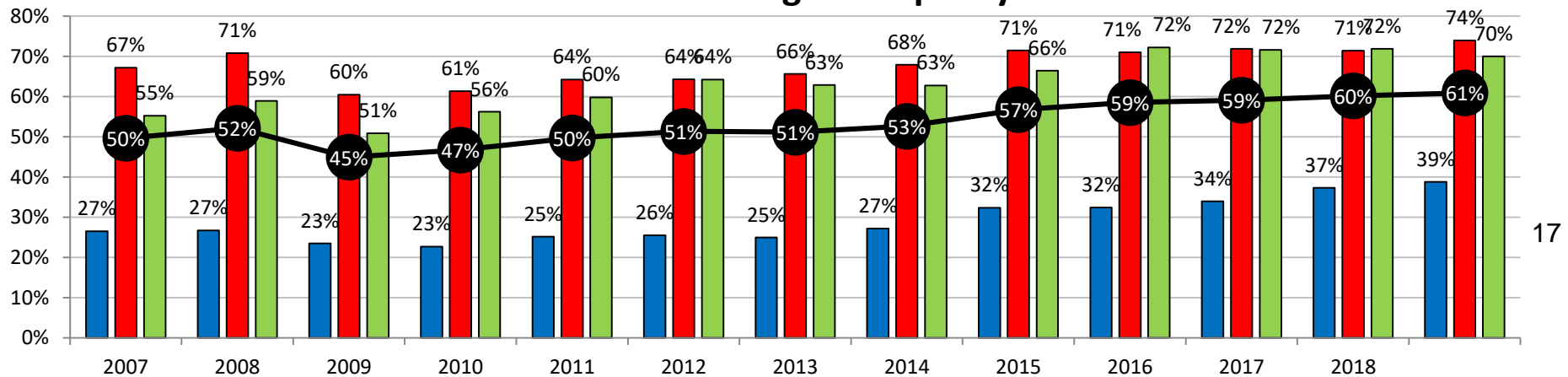
Revenues: Lodging Tax

Room Rate = The Majority Factor

Seasonal Average ADR

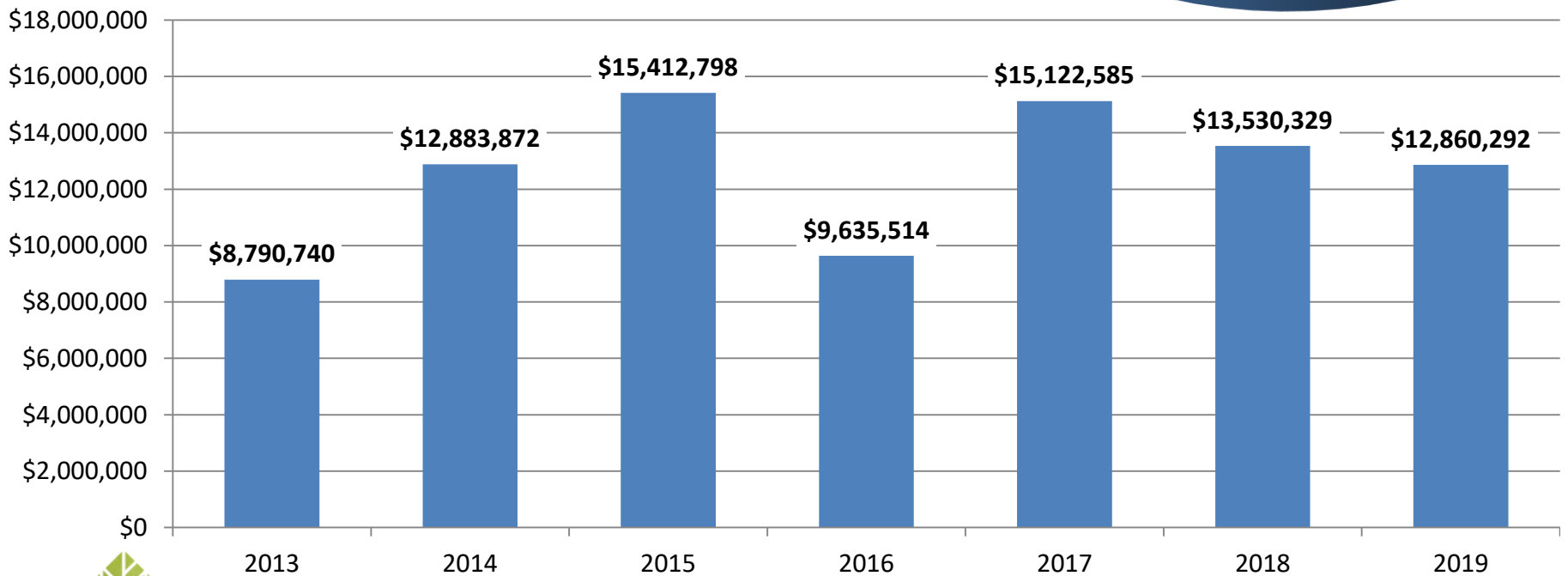
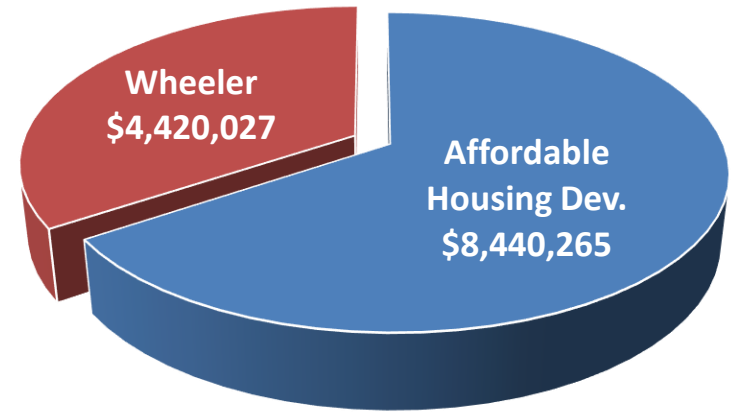


