

# **AGENDA**

## **CITY COUNCIL WORK SESSION**

**September 27, 2021**

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



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### **WEBEX MEETING INSTRUCTIONS**

#### **WEBEX MEETING INSTRUCTIONS**

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### **I. WORK SESSION**

I.A. Right of Way Activation

I.B. Financial Update

I.C. City Manager Update: City Public Health Order regarding Wheeler Opera House



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Trish Aragon, City Engineer  
Mitch Osur, Parking and Downtown Services Director  
Phillip Supino, Community Development Director

**MEMO DATE:** September 20, 2021

**MEETING DATE:** September 27, 2021

**RE:** Winter in Aspen Vitality (WAV) Program

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### REQUEST OF COUNCIL:

In a Work Session on September 7, 2021, Council provided direction on a range of topics related to the continuation of elements of the activation program that has been implemented over the last 18+ months in support of the local business community during the challenges presented by COVID-19. Currently, this program is set to expire on October 31st. This memo is a summary of staff's recommendation to Council on the continuation of activation strategies as the City and our business community prepares for the Winter season.

Staff asks that Council review this recommendation, provide feedback and direction on this recommendation and a small number of remaining questions. Following this discussion, staff will prepare a Resolution that defines the City of Aspen's activation efforts for Winter of 2021-2022. Council would consider this Resolution prior to the expiration of the existing activation program.

As Council considers staff's recommendation, please know that this plan assumes that COVID-19 is continuing along current assumptions and patterns. Staff is prepared to pivot as needed if the pandemic shows signs of more acute resurgence or public health orders should become more restrictive.

### SUMMARY AND BACKGROUND:

At the September 7<sup>th</sup> Work Session, staff asked for direction on the continuation through the Winter season of the following aspects of the activation program:

- Activations in parking spaces (e.g. Spring Café)
- Use of parking spaces to facilitate "take out" service (e.g. Big Wrap)
- Activations on the sidewalks (e.g. Aspen Tap)
- Activations on the walking malls (e.g. Ellina)
- Short term retail activations (e.g. Sky Gallery)
- Structures on the street (e.g. Meat and Cheese)

- Activations on private property (e.g. Local Coffee or Jing)  
and
- Long-term activation possibilities

In general, there was clear consensus that these efforts have been helpful to the business community during this difficult time and have been popular with locals and visitors alike. Council expressed that the realities of Winter do change the nature of some these efforts and the program needs to respond appropriately. Additionally, Council was unified in agreeing that if these activations were to continue through this Winter, that previously granted fee waivers related to use of the right-of-way and Land Use Code requirements for affordable housing mitigation should come to an end.

## **DISCUSSION:**

The following reflects staff recommendation for the continued activation of the right-of-way and private commercial property as we move into the Winter season. This recommendation considers Council direction from the 9/7 Work Session and staff's evaluation of how to best implement the program.

### **1) Activations in Parking Spaces**

The use of parking spaces by restaurants and other businesses (bike rentals, etc.) would come to an end for the season on October 31, 2021. The exception to this is three temporary structures that have been erected in parking spaces. These structures will be discussed in more detail below.

### **2) Use of Parking Spaces for "Take Out" Service**

Staff recommends that the City allow pick up spots for restaurants that have seating for six people or less. These spaces would be immediately adjacent to the restaurants they are intended for. Staff recommends that restaurants pay \$4.43 per square foot (see attached memo and lease agreement).

### **3) Activations on Sidewalks**

The use of sidewalks for business activation would come to an end for the season on October 31, 2021.

### **4) Activations on the Walking Malls**

Staff recommends continued activations on the walking malls for restaurants only. Restaurants would be required to serve lunch and/or dinner, and to operate at least 5 days per week. Staff recommends that restaurants pay \$4.43 per square foot (see attached memo and lease agreement). Staff will ensure there are some areas between any adjacent activations for pedestrians to cross from one side of the mall to the other.

### **5) Short-Term Retail Activations**

Staff does not recommend any short-term activations - retail or otherwise on the streets, unless associated with a special event permit.

The topic that received the most discussion at the previous Work Session is the continued use of temporary structures – both in the right-of-way and on private property. As Council evaluates staff's recommendation the following information is important to consider.

#### Building Code Flexibility – particularly Energy Code compliance

While all of the permitted structures (both in the ROW and on private property) complied with standards to ensure life, health and safety and accessibility, one important factor was completely waived: energy code requirements. Whether made of tent material or constructed with lumber and solid roofing materials – none of these structures (when enclosed and heated during the winter months) can meet even the most basic of requirements for insulation and energy efficiency. Staff understood this as a trade-off for the need to provide restaurants with additional square footage during capacity restrictions. As Council contemplates extending these structures through Winter of 21-22, the energy consumption and inefficiency of these structures should be considered and weighed against any benefits of their continued use.

It should also be noted that a small number of structures and enclosures on private property were erected during the last 18 months that were not permitted (generally tent-type enclosures). If these types of structures are to remain past October 31, staff will begin enforcement towards compliance on the unpermitted structures.

#### Commercial Design Review

For structures on private property, one issue that has been waived during the COVID response, has been Commercial Design review requirements. Most obvious has been flexibility granted to requirements for materials and the relationship of these structures to the entrances of the adjacent buildings. In general, the code prohibits tent like materials – including fabric, plastic, etc. While some of these temporary structures have been approved by Council for temporary use pre-COVID, and others were grandfathered due to their existence prior to changes in the Land Use Code, in general these structures are prohibited. If they have been approved at some time in the past – they have been established as a temporary use and have been required to pursue issuance of a tent or temporary structure permit.

