

# VAIL HOMEOWNERS ASSOCIATION

## The Winter Ski Season

### Another Effort to Change the TOV Noise Limits

#### A November Ballot Issue

September 4, 2020



**Updates.** Since our last report, there have been no new developments on the Booth Heights land swap, although a Memorandum of Understanding for the relocation of the Children’s Garden Learning (CGL) Center, which is necessary to facilitate the Booth Heights swap, is about to be finalized. The CGL will move to renovated space in the Town Community Development (COMDEV) Building. This will be a temporary site for up to five years while a Task Force studies locations for a permanent site and the optimum size of the new facility.



**The CGL Center is to temporarily shared space with the COMDEV Department within the TOV’s complex, west building.**

Work is also underway on the forest initiative in the bighorn sheep winter habitat, and Colorado Department of Transportation (CDOT) has obtained the go-ahead to initiate a fencing project in East Vail but that is several years away. In the meantime, the TOV will be installing temporary fencing for this winter. And we expect to hear shortly on the process for the VHA request that the Middle Bench of Donovan Park be designated as “Designated Open Space.” There are also no new developments on a new Code of Conduct and Conflict of Interest law. We continue to monitor these matters and, hopefully, will be able to bring positive reports in the near future.

In this report, we cover two other issues that are currently pending in the Town of Vail. They are another effort to change the TOV noise limitations and a proposed ballot issue for the November election. We also report on the latest developments from Vail Resorts for the winter ski season.

## The Winter Ski Season

Skiing this winter at Vail, Beaver Creek and Arrowhead, as well as all other Vail Resorts ski areas, is going to be different. Due to COVID restrictions, on-mountain capacity will be restricted, and [VR will use a reservation system to manage the numbers](#). All skiers will be required to make a reservation to access the mountains. Presumably, capacity and the number of available reservations will vary based on conditions, weather and other factors. VR has not announced what the capacity limits will be for each of its areas although it claims that on the “vast majority” of days everyone who wants to ski will be able to be accommodated.

The reservation system is complicated. For early season, Nov. 20 through Dec. 7, there will be no single day tickets. Only pass holders will have access, and reservations will have to be made on a week-to-week basis (each week VR will release the reservation inventory available). For the core season, Dec. 8 through Apr. 4, pass holders can make advance reservations starting on November 6. Only 7 days can be reserved, but as days are skied, additional reservations can be made up to the 7-day limit. In addition to advance reservations, there will also be week-of reservations up to an additional 7 days. Presumably, VR will continue to release a weekly inventory of available reservations during the core season. Pass holders are to receive “priority” in making reservations, but so far, there are no details as to what that means or how it will work. Reservations will be for a full day so that skiers can go on the mountain whenever during the day they desire. The reservation system will be run through the EpicPass.com, and there will be phone assistance via VR pass experts.

There will also be ride restrictions similar to what was done at the end of last season; gondolas and lifts will be restricted to family, designated groups or single ridership, and lift lines will require social distancing. Masks will also be mandatory although pulled up neck gaiters will suffice. And, while on-mountain facilities will be open, social distancing and other COVID limits will be in effect.

These developments underscore that recovery from COVID is going to be a long-term process, something that could well extend into 2022; some are even projecting that it could take as long as three to five years to get back to pre-COVID activity. That economic slowdown will impact not just the winter ski season but also the longer-term prospects for economic recovery in Vail Valley and the TOV. The TOV is already contemplating budget restrictions for 2021, and rumblings are being heard about the summer 2021 season. In the meantime, the TOV Council voted 4 to 3 (Mayor Chapin, and Council members Bruno, Coggins and Foley opposed; Council members Langmaid, Stockmar and Mason in favor) to not require masks in outdoor spaces in Vail. These are matters that the VHA continues to monitor.