Seasonal Average Occupancy



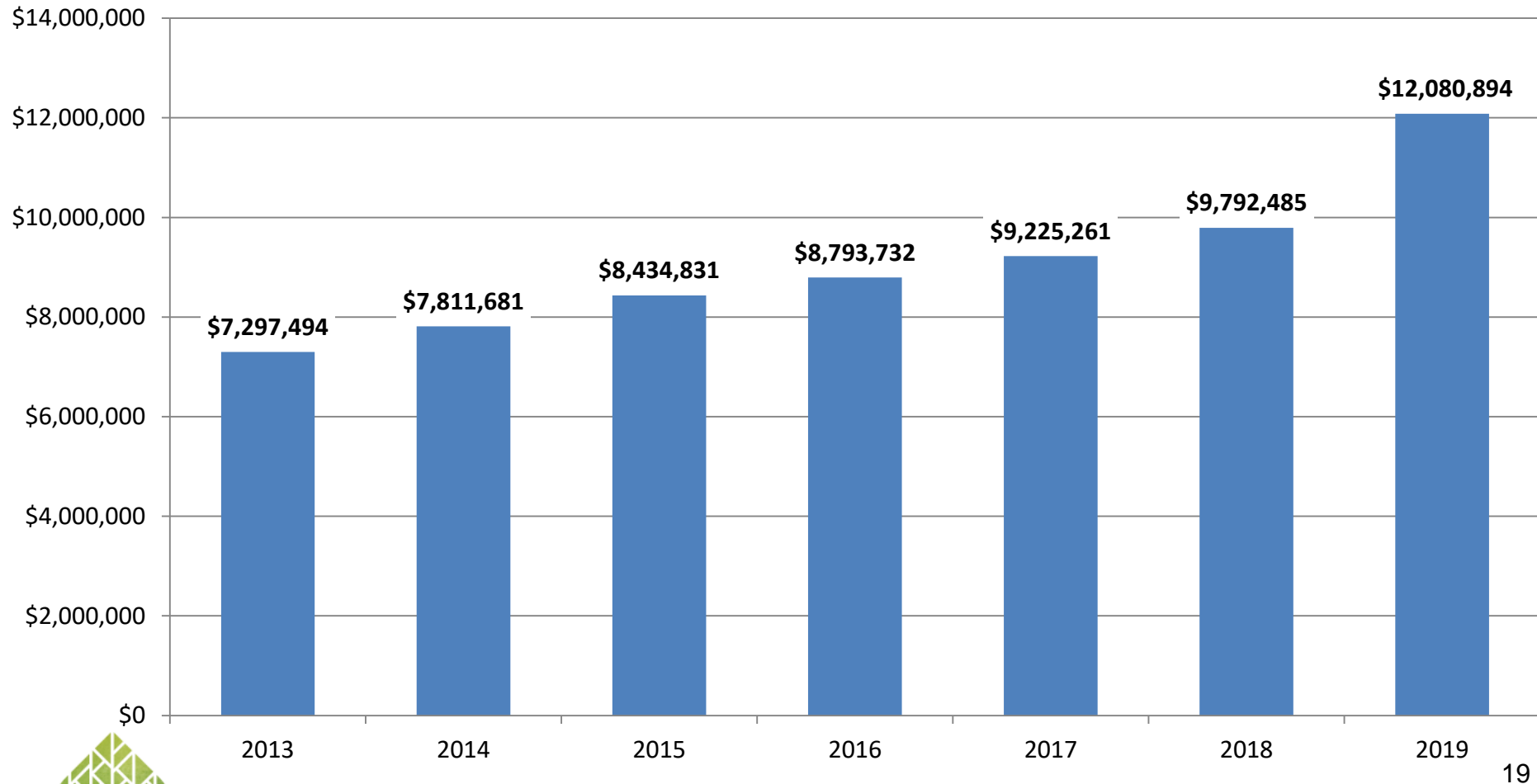
Revenues: RETTs

Exceeded Budget But
Less Than 2018



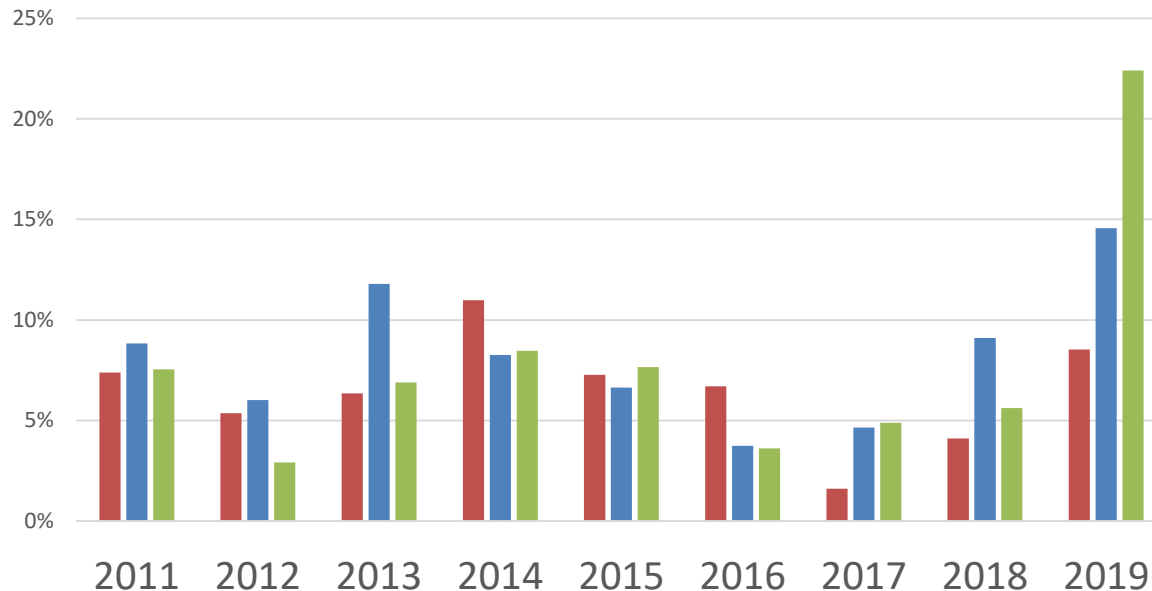
Revenues: Share of 2.0% County Sales Tax

Greater Than 20% Increase Relative to 2018



City Share of 2.0% County Sales Tax

Annual Change in Tax Collections



■ Aspen 2.1% Sales Tax

■ Town of Snowmass Village 3.5% Sales Tax

■ County 2.0% Sales Tax

Other
Jurisdictions
Seeing Larger
Growth...

City of Aspen
Business Licenses
Increased ~10%:

Dec. 2018: 9,410
Dec. 2019: 10,335



City Share of 2.0% County Sales Tax

- Pitkin Retains 43% of Collections
- Remainder Allocated:
 - *Aspen: 44.0%*
 - *Snowmass Village: 11.4%*
 - *Basalt: 1.6%*
- Separate from 1.0% Sales Tax for Transportation (RFTA)

Formula for Distribution of 57%:

Percentage Share During
24 months (Sept – Aug)
Prior to Next Calendar Yr.