Also contained within Commercial Design Review requirements are definitions and expectations for “Pedestrian Amenity” space. Prior to 2017, these areas were named “Public Amenity” spaces and had a slightly different definition. Pre-2017, these areas did have some requirement to be open for public use, but the concept was not evenly applied and often conflicted with the operating realities of commercial enterprises – most notably restaurants and lodges. Today, the concept and requirements of “Pedestrian Amenity” is to encourage a street scape and urban form that promotes interest within the pedestrian experience and a sense of openness. The LUC does not require unfettered public access to these spaces. However, there are design requirements for these existing areas and they are prohibited from being reduced in size – typically this means covering the space with a permanent roof or canopy. If they are proposed for reduction in size, there is a required review and a Fee-in-Lieu of \$100 per square foot. One of the things that can

cause a reduction in size of these areas – are structures that enclose or permanently roof these areas.

### Growth Management Review

The Land Use Code requires structures approved through temporary use – pay GMQS mitigation requirements for uses beyond 14 days. This has generally been applied to special event tents established by lodges, or for enclosed spaces approved by Council – like that at the Grey Lady/Nakazawa restaurant. These mitigation requirements for all temporary structures have been waived for the duration of the COVID response.

The calculation for these mitigation requirements is established in the LUC based on the net leasable requirements for commercial square footage and then “amortizing” the calculation to the number of days that the structure is erected. **Using the Nakazawa space (788 square feet) as an example, the GMQS/AH mitigation for a 180-day use (November 1 through May 1, approximately) would be \$11,053.** There is an important quality of these spaces that should be noted – these requirements are for “enclosures”. The LUC establishes that patio and other spaces that are covered (either permanently or with an awning) but remain open on the sides – are not subject to these mitigation requirements. In other words, if these structures are directly associated/adjacent to a commercial space, but do not have walls or windows – fabric, plastic or otherwise – they do not require AH mitigation.

Councilmember Richards suggested that an alternative calculation be established to assign mitigation requirements. While staff agrees that the current methodology is cumbersome, it would take time to identify an appropriate alternative to that which is already codified. Relative to the time required, staff does not believe an additional calculation is necessary and does not recommend the development and codification of a new calculation.

Related to Temporary structures, staff makes the following recommendations:

### **6) Activations in the ROW**

- Existing structures will be allowed to remain until May 1, 2022. As staff currently understands this situation, this involves La Creperie, Meat and Cheese, and Kemo Sabe.
- No new structures will be allowed to be established.
- Existing structures will be subject to GMQS/AH mitigation review and requirements per 26.470.090.F and will be approved through an administrative Temporary Use review. This would suspend the requirement for Council approval of each of these structures.
- These facilities will also be subject to any fees associated with temporary encroachment into the ROW.
- GMQS and Temporary Encroachment fees will be collected as a condition of issuance of the Temporary Use approval. Fees would be assessed for the number of days the structures are in place between October 31, 2021 and May 1, 2022.

- Structures in the ROW will continue to be evaluated by City Engineering to ensure pedestrian, bicycle, and vehicle safety, and accessibility; and by Community Development to ensure structural safety

## **7) Activations on Private Property**

- Existing structures will be allowed to remain until May 1, 2022.
- New structures may be established through an administrative Temporary Use review and Temporary Structure/Tent permit – with an expiration date of May 1, 2022.
- All (existing and new) structures will be subject to GMQS/AH mitigation review and requirements per 26.470.090.F and will be approved through an administrative Temporary Use review. This would suspend the requirement for Council approval of each of these structures. GMQS mitigation would be collected as a condition of issuance of the Temporary Use approval. Mitigation requirements would be assessed for the number of days the structures are in place between October 31, 2021 and May 1, 2022.
- Any structures not currently permitted will be enforced towards compliance.
- Structures utilized through May 1, 2022 will not be subject to Pedestrian Amenity, or other Commercial Design review or requirements.
- Community Development staff will continue to evaluate for structural safety.

**\*\*Question. We do not have the same public health guidance/requirements that we had last winter. Is Council supportive of these structures being fully enclosed during the Winter season?**

## **8) Long-Term Implementation of Activations**

Council, in general, has seemed willing to consider elements of the activations established in response to COVID-19 for long-term implementation. Staff recommends further evaluation of these possibilities. With Council direction, staff will work across agencies (ComDev - Planning, Building, and Environmental Health; Engineering; and Parking and Downtown Services) to identify a staff recommendation for potential solutions and perhaps additional flexibility in the long-term establishment of these activation efforts. Building and Energy codes, Commercial Design and GMQS review, pedestrian and bicycle safety, and the encouragement of vitality in the downtown core will be the focus of staff's analysis and eventual recommendation. Staff proposes returning in the 1<sup>st</sup> Quarter of 2022 with alternatives for Council consideration.

**ENVIRONMENTAL IMPACTS:** Should temporary structures be approved for continuation past October 31<sup>st</sup>, efforts to heat these structures will be inefficient from an energy-use perspective. Staff believes this aspect of these structures should be considered in evaluation of their continued use.

**FINANCIAL IMPACTS:** Should Council agree that previous fee and permit waivers should be ended, revenues from these activations (ROW, GMQS, and other permit fees)

will begin to again cover staff costs for the administration of this program and the impacts of these activations to employee generation.

**ALTERNATIVES:** Council could consider modifications to any of the recommendations identified above.

**RECOMMENDATIONS:** Based on previous Council direction and staff consideration of how to best implement activations in the Winter season, staff recommends Council provide support of staff's recommendation in directing formulation of a Resolution that will come before Council in the coming weeks.

**CITY MANAGER COMMENTS:**

**EXHIBITS**

**A:** Memo, Right-of-Way Activation Fees

**B:** Mall Lease

## Exhibit A



### MEMORANDUM

**TO:** Sara Ott, City Manager

**FROM:** Mitch Osur, Director of Parking and Downtown Services  
Nicole Henning, City Clerk  
Ron LeBlanc, Special Projects Manager

**MEMO DATE:** September 20, 2021

**RE:** Costs associated with activation in public ROW

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**REQUEST OF CITY MANAGER:** Review the cost of activating in the public rights-of-way and prepare a range of options

**DISCUSSION:** This research was undertaken by a staff team consisting of Mitch Osur, Nicole Henning, and Ron LeBlanc. This information will be presented to the City Manager for review prior to submitting the WAV Team recommendations to the City Council for discussion at the September 27 work session.

