



Town Council, Board and Commissions Handbook



Welcome

“Welcome to the Town of Breckenridge. We are so fortunate to have a lengthy history of thoughtful community-minded leaders, and I want to thank all our newly elected and appointed members for continuing this commitment to our Town!” Mayor, Kelly Owens.

Your selection as a member of the elected body or of a board or commission provides you with a valuable opportunity for genuine public service and we thank you for your contribution. Although the specific duties of each board and commission vary widely, there are certain responsibilities common to council members and all board and commission members. These guidelines will assist you in maximizing your contribution to our community.

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Introduction –Home Rule and Council-Manager Form of Government

The Breckenridge Home Rule Charter Commission, comprised of nine individuals, duly elected by the people of Breckenridge, Colorado, at a special election held on November 27, 1979, were elected to frame a home rule charter for the town of Breckenridge. The commission was comprised of the following individuals: Marlene A. Martin, Chairwoman, Gerald R. Cooney, Anne M. Murphy, James R. Anderson, Michael J. Bertaux, Marsha Dutmers, S.L. Bunny Hamill, and William Stanley.

The current version of the Breckenridge municipal charter is organized into the three major subdivisions of authority: Council, Article IV, Town Administration, Article VII, and Legal and Judiciary, Article VIII.

Breckenridge is a home-rule municipality deriving its authority directly from the Colorado Constitution, article XX. Home rule is based on the theory that the citizens of a municipality should have the right to decide how their local government is to be organized and how their local problems should be solved. It affords residents of cities and towns that adopt a local charter freedom from the need for state-enabling legislation and protection from state interference in "both local and municipal matters."

Breckenridge is a "council-manager" form of government. §2.4. The charter provides that:

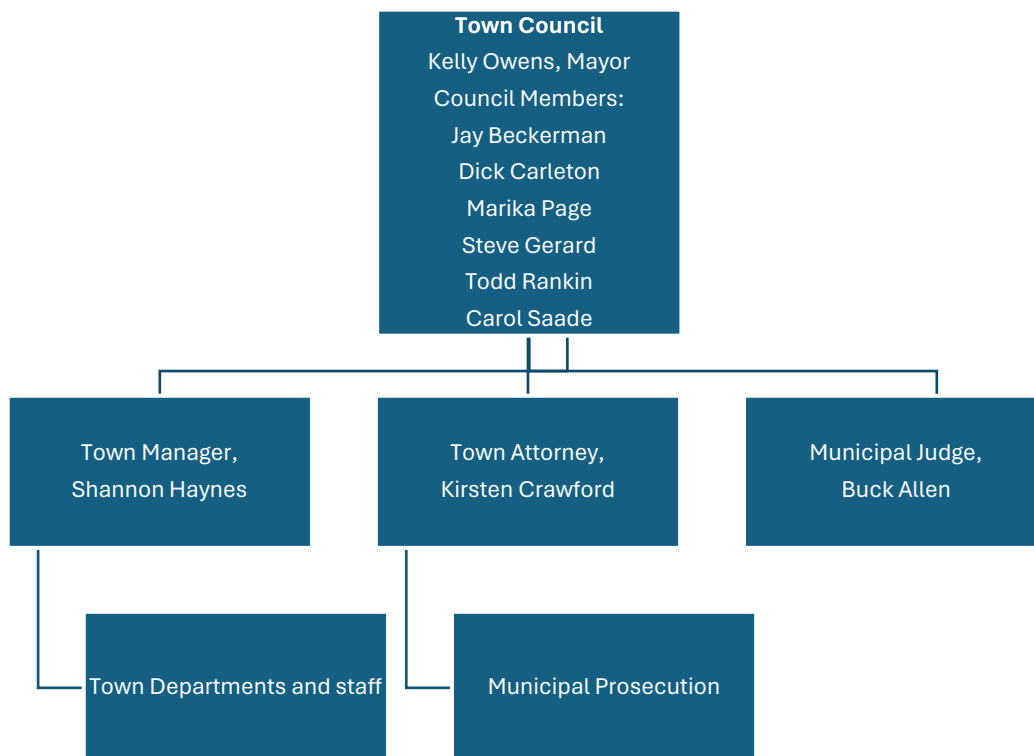
Except for the purpose of inquiry, the council and its members, the mayor and any council committee shall deal with the administrative service solely through the town

manager and neither the council, its members, the mayor, nor any council committee thereof shall give orders to any of the subordinates of the town manager.

In a council-manager form of government, the Town Council appoints the Town Manager, the Town Attorney, and the Municipal Judge. These highly trained, experienced individuals serve at the pleasure of the elected governing body. While the policymaking power is concentrated in the elected council, it is the professional manager and the staff that has responsibility for preparing the budget, directing day-to-day operations, hiring and firing personnel, and implement its policies.

The Town Attorney and assistants, if any, serve as legal advisor to the Town Council and the Town administration. The Town Attorney provides legal representation to the elected body, and all departments, enterprises, and boards and commissions. The Town Attorney oversees special counsel, litigation counsel, and the municipal prosecutor.

Colorado Municipal Courts were established to function within local jurisdictions according to state and local charters. Municipal court only handles cases of municipal ordinance violations within the Town limits. Municipal Courts are separate from the state judicial system but operate under the rules and procedures established by the Colorado Supreme Court.



Guide to the Legislative Process

I. Charter

The Breckenridge municipal charter and municipal code can be found online at <https://breckenridge.town.codes/>. The charter is the equivalent of the Town's constitution and can only be amended by a vote of the people. The municipal code on the other hand may be amended by adoption of a bill for an ordinance by an affirmative vote of a majority of council.

II. Council action.

Council can only take official action via the passage of ordinances, resolutions, and motions.

A. Ordinances

Ordinances must be enacted by the introduction of a bill. Bills require two readings – publication on the first reading and passage on the second reading. If the ordinance is approved on the first reading, it shall be published with a day, hour, and place for second reading and a public hearing on the ordinance. Bill titles shall comply with the single-subject legal requirement under §5.8. Bills are effective 30 days after final publication under §5.9.

B. Resolutions

Unlike bills, resolutions do not require publication and do not require a public hearing with some limited exceptions. A resolution only requires a single reading for adoption and becomes effective upon approval. By far, the largest category of actions that are taken by resolution are approval of certain contracts.

C. Motions

A motion requires a second and a simple majority.

D. Proclamations.

Proclamations may be used to state an official position of the Council, but not to take official action.

III. Meeting Procedure Basics

A. Open meetings law/open records

- a. Notice – Notice of the meeting and topics to be discussed must be published no less than 24 hours in advance of the council or board meeting.
- b. Meetings shall be open to the public with limited statutory exceptions for confidential executive sessions. There are very rigid requirements for calling an executive session which must be followed to comply with state law. There are penalties for violations.

- B. Agenda: The agenda is prepared in advance of the meeting and contains the description of the items to be discussed.

- a. Public participation is important to the democratic process. There are three main ways for the public to participate, in addition to written submissions to council or individually elected officials: (i) public hearings required by law (ii) courtesy public hearings, and (iii) public comment.
- C. Council has rules of procedure governing the process which are reviewed when newly elected members are seated.

Representation on a Board or Commission

As an individual member of a board or commission, you are appointed by Council to represent the views of the majority of the board for which you are appointed. Board or commission members making recommendations or expressing views which have not been approved by a majority of the board should indicate they are expressing individual opinions and are not speaking on behalf of the board or the Town.

Public statements should contain no promises that may be construed to be binding on a board or commission, staff, or the Town. When making a public statement, members should remind listeners that board actions are recommendations (unless otherwise provided by law) and that final action will be taken by the Council. Remember that your actions and statements as a board or commission member assume special significance, and if not responsibly discharged, could result in a situation detrimental to the Town's best interests.

Although board and commission members may be selected, in part, on the basis of representing specific interest groups, each member should represent the overall public good and not that of an exclusive group or interest.

Relationship with Other Members

On many occasions, the success or failure of the efforts of a board or commission is dependent upon the degree of cooperation evident among the individual members of the body. We encourage you to show respect for another's viewpoint, allow others adequate time to present their views fully before making comments, be open and transparent with your comments at the public meetings.

The Town has both charter-established boards and boards that have been created by ordinance. Under Article IX of the municipal charter, the Council may delegate certain authority to boards and commissions. Once the authority has been delegated, the Council defers to the board in the delegated areas. Boards can be both decision-making boards or advisory boards (i.e. only make recommendations to the Council).

- The Election Commission and Planning Commission were created by charter and are decision-making bodies.

- The Liquor and Marijuana Authority is also a decision-making body, however, it is created by ordinance.
- The Town has the following advisory boards: Open Space and Advisory Commission, Social Equity Commission, And Breckenridge Events Committee.

It is important to review the charter and/or code to understand the scope of authority delegated to the boards/commissions. Decision-making boards have heightened standards by which they must render decisions according to codified criteria and these decisions can be appealed ultimately to a district court.

Each board has a set of bylaws or meeting procedures adopted by the board that govern the meeting protocols.

The Council and all boards and commissions are subject to both the Colorado open meetings laws and the Colorado open records laws, as set forth more fully above.

TOWN COUNCIL



ARTICLE IV COUNCIL

Section 4.1 THE COUNCIL:

The town shall be governed by a council of six (6) councilmen and one mayor. All council men and the mayor shall be nominated and elected at large from the entire town. The town council may, however, by ordinance, provide that the council in whole or in part shall be elected from wards so long as said wards are equally apportioned.

Section 4.2 TERMS OF OFFICE:

The terms of office for councilmen shall be four years as hereinafter provided. The council as constituted on the effective date of this charter shall continue as follows:

- (a) The councilmen previously elected shall continue throughout their elected terms;
- (b) In the regular municipal election to be held in 1980, the three candidates receiving the highest number of votes shall be elected for four year terms.
- (c) In the regular municipal election to be held in 1982 and thereafter the three candidates receiving the highest number of votes shall be elected for four-year terms.

Section 4.3 MAYOR:

The mayor shall be elected at large from the entire town for a term of four years. In the regular municipal election to be held in April, 1984, and every four (4) years thereafter, the mayoral candidate receiving the highest number of votes shall be elected mayor.

The mayor shall preside at meetings of the council and shall exercise such powers and perform such other duties as are or may be conferred and imposed upon him by this charter or by ordinance or other applicable law. He shall have all of the powers, rights and privileges of a council member including the right to vote. He shall be recognized as the head of the town government for all ceremonial and legal purposes and he shall execute and authenticate legal instruments requiring his signature as such official.

Section 4.4 MAYOR PRO TEM:

The mayor pro tem shall be elected by a majority vote of the council at the first organization meeting after the election and shall serve at the pleasure of the council for a two-year term.

In the absence or disability of the mayor, the mayor pro tem shall perform all duties and have all powers of the mayor. In the event of a vacancy in the office of mayor pro tem, the council shall choose his successor.

Section 4.5 POWERS OF COUNCIL:

The council shall be the legislative and governing body of the town and shall exercise, except as otherwise provided in this charter, all powers conferred upon or possessed by the town and shall adopt such laws, ordinances and resolutions as it shall deem proper.

Section 4.6 QUALIFICATIONS:

Each councilman and the mayor when nominated and elected shall be an elector of the town, a citizen of the United States, and shall have resided in the town, or any territory thereafter annexed, for one (1) year immediately preceding such election.

No councilman nor the mayor shall be a salaried employee of the town during his term of office. The council shall be the judge of the election and qualifications of its own members.

Section 4.7 COMPENSATION:

The members of the council shall receive such compensation and the mayor such additional compensation as the council shall prescribe by ordinance, provided, however, that they shall neither increase nor decrease the compensation of any member during his term of office. The mayor and councilmen may, upon order of the council, be paid their actual and necessary expenses incurred in the performance of their duties of office.

Section 4.8 VACANCIES:

- (a) A councilman or the mayor shall continue to hold his office until his successor is duly qualified.
- (b) A council seat or the mayor's office shall become vacant whenever he is recalled, dies, becomes incapacitated, resigns, refuses to serve, is convicted of a felony, or ceases to be a resident of the town or ward, if elected by ward. A council seat or the mayor's office shall further become vacant upon failure to attend three (3) consecutive regular council meetings unless council for good cause votes to retain him.

(c) Within sixty (60) days after a vacancy occurs, the remaining members of the council shall choose, by majority vote, a duly qualified person to fill such vacancy. He shall serve only until the next regular municipal election at which time the electors shall elect a councilman to serve the remainder of the unexpired term. The councilman candidates receiving the fourth, fifth and sixth highest number of votes, depending on the number of vacancies to be filled, shall serve the remainder of any unexpired terms. If three (3) or more vacancies exist simultaneously, the remaining councilmembers shall, at the next regular meeting of the council, call a special election to fill such vacancies, there will not be a regular municipal election within ninety (90) days and provided that their successors have not previously been elected. (Ord. 5, Series 1992; Election 4-7-1992)

(d) If a vacancy occurs in the office of mayor, the council shall call a special election within sixty (60) days to elect a new mayor, unless said vacancy occurs within ninety (90) days of the next regular municipal election. The person elected mayor shall serve in that office until the next regular municipal election.

Section 4.9 OATH OF OFFICE:

Before entering upon the duties of his office, every councilman, the mayor, town clerk, police chief, town manager, judge and town attorney shall take, subscribe before and file with the town clerk an oath or affirmation that he will support the constitution of the United States, the constitution of the state of Colorado, this charter and the ordinances of the town and will faithfully perform the duties of the office.

The Breckenridge Home Rule Charter is current through Election 2010-04-06.

Disclaimer: The town clerk's office has the official version of the Breckenridge Home Rule Charter. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

[Town Website: www.townofbreckenridge.com](http://www.townofbreckenridge.com)

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CHAPTER 7

TOWN OFFICERS AND EMPLOYEES

SECTION:

- 1-7-1: Salaries**
- 1-7-2: Authorized acts by agents and representatives**
- 1-7-3: References to town officers and employees**
- 1-7-4: Oaths**
- 1-7-5: Who may administer oaths or affirmations**

1-7-1: SALARIES:

A. Elected Officials:

1. Council Members: Compensation for Council members elected at the town's regular election in 2016 shall be nine thousand six hundred dollars (\$9,600.00) annually for each, payable at the rate of eight hundred dollars (\$800.00) per month. Compensation for Council members elected at the town's regular election in 2018, and for all Council members elected thereafter, shall be twelve thousand dollars (\$12,000.00) annually for each, payable at the rate of one thousand dollars (\$1,000.00) per month.
2. Mayor: Compensation for the Mayor elected at the town's regular election in 2016 shall be fourteen thousand four hundred dollars (\$14,400.00) annually, payable at the rate of one thousand two hundred dollars (\$1,200.00) per month. Compensation for the Mayor elected at the town's regular election in 2020, and for all Mayors elected thereafter, shall be eighteen thousand dollars (\$18,000.00) annually for each, payable at the rate of one thousand five hundred dollars (\$1,500.00) per month.
3. Deduction For Absence From Meetings: One twenty-fourth (1/24) of the above mentioned salaries may be deducted for the failure of any elected official to attend any regular meeting of the Council, by a majority vote of the Council.
4. Further Compensation: Council members and the Mayor elected April 4, 2006, and thereafter shall receive a credit of five hundred dollars (\$500.00) each twelve (12) month period commencing April 15 of one year and ending April 14 of the following year. Such sum may be used by such elected official only to pay to the town the cost of the elected official and his or her family (if applicable) accessing Town owned recreational facilities for which a fee is charged. No unused portion of the five hundred dollar (\$500.00) credit may be carried over to the following year.
5. Appointment To Council Vacancy: A person elected or appointed to fill a vacancy on the town council pursuant to subsection [4.8\(c\)](#) or [4.8\(d\)](#) of the town charter shall receive the same compensation as the person who held the office immediately prior to the vacancy being created.