## Another Effort to Change the TOV Noise Limits

From its very inception, the TOV has had noise restrictions to promote community tranquility and harmony, and for almost the same amount of time, various business interests have, periodically sought to extend those limits to create a “livelier” atmosphere in town. Now, once again, there is the claim that the rules are not supportive of music in the commercial areas and that Vail needs more of a “happy hour” atmosphere. This, apparently, comes about as a result of complaints about some of the pop-up COVID performances this summer and, looking ahead to next summer, a



desire to have more outdoor music. As a result, the TOV has assigned a “small group” to look at peer resorts and bring ideas back to the Town Council. This initiative will also involve some sound measurement testing, but the details of that are not yet known, and it is also unknown whether there will be any other investigation or science-based study. This is a matter of VHA concern both in terms of the necessity of any changes to the current rules as well as maintaining a proper balance between residents and business interests and preventing any unintended consequences if any changes are made.

**Current Law.** Current TOV law limits noise in the town by both its level and time of day. In residential areas, sound levels are limited to 55 dBA (decibels) until 11 p.m., dropping to 50 dBA after 11 p.m. In commercial areas, the limit is 65 dBA until 11 p.m., dropping to 60 dBA thereafter. Those same limits apply to amplified sound, but there are additional rules for such sound systems which include obtaining a permit prior to use. In residential areas or within 100 feet of those areas, all amplified sound for commercial purposes is prohibited; non-commercial amplified sound is permitted in residential areas up to 4:30 p.m. In all other areas in the TOV, amplified sound is permitted up to 10 p.m. on weekdays and Sunday and 11 p.m. on Friday and Saturday nights.

Recently, it has been said that Vail is not a “retirement community” and that Vail needs vitality to be a lively ski village. Music at 65 dBA is already in the “loud” range and not far from the “dangerous for over 30 minutes” range. Since loud, amplified music is already permitted in the town core up to 10 p.m. or 11 p.m., it is difficult to understand why there cannot be “lively” performances within that sound range or why there should be even louder music or why music needs to be performed later into the night.

**The TOV Limits Were Not Lightly Established.** The TOV first adopted a noise ordinance in 1981. In most relevant parts, it was the same as current law, except that amplified sound in commercial areas was limited to 9 p.m. Business interests wanted greater leeway in the evening, and in 1988, the ordinance was amended to allow amplified sound in commercial areas up to 10 p.m.

That, apparently, led to some serious noise problems, causing the Town Council in 1995 to suspend all amplified sound permits to study the issue. What followed was the creation of a Sound Committee, a year-long study with multiple work sessions, site visits, expert acoustical advice, a community survey and extensive public input. At the end of that process, the Council concluded there was no need for any changes and that the then current ordinance just needed more enforcement. The Town also adopted the practice of informing neighborhoods of sound permit applications.

Nonetheless, business interest continued to push for more relaxation of the rules, and in 2007, the use of amplified sound in commercial areas was extended to 11 p.m. on Fridays and Saturdays. All of these changes were controversial at the time, particularly during the mid-1990s study which raises the question: why dive back into another controversy when the TOV’s rules are consistent with those of peer resorts?

**Peer Resorts Have Similar Restrictions.** Aspen’s noise ordinance has the same maximum sound (dBA) levels as Vail although it does allow up to 100 dBA for Special Events but not after 9 p.m. No amplified sound for commercial uses is allowed after 9 p.m.; for private events, it must end at 8 p.m. Breckenridge has the same maximum sound levels for residential areas but allows up to 70 dBA up to 11 p.m. for commercial areas. Both Aspen and Breckenridge also have limitations of vehicle noise; in Aspen Dynamic Braking devices (Jake Brakes) are prohibited except in the case of imminent danger.

**Vail Can Have a Vibrant and Lively Street Nightlife Within the Current Rules.** At first blush, it might be tempting to go to a three-tier system in which sound limits were bumped up during the “happy hour,” but for several reasons, that is not a prudent choice. First, when the Town extensively studied the subject in the mid-1990s, the current rules were found to be fair and workable. Second, fun and exciting music does not have to be

loud to be enjoyable. The beauty of music is not in its volume but in the artistry and skill of the musicians. Loud music not only can be off-putting, but it can also destroy the enjoyment of the Vail experience. And third, none of the TOV's peer resorts have such a provision.

There would also seem to be no need to extend the times for loud music since they already extend well into the evening and are consistent with peer resorts.