The City Clerk provided a history of the activation fees charged for the pedestrian malls (Attachment A). The fees charged for the mall leases became the basis for the City's business support efforts during COVID. The mall lease fees were applied to other rights-of-way such as parking spaces and sidewalks. The purpose was to maintain consistency.

This research revealed that times have changed significantly since the first mall leases were enacted. In 1976, the city wanted to encourage activation on the downtown pedestrian malls. The \$1.00/sq. ft./month was set to entice local restaurants to initiate outdoor dining. Mall leases have continued for the past 45 years.

There was no documentation to indicate the basis for the initial \$1.00/sq. ft./month. It appears that a *de minimus* amount seemed reasonable at that time and that \$1.00 was a number that could be easily tracked and calculated. The initial fee was increased several times since. No study or staff report explains the justification of those increases, except that it appears an attempt was made to adjust for inflation at times.

The amount charged for mall leases informs the amount proposed for activation in the public ROW. It would be difficult to justify additional activation fees for restaurants in parking spaces. The precedent set by the fees for mall leases cannot be disassociated from any proposed fee for activation in parking spaces.

Mall leases have never been subject to a true economic analysis. This effort would require a third-party consultant with experience with economics and cost of service studies.



- Activations in parking spaces: **From May 1 to October 31**
- Use of parking spaces to facilitate “take out” service: **Year Round**
- Activations on the sidewalks: **From May 1 to October 31**
- Activations on the walking malls: **Year Round**
- Short term retail activations: **Not at all, special events only**
- Structures on the street: **Year Round**

**FINANCIAL IMPACTS:** Staff developed 4 different options. These scenarios are all predicated on three (3) head-in parking spaces approximating 360 square feet.

Option 1 – No change, remain at \$4.43.

- This is the amount approved by City Council in the current 2020 fee schedule for mall activations.
- $\$4.43 \text{ a sq foot} \times 360 \text{ sq feet} = \$1,595 \times 12 = \$19,140/365 = \$52.44 \text{ a day} \times 150 \text{ days} = \mathbf{\$7,866}$

Option 2 – Increase by 5%, increase to \$4.65.

- This option reflects a 5% cost of living increase.
- $\$4.65 \text{ a sq foot} \times 360 \text{ sq feet} = \$1,674 \times 12 = \$20,088/365 = \$55.04 \text{ a day} \times 150 \text{ days} = \mathbf{\$8,256}$ .

Option 3 – Increase to \$8.00.

- This would be an intermediary first step to phase in the amount identified in Option 4.
- $\$8.00 \text{ a sq foot} \times 360 \text{ sq feet} = \$2,880 \times 12 = \$34,560/365 = \$94.68 \text{ a day} \times 150 \text{ days} = \mathbf{\$14,202}$ .

Option 4 – Increase to \$16.50.

- This number was determined by taking the average rent for restaurants (\$50) and using only 1/3 of that amount to compensate for lack of water, heat, roof, etc.
- $\$16.50 \text{ a sq foot} \times 360 \text{ sq feet} = \$5,940 \times 12 = \$71,280/365 = \$195.29 \text{ a day} \times 150 \text{ days} = \mathbf{\$29,294}$ .

These scenarios are all predicated on three (3) head in parking spaces around 360 Sq. feet

				Difference for 150 Days
	<u>Price Per Sq Foot</u>	<u>Price Per day</u>	<u>Assume 150 Day Activation</u>	<u>Compared to a parking Space</u>
A regular parking space	\$0.15 a Sq. Foot	\$1.77	\$265.50	None
A Construction space	\$0.59 a Sq. Foot	\$6.98	\$1,047.00	\$781.50
Current 2020 Code	\$4.43 a Sq. Foot	\$52.44	\$7,866.00	\$7,600.50
5% increase on 2020 Code	\$4.65 a Sq. Foot	\$55.04	\$8,256.00	\$7,990.50
Intermediary Step	\$8.00 a Sq. Foot	\$94.68	\$14,202.00	\$13,936.50
1/3 of basic restaurant rent	\$16.50 a Sq. Foot	\$195.29	\$29,293.50	\$29,028.00

Keep in mind that an average parking space generates \$25 per day. This would equate to \$0.15 per square foot (\$0.15 per square foot x 360 sq. ft. = \$54.00 x 12/365 = \$1.77/day x 150 = \$265.50

Construction parking space cost \$100 a day. That would be around \$0.59 a sq foot.

**RECOMMENDATIONS:** Staff recommends Option 1 – no change, \$4.43, since this is the amount listed in the current fee ordinance. Should you want to change this amount, the 2022 Fee Ordinance should reflect the new amount effective January 1, 2022.

**CITY MANAGER COMMENTS:**

## ATTACHMENT A: History of fees for activation on pedestrian malls

Year	SQ FT per Month	Term Begin	Term End	Payment Due	Penalty	Notes
1977	1.00					
1978	1.06					
1979	1.12	June	Sept	July 1		
1980	1.19	Aug	Sept			
1981	1.26	June	Sept	July 1		
1982	1.34					
1983	1.42					
1984	1.50					
1985	1.59					
1986	1.69					
1987	2.00	May	Sept	May		
1988	2.12					
1989	2.25					
1990	2.39					
1991	2.53					
1992	2.68					
1993	2.84					
1994	3.01					
1995	3.09?	May 26	Oct 1	May 26		
1996	3.19	May	Oct 1	June		
1997	3.19	May 20 <sup>th</sup>	Oct 1	June 30th		
1999	3.58	May 20 <sup>th</sup>	Oct 1	June 30th		
2001	3.90	May 25	Oct 1			
2002	3.90	May 25	Oct 15	June 30	amount of ten percent (10%) shall be assessed on the arrears and, in addition, interest on the arrears shall accrue at the rate of two percent (2%) per month	No longer reference2 ord 20-73
2003		May 24	Oct 4		Same	
2005	2.50	May 30	Oct 15	July 1	same	
2006	2.50	May 13	Oct 15	Aug 1	same	
2009	2.50	May 23	Oct 15	Aug 15		
2010	2.50	May 15	Oct 15		Same	
2011	2.50	May 20 <sup>th</sup>	Oct 17	July 1	same	
2015	3.00	May 17	Oct 11	July 1	same	
2017	4.02	May 13	Oct 31	July 1	same	
2018	4.14	May 18	Oct 31	July 1	same	Ord 30-2017
2019	4.14	May 18	Oct 31	July 1	same	
2020	4.43					Ord 20-2020