6. Insurance: For those members of the town council elected at the town's regular election to be held April 1, 2014, and for all members of the town council and the Mayor elected or appointed to office thereafter, the cost of participating in the town's health insurance plans shall be the same as the cost paid by the active/current/eligible Town employees who participate in such plans. (Ord. [5](#), Series 2018)

B. Appointed Officers And Employees: The town council shall fix the salaries and compensation of all Council appointed officials of the town. (Ord. 21, Series 2006)

1-7-2: AUTHORIZED ACTS BY AGENTS AND REPRESENTATIVES:

When, by any ordinance of the town, or by any provision of this Code, an act is required to be performed by a designated Town officer or employee, and such act may be done well by an authorized agent or representative as by the designated Town officer or employee, the required act may be performed by any authorized agent or representative of the designated Town officer or employee; and any act performed by such authorized agent or representative shall be deemed to be the act of the designated Town officer or employee. (Ord. 30, Series 1992)

1-7-3: REFERENCES TO TOWN OFFICERS AND EMPLOYEES:

Any reference in this Code to the specific job title of a Town officer or employee means and includes any successor to such officer or employee and any person who performs the same essential employment functions of such officer or employee, regardless of such person's job title. (Ord. 4, Series 2017)

1-7-4: OATHS:

A. When a person is required by section [4.9](#) of the Breckenridge Town Charter to take an oath or affirmation before the person enters upon the duties of those public offices and positions described in section [4.9](#) of the Breckenridge Town Charter, the form of the oath or affirmation is as follows:

I, (STATE YOUR NAME), do [SELECT SWEAR OR AFFIRM] that I will support the Constitution of the United States, the Constitution of the State of Colorado, the laws of the State of Colorado, and the Charter and ordinances of the town of Breckenridge, and that I will faithfully perform the duties of [NAME OF OFFICE OR POSITION] upon which I am about to enter to the best of my ability.

B. The oath or affirmance must be:

1. In writing and signed by the person taking the oath or affirmation;
2. Administered as provided in section [1-7-5](#) of this chapter; and

3. Taken, signed, administered, and filed with the town clerk or other appropriate Town officer or employee before the person enters upon the public office or position. (Ord. 22, Series 2018)

1-7-5: WHO MAY ADMINISTER OATHS OR AFFIRMATIONS:

The town clerk, the Deputy Town Clerk, and the Municipal Judge have the power to administer oaths and affirmations required by section [4.9](#) of the Breckenridge Town Charter. (Ord. 22, Series 2018)

The Breckenridge Town Code is current through Ord. 39, Series 2023, passed November 28, 2023.

Disclaimer: The town clerk's office has the official version of the Breckenridge Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

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**COUNCIL PROCEDURES AND RULES OF ORDER
BRECKENRIDGE TOWN COUNCIL
TOWN OF BRECKENRIDGE, COLORADO**

Adopted October 8, 1991 By Resolution No. 27
Updated Through Resolution No. 20, Series 2021

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COUNCIL PROCEDURES AND RULES OF ORDER

I.

TOWN CHARTER

These Procedures and Rules of Order are established pursuant to the authority of Section 5.1 of the Breckenridge Home Rule Charter.

II.

FINDING OF LOCAL CONCERN

The Town Council hereby finds and determines that the matters set forth in these Procedures and Rules of Order are matters of local concern upon which home rule municipalities in Colorado are fully empowered to legislate and to supersede conflicting state statutes. Specifically, the Council acknowledges that the provisions of the Colorado Open Meeting Law (Part 4 of Article 6 of Title 24, C.R.S.) purport to establish rules governing the conduct of the meetings of home rule municipalities. The Council believes that such statute is unconstitutional as applied in home-rule municipalities. However, the Town Council further believes that these Procedures and Rules of Order substantially comply with the requirements of the provisions of the Colorado Open Meeting Law (Part 4 of Article 6 of Title 24, C.R.S.), and that such voluntary compliance by the Town will not infringe upon the power of local control granted to the Town Council by the Town Charter and Article XX of the Colorado Constitution. Unless otherwise provided in these Procedures and Rules of Order, the provisions of the Colorado Open Meeting Law (Part 4 of Article 6 of Title 24, C.R.S.) shall apply to all meetings of the Council. (Resolution 29 Series 2001)

III.

LEGISLATIVE BODY, OFFICERS, AND CUSTOMS OBSERVED

3.1 Town Council

a. The Town Council ("Council") is the legislative and governing body of the Town. (Resolution 5 Series 2016)

b. The organizational meeting of a newly elected Town Council may be held at any time after the Town Clerk has completed the canvas of the votes cast at the regular Town Election, and has certified the election results. The date and time of an organizational meeting of a newly elected Town Council shall be fixed by motion duly adopted by the previous Town Council, and such meeting need not occur on a second or fourth Tuesday of a month. Notice of the organizational meeting shall be given in the manner normally given for regular meetings of the Town Council. At the organizational meeting the oaths of office will be administered and a Mayor Pro Tem elected. The organizational meeting shall be deemed to be a regular meeting of the Town Council for all purposes. (Resolution 5 Series 2016)

3.2 Mayor - Presiding Officer

a. The Mayor shall be the Presiding Officer at meetings of the Council.

b. The Mayor shall have all of the powers, rights and privileges of a Councilmember including the rights of voting on all questions, making and seconding motions, and taking part in discussions; shall be recognized as the head of the Town government for all ceremonial, dignitary, and legal purposes; and shall sign and authenticate all legal instruments which require the Mayor's signature.

3.3 Mayor Pro Tem

a. The Council shall elect one of its members to serve as Mayor Pro Tem as provided by Section 4.4 of the Town Charter.

b. The Mayor Pro Tem shall preside at meetings of the Council in the absence or disability of the Mayor and when the Mayor abstains or is disqualified from presiding due to a conflict of interest. In serving as Presiding Officer, the Mayor Pro Tem shall retain all of the rights and privileges of a Councilmember, including the rights of voting on all questions, making and seconding motions, and taking part in discussions.

c. In the event of a vacancy in the office of Mayor Pro Tem the Council shall choose a successor.

3.4 Temporary Chair

a. In the event of the absence or disability of both the Mayor and Mayor Pro Tem which prevents them from attending or participating in any meeting of the Council, the Town Clerk shall call such meeting to order and shall call the roll. The Council shall then proceed to elect, by a majority vote of those present, a Temporary Chair of the meeting. A similar procedure shall be followed if both the Mayor and Mayor Pro Tem are prohibited from participating in a portion of a Council meeting due to conflicts of interest.

b. The Temporary Chair shall serve as Presiding Officer until the arrival of the Mayor or Mayor Pro Tem or until such time as the Mayor or Mayor Pro Tem shall be allowed to participate in such meetings, at which time the Temporary Chair shall relinquish the chair upon conclusion of the business immediately before the Council.

3.5 Town Clerk

Any act required to be performed by the Town Clerk under these Procedures and Rules Of Order may be performed by any person authorized to act by the Town Manager. (Resolution 6 Series 2013)

3.6 Execution of Plats

Any plat or similar document which requires the written approval of the Town Council may be executed by the Mayor, or in absence or incapacity of the Mayor, by the Mayor Pro Tem. In the event that both the Mayor and the Mayor Pro Tem are absent from the Town or are incapacitated at the same time, any member of the Town Council may lawfully sign a plat or similar document in the capacity of Assistant Mayor Pro Tem. (Resolution 33 Series 1994)

IV.

COUNCIL MEETINGS

4.1 Regular Meetings

Except as provided in Rule 3.1(b) concerning the holding of the organizational meeting of a newly elected Town Council, the Town Council shall meet in regular session each second and fourth Tuesday of each month at 7:00 P.M. in the Council Chamber at the Town Hall, unless otherwise ordered by the Town Council. When a regular meeting date falls on a holiday or on a day of special observance which is officially recognized by the Town, such regular meeting shall be held on the following day at the same hour and place. The Council, by majority consent, may dispense with the holding of any regular meeting. (Resolution 6 Series 2016)

4.2 Special Meetings

a. Special meetings of the Council shall be called by the Town Clerk on the written request of the Mayor, Town Manager or of any two (2) members of the Council. At least twenty-four (24) hours' advance notice, written or oral, of a special meeting shall be given to each member of the Council; provided, however, that a special meeting may be held on shorter notice thereof in writing. Notice of a special meeting shall also be posted in two (2) public places within the Town, one of which shall be the place designated in Section 4.4. Such notice shall be posted at least twenty-four (24) hours in advance of the special meeting, unless less than twenty-four (24) hours' notice is given to the members of the Council as provided above in which event the notice shall be posted at the same time as the notice of the special meeting is given to the members of the Council. The advance notice to the Councilmembers shall set forth the date, hour, place and purpose of such meeting. Any Councilmember may waive the requirement of notice of a special meeting, and attendance at a special meeting shall constitute a waiver of the requirement of advance notice of such meeting.

b. No business shall be conducted at a special meeting of the Council unless the same has been stated in the notice of such meeting; except that any business which may lawfully come before a regular meeting of the Council may be transacted at a special meeting if all members of the Council present consent thereto and all the members absent file their written consent.

c. Special meetings of the Council shall be held in the Council Chambers at the Town Hall, unless otherwise specified in the call and notice of a special meeting.

4.3 Notice Of Regular Meeting

Notice of each regular meeting shall be posted by the Town Clerk at the location designated in Section 4.4 not less than twenty-four (24) hours prior to the holding of the meeting. The posting shall include specific agenda information where possible. Whenever possible, the Town Clerk shall also cause the notice and specific agenda information to be published in a newspaper of general circulation in the Town; provided, however, that (i) such courtesy publication may be made in any newspaper of general circulation in the Town and need not be made in a publication meeting the requirements of a legal newspaper or legal publication under Part 1 of Article 70 of Title 24, C.R.S., and (ii) such courtesy publication shall not be a legal prerequisite to the holding of a regular Town Council meeting, and the failure of such courtesy publication to be made shall not affect the validity of the regular Town Council meeting or any action taken at such meeting. (Resolution 14 Series 1996)

4.4 Place For Posting Meeting Notices

The designated place for the posting of public notice of all regular and special meetings of the Council shall be on or outside the southerly front door of Town Hall. (Resolution 14 Series 1996)

4.5 Quorum

A majority of the members of the Council in office at the time shall be a quorum for the transaction of business at all Council meetings, and a quorum shall be required to be present for the Council to take any action. Councilmembers disqualified from acting upon a particular matter due to a conflict of interest shall not be counted in determining whether a quorum exists with respect to that matter. In the absence of a quorum, a lesser number may continue any matter to the next regular meeting. In the absence of all members, the Town Clerk may adjourn any meeting for not longer than one (1) week. In the event any meeting is adjourned to a later date, the Clerk shall prepare and cause to be delivered to each member of the Council timely written notice setting forth the date and hour to which such meeting has been adjourned.

4.6 Work Sessions

a. A work session is a meeting of the Council held for the purpose of informally discussing and studying matters which are of interest to the Council, and not for the purpose of taking final action on any matter. No proposed policy, position, resolution, ordinance, rule, regulation, or formal action of any kind shall be adopted at a work session. (Resolution 57 Series 2000)

b. The Council's regular work session shall be held on the day of the Council's regular meeting, at such time as shall be set forth in the notice of the work session. The Council may hold special or emergency work sessions on other dates, subject to the notice requirements of subparagraph c, below. (Resolution 57 Series 2000)

c. Notice of each regular Council work session shall be given in the same manner as a regular Council meeting is noticed as provided in Section 4.3. Notice of each special Council work session shall be given in the same manner as a special Council meeting is noticed as provided in Section 4.2. Notice of each emergency Council work session shall be given in the same manner as an emergency Council meeting is noticed as provided in Section 4.13. (Resolution 57 Series 2000)

d. Minutes of a Council work session shall not be kept; provided, however, a certificate shall be prepared, signed by the Mayor and filed in the official Town Records any time an executive session is held at a work session as required by subparagraph f, below. The filing of such certificate shall be deemed to satisfy the requirement of Section 24-6-402(d)(II), C.R.S. (Resolution 57 Series 2000)

e. Public hearings are not held during work sessions. The public is invited to attend the work session and to listen to the Council's discussion. However, the Council is not required to take public comment during work sessions. At the discretion of the Council, public comment may be allowed at a work session if time permits and, if allowed, public comment may be limited. (Resolution 57 Series 2000)

f. A work session is declared to be a public meeting open to the public at all times; provided, however, that a properly noticed regular or special Council work session shall be deemed to be a "regular or special meeting" of the Council within the meaning of Section 24-6-402(4), C.R.S., and at such work session the Council may go into an executive session in accordance with and subject to the provisions of Section 4.7. (Resolution 29 Series 2001)

4.7 Meetings To Be Public; Executive Sessions

All work sessions and regular, special or emergency meetings of the Council shall be open to the public and, subject to the provisions of Subsection 4.6(e), citizens shall have a reasonable opportunity to be heard as provided by these Procedures and Rules of Order; provided, however, that the Council, at any properly noticed work session or regular, special or emergency meeting, by the affirmative vote of 2/3 of the quorum present, may go into executive session for the purpose of considering any of the following matters: (Resolution 29 Series 2001)

- (1) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the Council has a personal interest in such purchase, acquisition, lease, transfer or sale; (Resolution 29 Series 2001)
- (2) Conference with an attorney for the Town for the purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of the Council is not sufficient to satisfy the requirements of this Subsection (2); (Resolution 29 Series 2001)
- (3) Matters required to be kept confidential by federal or state law or rules and regulations. The Council shall announce the specific citation of the statutes or rules that are the basis for confidentiality before holding the executive session; (Resolution 29 Series 2001)
- (4) Specialized details of security arrangements or investigations; (Resolution 29 Series 2001)
- (5) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators; (Resolution 29 Series 2001)

(6) Personnel matters, except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. The provisions of this Subsection (6) shall not apply to discussions of the Council concerning any member of the Council, any elected official, or the appointment of a person to fill the office of a member of the Council or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to a particular employee; (Resolution 29 Series 2001)

(7) Consideration of any documents protected by the mandatory nondisclosure provisions of Part 2 of Article 72 of Title 24, C.R.S., commonly known as the "Open Records Act"; except that all consideration of documents or records that are work product as defined in Section 24-72-202(6.5), C.R.S. or that are subject to the governmental or deliberative process privilege shall occur in a public meeting unless an executive session is otherwise allowed pursuant to these Procedures and Rules of Order. (Resolution 29 Series 2001)

No adoption of any proposed policy, position, resolution, rule, regulation, ordinance or formal action shall occur at any executive session which is not open to the public. (Resolution 29 Series 2001)

Prior to the Council going into executive session the Mayor shall announce the topic of the executive session, including the specific citation(s) to the provisions of Section 24-6-402, C.R.S., which authorize the Council to meet in an executive session and an identification of the particular matter to be discussed in the executive session in as much detail as possible without compromising the purpose for which the executive session is authorized. (Resolution 29 Series 2001)

4.8 Town Manager And Assistant Town Manager

The Town Manager, or the Assistant Town Manager, shall attend all regular or special meetings of the Council and shall attend such other meetings and sessions of the Council as the Council may request.