Hopefully, the Town Council would not simply adopt "ideas" without a scientific basis to back up those ideas. The TOV could decide to study the issue again but that would be tantamount to re-inventing the wheel since that was already done extensively in the mid-1990s. It would also entail substantial expense since any study would necessarily need expert consultants and perhaps a community survey. In this COVID era, that does not seem to be a prudent expenditure of already scarce funds when the current law already is permissive of a lively, fun evening street scene.

The VHA will monitor developments on this issue and report back as needed to keep the community informed.



**Vail Town Council Chamber, the public forum where the future of the Vail Community is being shaped during the CV pandemic.**

## **A November Ballot Issue**

The Town Council has decided to place a question on the ballot for the November election as to whether to “de-Gallagherize” Vail property taxes to stop a steady decline in property tax revenue. As proposed, this would not be a tax increase since the effect of a “YES” vote will be to stop any further decline in tax revenues by maintaining them at current levels so as to allow the TOV to continue to provide needed services to the community.

Property taxes in Colorado are a complicated matter, not understood by many. It starts with the Gallagher Amendment, adopted in 1982 as part of a package of property tax changes that were fueled by a revolt against the then system for determining and assessing property taxes. Gallagher was designed to limit residential property taxes by (1) freezing the ratio of taxes collected on residential (45%) and non-residential property (55%) and (2) fixing the assessed value (the percentage of the total value of property that is subject to taxation) of commercial property at 29%. That meant the assessment rate for residential property would fluctuate to maintain the 45/55 split. However, due to the rising value of residential property, primarily on the front range, the assessment rate of residential property has steadily declined. That effect was compounded in Eagle County where there is a higher portion of residential versus commercial property, resulting in a decline in the assessment rate from 30% in the early 1980s to 7.15% for 2020. That in turn meant the resulting local tax revenue that was based on those assessments--the money used by municipalities, local taxing districts and schools—fell precipitously.

Initially, the revenue difference was made up by raising the millage rate, but another amendment in 1992, the Taxpayers Bill of Rights (TABOR), required that any increase in either the assessment or tax rate was subject to voter approval, something that is difficult if not impossible to attain. This brought a halt to raising millage rates and served to cap tax revenues. In practice, it meant falling tax revenues since Gallagher was causing the assessment rate to be reduced, and because of TABOR, the assessment can't go back up and local governments could not make up the difference by raising the millage rate. The unintended consequence was a permanently declining tax revenue from residential property and a squeezing of local government. And, under TABOR, if it turned out that more residential taxes were collected than authorized by the 45/55 split, the excess could not be used but had to be rebated.

The combined effects of Gallagher/TABOR resulted in 2005 in a five-year voter approved “time out” of TABOR refunds, allowing local governments to keep and use any excess funds from residential property taxes. That, of course, has now ended, and TABOR is back in full force and effect. In Vail, that has meant that over the last three years, the town has lost \$1.3 million in property tax revenue, and next year the town stands to lose another \$1.4 million with more losses to come in future years. None of this was understood or intended when Gallagher and TABOR were adopted.

This is not a problem that is unique to Vail, and 51 out of 64 counties, 230 out of 274 municipalities and 174 school districts have already adopted similar provisions, including in the Vail Valley the Greater Eagle Fire Protection District, Eagle County Paramedic Service, the Gypsum Fire Protection District, the Eagle Valley Library District and the Colorado Mountain College. This year Avon, Eagle and the state itself will also have similar questions on the ballot. The Vail ballot question is the same. It asks whether voters will authorize millage rates to fluctuate to maintain the total taxes at current levels (if assessment rates further declined, millage rates could be raised to maintain the same tax revenue).

Due to COVID, the TOV is already severely squeezed to maintain services. Needed capital projects have had to be deferred; the Town has imposed hiring and merit pay increase freezes, has been forced to furlough workers and has shifted to a crisis budget. Further cuts in revenue could threaten the financial security of the Town. The VHA intends to continue to study this matter and, in the near future, to make a recommendation about voting on this issue.

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If you value our work, we invite you to join VHA or become a subscriber to our reports. Your support will ensure that the VHA can continue to bring such matters to the community's attention and, by doing so, make a difference for the good and the future of our community.

VHA welcomes your participation and support.  
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