## Exhibit B

### RESTAURANT ENCROACHMENT AND OR CITY PROPERTY LEASE AGREEMENT

THIS LEASE AGREEMENT made \_\_\_\_\_, 2020, at Aspen, Pitkin County Colorado, by and between THE CITY OF ASPEN, COLORADO, a municipal corporation, as Lessor (hereinafter "City"), and Lessee (hereinafter "Lessee") **Corporate Name** \_\_\_\_\_

**Liquor License Number** \_\_\_\_\_

**Address of Business** \_\_\_\_\_

**DBA** \_\_\_\_\_

**Phone number** \_\_\_\_\_

#### WITNESSETH:

WHEREAS, the City Council of the City of Aspen is desirous of leasing portions of said city property to abutting land owners and/or lessees who wish to use such areas for restaurant and/or liquor sales. This lease supersedes the Colorado Department of Revenue laws.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, it is agreed as follows:

1. The City does hereby lease to Lessee \_\_\_\_\_ square feet of city property, being that portion of the **city property abutting the business structure** or otherwise designated herein and lot area owned and/or managed by Lessee. Encroachments are not to be considered to be part of such building and/or lot. The term of this lease shall be for the period of time beginning on \_\_\_\_\_, **2020** and terminating on \_\_\_\_\_, **2020**. Rent shall be calculated at **\$4.43** per square foot per month. As rent for such area and term, Lessee hereby agrees to pay City the total sum \_\_\_\_\_ which sum shall be payable in advance on or before \_\_\_\_\_, **2020** at the offices of the City Clerk, Aspen City Hall, 130 S. Galena Street, Aspen, Colorado 81611.

If the rent payment is not paid in full when due, a penalty in the amount of ten percent (10%) shall be assessed on the arrears and, in addition, interest on the arrears shall accrue at the rate of two percent (2%) per month.

2. Lessee agrees to use such area for the sole purpose of selling and dispensing food or beverages to the public. Such area shall be open to the public by 11:00 a.m. Seating shall be stopped by 9:30 and the outside seating shall close at 10:30 p.m. Food shall be available in the leased area. Lessee further agrees to use the premises for no purpose prohibited by the laws of the United States, the State of Colorado, or ordinances of the City of Aspen. Further, lessee agrees to comply with all reasonable recommendations by the City of Aspen relating to the use of the leased premises. For restaurants whose operation does not include a lunch service, tables shall be removed or available for use beginning at 11 a.m. for the general public until dinner service begins. For restaurants not serving lunch, please include a plan as to how tables will be accommodated for the general public.

3. Lessee shall remove any fences, furniture, or planters on the leased premises promptly upon expiration of this lease. Failure to remove them within 5 days of said expiration shall result in ownership therein transferring to the City of Aspen.

4. Lessee agrees to keep said premises in repair and free from all litter, dirt, and debris and in a clean and sanitary condition; to neither permit nor suffer any disorderly conduct or nuisance whatever about said premises

which would annoy or damage, either proximate or remote, occurring through or caused by any alteration to said leased premises, or by any injury of accident occurring thereon. Further, Lessee does, by execution of this agreement, indemnify and agree to save harmless the City of Aspen, its employees, elected and appointed officials against any and all claims for damages or personal injuries arising from the use of the premises as herein above described. Further, Lessee agrees to furnish City with **certificate(s) of insurance naming the City of Aspen** as an additional insured as proof that it has secured and paid for a policy of public liability insurance covering all public risks related to the leasing, use, occupancy, maintenance, and operation of location of the leased premises. The insurance shall be procured from a company authorized to do business in the State of Colorado and be satisfactory to the City. The amount of this insurance, without co-insurance clauses, shall not be less than the maximum liability that can be imposed upon the City of Aspen under the laws of the State of Colorado found at C.R.S. Section 24-10-101, et seq. as amended. Lessee shall name the City as co-insured on all insurance policies and such policies shall include a provision that written notice of any non-renewal, cancellation or material change in a policy by the insurer shall be delivered to the City no less than ten (10) days in advance of the effective date.

5. No portion of the Lessee's fixtures shall extend beyond the boundaries of the City-leased premises; this shall be construed to include planters, host podiums, umbrellas while closed or open, any type of lighting fixtures, and any other fixtures of the Lessee. Flower pots are to be attached to the inside of the fence.

6. Rules of outside dining:

- Horizontal clear area for pedestrian travel is a minimum of 6'; this clear area will be marked by the Clerk's department and must be adhered to.
- Amplified music must comply with the city code. 7a.m to 11 pm 65 decibels.
- No structures, as defined in the City of Aspen Municipal Code, Section 26.104.100 are permitted. **Structure definition:** Anything constructed, installed or erected which requires location on the ground or is attached/supported by something on the ground, inclusive of buildings, signs, roads, walkways, berms, fences and trees, unless otherwise permitted by the City Manager. Nothing can be attached to the trees.
- No tripping hazards including extension cords across the public right-of-way.
- Outside area must be defined by planters, fence, flower boxes, etc. Defined area cannot be less than 24 inches in height.
- Blinking lights are not permitted; exterior lighting must meet the City of Aspen lighting code.
- Portable wait stations, defined as areas for the storage of service items, i.e. silverware and water pitchers, are permitted within leased premises.
- Wait stations must be taken in at night for wildlife protection; Wait station must comply with Colorado retail food regulations.
- No food preparation in leased premises.
- Trash receptacles are to be taken in at night.
- NO dumping of drinks in the leased premise, City right of way, or ANY adjacent public or private property.
- Do not use grass areas as ingress and egress for your leased space.
- Portable gas heaters cannot be located beneath, or closer than 5 feet to combustible decorations, combustible overhangs, awnings, sunshades, or similar combustible materials. This includes trees and other vegetation.
- Portable gas-fired heaters cannot be located any closer than 5 feet to buildings.
- Portable gas-fired heaters cannot be located within 5 feet of exits or exit paths. A safer, recommended alternative to gas-fired heaters are infrared patio heaters or directly connected natural gas heaters.
- If you are issued two infractions your mall lease will be revoked without a refund.