4.9 Minutes And Recording Of Meetings (Including Keeping of Record of Executive Session)

a. A person designated by the Town Manager (the "Recorder") shall attend and shall keep the minutes of each regular, or special or emergency meeting of the Council, except those portions of a regular, special or emergency meeting during which an executive session is held. (Resolution 6 Series 2013)

b. An electronic recording of all portions of all regular, special or emergency meetings of the Council (except executive sessions, which are governed by subsection (i) of this Rule) shall be made by the Recorder. Such electronic recordings shall be retained for one (1) year, and shall be open to public inspection and copying. (Resolution 6 Series 2013)

c. The minutes of a meeting during which an executive session is held shall reflect the general topic of discussion at the executive session. (Resolution 6 Series 2013)

d. The minutes of each such meeting shall record in full all motions, resolutions and ordinances. Otherwise and with the exception of public hearings, the minutes of meetings shall record what was done rather than what was said. (Resolution 6 Series 2013)

e. A Councilmember shall have the privilege of having his or her statement on any subject then under consideration by the Council entered into the minutes. Such request must be made before the Presiding Officer puts the question to a vote, or before the final approval of the minutes by the Council. (Resolution 6 Series 2013)

f. A copy of the minutes of the preceding regular, special, or emergency meeting(s) shall be included in each Councilmember's agenda for the subsequent regular meeting. (Resolution 6 Series 2013)

g. Minutes will not be read provided each member of the Council has been provided with a copy of the minutes of the previous meeting in advance of the meeting at which they are to be approved. Approval of minutes will not be necessary. Accordingly, the minutes will then be approved "as previously submitted by the Recorder," or approved "as corrected." (Resolution 6 Series 2013)

h. Minutes shall be signed by the Presiding Officer and by the Recorder. (Resolution 6 Series 2013)

i. An electronic recording of the actual contents of the discussion during an executive sessions shall be made by the Presiding Officer of the meeting at which the executive session is held as required by Section 24-6-402 (2)(d.5)(II)(A), C.R.S. The electronic recording of an executive session shall not be subject to public disclosure or to discovery in any administrative or judicial proceeding, except in an action brought pursuant to Section 24-72-204(5.5)(a), C.R.S. Such electronic recording shall be retained by the Town Clerk for only ninety-one (91) days after the date of the executive session. If, on such date, the Town has not been served with a summons in an action to review such electronic recording pursuant to Section 24-72-204(5.5)(a), C.R.S., the Town Clerk shall forthwith cause the electronic recording of the executive session to be destroyed. The mandatory destruction of an executive session electronic recording as provided in this Subsection shall be deemed to be part of the Town's record retention and destruction policy. (Resolution 6 Series 2013)

4.10 Attendance

In the event any member of Council is unable to attend any meeting of the Council, such member is requested to make a reasonable effort to so advise the Town Manager in advance of the meeting.

4.11 Agenda - Order Of Business

a. Regular meetings of the Council will have an established order of business generally along the following guidelines:

- (1) Call to order and Roll Call
- (2) Approval of minutes of previous meeting(s)
- (3) Approval of Agenda
- (4) Communications to Council (concerning matters not already scheduled for discussion on the meeting's Agenda
- (5) Continued business
- (6) New business
- (7) Planning Commission decisions
- (8) Reports by Town Manager and staff
- (9) Reports by Mayor and Councilmembers
- (10) Other matters
- (11) Scheduled meetings
- (12) Adjournment

b. Once approved, the Agenda may be modified only by majority vote of those Councilmembers present at the meeting.

c. In order to expedite matters of general importance or for the convenience of the public, the Presiding Officer may, by general consent, vary from the established order of business at any regular or special meeting if other members of Council do not object. If any such objection is made, a majority vote of those Councilmembers present will be necessary to change the order of business.

d. Repealed by Resolution 6 Series 2013)

e. Not later than the Friday preceding each regular meeting of the Council, the Town Manager shall cause to be prepared an Agenda showing the order of business for the upcoming work session and regular meeting, and

shall cause such Agenda to be made available to the Mayor and to each member of the Council. E-mail delivery of a link to the meeting's digital agenda(s) satisfies the requirements of this subsection. (Resolution 6 Series 2013)

4.12 No Smoking At Council Meetings

There shall be no smoking in the Council Chambers during meetings of the Town Council and there shall be no smoking during work sessions of the Town Council.

4.13 Emergency Meetings

An emergency meeting of the Council may be called in the event of an emergency that requires the immediate action of the Council in order to protect the public health, safety and welfare of the residents of the Town. At such emergency meeting, any action within the police power of the Council that is necessary for the immediate protection of the public health, safety and welfare may be taken; provided, however, any action taken at an emergency meeting shall be effective only until the first to occur of (i) the next regular meeting of the Council, or (ii) the next special meeting of the Council at which the emergency issue is on the public notice of the meeting. At such subsequent meeting the Council may ratify any emergency action taken. If any emergency action taken is not ratified by the conclusion of the next regular meeting, then such action shall be deemed rescinded. As used in this section, the term "emergency" shall mean an unforeseen combination of circumstances or the resulting state that calls for immediate action. (Resolution 34 Series 1996)

4.14 Mailing List For Meetings

The Town Clerk shall maintain a list of persons who, within the previous two years, have requested notification of all meetings of the Council, or of meetings of the Council when certain specified policies will be discussed. The Town Clerk shall provide reasonable advance written notification of such meetings to such persons at the same time that the Council agenda information for such meetings provided to Councilmembers; provided, however, that unintentional failure on the part of the Clerk to provide such notice shall not nullify or affect actions taken at an otherwise properly noticed Council meeting. E-mail delivery of a link to the meeting's digital agenda(s) satisfies the requirements of this subsection. (Resolution 6 Series 2013)

4.15. Attendance at Town Council Meetings By Use of a Virtual Platform (Resolution 20, Series 2021)

A. Purpose. The purpose of this Rule 4.15 is to specify the circumstances under which a member of the Town Council may participate in a regular, special, or emergency meeting of the Town Council by use of a virtual platform. When used in this Rule 4.15, the term "Council member" or "member" includes both the Mayor and all other members of the Town Council.

B. Statement of General Policy. Because of the many benefits of attending a meeting in person, it is the preference of the Town Council that members attend meetings of the Town Council in person.

C. Attendance at Town Council Meeting By Use of a Virtual Platform. Notwithstanding Section B of this Rule 4.15, any member of the Town Council may elect to attend a regular, special, or emergency meeting of the Town Council by use of a virtual platform for the following reasons:

1. Personal Health Reason. If a Town Council member reasonably determines that his or her personal attendance at a Town Council meeting would not be prudent because the member is ill or the member has other personal health concerns such member may participate in a Town Council meeting by use of a virtual platform. There is no limit on the number of Town Council meetings at which a Council member may participate by use of a virtual platform under this Section C1.

2. Other Reasons. A Town Council member may also participate in a Town Council meeting by use of a virtual platform if the Council member is out of Town or is otherwise unable to be physically present

at the meeting. A Town Council member may participate in Town Council meetings by use of a virtual platform pursuant to this Section C2 not more than three (3) times in a calendar year.

3. Executive Sessions. If the Town Council holds an executive session as part of a meeting a member participating by a virtual platform shall also be authorized to attend the executive session. A member participating in an executive session using a virtual platform shall: (i) have a secure internet connection, and (ii) certify that they are the only person in the room and that no other person has access to the executive session. Any executive session conducted under this Rule 4.15 shall be recorded electronically as provided for by statute.

D. Additional Rules When Participation In a Town Council Meeting By Use of a Virtual Platform Is Allowed. Whenever a Town Council member is allowed to participate in a Town Council meeting by use of a virtual platform pursuant to this Rule 4.15, the following special rules shall be observed:

1. The virtual platform to be used shall be Zoom unless another virtual platform is approved by the Town Clerk.

2. All members of the Town Council and Town staff must be able to: (i) hear one another clearly, (ii) communicate with one another, and (iii) hear or read all documents and testimony in a manner designed to provide maximum participation.

3. The member shall be in a physical location with good internet connectivity. The Mayor is authorized to discontinue a member's participation in a meeting if: (i) the member's use of the virtual platform results in delays, (ii) the communication is unclear, or (iii) the member's virtual participation otherwise interferes with the conduct of the meeting.

4. A Town Council member attending a meeting by use of a virtual platform may fully participate in a quasi-judicial matter coming before the Town Council at such meeting. For avoidance of doubt, such member shall have the right to vote in connection with such quasi-judicial matter.

5. If possible, a member who elects to participate virtually in a meeting of the Town Council pursuant to this Rule 4.15 shall notify the Town Clerk at least two (2) days before the meeting so that arrangements can be made to accommodate such member's virtual attendance at the meeting.

6. All votes of the Town Council shall be conducted by roll call.

7. Minutes of the meeting of the Town Council shall be taken and promptly recorded, and such records shall be open to public inspection.

8. When a Town Council meeting is held by use of a virtual platform the chair of the meeting must be present in the Town Council Chambers unless all members of the Town Council participating in the meeting do so using the virtual platform.

9. Full and timely notice shall be given to the public setting forth the time of the meeting as required by Rule 4.3. Such notice shall include the fact that one or more members of the Town Council may attend the meeting by use of a virtual platform.

10. A member of the Town Council who participates in a virtual meeting of the Town Council in accordance with this Rule 4.15 shall be considered to be "present" at the meeting for all purposes, including, without limitation, establishing a quorum. Such member shall also be entitled to vote on all matters coming before the Town Council at the meeting as if such member was physically present at the meeting.

11. Participation in a regular Town Council meeting by use of a virtual platform in accordance with this Rule 4.15 shall not be considered to be a "failure to attend" a regular Council meeting for determining

whether a vacancy in the office of the Mayor or a Council member has occurred under Section 4.8(b) of the Town Charter.

E. The Town Council may provide reasonable accommodation and waive or modify provisions of this Rule 4.15 for the benefit of members of the Town Council or the public with a disability.

F. Members of the public may hear and view any virtual meeting of the Town Council unless technical problems prevent them from doing so. Members of the public desiring to communicate with the Town Council may do so by letter, e-mail, or by attending a Town Council meeting in person.

V.

PARLIAMENTARY PROCEDURE

5.1 Parliamentary Authority

Robert's Rules Of Order, Revised shall be the parliamentary authority for all meetings of the Council and the rules contained therein shall govern the procedures utilized at such meetings in all cases where applicable and where not inconsistent with the Town Charter or these Procedures And Rules Of Order as amended.

5.2 Presiding Officer

The Presiding Officer shall be responsible for conducting the meetings of the Council in an orderly and democratic manner; shall state every question coming before the Council; shall announce the decisions of the Council on all subjects; and shall decide all questions of order subject to appeal by Council.

5.3 Right To The Floor

A Councilmember shall not speak while another member has the floor, except as may be permitted by Robert's Rules Of Order, Revised.

5.4 Right Of Appeal

Any Councilmember may appeal a ruling of the Presiding Officer to the Council at large. If the appeal is seconded, the member making the appeal may briefly state the reason for the same, and the Presiding Officer may briefly explain his or her ruling; but there shall be no debate on the appeal. The Presiding Officer shall then put the question, "Shall the decision of the Chair be sustained?" If a majority of this Councilmembers present vote "Yes," the ruling of the Chair is sustained; otherwise, it is overruled.

5.5 Motions

- a. Motions are used to give direction to the operation of the Town government. (Resolution 6 Series 2013)
- b. Motions are generally introduced by voice. However, if long or involved, motions should be in writing and, in any event, any two (2) members of the Council may ask that a motion be put in writing.
- c. Some discussion may be held on reports, bids, and proposals without a motion being presented.
- d. Main motions must have a second and have been stated by the Presiding Officer before debate or discussion.
- e. Secondary motions are motions that propose to do something regarding the main motion, as to amend, limit, table, or postpone discussion.

f. Privileged motions may be brought up at any time and must be decided before returning to other business. Such motions are to adjourn, recess, keep to agreed order of business and motions on questions of privilege or rights.

g. The withdrawal of a main motion automatically cancels all of the secondary motions regarding the main motion.

h. A motion may be withdrawn before it has been stated by the Presiding Officer. After a motion has been so stated, such motion may not be withdrawn without a majority vote of the Councilmembers present.

i. Motions shall be acted upon after they are introduced, seconded (when required), and stated by the Presiding Officer.

5.6 Debate - Decorum

a. When recognized by the Presiding Officer, a Councilmember shall confirm his or her remarks to the question then under discussion and shall avoid personalities.

b. The Council may, when necessary, limit the time of debate on any subject or debatable motion.

c. A Councilmember shall speak only once on the question until all other members of Council who wish to speak have had the opportunity to do so.

5.7 Voting

a. The vote by "Yes" or "No" shall be taken upon the passage of all ordinances and resolutions. On all other matters, a voice vote may be taken.

b. Every Councilmember present, when a question is put, shall vote either "Yes," or "No," unless previously excused by the Council for any of the reasons set forth in Section 6.7 of the Town Charter or any ordinance of the Town pertaining to conflict of interest or disqualification of the Councilmember. Any Councilmember refusing to vote except when not required to do so by the preceding sentence shall be guilty of misconduct in office.

c. The minutes shall record how each Councilmember voted on each question, except that where the vote was unanimous it shall only be necessary for the minutes to so state, and the minutes need only reflect a voice vote passed or failed.

d. All roll call votes shall be taken in rotating order, with the Presiding Officer voting last.

e. A Councilmember has the right to change his or her vote up to the time the vote is announced by the Presiding Officer; after that, a member may change his or her vote only by permission of the Council, which can be given by general consent, or by the adoption of a motion to grant permission, which motion is undebatable.

f. No Councilmember shall be permitted to explain his or her vote during voting or after the vote is announced.

5.8 Votes Required For Passage Of Ordinances, Resolutions, And Motions

a. With the exception of ordinances approved at special meetings of the Council and emergency ordinances, all ordinances shall require the affirmative vote of the majority of the entire Council for final adoption. Ordinances may be approved on first reading by a majority vote of those Councilmembers present.

b. Emergency ordinances for the preservation of public property, health, welfare, peace or safety shall require five affirmative votes. No ordinance making a grant of any special privilege, levying taxes or fixing rates charged by any Town-owned utility shall be passed as an emergency measure.

c. Resolutions and motions shall require the affirmative vote of a majority of the Councilmembers present for passage.

d. Any ordinance approved at a special meeting shall require five affirmative votes.

5.9 Reconsideration

After the decision on any question, any Councilmember who voted with the prevailing side may move a reconsideration of any action at the same or at the next succeeding regular meeting; provided, however, that an action of the Council authorizing or relating to any contract may be reconsidered at any time prior to the final execution thereof. A motion to reconsider may be seconded by any member of the Council and shall require a majority vote of the Councilmembers in office for adoption. After a motion to reconsider has been once voted on and lost, it shall not be introduced again except by unanimous consent of the Council.

5.10 Recess - During Meeting

The Presiding Officer may, at any point in the Agenda, declare a recess for a specified time.

5.11 Adjourning To A Later Date

Any session of the Council may be continued or adjourned from day to day, or for more than one day, but no adjournment shall extend beyond the next regular meeting date. The first order of business at an adjourned meeting shall be the business not concluded at the preceding session of that adjourned meeting. Such adjournment from a regular meeting to a later date shall be by general consent or otherwise by a majority vote of the Councilmembers present.

VI.

RESOLUTIONS AND ORDINANCES

6.1 Resolution

a. Resolutions are acts of a relatively permanent nature and will remain in effect until rescinded or amended by the Council.

b. Resolutions may be used on formal statements of policy which are not required to be adopted by ordinance, on matters involving lengthy or complex questions, on administrative or executive matters, to approve contracts, and for such other purposes as the Council may determine.

c. All resolutions must be introduced in written form.

d. Unless otherwise provided by the Town Charter, a resolution shall refer to only one subject and shall carry a title stating the subject.

e. Following adoption, resolutions shall be numbered chronologically in the order adopted within each calendar year.

f. A resolution shall be signed by the Presiding Officer and the Clerk of the meeting at which the resolution was adopted.