CITY OF ASPEN

Expenditures

Expenditures

	2019 Budget / Spend
Original Budget	\$150,736,285
Spring Supplemental	\$69,922,382
Fall Supplemental	\$7,737,991
Total Annual Budget	\$228,396,658
Expended to Date	\$139,341,801
% of Annual	61%



Housing Development Fund:

- Public Private Partnership Projects (\$11M of \$26M)

Asset Management Plan Fund:

- City Offices Project (\$6M of \$33M)

Truscott I & Marolt Housing Funds:

- Truscott – Various (\$350K of \$1M)
- Marolt – Exterior Paint (\$0K of \$275K)

Employee Housing Fund:

- Water Place Phase II Project (\$227K of \$3.4M)

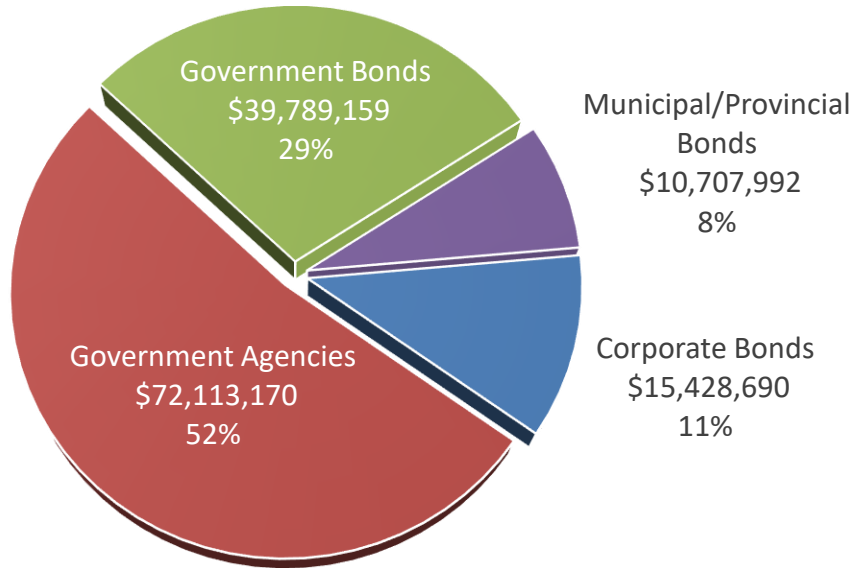


CITY OF ASPEN

Investments

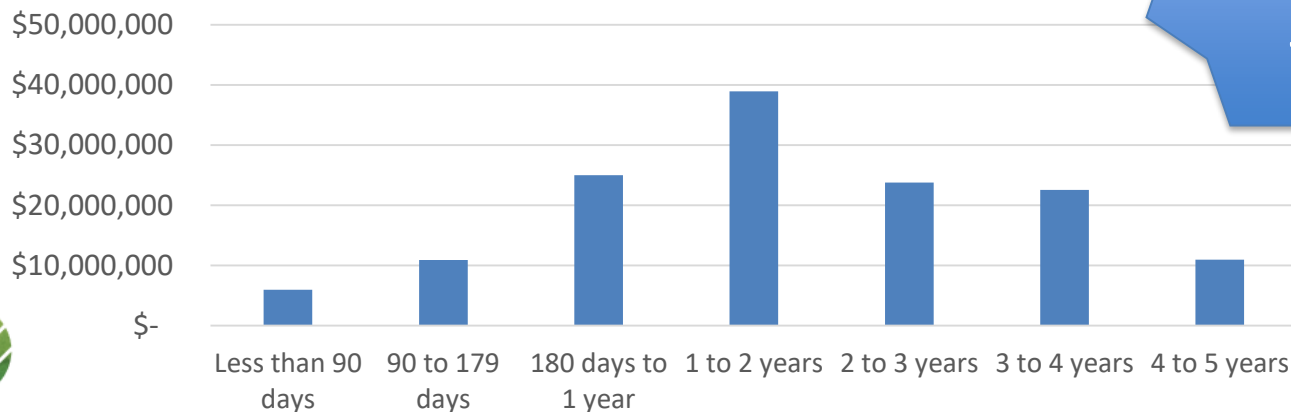
Quick Hits:

Portfolio Diversification (\$138M)



Agencies: Home Loan & Farm Credit
Bonds: US Treasuries
Municipal: NY, CA, WI, MA
Corporate: US Bank, Microsoft, Toyota, Berkshire Hathaway

Maturity Schedule (Avg. 1.8 Years)



Annual
Return:
3.49%

Quick Hits:

- City of Aspen Follows State Statutes (24-75-601.1 C.R.S.)
- Three Basic Principles
- Last Revised Dec. 2017