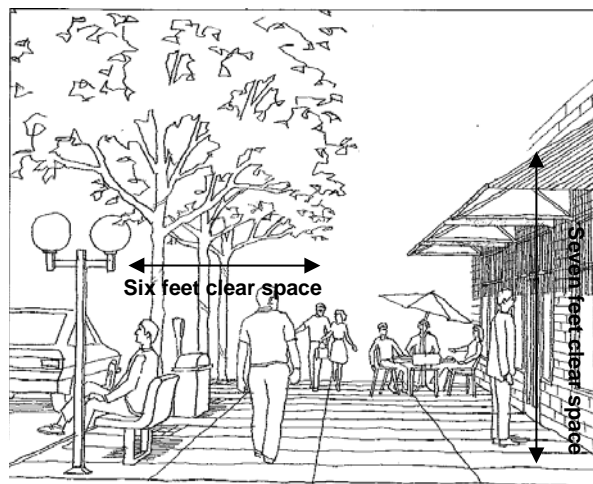
7. One sign box containing a menu and of no more than four (4) square feet is permitted in leased premises, and must be attached to the hostess station, fencing, etc. Sandwich boards and other 2-sided signs, as defined in City of Aspen Land Use Code Section 26.510.110, Sandwich Board Signs, are prohibited. Signage must be submitted as part of the lease application. Sign boxes shall become the property of the City of Aspen for the duration of the lease then be returned to the lessee at the end of the lease term.
8. Umbrellas are allowed, but no signage shall be permitted on the umbrella, unless it becomes part of the signage for the regular business location. Umbrellas and retractable canopies are permitted. No tents or sides on a canopy/umbrella covering are allowed.
9. Lessee agrees to permit agents of the City to enter upon the premises at any time to inspect and make any necessary repairs or alterations to the sidewalks, curbs, gutters, streets, utility poles, or other public facilities as the City may deem necessary or proper for the safety, improvement, maintenance or preservation thereof. Lessee further agrees that if the City of Aspen shall determine to make major structural changes to city property which may affect any structures placed within the city property by the Lessee that the Lessee, by execution of this agreement, hereby waives any and all right make any claim for damages to the improvements (or to its leasehold interest) and agrees to remove any structures necessary during such construction periods. City agrees to rebate all rents in the event it undertakes major structural changes to city property during the lease period.
10. The City of Aspen by this demise hereby conveys no rights or interest in the public way except the right to the uses on such terms and conditions as are above described, and retains all title thereto.
11. Lessee agrees not to sublet any portion of the leased premises or to assign the lease.
12. Lessee hereby affirms that Lessee is the owner and/or lessee of the abutting property and agrees that on sale or other transfer of such ownership interest, Lessee will so notify the City of the transfer in interest, and all right and interest under this lease shall terminate.
13. Lessee agrees to surrender and deliver up the possession of the leased premises promptly upon the expiration of this lease, or upon 5 days' written notice in the case of the termination of this lease by City by reason of a breach in any provisions hereof.
14. If legal action is taken by either party hereto to enforce any of the provisions of this lease, the prevailing party in any legal action shall be entitled to recover from the other party all of its cost, including reasonable attorney's fees.
15. It is further agreed that no assent, expressed or implied, to any breach of any one or more of the covenants or agreements herein shall be deemed or taken to be a waiver of any succeeding or any other breach.
16. Lessee agrees to comply with all laws, ordinances, rules and regulations that may pertain or apply to the leased premises and its use. In performing under the lease, Lessee shall not discriminate against any worker, employee or job applicant, or any member of the public because of race, color, creed, religion, ancestry, national origin, sex, age, marital status, physical handicap, status or sexual orientation, family responsibility or political affiliation, or otherwise commit an unfair employment practice.
17. Lessee and City agree that all correspondence concerning the Lease shall be in writing, and either hand delivered or mailed by first class certified mail to the following parties:  
City of Aspen

**18. Within the Commercial Core all outdoor dining areas shall demonstrate that:**

The horizontal clear area for pedestrian travel is a minimum of 6' in width. This measurement is to be taken from the edge of the encroachment to the edge of the walking surface. The walking surface must be solely within the City Right of Way and shall not include landscape areas, metal tree grates, or other areas that are accessory to the sidewalk area.

The vertical clear area for pedestrian travel is a minimum of 7' in height. This measurement will be taken from the natural grade (sidewalk) to the base of the lowest feature that penetrates the City of Aspen Right of Way. This shall include awnings, flower baskets, or other signage that may penetrate the Right of Way.

If alcohol is intended to be served within the outdoor dining area, the applicant must clearly state this intent and shall define the area which will be used to serve patrons alcohol on City property.



19. Provide diagram including umbrella width, layout of tables and wait stations, bar and exact dimensions. Diagram must include the façade of the building and ALL entrances to the outdoor dining area. Refer to example on Exhibit A.