6.2 Ordinances

a. An ordinance is considered the most authoritative form of action the Council can take. All legislative enactments shall be in the form of ordinance. An adopted ordinance becomes an established rule or law of the Town and remains in effect until otherwise rescinded or amended by the Council.

b. Procedure for passage of ordinances shall be as is set forth in the Town Charter (Article V, Sections 5.10 and 5.11).

c. In addition to such acts of the Council as are required by the Town Charter or by ordinance, every act making an appropriation, creating an indebtedness, authorizing the borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property shall be by ordinance; provided, however, this Subparagraph c shall not apply to the budget adoption.

d. All ordinances shall be confined to one (1) subject, except repealing ordinances.

e. An ordinance shall be introduced in written or oral form and shall carry a title stating the subject of the ordinance.

f. Every proposed ordinance must be submitted to and reviewed by the Town Attorney and every adopted ordinance must bear his certification that it is in correct form.

g. Ordinances shall be numbered in the order in which they became effective.

6.3 Reading Of Resolutions And Ordinances

Every resolution or ordinance shall be read in full at the Council meeting at which same is considered, or in cases where copies of the resolution or ordinance are available to the Council and to those persons in attendance at the Council meeting, such resolution or ordinance may be read by title only.

VII.

PUBLIC HEARINGS - PROCEDURES

Public hearings will be conducted in accordance with the following guideline procedures:

1. The Presiding Officer, in the order indicated, will:
 - a. Declare the public hearing open;
 - b. Announce the public hearing procedures;
 - c. Establish, when determined to be necessary, reasonable time limits for the hearing and reasonable time allocations to be established therein, with consent of the Council;
 - d. Ask for an introductory presentation by the Town Manager or staff, if appropriate;
 - e. Ask for the petitioner's presentation, if appropriate;
 - f. Ask for any presentation by those who are in favor of the matter;
 - g. Ask for any presentation by those who are opposed to the matter.

2. Each side of an issue will be given an opportunity to be heard and to present their case.

3. At any point in the hearing, either side may question any witnesses who have made presentations, but the time for such questions shall be included within the original time allotted for each side. Any person desiring to question any witness must first be appropriately recognized by the Presiding Officer before proceeding to ask his or her questions.

4. Following the presentations of those in favor and those opposed, opportunity will be given for rebuttal.

5. Any person speaking or presenting any information at the hearing may be questioned by the Town Council and/or by the Town Manager or staff.

6. Following rebuttal, the Presiding Officer will ask if any member of Council has any questions of or desires any additional information from anyone who has spoken or has presented information during the hearing. If such is the case, a member of Council may direct the question and/or request through the Presiding Officer to such individual and the response will be limited to the answer of the question, as stated.

7. Following questions from Council, the Presiding Officer will declare the public hearing closed and the matter will be remanded to the Council for consideration.

VIII.

ADDRESSING THE COUNCIL

8.1 Recognition Required (Resolution 6 Series 2013)

At any regular or special meeting of the Council, any person desiring to address the Council shall first secure the permission of and be recognized by the Presiding Officer.

8.2 Place On Agenda - Scheduled Appearance

Any person who desires to appear before and address the Town Council may be scheduled to appear by advising, in writing, the Town Manager of such request not later than 5:00 P.M. on the seventh (7th) day preceding a regular Council meeting. The request shall be in writing, shall outline the subject matter desired to be presented, shall be signed and dated by the person making the request and shall show the address of the person submitting the request. When this procedure is followed, the person's name and subject matter desired to be discussed will be listed on the Agenda.

8.3 Citizens' Comments

Citizens may address the Council at any regular meeting, by written or oral communications, on any matter concerning the Town's business or any matter over which the Council may have control, and may do so under the "Communications to Council" portion of the Agenda; provided, however, that time preference will be given to those persons who may have notified the Town in advance of their desire to speak in order that they may appear on the Agenda of the Council.

8.4 Participation

On debatable questions and open hearings, any interested person may address the Council by written or oral communications regarding any matter then under discussion at a Council meeting.

8.5 Delegations

When delegations attend Council meetings, such delegations shall designate to the Presiding Officer which persons are to speak for them.

8.6 Written Communications To Council

Written communications to the Council are permitted; however unsigned communications will not be forwarded to the Council. A copy of any signed written communication to the Council which touches upon a quasi-judicial matter pending before the Planning Commission, or other Town agency or board, shall be provided to the Planning Commission, agency or board, as well as to any applicant or other person whose rights might be directly affected by the matters raised in such written communication. (Resolution 31 Series 1994)

8.7 Manner Of Addressing - Time Limit

a. Each person addressing the Council shall give his or her name and address for the record, and shall limit the address to a reasonable time. (Resolution 6 Series 2013)

b. In consideration of the number of business items that normally come before Council meetings, the Presiding Officer may specifically set the allotted time for and limit any and all addresses with the general consent of the Council.

IX.

NOMINATIONS AND ELECTIONS

9.1 Nominations For Mayor Pro Tem, To Fill A Vacancy On The Council, And For Members For Boards And Commissions

Nominations for Mayor Pro Tem, for an appointment to fill a vacancy on the Council, and for members to serve on boards and commissions may be made "from the floor" by any Councilmember who wishes to propose a name for such position. (Any person so nominated can, at this time, withdraw his or her name from nomination.)

9.2 Election To Fill Vacancy On Council

Elections to fill a vacancy on the Council will be held by ballot. "Ballot" means a vote cast in such a way that the identity of the person voting and the position taken in such vote is subject to disclosure to the public upon request. When there are multiple candidates for a vacancy, Council may elect to vote for their top 3 candidates, each council person's vote for their number one choice would be worth 3 points, number two choice would be worth 2 points, and their number 3 choice would be worth 1 point. After each Council person votes, the person with the highest total of points would be declared elected. If there are only two candidates for a vacancy, the number one choice would be worth two points and the number two choice would be worth one point. (Resolution 9 Series 2018)

9.3 Election For Mayor Pro Tem And For Board And Commission Members

A. Elections to fill the position of Mayor Pro Tem will be held by secret ballot. After the votes are cast, the Town Manager will collect and count the votes. The Town Manager will then announce the results. The affirmative vote of a majority of the entire Councilmembers in office shall be required to elect the Mayor Pro Tem. If any of the nominees receives the vote of the majority of the entire Councilmembers in office on the first ballot, he or she shall be declared elected without further Council action. If none of the nominees receives such a majority vote at the end of the first balloting, the candidate receiving the fewest number of votes will be dropped as a candidate unless the elimination of such name (or names in cases of a tie vote) would leave only one candidate for the office. This process will continue until one candidate receives the majority vote of the entire Councilmembers in office. "Secret ballot" means a vote cast in such a way that the identity of the person voting or the position taken in such vote is withheld from the public. (Resolution 6 Series 2013)

B. . Elections to fill positions on Town boards and commissions will be held by ballot. "Ballot" means a vote cast in such a way that the identity of the person voting and the position taken in such vote is subject to disclosure to the public upon request. After the votes are cast, the Town Manager will collect and count the votes. The Town Manager will then announce the results. The affirmative vote of a majority of the entire Councilmembers in office shall be required to fill all positions on Town boards and commissions. If any of the nominees receives the vote of the majority of the entire Councilmembers in office on the first ballot, he or she shall be declared elected without further Council action. If none of the nominees receives such a majority vote at the end of the first balloting, the candidate receiving the fewest number of votes will be dropped as a candidate unless the elimination of such name (or names in cases of a tie vote) would leave only one candidate for the office. This process will continue until one candidate receives the majority vote of the entire Councilmembers in office. (Resolution 9 Series 2018)

9.4 When Balloting Unnecessary

If nominations are closed with no more candidates being nominated than there are positions to be filled, the candidate(s) nominated shall thereby be appointed and no balloting shall be required.

X.

MAYORAL PROCLAMATIONS

10.1 Mayoral Proclamations

The Mayor, or in his or her absence, the Mayor Pro Tem, shall have the unilateral authority to issue Mayor Proclamations. Such proclamations shall not require the consent or approval of the Council. Mayor proclamations shall not have the effect of law within the Town. (Resolution 6 Series 2013)

XI.

ADHERENCE TO AND SUSPENSION OF RULES

11.1 Adherence To Procedures

These Procedures And Rules Of Order are intended to govern the organization and meetings of the Town Council, to govern the actions of the Council in the conduct of its business, and to serve as a reference in handling parliamentary questions. In handling routine business and where not otherwise required by the Town Charter, the Council may, by general consent, use a more informal procedure than that set forth in these Procedures And Rules Of Order.

11.2 Suspension Of Rules

Any provision of these Procedures And Rules Of Order not governed by the Town Charter may be temporarily suspended at any meeting of the Council by a two-thirds (2/3) vote of the Councilmembers in office or may be temporarily suspended by general consent if a temporary suspension is presented by the Presiding Officer and if there are no objections from any member of Council.

XII.

AMENDMENTS

12.1 Amendments

These Procedures And Rules Of Order may be amended by a two-thirds (2/3) vote of the Councilmembers in office. Any proposed amendments shall be submitted in writing to each member of Council at least two (2) weeks in advance of the Council meeting at which such amendments are to be considered. The adoption of amendments shall be done by Resolution.

ADOPTED by the Town Council this 9th day of February, 2016.

John G. Warner, Mayor

ELECTION COMMISSION

Section 3.5 ELECTION COMMISSION:

An election commission is hereby created, consisting of the town clerk and two electors of the town. Neither of the two electors during their term of office shall be town officers or employees or candidates or nominees for elective town office. These two electors shall be appointed by the council in May following a regular town election, for a term of two (2) years and shall serve without compensation.

The town clerk shall be chairman. The election commission shall have charge of all activities and duties required of it by statute and this charter relating to the conduct of elections in the town. In any case where election procedure is in doubt, the election commission shall prescribe the procedure to be followed.

The commission shall provide procedures to establish proof of residency qualification where residency is in question. Upon a showing for good cause, the election commission may require proof of residency by any person registered to vote or attempting to register to vote in the town of Breckenridge. Said person shall not be qualified to vote in any municipal election until the election commission is satisfied that he has presented sufficient proof of residency as required by statute or ordinance adopted pursuant to this charter.

The election commission shall provide for ballots and sample ballots, voting machines or electronic voting equipment for determination of the winner by lot in the event of a tie vote, for canvass of returns and for the issuance of appropriate certificates.

The Breckenridge Home Rule Charter is current through Election 2010-04-06.

Disclaimer: The town clerk's office has the official version of the Breckenridge Home Rule Charter. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

[Town Website: www.townofbreckenridge.com](http://www.townofbreckenridge.com)

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PLANNING COMMISSION



Section 9.3 PLANNING COMMISSION:

There shall be established a seven (7) member planning commission appointed by the council. Members of the planning commission shall be residents of the town of Breckenridge and electors. One member of the town council may be appointed to serve on the planning commission if authorized by ordinance.

The terms of appointment to the planning commission shall be for four (4) years on an overlapping basis. However, if a member of the town council is appointed to serve on the planning commission, the term of appointment for such office shall be fixed by ordinance. (Ord. 28, Series 2002; Election 11-5-2002)

The Breckenridge Home Rule Charter is current through Election 2010-04-06.

Disclaimer: The town clerk's office has the official version of the Breckenridge Home Rule Charter. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

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CHAPTER 2

PLANNING COMMISSION

SECTION:

- 2-2-1: Establishing planning commission**
- 2-2-2: Membership requirements, appointment**
- 2-2-3: Term of office**
- 2-2-3-1: Term limits**
- 2-2-4: Vacancies**
- 2-2-5: Removal**
- 2-2-6: Appointments to fill vacancies**
- 2-2-7: Officers, rules, quorum**
- 2-2-8: Functions, powers and duties**
- 2-2-9: Compensation**
- 2-2-10: Benefits**

2-2-1: ESTABLISHING PLANNING COMMISSION:

Pursuant to the Breckenridge home rule charter, the Breckenridge Planning Commission, also known as "Planning Commission" or "commission" is hereby established. (Ord. 5, Series 1986)

2-2-2: MEMBERSHIP REQUIREMENTS, APPOINTMENT:

The Planning Commission shall consist of seven (7) members who are residents and electors of the town. Unless the town council decides otherwise, one (1) member of the town council shall be a member of the Planning Commission. (Ord. 19, Series 2011)

2-2-3: TERM OF OFFICE:

The term of office for all non-council members of the Planning Commission shall be four (4) years, or until a successor takes office. Each term of office for the non-council members shall commence on November 1 of the year of appointment and shall end on October 31 of the final year of the term. The terms of office shall be staggered. The town council may appoint one (1) of its members to serve on the Planning Commission as provided in section [2-2-2](#) of this chapter. The term of the town council member on the Planning Commission shall commence on the second Tuesday of April in the year the appointment is made, and shall expire, subject to the right of the Council to remove the town council representative as provided in section [2-2-5](#) of this chapter, on the second Tuesday of April the following year. (Ord. 19, Series 2011)

2-2-3-1: TERM LIMITS:

A. In order to allow for more direct citizen participation in Town government, no member of the Planning Commission shall serve more than three (3) consecutive four-year terms in office, and no member of the Planning Commission shall be reappointed to the commission if he or she has already completed three (3) consecutive four-year terms in office. Time served on the commission resulting from an appointment made by the town council to fill a vacancy on the commission does not count in determining compliance with the limitation of this subsection A.

B. The members of the commission who are in office when subsection [A](#) of this section is adopted shall be subject to subsection [A](#) of this section when their current terms of office expire. No member of the commission may be reappointed if such action would violate subsection [A](#) of this section. Subsection [A](#) of this section shall not be applied to shorten the term of any member of the Planning Commission.

C. A person who is term-limited under subsection [A](#) of this section may not be appointed to the Planning Commission until four (4) years have expired following the end of term of office that resulted in the person being term-limited.

D. A person who is term-limited under subsection [A](#) of this section may be appointed to fill a vacancy and serve out the remainder of the term of office of a member of the commission even though four (4) years have not expired following the end of term of office that resulted in the person being term-limited. (Ord. 21, Series 2017)

2-2-4: VACANCIES:

Vacancies shall automatically occur upon the happening of one (1) or more of the following events:

- A. A term is completed.
- B. A member ceases to be a resident and elector of the town.
- C. A member resigns. (Ord. [5](#), Series 1986)
- D. A member misses three (3) consecutive regularly scheduled or duly advertised special meetings of the commission, or five (5) regularly scheduled meetings in any twelve (12) month period of time. Provided, however, upon written request by the commission member to the town council, within fifteen (15) days of missing said third or fifth meeting, the town council, for good cause shown, may by majority vote of all the Council members in office at the time, allow the member to remain on the commission upon such further terms and conditions as may be determined by the town council. (Ord. 31, Series 2007)

2-2-5: REMOVAL:

After six (6) months of service, any non-council member of the Planning Commission may be removed by an affirmative vote by five (5) members of the town council; provided, however, that the Council may not remove more than three (3) non-council members in any twelve (12) month period, except the Council may remove additional non-council members upon a finding of misconduct in office.

If removed under this section, the Planning Commissioner shall be given written notice of such action within a three (3) day period. The removed Planning Commission member may appeal the Council's decision in writing within five (5) days after said notice, and if appealed, the Council shall set a hearing within fourteen (14) days of written notice of the appeal, at which time the issue shall be heard and a decision rendered.

The town council representative to the Planning Commission may be removed at any time by a majority vote of the entire Council. (Ord. 19, Series 2011)

2-2-6: APPOINTMENTS TO FILL VACANCIES:

Within thirty (30) days of any vacancy on the commission, the town council, by majority vote of all the Council members in office at the time of the appointment, shall appoint a Town resident and elector to fill such vacancy for the unexpired term of the vacated position. Appointment shall be made only after publication in accordance with section [1-22-2](#) of this Code of a solicitation of applications, and review of all such applications by the town council. (Ord. 3, Series 2011)

2-2-7: OFFICERS, RULES, QUORUM:

The commission shall elect a Chairman and Vice Chairman and such other officers as determined by commission regulation from among its members during November of each year. Terms of all elected offices shall be for one (1) year, with each office eligible for reelection.