20. Lessee shall submit a new diagram and photos of the proposed furniture, fixtures and lighting to the City Clerk's office each year as part of the application packet. A diagram of the premises is the subject of the agreement including umbrella width, layout of tables and wait stations, bar and exact dimension shall be attached hereto and made a part of the Restaurant Encroachment and/or City Property Lease Agreement. The diagram must also include the façade of the building and ALL entrances to the outdoor dining area. The diagram must reflect and the use of the premises that is the subject of the agreement must comply with all building and applicable codes, including but not limited to the Americans with Disabilities Act (ADA), to the extent required by law.

21. Penalty enforced on an individual basis and may result in revocation of lease and future participation.

City of Aspen  
130 South Galena Street  
Aspen, Colorado 81611

CITY OF ASPEN, COLORADO

By \_\_\_\_\_  
City Manager

\_\_\_\_\_  
Lessee Printed Name

\_\_\_\_\_  
Lessee Signature

**EXAMPLE:** The mall lease fee for 2017 is \$4.43 a square foot

Calculation:

$\$4.43 \times 855 \text{ sq.ft.} = \$3,787.65. \times 12 = \$45,451.80 \div .365 = \$125. \text{ a day} \times 122 \text{ days}$







CITY OF ASPEN

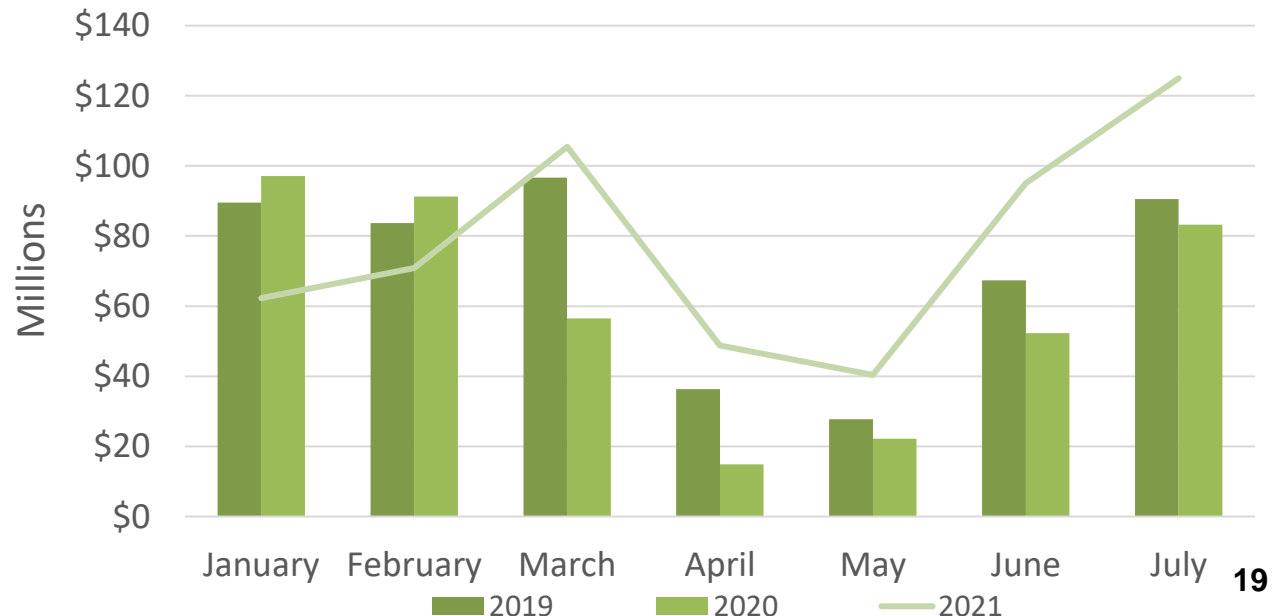
# Financial Update

September 27, 2021

# Taxable Sales - YTD

## Economic Activity Accelerated Through Summer

Month	2019	2020	2021	2021 vs 2019	2021 vs 2020
January	\$89,539,693	\$97,134,946	\$62,330,284	-30%	-36%
February	\$83,694,437	\$91,251,577	\$70,834,355	-15%	-22%
March	\$96,653,761	\$56,509,729	\$105,452,080	9%	87%
April	\$36,315,703	\$14,920,645	\$48,774,751	34%	227%
May	\$27,725,371	\$22,186,383	\$40,364,850	46%	82%
June	\$67,343,747	\$52,263,129	\$95,084,662	41%	82%
July	\$90,488,347	\$83,210,861	\$124,993,848	38%	50%
<b>Jan-Jul Subtotal</b>	<b>\$491,761,059</b>	<b>\$417,477,271</b>	<b>\$547,834,831</b>	<b>11%</b>	<b>31%</b>



# Taxable Sales - YTD

## Nearly All Industries See Improvement...

Thru July	2019 Sales	2020 Sales	2021 Sales	2021 vs 2019	2021 vs 2020
Accommodations	\$152,552,756	\$108,752,106	\$127,784,219	-16%	18%
Restaurants	\$86,245,599	\$70,093,615	\$85,248,474	-1%	22%
Sporting Goods	\$32,287,838	\$30,529,032	\$37,801,824	17%	24%
Clothing	\$37,505,858	\$28,590,244	\$63,841,945	70%	123%
Food & Drug	\$33,970,355	\$33,138,595	\$40,806,825	20%	23%
Liquor	\$6,311,326	\$7,167,221	\$7,967,531	26%	11%
Marijuana	\$7,524,581	\$6,247,760	\$6,990,302	-7%	12%
Miscellaneous	\$36,893,962	\$38,191,413	\$46,845,409	27%	23%
Luxury Goods	\$21,163,048	\$21,887,522	\$22,782,606	8%	4%
Utilities	\$28,130,971	\$27,875,213	\$31,189,592	11%	12%
Construction	\$37,135,641	\$34,875,855	\$51,510,690	39%	48%
Automobile	\$12,039,124	\$10,128,696	\$18,724,906	56%	85%
Banking / Financial	\$0	\$0	\$2,559,110	N/A	N/A
Health & Beauty	\$0	\$0	\$3,781,399	N/A	N/A
<b>Total Taxable Sales</b>	<b>\$491,761,059</b>	<b>\$417,477,271</b>	<b>\$547,834,831</b>	<b>11%</b>	<b>31%</b>





...But Seasonality Affects Are Unique

# 2021 Proj. Tax Collections

## Forecast Assumes Strong Summer Close

- More Resources for Dedicated Use

	2019	2020	2021	2021 vs 2019	2021 vs 2020
<b>Total Taxable Sales</b>	<b>\$822,574,456</b>	<b>\$766,222,659</b>	<b>\$917,318,321</b>	<b>12%</b>	<b>20%</b>
<i>1.00% Parks &amp; Open Space</i>	<i>\$8,191,174</i>	<i>\$7,650,903</i>	<i>\$9,159,600</i>		
<i>0.50% Parks &amp; Open Space</i>	<i>\$4,094,610</i>	<i>\$3,824,031</i>	<i>\$4,578,100</i>		
<i>0.15% Transportation</i>	<i>\$1,228,582</i>	<i>\$1,146,678</i>	<i>\$1,372,800</i>		
<i>45% of 0.45% Housing Dev.</i>	<i>\$1,659,072</i>	<i>\$1,549,251</i>	<i>\$1,854,800</i>		
<i>55% of 0.45% Kids First</i>	<i>\$2,026,662</i>	<i>\$1,892,768</i>	<i>\$2,266,000</i>		
<i>0.30% Education</i>	<i>\$2,448,270</i>	<i>\$2,294,992</i>	<i>\$2,747,600</i>		
<b>2.40% Tax Collections</b>	<b>\$19,648,370</b>	<b>\$18,358,622</b>	<b>\$21,978,900</b>	<b>12%</b>	<b>20%</b>

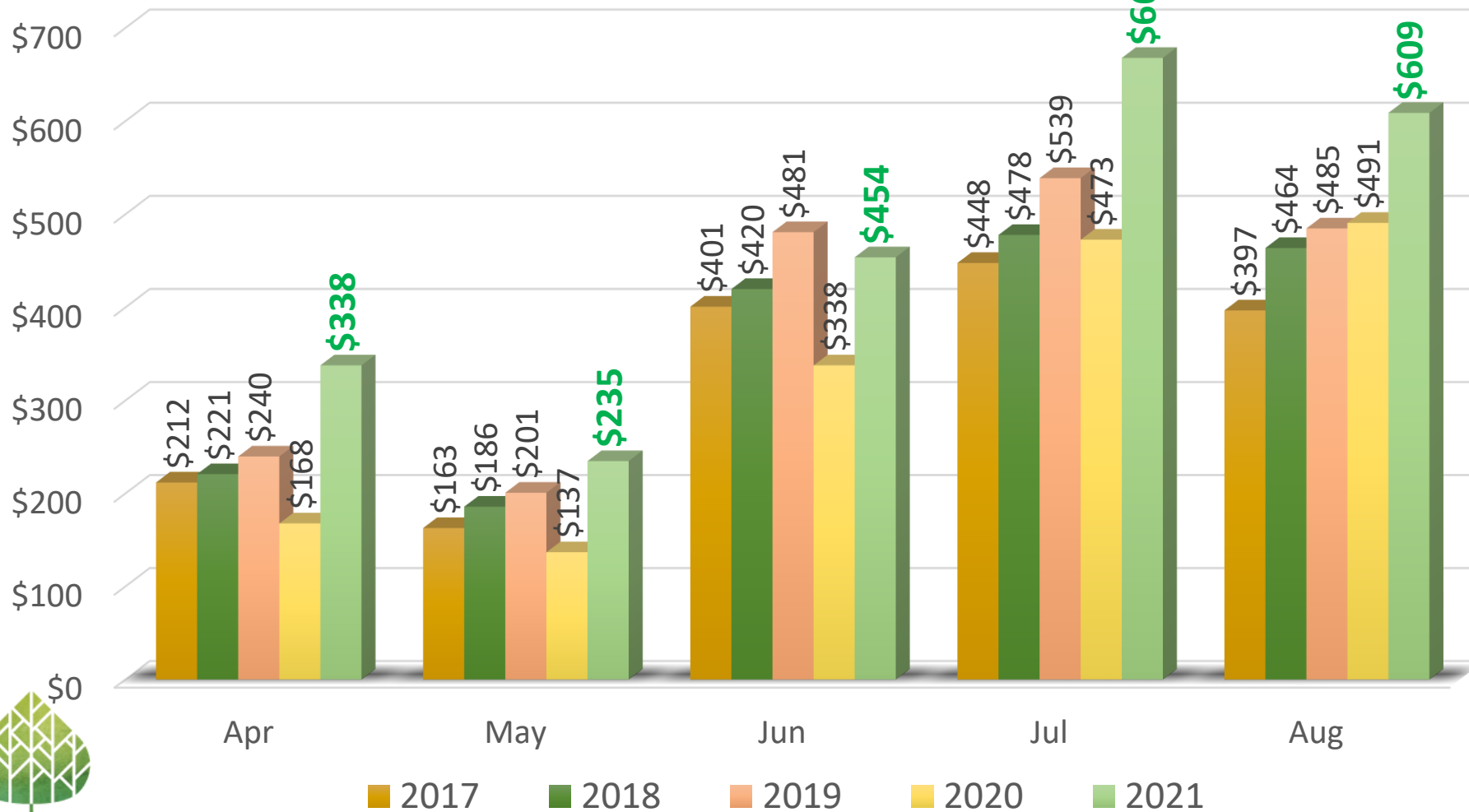
- Still, Risks Are Present...



# Lodging

“Price Is No Object” – Large Increases Since Apr.