The commission shall adopt rules for the transaction of its business, and shall keep a record of attendance at its meetings and of resolutions, transactions, findings, and determinations showing the vote on each question requiring a vote. The record of the commission shall be a public record. (Ord. [5](#), Series 1986)

A quorum shall consist of four (4) members, and the affirmative vote of a majority of the quorum present at a meeting shall be required in order for the commission to act upon any matter. (Ord. 27, Series 1994)

2-2-8: FUNCTIONS, POWERS AND DUTIES:

The commission shall have all the powers and duties of Municipal planning commissions, boards of zoning adjustment as now or hereafter set by law, the powers and duties set forth in this chapter, and such other powers and duties as may be established by the Council from time to time. (Ord. 1, Series 1987)

2-2-9: COMPENSATION:

A. Effective January 1, 2009, each member of the Planning Commission shall receive compensation for serving on the commission at the rate of four thousand eight hundred dollars (\$4,800.00) annually, payable at the rate of four hundred dollars (\$400.00) per month. The annual salary of the members of the Planning Commission may be increased or decreased at any time by ordinance duly adopted by the town council without regard for the term of appointment of such members. (Ord. [41](#), Series 2008)

B. Notwithstanding the provisions of subsection [A](#) of this section, the town council member who serves on the Planning Commission shall only receive the compensation provided by section [1-7-1](#) of this Code, and shall not receive the additional compensation provided by subsection [A](#) of this section. (Ord. [19](#), Series 2011)

C. One twenty-fourth (1/24) of the above mentioned salary may be deducted for the failure of any member of the commission to attend any regular meeting of the commission. The decision to make such deduction shall be made by majority vote of the Council. (Ord. 35, Series 1992)

2-2-10: BENEFITS:

In addition to the compensation described in section [2-2-9](#) of this chapter, Planning Commission members shall receive such benefits from the town as may be provided from time to time by Town policies, practices, or plans. (Ord. 25, Series 2013)

The Breckenridge Town Code is current through Ord. 39, Series 2023, passed November 28, 2023.

Disclaimer: The town clerk's office has the official version of the Breckenridge Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

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1 **TOWN OF BRECKENRIDGE PLANNING COMMISSION**
2 **RULES OF PROCEDURE**
3 **(August, 2021 Edition)**

4
5 **Rule 1. Authority For Adoption**

6
7 These Rules of Procedure are adopted pursuant to the authority granted to the Town of
8 Breckenridge Planning Commission by Section 2-2-7 of the Breckenridge Town Code.

9
10 **Rule 2. Applicability**

11
12 These Rules of Procedure shall apply to all meetings of the Town of Breckenridge Planning
13 Commission.

14
15 **Rule 3. Definitions**

16
17 The term “Rules” shall mean these Rules of Procedure, as amended from time to time. The term
18 “Commission” shall mean the Town of Breckenridge Planning Commission. The term “Director”
19 shall mean the Director of the Department of Community Development of the Town of
20 Breckenridge, or such person’s designee. The term “Presiding Officer”, shall mean the Chair, or
21 to the Vice-Chair or Temporary Chair when acting in the absence of the Chair.

22
23 **Rule 4. Other Laws**

24
25 These Rules must be read in conjunction with the Town of Breckenridge Development Code¹,
26 the Town of Breckenridge Subdivision Standards², the Director’s Administrative Rules and
27 Regulations³, as well as all applicable Town, state or federal laws, rules or regulations. In the
28 event of a conflict between these Rules and any ordinance or statute, the ordinance or statute
29 shall control.

30
31 **Rule 5. Regular Meetings**

32
33 **Rule 5.1. Date, Time and Place of Regular Meetings**

34
35 The Commission shall hold regular meetings on the first and third Tuesdays of each
36 month, except that:

37
¹ Chapter 1 of Title 9 of the Breckenridge Town Code

² Chapter 2 of Title 9 of the Breckenridge Town Code

³ Adopted pursuant to the authority granted by Section 9-1-28 of the Breckenridge Town Code (for Development Code matters) and Section 9-2-3-9 (for Subdivision Standards matters)

- 1 a) if a regular meeting day is a legal holiday, the meeting shall be held on the
2 next business day;
3 b) there shall be no second regular meeting held in the month of December each
4 year; and
5 c) By majority consent, the Commission may dispense with the holding of any
6 other regular meeting, or agree to hold a regular meeting on a different day
7 than is normally required by this Rule.
8

9 All regular meetings of the Commission shall be held in the Town Council Chambers of
10 the Breckenridge Town Hall, 150 Ski Hill Road, Breckenridge, Colorado, unless the
11 Commission shall otherwise order.
12

13 Each regular meeting of the Commission shall begin at 5:30 P.M., unless otherwise
14 provided in the notice of the meeting.
15

16 In his discretion, the Director may schedule an application out of the normal order of
17 business if it involves a matter of substantial public interest, or if the Director determines
18 that good cause exists to vary the normal order of business. Further, by general consent of
19 the Commission, items may be considered out of order.
20

21 **Rule 5.2. Notice of Regular Meetings.** 22

23 Notice of each regular meeting shall be posted by the Director on Commission's official bulletin
24 board as designated in Rule 9 not less than 24 hours prior to the holding of the meeting. The
25 posting shall include specific agenda information where possible.
26

27 **Rule 6. Special, Emergency, and Adjourned Meetings** 28

29 **Rule 6.1. Special Meetings** 30

31 Special meetings of the Commission shall be called by the Director on the written request of the
32 Chair, the Vice-Chair in the absence of the Chair, or on the written request of any four (4)
33 members of the Commission. At least 24 hours advance notice, written or oral, of a special
34 meeting shall be given to: (i) each member of the Commission, and (ii) each person who has
35 filed a written request for notice with the Director pursuant to Rule 14. Notice of a special
36 meeting shall also be posted in the place designated in Rule 9. Such notice shall be posted at
37 least 24 hours in advance of the special meeting. The advance notice to the Commission
38 members, and to each person who has filed a written request for notice with the Director
39 pursuant to Rule 14, shall set forth the date, hour, place and purpose of such meeting. Any
40 Commission member may waive the requirement of notice of a special meeting, and attendance
41 at a special meeting shall constitute a waiver of the requirement of advance notice of such
42 meeting.

1
2 No business shall be conducted at a special meeting of the Commission unless the same has been
3 stated in the notice of such meeting; except that any business which may lawfully come before a
4 regular meeting of the Commission may be transacted at a special meeting if all members of the
5 Commission are present and consent thereto.

6
7 A special meeting may also be called or scheduled by vote of the Commission in open session
8 during another duly called meeting. No special notice shall be required with respect to a special
9 meeting called in such manner.

10 11 **Rule 6.2. Emergency Meetings**

12
13 The Chair may at any time call an emergency meeting of the Commission by signing a written
14 notice stating the time and place of the meeting and the subject(s) to be considered. Written or
15 oral notice of the meeting shall be given to each Commission member and provided to each
16 person who has filed a written request for notice with the Director pursuant to Rule 14. Action
17 taken at an emergency meeting shall be effective only until the first to occur of: (i) the next
18 regular meeting of the Commission, or (ii) the next special meeting of the Commission at which
19 the emergency issue is on the public notice of the meeting. At such subsequent meeting the
20 Commission may ratify any emergency action taken. If any emergency action taken is not
21 ratified by the conclusion of the next regular meeting, then such action shall be deemed
22 rescinded.

23
24 Emergency meetings may be called only because of generally unexpected circumstances that
25 require immediate consideration by the Commission. Only business connected with the
26 emergency may be considered at an emergency meeting.

27 28 **Rule 6.3. Adjourned Meetings**

29
30 A properly called regular, special, or emergency meeting may be adjourned to a date and time
31 certain by motion made and adopted in open session during the regular, special, or emergency
32 meeting. The motion shall state the date, time and place when the meeting will reconvene. No
33 further notice need be given of such an adjourned session of a properly called regular, special, or
34 emergency meeting.

35 36 **Rule 6.4. Cancellation of Meeting**

37
38 If: (i) no business is scheduled before the Commission, (ii) it is apparent that a quorum will not
39 be available, or (iii) the scheduled date for any Commission member is a legal holiday, any
40 meeting may be cancelled by the Chair or the Director by giving notice to all members prior to
41 the time set for such meeting, and to each person who has filed a written request for notice with
42 the Director pursuant to Rule 14. Notice of the cancellation of a special meeting shall also be

1 posted in the place designated in Rule 9. Notice of cancellation of a meeting may be given by
2 telephone, electronically (e-mail), fax, in person, or by first class mail. If no quorum is present at
3 the meeting, the Director shall cancel the meeting and all items scheduled to be heard shall be
4 rescheduled by the staff.

5 6 **Rule 7. Quorum**

7
8 Four members of the Commission shall constitute a quorum, and the affirmative vote of a
9 majority of the quorum present at a meeting shall be required in order for the Commission to act
10 upon any matter.⁴ A majority is more than half. The Chair shall be considered a member of the
11 Commission in determining the number on which a majority is based, and in counting the
12 number of members actually present.

13 14 **Rule 8. Applicability of Colorado Open Meetings Law**

15
16 All meetings of the Commission shall be subject to the provisions of the Colorado Open
17 Meetings law.⁵

18 19 **Rule 9. Place for Posting Meeting Notices⁶**

20
21 The designated place for the posting of public notice of all regular and special meetings of the
22 Commission shall be the bulletin board located outside the southerly front door of the
23 Breckenridge Town Hall, 150 Ski Hill Road, Breckenridge, Colorado.

24 25 **Rule 10. Electronic Record/Minutes**

26
27 The Commission shall keep an electronic record of its meetings, including any executive
28 sessions. In addition, full and accurate minutes of the Commission proceedings, except executive
29 sessions, shall be kept as required by the Colorado Open Meetings law. Records of executive
30 sessions shall be kept in accordance with the requirements of the Colorado Open Meetings law.
31 These minutes shall be open to inspection of the public as provided in the Colorado Open
32 Meetings law. The exact wording of each motion and the vote of each member of the
33 Commission thereon shall be recorded in the minutes.

34 35 **Rule 11. Election of Chair and Vice-Chair**

36
37 During November of each year the Commission shall elect a Chair and Vice-Chair.

⁴ Pursuant to Section 2-2-7 of the Breckenridge Town Code

⁵ The Colorado Open Meetings law is found at Part 4 of Article 6 of Title 24, C.R.S.

⁶ Required by Section 24-6-402(2)(c), C.R.S.

1 The terms of the office of Chair and Vice-Chair shall be one year, or until their successors are
 2 duly elected. The Town Council representative to the Commission may be elected as either Chair
 3 or Vice-Chair of the Commission. There is no limit on the number of consecutive terms which a
 4 member may serve as either Chair or Vice-Chair of the Commission.⁷
 5

6 **Rule 12. Vacancies**

7 8 **Rule 12.1. Vacancies in Commission Offices**

9
10 If there is a vacancy in either the office of Chair or Vice-Chair of the Commission, the remaining
 11 members of the Commission shall fill the unexpired term of such vacated position by election.
 12

13 **Rule 12.2. Vacancies on the Commission**

14
15 Vacancies on the Commission shall be filed by the Town Council in the manner provide by law.⁸
 16

17 **Rule 13. Secretary**

18
19 The Director shall serve as the *ex officio* secretary to the Commission. The Director shall
 20 designate a person or persons to provide the necessary secretarial and recording services for the
 21 Commission. The Director shall be responsible for the giving of all required notice of
 22 Commission public hearings and actions under the Development Code or Subdivision Standards.
 23

24 **Rule 14. List of Interested Parties⁹**

25
26 The Director shall maintain a list of persons who, within the previous two years, have requested
 27 notification of all meetings of the Commission, or meetings when certain specified polices will
 28 be discussed, and shall provide not less than 24 hours advance notification of such meetings to
 29 such persons. Notice may be given by telephone, electronically (e-mail), fax, in person, or by
 30 first class mail. Such notice as may be provided is hereby determined to be reasonable and
 31 sufficient. The unintentional failure to provide such advance notice to persons requesting the
 32 same will not nullify actions taken by the Commission at an otherwise properly noticed meeting.
 33

34 **Rule 15. Agenda**

35 36 **Rule 15.1. Proposed Agenda**

37
⁷ Pursuant to Section 2-2-7 of the Breckenridge Town Code

⁸ Pursuant to Section 2-2-6 of the Breckenridge Town Code

⁹ Required by Section 24-6-402(7), C.R.S.

1 The Director shall prepare a proposed agenda for each meeting, together with an agenda packet.
2 The agenda packet shall include the agenda and accompanying background information on each
3 agenda item. A copy of each agenda and agenda packet for a regular meeting shall be made
4 available to each Commission member not later than 48 hours prior to the meeting. A copy of
5 each agenda and agenda packet for a special or emergency meeting shall be made available to
6 each Commission member as soon as possible prior to the meeting.
7

8 **Rule 15.2. Adoption of the Agenda**

9

10 Immediately following the call to order, roll call of the members at each meeting and the
11 approval of the minutes, the Chair shall inquire of the Director whether there are any proposed
12 changes to the agenda. If there are no such changes, the agenda shall stand approved as
13 proposed without the need for formal Commission approval. If there are proposed changes to the
14 agenda, the Commission shall discuss and revise the proposed agenda, and adopt an agenda for
15 the meeting. The Commission may add items to or subtract items from the proposed agenda,
16 except that the Commission may not add items to the agenda of a special meeting except as
17 provided in Rule 6.1. If an item is to be added to the agenda, written copies of the particular
18 documents connected with such item shall be made available at the meeting to all Commission
19 members.
20

21 **Rule 15.3. Consent Calendar**

22

23 The Commission shall consider items placed upon the “Consent Calendar” by the Director. The
24 Consent Calendar shall include all matters which are to be submitted to the Commission on a
25 consent calendar under the applicable provisions of the Development Code or Subdivision
26 Standards. See Rule 26 for the procedures to be followed with respect to the Consent Calendar.
27

28 **Rule 16. Order of Business**

29

30 Items shall be placed on the agenda according to the order of business. The order of business for
31 each regular meeting shall normally be as follows:
32

33 Call to Order; roll call
34 Approval of the minutes
35 Discussion and revision of the proposed agenda; adoption of an agenda
36 Worksession(s)
37 Consent Calendar
38 Final Hearing(s)
39 Preliminary Hearing(s)
40 Other Matters
41 Adjournment
42

1 In his discretion, the Director may schedule an application out of the normal order of business if
2 it involves a matter of substantial public interest, or if the Director determines that good cause
3 exists to vary the normal order of business. Further, by general consent of the Commission, items
4 may be considered out of order.
5

6 **Rule 17. Presiding Officer**

7

8 The Chair shall preside at all Commission meetings if he or she is present. The Chair may vote in
9 all cases. In order to address the Commission, a member must be recognized by the Chair.
10

11 If the Chair is absent, the Vice-Chair shall preside. If both the Chair and Vice-Chair are absent,
12 another member designated by vote of the Commission shall preside as Temporary Chair. The
13 Vice-Chair or Temporary Chair retains all of his or her rights as a member, including the right to
14 make motions and the right to vote.
15

16 In accordance with these and other applicable rules, the Presiding Officer shall decide all points
17 of procedure or order, unless otherwise directed by a majority of the members of the
18 Commission in attendance on motion duly made and passed. The Presiding Officer shall
19 maintain order and decorum, and to that end may order removal of disorderly or disruptive
20 persons.
21

22 **Rule 18. Conduct of Commission Members**

23

24 **Rule 18.1. Conformity With Town Code of Ethics**

25

26 The conduct of Commission members shall at all times conform with the requirements of the
27 Town of Breckenridge "Code of Ethics."¹⁰
28

29 **Rule 18.2. Ex Parte Contacts**

30

31 Each member of the Commission must exercise care in responding to and reporting any ex parte
32 contact with respect to any matter which is pending before the Commission.
33

- 34 A. An ex parte contact is any contact (written, oral or electronic) concerning a matter
35 pending before the Commission which is offered to or received by a member of the
36 Commission outside of the actual hearing process.
37
- 38 B. Whenever a person attempts to make an ex parte contact with a member of the
39 Commission, the member shall, to the extent possible, refuse to accept such ex parte
40 contact. The member shall advise the person who is attempting to make the ex parte

¹⁰ The Code of Ethics is found at Chapter 16 of Title 1 of the Breckenridge Town Code.