Avg. Daily Rate



# 2.0% City Lodging Tax

Month	2019	2020	2021	2021 vs 2019	2021 vs 2020
January	\$580,244	\$564,549	\$224,949	-61%	-60%
February	\$514,895	\$556,669	\$278,308	-46%	-50%
March	\$588,543	\$263,001	\$492,738	-16%	87%
April	\$96,056	\$7,441	\$117,694	23%	1482%
May	\$73,578	\$11,694	\$67,857	-8%	480%
June	\$276,779	\$132,724	\$309,121	12%	133%
July	\$416,096	\$351,945	\$574,035	38%	63%
<b>Jan-Jul Subtotal</b>	<b>\$2,546,191</b>	<b>\$1,888,023</b>	<b>\$2,064,702</b>	<b>-19%</b>	<b>9%</b>
Aug-Dec Projection	<b>\$1,339,325</b>	<b>\$1,135,320</b>	<b>\$1,545,298</b>	15%	36%
<b>Total Lodging Tax Projection</b>	<b>\$3,885,516</b>	<b>\$3,023,343</b>	<b>\$3,610,000</b>	<b>-7%</b>	<b>19%</b>
<i>1.50% Tourism Promotion</i>	<i>\$2,914,137</i>	<i>\$2,267,507</i>	<i>\$2,707,500</i>		
<i>0.50% Transportation</i>	<i>\$971,379</i>	<i>\$755,836</i>	<i>\$902,500</i>		

## Still Climbing Out of Hole

- Not Projected to Fully Recovery By EOY



# Real Estate Transfer Taxes

## Single Family

- Price per Sale Increased ~35%
- Price per Sqft ~\$2,110
- 32 Homes over \$10M
- Inventory Down ~40%



## Condos

- Units Sold Increased More Than 100%
- Inventory Down ~50%

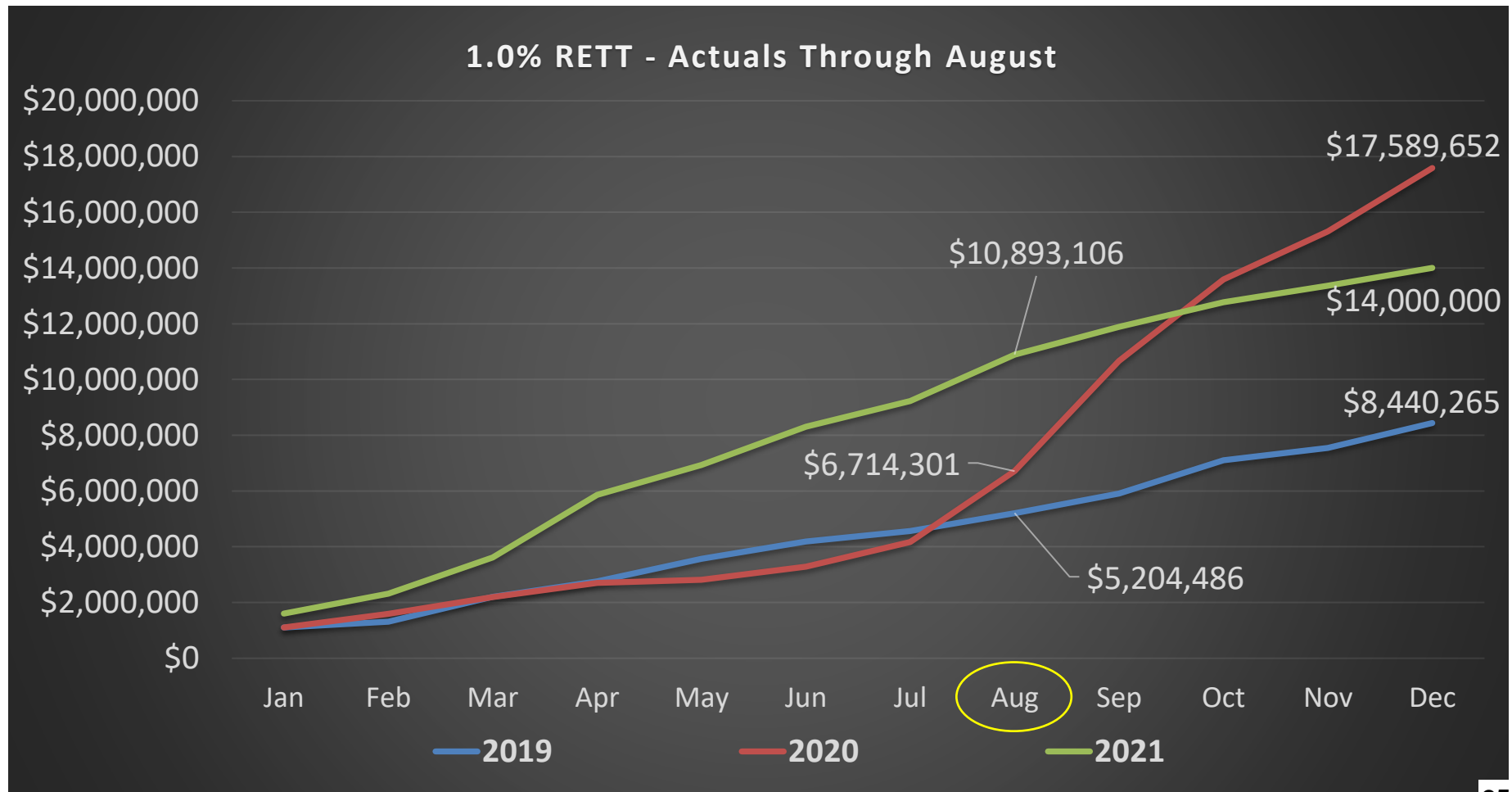




# Real Estate Transfer Tax

## Projected 2/3rds Increase to 2019 Levels

- Dampen Expectations in Future Years



# 2022 Planning

## Cautious Stance Looking Forward

- *Domestic Tourism Healthy But...*

## Early Projections:

- *City Sales Tax: 4.3% Incr.*
- *City Lodging Tax: 13.8% Incr.*
- *Real Estate Transfer Taxes: 45% Decr.*