1 contact that all comments and information related to the pending matter should be
2 presented to the entire Commission, as well as all interested parties, at the time of the
3 public hearing.

4
5 C. Any member of the Commission who has received an ex parte contact must report the
6 information and identify the source and date of the contact, to the full Commission and
7 the applicant for inclusion in the formal record of the hearing on the application.

8
9 D. Any written ex parte contact transmitted to or received by a member of the Commission
10 concerning a matter which is pending before the Commission, including printed and e-
11 mailed communications, shall be forwarded directly to the Director for review and
12 incorporation into the staff's report. A copy of such written material shall also be
13 provided to the applicant not later than the commencement of the hearing.

14
15 E. The rule against ex parte contacts shall not apply to preclude members of the
16 Commission from seeking and receiving information from other members, the Director,
17 the Town Attorney, or staff members of the Department of Community Development, but
18 no member of the Commission shall discuss the matter with the applicant, the applicant's
19 counsel or representatives, or any person reasonably anticipated to be witnesses prior to
20 the public hearing.

21 22 **Rule 18.3. Conflicts of Interest**

23
24 The topic of conflicts of interest of Commission members is specifically dealt with in the Town's
25 Ethics Code as follows:

26
27 Any member of the Planning Commission who believes he or she has a conflict of
28 interest as defined in [the Code of Ethics] on any matter proposed or pending
29 before the Planning Commission shall disclose such conflict to the Planning
30 Commission. Any member of the Planning Commission who believes that another
31 member of the Planning Commission has a conflict of interest shall bring the
32 matter to the attention of the Planning Commission prior to Planning Commission
33 consideration of the issue involving the alleged conflict. The Planning
34 Commission shall determine whether a conflict of interest exists. If the Planning
35 Commission determines that an actual conflict of interest exists, the Planning
36 Commissioner with the conflict shall not attempt to influence other members of
37 the Planning Commission in connection with such matter, and, except as provided
38 in Section 1-16-13 [of the Code of Ethics], shall not vote upon such matter. The
39 Planning Commissioner shall leave the Commission meeting room during the

1 Commission's discussion and action on the subject, and shall return only when the
2 Planning Commission has taken up the next agenda item.¹¹

3
4 The members of the Commission shall strictly comply with the requirements of Section
5 1-16-12 of the Code of Ethics.

6
7 **Rule 18.4. Expressions of Bias, Prejudice, or Individual Opinion Prior to Hearing and**
8 **Determination**

9
10 No member of the Commission shall express any bias, prejudice, or individual opinion on the
11 proper outcome of a matter prior to its hearing and determination.

12
13 **Rule 19. Action by the Commission**

14
15 **Rule 19.1. Action By Motion**

16
17 The Commission shall proceed by motion, unless otherwise required by applicable law.

18
19 **Rule 19.2. Who May Make A Motion**

20
21 Any member of the Commission, including the Chair, may make a motion.

22
23 **Rule 19.3. Second Required**

24
25 A motion requires a second. Any member of the Commission, **including** the Chair, may second
26 a motion.

27
28 **Rule 19.4. One Motion at a Time**

29
30 A member may make only one motion at a time.

31
32 **Rule 20. Voting**

33
34 **Rule 20.1. Who May Vote**

35
36 Except as provided in Rule 18.3 with respect to a member who has a conflict of interest, each
37 member of the Commission, including the Chair, may vote on any motion.

38
39 **Rule 20.2. Adoption by Majority Vote**

40
¹¹ Section 1-16-12 of the Breckenridge Town Code

1 A motion shall be adopted by a majority of the votes cast, a quorum as defined in Rule 7 being
2 present. A majority is more than half.

3

4 **Rule 20.3. Duty to Vote**

5

6 Every member of the Commission must vote unless excused by the remaining members of the
7 Commission. A member who wishes to be excused from voting shall so inform the Chair, who
8 shall take a vote of the remaining members. No member shall be excused from voting except in
9 cases involving conflicts of interest, as defined by the Commission or by law, or the member's
10 official conduct, as defined by the Commission

11

12 **Rule 21. Debate**

13

14 The Chair shall state the motion and then open the floor to debate. The Chair shall preside over
15 the debate according to the following general principles:

16

- 17 1. The maker of the motion is entitled to speak first;
- 18 2. A member who has not spoken on the issue shall be recognized before someone who has
19 already spoken.

20

21 **Rule 22. Ratification of Actions**

22

23 To the extent permitted by law, the Commission may ratify actions taken on its behalf but
24 without its prior approval.

25

26 **Rule 23. Executive Sessions**

27

28 At any meeting the Commission, by consent of 2/3 of the quorum present, may go into executive
29 session for those purposes authorized by law.

30

31 No adoption of any proposed policy, position, resolution, rule, regulation or formal action shall
32 occur at any executive session of the Commission which is not open to the public, except as
33 authorized by the Colorado Open Meetings law.

34

35 Prior to the Commission going into executive session the Chair shall announce to the public the
36 general topic of executive session, including a specific citation to the applicable provision of the
37 Colorado Open Meetings law which authorizes the Commission to meet in an executive session,
38 and identification of the particular matters to be discussed in as much detail as possible without
39 compromising the purpose for which the executive session is authorized.

40

41 The Commission shall terminate the executive session by a majority vote.

42

1 Only those actions authorized by statute may be taken in an executive session. A motion to
2 adjourn or recess a meeting shall not be in order during an executive session.

3
4 A tape recording of the actual contents of the discussion during an executive sessions shall be
5 made by the Chair of the meeting at which the executive session is held. The tape recording of an
6 executive session shall not be subject to public disclosure or to discovery in any administrative
7 or judicial proceeding, except in an action brought pursuant to Section 24-72-204(5.5)(a), C.R.S.
8 Such tape recording shall be retained by the Director for only ninety-one (91) days after the date
9 of the executive session. If, on such date, the Town has not been served with a summons in an
10 action to review such tape recording pursuant to Section 24-72-204(5.5)(a), C.R.S., the Director
11 shall forthwith cause the tape recording of the executive session to be destroyed. The mandatory
12 destruction of an executive session tape as provided in this Rule shall be deemed to be part of the
13 Town's record retention and destruction policy.

14
15 If it appears that the tape recorder in the Commission chambers is not functioning properly at the
16 time that an executive session is to be held, or if there is no tape recorder available at the location
17 where the executive session is to be held, or when otherwise deemed necessary or advisable by
18 the Commission, a written record of the actual contents of the discussion during an executive
19 session which satisfies the requirements of Section 24-6-402 (2)(d.5)(II)(A) and (B), C.R.S.,
20 shall be kept. The written minutes of an executive session shall not be subject to public
21 disclosure, or to discovery in any administrative or judicial proceeding, except in an action
22 brought pursuant to Section 24-72-204(5.5)(a), C.R.S. The written record of an executive
23 session, in the form of written minutes of the executive session, shall be retained by the Director
24 for only ninety one (91) days after the date of the executive session. If, on such date, the Town
25 has not been served with a summons in an action to review such written record pursuant to
26 Section 24-72-204(5.5)(a), C.R.S., the Director shall forthwith cause the minutes of the executive
27 session to be destroyed. The mandatory destruction of executive session minutes as provided in
28 this Rule shall be deemed to be part of the Town's record retention and destruction policy.

29
30 The provisions of Section 24-6-402(2)(d.5)(II)(B), C.R.S., concerning privileged attorney-client
31 communications which occur in an executive session shall apply to any record of an executive
32 session kept by the Commission.

33 34 **Rule 24. Site Visits**

35
36 The Commission finds that visiting the site of a proposed development is a helpful way to gather
37 relevant facts concerning the proposed development. A site visit often leads to a better
38 understanding of a proposed development and, therefore, enhances the ability of the Commission
39 to make appropriate decisions concerning the development of the site. However, site visits
40 present unique problems in the context of the formal development permit application process.

41

1 The Commission may schedule and conduct a site visit when requested to do so by the applicant,
2 the staff, the general public, or on its own initiative. In connection with any site visit conducted
3 by the Commission, the applicant shall be notified not less than 48 hours in advance and given an
4 opportunity to attend and participate in the site visit. A site visit shall be noticed by the Director
5 as a public meeting of the Commission. However, a site visit is not a public hearing. Members
6 of the public shall be permitted to attend the site visit to listen to the questions and comments of
7 the staff, the applicant and the Commission. However, the public does not have the right to ask
8 questions of the staff, the applicant or the Commission members. Commission members shall
9 avoid engaging in improper ex parte contacts during a site visit. No minutes of a site visit shall
10 be kept by the Director, although the minutes of the Commission should reflect that a site visit
11 was conducted. Nothing in this Rule shall be construed to prevent a member of the Commission
12 from visiting the site of a proposed development on his or her own time for the purpose of
13 reviewing a site in connection with a development permit application.
14

15 Nothing in this Rule shall prevent an individual member of the Commission from visiting the site
16 of a proposed development outside of a formal site visit. In connection with such visit, the
17 Commission member shall avoid ex parte contacts.
18

19 **Rule 25. General Provisions Governing Public Hearings**

20

21 **Rule 25.1. Part of Meeting**

22

23 A public hearing is considered to be part of a regular or special meeting of the Commission.
24

25 **Rule 25.2. Representation**

26

27 At any hearing, any person may appear or be represented by authorized agents or attorneys at
28 their own expense. An attorney who appears before the Commission at any hearing shall be
29 required to state the name(s) and address(es) of all persons whom he or she has been authorized
30 to represent at the hearing.
31

32 **Rule 25.3. Testimony Under Oath Not Required**

33

34 Testimony offered at a hearing before the Commission shall not be required to be given under
35 oath or affirmation.
36

37 **Rule 25.4. Right To Present Evidence And Cross-Examine Witnesses**

38

39 At a hearing held before the Commission, each party shall have the right to present such
40 evidence as may be relevant, and to cross-examine all witnesses.
41

42 **Rule 25.5. Rules Of Evidence**

1
2 The strict rules of evidence shall not apply to a hearing held before the Commission.

3
4 **Rule 25.6. Objections**

5
6 Objections to proffered evidence shall be stated orally for the record. Any objection not made in
7 a timely and proper fashion shall be waived.

8
9 **Rule 25.7. Burden Of Proof**

10
11 The burden of proof shall be on an applicant to prove compliance with the applicable
12 requirements of the Development Code, Subdivision Standards, or other applicable law by a
13 preponderance of the evidence.” Preponderance of the evidence” means to prove that something
14 is more probably true than not.

15
16 **Rule 25.8. Limitation of Evidence**

17
18 The Presiding Officer shall have the authority to limit the presentation of evidence tending to be
19 repetitious or which is immaterial or irrelevant.

20
21 **Rule 25.9. Order of Debate**

22
23 Orderly procedure requires that each side shall proceed without interruption by the order; that all
24 arguments and pleadings shall be addressed to the Commission; and that there be no questioning
25 or argument between individuals.

26
27 **Rule 25.10. Commission and Staff's Remarks**

28
29 During the hearing, Commission members and members of the staff may ask questions and make
30 appropriate comments pertinent to the application; however, no member should debate or argue
31 an issue with the applicant.

32
33 **Rule 25.11. Applicant (and Others) Questioned**

34
35 The Commission members may direct questions to the applicant or any person speaking in order
36 to bring out all relevant facts, and may call for questions from members of the staff.

37
38 **Rule 25.12 Attendance at Meetings Using Town’s Zoom or Other Virtual Meeting Platform**

39
40 The applicant, or the applicant’s architect, planner, or other consultant may appear at a meeting
41 of the Commission using the Town’s Zoom or other virtual meeting platform. A person who will

1 appear at a Commission meeting using the Town's Zoom or other virtual meeting platform must
2 notify the Director not less than two (2) days prior to a meeting.

3
4 **Rule 26. Class C Items/Consent Calendar**

5
6 Class C items are presented to the Commission on a Consent Calendar, and no Commission
7 action is required, except that the Commission may call up items for further review when
8 warranted. The following procedures shall be utilized for the review of the Consent Calendar;
9 this review is intended only to ascertain if the items should remain on the Consent Calendar or be
10 pulled off for further review:

11
12 A. The Commission reviews the requests and asks minimal questions of the staff and applicants.
13 These comments may be brief, and shall be limited to: (i) clarification of the Commission's
14 understanding of the application(s); and (ii) the issue of whether a particular item should be
15 removed from the Consent Calendar and called up by the Commission.

16
17 B. Short comments are allowed by members of the audience concerning whether a particular
18 item should be removed from the Consent Calendar and called up by the Commission. The
19 comments shall be brief, and shall be limited to the issue of whether a particular item should be
20 called up.

21
22 C. The Commission may make motions to pull items off the Consent Calendar for further
23 review.

24
25 D. Any motions to remove items from the Consent Calendar shall be acted on at the time the
26 motion is made.

27
28 E. If no items are removed from the Consent Calendar, the Chair shall state "the Consent
29 Calendar stands approved as presented". If an item has been removed, the Chair shall state the
30 "all remaining items on the Consent Calendar stand approved as presented," and the Commission
31 shall move on to the review of those items removed.

32
33 F. Items removed from the Consent Calendar shall be reviewed in the following order:

- 34
35 (1) Staff presentation.
36 (2) Applicant presentation.
37 (3) Commission questions to staff and applicant.
38 (4) Audience comments in favor or against.
39 (5) Opportunity for staff to rebut any evidence.
40 (6) Opportunity for applicant to rebut any evidence.
41 (7) Commission discussion and decision.
42

1 **Rule 27. Class A and Class B Preliminary Hearings**

2
3 The following process shall be utilized for all Class A and Class B preliminary hearings. (These
4 hearings are not public hearings).

5
6 A. The Chair opens the hearing.

7
8 B. Staff introduces the application.

9
10 C. The applicant or applicant's representative presents the applicant's evidence in support of the
11 application.

12
13 D. The Commission asks questions of the staff and the applicant (or applicant's representative)
14 concerning the application.

15
16 E. Since preliminary hearings are not public hearings, but rather work sessions, audience
17 participation and comment may only be allowed at the discretion of the Chair, subject to the right
18 of the Commission to overrule the Chair. If comment is allowed, it shall take place prior to
19 Commission comments; shall be allowed equally for all participants; and shall allow for an
20 opportunity for the applicant to respond to any opposition comments.

21
22 F. The staff is given the opportunity to rebut any evidence presented by the applicant or the
23 public, and make its final comments.

24
25 G. The applicant is given the opportunity to rebut any evidence presented by the staff or the
26 public, and make its final comments.

27
28 H. The Commission members are given a second opportunity to examine any witnesses and the
29 applicant, and to discuss the request.

30
31 I. The Commission then comments on the application. The Commission's comments are not to
32 be responded to at this particular time, but should be addressed by the applicant as part of a
33 future application.

34
35 **Rule 28. Final Hearings For Class A and Class B Applications**

36
37 Final hearings for all Class A and Class B applications are considered public hearings, and, as
38 such, shall be processed in the following manner:

39
40 A. The Chair opens the public hearing.

41
42 B. Staff introduces the application.

1
2 C. The applicant or applicant's representative presents the applicant's evidence in support of the
3 application.

4
5 D. The Commission asks questions of the staff and the applicant (or applicant's representative)
6 concerning the application.

7
8 E. The Commission takes public comment concerning the application.

9
10 F. The staff is given the opportunity to rebut any evidence presented by the applicant or the
11 public, and make its final comments.

12
13 G. The applicant is given the opportunity to rebut any evidence presented by the staff or the
14 public, and make its final comments.

15
16 H. The Commission members are given a second opportunity to examine any witnesses and the
17 applicant, and to discuss the request.

18
19 I. The Chair closes the public hearing, and no further testimony is taken unless the hearing is
20 reopened pursuant to Rule 32.

21
22 J. Members of the Planning Commission make individual comments concerning the application.
23 The point analysis, as presented by the staff, may be discussed by the Commission, and the
24 Commission is given the opportunity to vote to change any point allocations within the
25 document.

26
27 K. The Chair shall ask if any motions to change the point analysis are to be made. If he or she
28 hears none, the point analysis shall be declared to have been approved as submitted by the staff,
29 and it shall become the official findings of the Commission, along with any other finding
30 specifically adopted.

31
32 L. The Commission shall then vote on the application, including any and all additional, specific
33 findings and conditions to be placed upon the application if approved.

34
35 **Rule 29. Continuance of Hearing**

36
37 Continuances of a scheduled hearing of the Commission may be granted for good cause
38 as described in this Rule, or upon the Commission's own initiative.

39
40 A motion for a continuance by an applicant must be timely. For purposes of this Rule,
41 "good cause" may include, but is not limited to: (i) the unavailability of the applicant, the
42 applicant's attorney, the applicant's architect, or other key person necessary for the

1 proper presentation of the applicant's application before the Commission; (ii) a showing
2 that more time is necessary to obtain relevant information related to the applicant's
3 application; (iii) a showing that more time is legitimately necessary to allow adequate
4 preparation for the hearing; or (iv) the complexity of the project requires additional
5 scrutiny and discussion by the Planning Commission. "Good cause" normally shall not
6 include the failure of an attorney or a party to prepare for the hearing.
7

8 Before a hearing is convened, the Chair or the Director may continue a hearing. Once a
9 hearing is convened, only the Commission may continue a hearing.
10

11 The Director shall notify applicant of a continuance granted outside of a meeting of the
12 Commission.
13

14 If a hearing is continued to a date certain, it shall not be necessary to re-notice the hearing; it
15 shall be conclusively presumed that all interested parties are aware of the continuation of the
16 hearing. If any hearing is continued without a date certain being specified, it shall be necessary to
17 re-notice the hearing in the same manner as the original notice of hearing was given.
18

19 **Rule 30. Audio-Tape Of Public Hearing**

20

21 An audio-taped record shall be made of each hearing which is held by the Commission. The
22 Town shall retain the original audio-tape for not less than one year. A copy of an audio-taped
23 record of a hearing shall be made to any party upon written request and payment of a fee
24 determined by the Town Manager to be sufficient to reimburse the Town for the cost of
25 providing such copy. The Town shall not be obligated to provide a transcript of a hearing which
26 is held before the Commission, and any party desiring such transcript shall obtain and pay the
27 cost thereof. A court reporter may be employed by any party, at the expense of such party, to
28 prepare a verbatim written record of administrative hearing.
29

30 **Rule 31. Record of the Public Hearing**

31

32 The record of a public hearing which is held before the Commission shall consist of: (i) all staff
33 reports and similar information which is provided to the Commission in connection with the
34 public hearing, excluding confidential attorney-client communications from the Town Attorney;
35 (ii) all documents admitted into evidence by the Commission; (iii) all documents offered into
36 evidence at the hearing, but not admitted; (iv) the written decision of the Commission; (v) copies
37 of any applicable statutes, ordinances, rules or regulations; (vi) a transcript of the public hearing;
38 and (vii) such other documents as may properly be included in the record.
39

40 **Rule 32. Reopening of a Public Hearing**

41

1 Whenever a public hearing has been opened and continued to another date, or where it has been
2 closed and the Commission wishes to take additional evidence prior to a vote or a
3 reconsideration of a vote, the Chair may reopen the public hearing for purposes of taking such
4 additional evidence. The Chair may limit the scope of such evidence to be taken. Whenever a
5 public hearing is reopened and additional evidence is taken, all such additional evidence shall be
6 deemed to be a part of the original public hearing.

7 8 **Rule 33. Decisions By Commission**

9 10 **Rule 33.1. Time For Decision**

11
12 It is within the discretion of the Commission to make an immediate decision upon the conclusion
13 of a public hearing, or to require the Town Attorney's office to prepare written findings within a
14 reasonable time after the hearing, not to exceed 30 days.

15 16 **Rule 33.2. Written Decision**

17
18 The findings or decision of the Commission shall be in writing. A copy of the written decision of
19 the Commission shall be mailed to the applicant within 30 days after the determination is made.

20 21 **Rule 33.3. Members Not to Vote Unless Present at Hearing**

22
23 No Commission member shall vote to decide any application or appeal requiring a public
24 hearing, unless he or she has attended the final public hearing on the application or appeal, or he
25 or she has: (i) listened to the tape(s) of the final hearing or appeal, (ii) reviewed all relevant
26 application materials; and (iii) has stated his or her compliance with the requirements of (i) and
27 (ii) on the record prior to voting.

28 29 **Rule 34. Execution of Documents**

30
31 Any document which requires the written approval of the Commission may be executed by the
32 Chair, or in absence or incapacity of the Chair, by the Vice-Chair. In the event that both the
33 Chair and the Vice-Chair are absent from the Town or are incapacitated at the same time, any
34 member of the Commission may lawfully sign a document in the capacity of Assistant Vice-
35 Chair.

36 37 **Rule 35. Suspension of the Rules**

38
39 Any provision of these Rules not governed by the Town Charter or the ordinance which created
40 the Commission may be temporarily suspended at any meeting of the Commission by a majority
41 vote of the Commission. Any Rule may be suspended by general consent if the matter is
42 presented by the Chair and there is no objection by any member of the Commission.

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Rule 36. Amendment of the Rules

These Rules may be amended at any regular meeting or at any properly called special meeting that includes amendment of the Rules as one of the stated purposes of the meeting. Adoption of an amendment shall require an affirmative vote of a majority of the quorum present at the meeting.

Rule 37. Reference to *Robert's Rules of Order*

The Commission shall refer to the current edition of *Robert's Rules of Order Newly Revised*, to answer procedural questions not resolved in these Rules, so long as *RONR* does not conflict with Colorado law, or with the spirit of these Rules.

Rule 38. Effect of Adoption of Rules

These Rules supercede all prior rules and regulations of the Commission.

Adopted: June 15, 2021

Updated: August 5, 2021

LIQUOR AND MARIJUANA LICENSING AUTHORITY



CHAPTER 5

LIQUOR AND MARIJUANA LICENSING AUTHORITY

SECTION:

- 2-5-1: Findings**
- 2-5-2: Creation**
- 2-5-3: Appointment; Qualification**
- 2-5-4: Terms of office; Vacancies**
- 2-5-4-1: Term limits**
- 2-5-5: Compensation**
- 2-5-6: Powers, duties and responsibilities**
- 2-5-7: Elimination of distance requirement for junior college districts**
- 2-5-8: Operation**
- 2-5-9: Meetings**
- 2-5-10: Rules and regulations**
- 2-5-11: Applicability of code of ethics**
- 2-5-12: Legal advisor**
- 2-5-13: Appeals**
- 2-5-14: Town clerk duties**
- 2-5-15: Annual report**
- 2-5-16: Oaths; Subpoenas**
- 2-5-17: Terms and conditions of license and permit**
- 2-5-18: False application basis for revocation**
- 2-5-19: Buildings to meet code standards**
- 2-5-20: Specific provisions control over general**
- 2-5-21: Actions of liquor licensing authority ratified and confirmed**

2-5-1: FINDINGS:

The town council finds and determines as follows:

- A. The town council is authorized by section [44-3-103\(27\)](#), Colorado Revised Statutes, to create by ordinance a local licensing authority to handle all liquor licensing matters for the town.

B. The town has authorized the issuance of certain local licenses under the Colorado Medical Marijuana Code¹, the Colorado Retail Marijuana Code², the Colorado Regulation of Tobacco Sales, and the applicable administrative regulations promulgated with respect to such statutes, all as more fully set forth in title [4](#), chapter [4](#) of this Code.

C. The town council is authorized by section [44-11-104\(5\)](#), Colorado Revised Statutes (which is part of the Colorado Medical Marijuana Code), and [44-12-103\(10\)](#), Colorado Revised Statutes (which is part of the Colorado Retail Marijuana Code) to create by ordinance a local licensing authority to handle all marijuana licensing matters for the town.

D. The town council desires to establish a single local licensing authority to act for the town in all local licensing matters arising under the Colorado Beer Code³, the Colorado Liquor Code⁴, the Colorado Special Liquor Events Code⁵, the Colorado Medical Marijuana Code⁶, the Colorado Retail Marijuana Code⁷, the Colorado Regulation of Tobacco Sales, the applicable administrative regulations promulgated with respect to such statutes, the town's marijuana licensing ordinance (title [4](#), chapter [4](#) of this Code); and other applicable law.

E. Section [9.5](#) of the Town Charter authorizes the town council to create by ordinance permanent boards and commissions for the town, and sets forth certain requirements which must be met with respect to the creation of a permanent town board or commission.

F. Section [9.2\(a\)](#) of the Town Charter provides that neither the mayor nor any town employee shall serve on any town board or commission.

G. The Town of Breckenridge liquor and marijuana licensing authority should be created to replace the Town of Breckenridge liquor licensing authority (established by ordinance [20](#), series 2003), and given the authority to handle all liquor and marijuana licensing matters for the town, all as more fully set forth in this chapter. (Ord. 32, Series 2018; amd. Ord. 18, Series 2022)

Notes:

1 CRS Title [44](#), art. [11](#).

2 CRS Title [44](#), art. [12](#).

3 CRS Title [44](#), art. [4](#).

4 CRS Title [44](#), art. [3](#).

5 CRS Title [44](#), art. [5](#).

6 CRS Title [44](#), art. [11](#).

7 CRS Title [44](#), art. [12](#).

2-5-2: CREATION:

There is hereby created and established the Town of Breckenridge liquor, tobacco, and marijuana licensing authority. The Town of Breckenridge liquor, tobacco and marijuana licensing authority is referred to in this chapter as the "authority." The authority shall be a permanent board of the town, and shall operate in accordance with and subject to the provisions, duties, and limitations of this chapter and other applicable law. (Ord. 1, Series 2016; amd. Ord. 18, Series 2022)

2-5-3: APPOINTMENT; QUALIFICATION:

- A. The authority shall consist of five (5) members who shall be appointed by the town council.
- B. Members of the authority shall be residents and electors of the town.
- C. Neither the Mayor nor any Town employee shall serve on the authority.
- D. No person shall serve as a member of the authority if such person or a member of such person's immediate family has any interest in a business for which a license or permit has been applied for or issued by the town pursuant to this chapter.
- E. All members of the authority shall serve at the pleasure of the town council, and may be removed by the town council at any time without cause. (Ord. [1](#), Series 2016)
- F. The town council may appoint an alternate member to serve on the authority when such person's presence is necessary for the authority to be able to act at a particular meeting. The term of office of an alternate member of the authority shall be as provided in section [2-5-4](#) of this chapter. The alternate member shall count when determining whether a quorum is present at a meeting, and when acting at a meeting the alternate member shall be treated as a member of the authority for all purposes. Because it is anticipated that the alternate member will only

have limited involvement with the authority, the alternate member shall not be subject to the term limit provision in section [2-5-4-1](#) of this chapter. (Ord. 31, Series 2017)

2-5-4: TERMS OF OFFICE; VACANCIES:

A. The terms of the members of the authority shall be four (4) years. The terms shall be staggered.

B. In the event that a vacancy shall occur during the term of any member of the authority, a successor shall be appointed by the town council to serve the unexpired portion of the term. (Ord. 1, Series 2016)

2-5-4-1: TERM LIMITS:

A. In order to allow for more direct citizen participation in Town government, no member of the authority shall serve more than two (2) consecutive four-year terms in office, and no member of the authority shall be reappointed to the authority if he or she has already completed two (2) consecutive four-year terms in office. Time served on the authority resulting from an appointment made by the town council to fill a vacancy on the authority does not count in determining compliance with the limitation of this subsection A.

B. The members of the authority who are in office on January 31, 2018, shall be subject to subsection [A](#) of this section when their current terms of office expire. No member of the authority may be reappointed if such action would violate subsection [A](#) of this section. Subsection [A](#) of this section shall not be applied to shorten the term of any member of the authority.

C. A person who is term-limited under subsection [A](#) of this section may not be appointed to the authority until four (4) years have expired following the end of term of office that resulted in the person being term-limited.

D. A person who is term-limited under subsection [A](#) of this section may be appointed to fill a vacancy and serve out the remainder of the term of office of a member of the authority even

though four (4) years have not expired following the end of term of office that resulted in the person being term-limited. (Ord. 22, Series 2017)

2-5-5: COMPENSATION:

Members of the authority shall serve without compensation. (Ord. 1, Series 2016)

2-5-6: POWERS, DUTIES AND RESPONSIBILITIES:

The authority shall have all of the powers of a local licensing authority as are set forth in the following laws, all as amended from time to time:

- A. The Colorado Beer Code¹;
- B. The Colorado Liquor Code²;
- C. The Colorado Special Liquor Events Code³;
- D. The town's marijuana licensing ordinance⁴;
- E. The Colorado Medical Marijuana Code⁵;
- F. The Colorado Retail Marijuana Code⁶;
- G. The Colorado Regulation of Tobacco Sales;
- H. The administrative regulations promulgated by the Liquor Enforcement Division of the Colorado Department of Revenue under the statutes set forth above;
- I. The administrative regulations promulgated by the authority as authorized by section [2-5-10](#) of this chapter; and
- J. Other applicable law. (Ord. 32, Series 2018; amd. Ord. 18, Series 2022)

Notes:

¹ CRS Title [44](#), art. [4](#).

² CRS Title [44](#), art. [3](#).

3 CRS Title [44](#), art. [5](#).

4 Title [4](#), chapter [4](#) of this Code.

5 CRS Title [44](#), art. [11](#).

6 CRS Title [44](#), art. [12](#).

2-5-7: ELIMINATION OF DISTANCE REQUIREMENT FOR JUNIOR COLLEGE DISTRICTS:

The distance limitation imposed by section [12-47-313\(1\)\(d\)\(I\)](#), Colorado Revised Statutes, shall not apply within the town to a hotel and restaurant license issued for premises that are part of the campus of any junior college district organized pursuant to Colorado law. Except as specifically altered by this section, the distance limitations imposed by section [12-47-313\(1\)\(d\)\(I\)](#), Colorado Revised Statutes, shall continue in full force and effect. (Ord. 1, Series 2016)

2-5-8: OPERATION:

The authority shall elect a chair and a vice chair from its members, together with such other officers as the authority shall deem appropriate, and shall fix the terms of such offices. The authority shall keep an electronic record of its meetings and shall further keep written minutes thereof as required by the Colorado open meetings law, title [24](#), chapter 6, part 4, Colorado Revised Statutes. Three (3) members of the authority shall constitute a quorum for the transaction of business, and a decision of the majority of those present constituting a quorum shall control. Any absent member may join in a decision of the authority only after he or she has considered the evidence adduced in any hearings conducted during his or her absence. (Ord. 1, Series 2016)

2-5-9: MEETINGS:

The authority shall meet at Town Hall, or such other location within the town as the authority shall determine. The authority shall meet on such dates as the authority may determine. All

meetings of the authority shall be subject to the provisions of the Colorado open meetings law, title [24](#), chapter 6, part 4, Colorado Revised Statutes. (Ord. 1, Series 2016)

2-5-10: RULES AND REGULATIONS:

The authority shall have the power to adopt rules and regulations governing its operation. Such rules shall not be inconsistent with applicable law. (Ord. 1, Series 2016)

2-5-11: APPLICABILITY OF CODE OF ETHICS:

The provisions of the Breckenridge town code of ethics (title [1](#), chapter [16](#) of this code) shall apply to all members of the authority. (Ord. 1, Series 2016)

2-5-12: LEGAL ADVISOR:

The town attorney shall be the legal advisor to the authority. In the event that it would be a conflict of interest for the town attorney to both present evidence to the authority on any matter and to advise the authority as to such matter, the town attorney shall continue to advise the authority on the matter and shall engage independent counsel to present the evidence. (Ord. 1, Series 2016)

2-5-13: APPEALS:

The finding or decision of the authority shall be in writing. The decision of the authority shall be final, subject to the right of any aggrieved party to contest the matter in an appropriate court action commenced under rule 106(a)(4) of the Colorado rules of civil procedure. For purposes of determining the time limit for the commencement of an action under rule 106(a)(4) of the Colorado rules of civil procedure, the decision of the authority shall be deemed to be final upon the authority's issuance of a written finding or decision following the conclusion of the hearing. If the appealing party receives a copy of the written decision of the authority at the time of the

hearing, the time for the filing of the appeal pursuant to rule 106(a)(4) of the Colorado rules of civil procedure shall commence from the date the appealing party receives the written decision. If the written decision of the authority is transmitted to the appealing party by mail, the time for the filing of the appeal rule 106(a)(4) of the Colorado rules of civil procedure shall commence from the date of the mailing of the written decision. (Ord. 1, Series 2016)

2-5-14: TOWN CLERK DUTIES:

A. The town clerk shall receive all applications for licenses and permits that may be issued pursuant to this chapter, and shall issue all licenses and permits granted by the authority (or the town clerk, whichever is applicable) upon receipt of such fees and taxes as are required by law.

B. The town clerk shall serve as the official secretary of the authority, and shall designate a person or persons to provide the necessary administrative services for the authority. The town clerk or the clerk's designee shall attend the meetings of the authority, and shall publish and post those notices that are required by law.

C. The town clerk is assigned the duty to approve or deny all applications for special liquor events permits that are submitted to the authority. In exercising the authority hereby delegated, the town clerk shall follow the rules and procedures set forth in the Colorado Special Liquor Events Code, and all applicable administrative regulations governing special liquor events promulgated by the Liquor Enforcement Division of the Colorado Department of Revenue. (Ord. 1, Series 2016; amd. Ord. 18, Series 2022)

2-5-15: ANNUAL REPORT:

On or before January 31 of each year, the authority shall file a report with the town council setting forth the number of applications for licenses and permits acted upon; the number of licenses and permits granted; the number of licenses and permits denied; and any other actions taken by the authority during the past year. (Ord. 1, Series 2016)

2-5-16: OATHS; SUBPOENAS:

The authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing which the authority is authorized to conduct. It shall be unlawful and a violation of this Code for any person to fail to comply with any subpoena issued by the authority in the proper conduct of its hearings, and upon conviction for such violation the offender shall be punished as provided in title [1](#), chapter [4](#) of this Code. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State. (Ord. 1, Series 2016)

2-5-17: TERMS AND CONDITIONS OF LICENSE AND PERMIT:

A. The authority or the town clerk, whichever is applicable, shall have the power to impose such special terms and conditions on a license or permit, or the renewal thereof, as may be reasonably required to protect the public health, safety, and welfare, subject to any limitation imposed by applicable law.

B. It shall be a condition of each license or permit issued pursuant to the authority granted by this chapter, whether or not expressly stated in the license or permit, that during the term of the license or permit the licensee or permittee shall not violate, or permit the licensee's or permittee's employees to violate, any ordinance of the town now existing or hereafter adopted related to the regulation of noise emanating from the premises for which the license or permit was issued. (Ord. 1, Series 2016)

2-5-18: FALSE APPLICATION BASIS FOR REVOCATION:

Any information that is furnished to the authority with the intent to mislead or misrepresent the true state of facts shall be a basis for denial of the application or suspension or revocation of the license or permit. (Ord. 1, Series 2016)

2-5-19: BUILDINGS TO MEET CODE STANDARDS:

No license or permit shall be issued, renewed, or transferred pursuant to the authority granted by this chapter unless the building in which the business is carried on meets all of the requirements of the land use regulations and the building and other technical codes of the town. (Ord. 1, Series 2016)

2-5-20: SPECIFIC PROVISIONS CONTROL OVER GENERAL:

Where both general and specific provisions of this chapter are applicable and such provisions are in conflict, the specific provisions shall control over the general. (Ord. 1, Series 2016)

2-5-21: ACTIONS OF LIQUOR LICENSING AUTHORITY RATIFIED AND CONFIRMED:

All action taken by the town of Breckenridge liquor licensing authority prior to the readoption of this chapter in 2016 is hereby ratified and confirmed in all respects. The authority created by this chapter is the successor to the town of Breckenridge liquor licensing authority in all respects. All licenses and permits issued by the town of Breckenridge liquor licensing authority, and all orders and other action, of whatever kind, taken by the town of Breckenridge liquor licensing authority pursuant to its lawful authority prior to the readoption of this chapter shall remain in full force and effect and shall be legally valid and enforceable notwithstanding the readoption of this chapter. All licenses, permits, orders, and similar matters issued or decided by the town of Breckenridge liquor licensing authority prior to the readoption of this chapter shall be binding upon and shall be fully enforceable by the town of Breckenridge liquor and marijuana licensing authority created pursuant to this chapter. (Ord. 1, Series 2016)

The Breckenridge Town Code is current through Ord. 39, Series 2023, passed November 28, 2023.

Disclaimer: The town clerk's office has the official version of the Breckenridge Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

[Town Website: www.townofbreckenridge.com](http://www.townofbreckenridge.com)

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**TOWN OF BRECKENRIDGE
LIQUOR AND MARIJUANA LICENSING AUTHORITY**

**RULES OF PROCEDURE
(October 2017)**

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**TOWN OF BRECKENRIDGE
LIQUOR AND MARIJUANA LICENSING AUTHORITY**

**RULES OF PROCEDURE
(October 2017)**

Rule 1. Authority For Adoption

These Rules of Procedure are adopted pursuant to the authority granted to the Town of Breckenridge Liquor and Marijuana Licensing Authority by Section 2-5-10 of the Breckenridge Town Code.¹

Rule 2. Applicability; Definitions

2.1 Applicability. These Rules of Procedure shall apply to all meetings of the Town of Breckenridge Liquor and Marijuana Licensing Authority.

2.2 Definitions. The term “Rules” shall mean these Rules of Procedure, as amended from time to time. The term “Authority” shall mean the Town of Breckenridge Liquor and Marijuana Licensing Authority.

2.3 “Neighborhood” Defined. For the purpose of all applications for an alcoholic beverage license, the term “neighborhood” is defined to mean the Upper Blue River Basin, with general boundaries being Farmers Korner to the North, Hoosier Pass to the South, the Continental Divide to the East, and the top of the Ten Mile Range to the West.

Rule 3. Regular Meetings

3.1 Date, Time, and Place of Regular Meetings

Unless otherwise ordered by the Authority, the Authority shall hold its regular meeting on the third Tuesday of each month in the Town Council Chambers of the Breckenridge Town Hall, 150 Ski Hill Road, Breckenridge, Colorado commencing at 9:00 A.M. If the date scheduled for a regular meeting is a legal holiday, the meeting shall be held on the next business day unless the Authority shall otherwise order.

3.2 Notice of Regular Meetings

Notice of each regular meeting shall be posted by the Secretary of the Authority at the Authority’s official bulletin board as designated in Rule 7 not less than twenty-four (24) hours prior to the holding of the meeting. The posting shall include specific agenda information where possible.

¹ Chapter 5 of Title 2 of the Breckenridge Town Code is the Town ordinance concerning the Authority.

Rule 4. Special, Emergency, and Adjourned Meetings

4.1 Special Meetings

The Chair may call a special meeting of the Authority at any time. A special meeting may also be called or scheduled by vote of the Authority in open session during another duly called meeting. The motion scheduling a special meeting shall specify its time, place, and purpose. At least twenty four (24) hours before a special meeting is held notice of the time, place, and purpose of the meeting shall be: (i) given to each Authority member; (ii) posted on the Authority's official bulletin board as described in Rule 7; and (iii) provided to each person who has filed a written request for notice with the Authority's Secretary pursuant to Rule 12. Only those items of business specified in the notice may be discussed or transacted at a special meeting, except as authorized in Rule 13.2.

4.2 Emergency Meetings

The Chair may call an emergency meeting of the Authority by signing a written notice stating the time and place of the meeting and the subject(s) to be considered. An emergency meeting may be held anywhere within the Town limits. Written or oral notice of the meeting shall be given to each Authority member and provided to each person who has filed a written request for notice with the Authority's Secretary pursuant to Rule 12. Action taken at an emergency meeting shall be effective only until the first to occur of: (i) the next regular meeting of the Authority; or (ii) the next special meeting of the Authority at which the emergency issue is on the public notice of the meeting. At such subsequent meeting the Authority may ratify any emergency action taken. If any emergency action taken is not ratified by the conclusion of the next regular meeting, then such action shall be deemed rescinded.

Emergency meetings may be called only because of unexpected circumstances that require immediate consideration by the Authority. Only business connected with the emergency may be considered at an emergency meeting.

4.3 Adjourned Meetings

A properly called regular or special meeting may be adjourned to a date, time, and place certain by motion made and adopted in open session during the regular or special meeting. The motion shall state the date, time, and place when the meeting will reconvene. No further notice need be given of such an adjourned session of a properly called regular, special, or emergency meeting. An emergency meeting may not be adjourned to another date, time, and place.

4.4 Cancellation

If no business is scheduled before the Authority, or if it is apparent that a quorum will not be available, any meeting may be cancelled by the Chair. The Secretary shall give notice of cancellation of a meeting. Notice of cancellation of a meeting shall be: (i) given to each Authority member prior to the time set for such meeting; (ii) posted on the Authority's official bulletin board as described in Rule 7; and (iii) provided to each person who has filed a written request for notice with the Authority's Secretary pursuant to Rule 12. If no quorum is present at the meeting, the Secretary shall cancel the meeting and all items scheduled to be heard shall be rescheduled by the

staff.

Rule 5. Quorum

Three members of the Authority shall constitute a quorum, and a decision of the majority of those present constituting a quorum shall control.² A majority is more than half. The Chair shall be considered a member of the Authority in determining the number on which a majority is based, and in counting the number of members actually present.

Rule 6. Applicability of Colorado Open Meetings Law

All meetings of the Authority shall be subject to the provisions of the Colorado Open Meetings law.³

Rule 7. Place for Posting Meeting Notices

The designated place for the posting of public notice of all regular and special meetings of the Authority shall be the bulletin board located outside the southerly front door of the Breckenridge Town Hall, 150 Ski Hill Road, Breckenridge, Colorado.

Rule 8. Electronic Record/Minutes

The Authority shall keep an electronic record of its meetings, including any executive sessions. In addition, full and accurate minutes of the Authority proceedings, except executive sessions, shall be kept as required by the Colorado Open Meetings law.⁴ Records of executive sessions shall be kept in accordance with the requirements of the Colorado Open Meetings law. These minutes shall be open to inspection of the public only as provided in the Colorado Open Meetings law. The exact wording of each motion and the vote of each member of the Authority thereon shall be recorded in the minutes. Audio recordings of an executive session shall be retained by the Secretary for ninety (90) days following the executive session. Such recordings shall be destroyed by the Secretary on the first business day following the expiration of ninety (90) days following the executive session unless prior to the expiration of such ninety (90) day period the Town has received actual notice of the filing of an application seeking access to such recording pursuant to Section 24-72-204(5.5), C.R.S. If the Town receives timely notice of the filing of an action pursuant to Section 24-72-204(5.5), C.R.S., the Secretary shall not destroy the recording that is the subject of such action unless and until advised by the Town Attorney that such destruction is legally permissible.

² Pursuant to Section 2-5-8 of the Breckenridge Town Code

³ Pursuant to Section 2-5-9 of the Breckenridge Town Code. The Colorado Open Meetings law is found at Part 4 of Article 6 of Title 24, C.R.S.

⁴ Pursuant to Section 2-5-8 of the Breckenridge Town Code

Rule 9. Organizational Meeting

9.1 First Organizational Meeting. The initial organizational meeting of the Authority occurred on April 19, 2016.

9.2 Subsequent Organizational Meetings. Beginning in 2017, the regular meeting in January each year shall be the organizational meeting of the Authority. At such meeting the newly appointed members of the Authority shall take and subscribe the oath of office as the first order of business. As the second order of business, the Authority shall elect a Chair and Vice-Chair.⁵

Rule 10. Terms of Office of Chair and Vice Chair

The terms of the office of Chair and Vice-Chair shall be one year, commencing with the organizational meeting each January, and ending with the organizational meeting the following year.

10.1 Vacancies

If there is a vacancy in either the office of Chair or Vice-Chair of the Authority, the remaining members of the Authority shall fill such vacancy by election. The person elected to fill the vacancy shall serve only until the next organizational meeting of the Authority. In the event that a vacancy shall occur during the term of any member of the Authority, a successor shall be appointed by the Town Council to serve the unexpired portion of the term.⁶

Rule 11. Secretary

The Town Clerk of the Town of Breckenridge shall serve as the ex officio Secretary to the Authority. The Town Clerk shall designate a person or persons to provide the necessary administrative support services for the Authority. The Town Clerk or the Town Clerk's designee shall attend the meetings of the Authority. The Town Clerk shall be responsible for the giving of all required notice of Authority public hearings and actions.⁷

Rule 12. List of Interested Parties

The Secretary shall maintain a list of persons who, within the previous two years, have requested notification of all meetings of the Authority, or meetings when certain specified policies will be discussed, and shall provide not less than twenty four (24) hours' advance notification of such meetings to such persons. Notice may be given by telephone, electronically, fax, or in person. Such notice as may be provided by the Secretary pursuant to this Rule 12 is determined to be reasonable and sufficient. The unintentional failure to provide such advance notice will not nullify actions taken by the Authority at an otherwise properly noticed meeting.

⁵ Pursuant to Section 2-5-8 of the Breckenridge Town Code

⁶ Pursuant to Section 2-5-4(B) of the Breckenridge Town Code

⁷ Pursuant to Section 2-5-14(B) of the Breckenridge Town Code

Rule 13. Agenda

13.1 Proposed Agenda

The Secretary shall prepare a proposed agenda for each meeting, together with an agenda packet. The agenda packet shall include the agenda and as much background information on each agenda item as is available and feasible to reproduce. A copy of each agenda and agenda packet for a regular meeting shall be made available to each Authority member not later than forty eight (48) hours prior to the meeting. A copy of each agenda and agenda packet for a special or emergency meeting shall be made available to each Authority member as soon as possible prior to the meeting. The Secretary's unintentional failure to provide agenda packets as required by this such advance notice, or the failure of a member to actually receive an agenda packet prior to the meeting, will not nullify actions taken by the Authority at an otherwise properly noticed meeting.

13.2 Adoption of the Agenda

As its first order of business at each meeting, the Authority shall discuss and revise the proposed agenda and adopt an agenda for the meeting. The Authority may add items to or delete items from the proposed agenda, except that the Authority may not add items to the agenda of a special meeting unless: (i) all members are present; and (ii) the Authority determines at the meeting that it is essential to discuss or act on the item immediately. If an item is to be added to the agenda, written copies of the particular documents connected with such item shall be made available at the meeting to all Authority members.

13.3 Consent Calendar

As part of the new business portion of each agenda, the Authority shall consider items placed upon the "Consent Calendar" by the Secretary. The Consent Calendar shall include all matters of a non-controversial nature which require Authority approval or action but do not require a public hearing. No item requiring a public hearing shall be placed on the Consent Calendar. Any member of the Authority may request that any item on the Consent Calendar be removed from the Consent Calendar and set aside for discussion and action. Upon such request, the item shall be removed from the Consent Calendar and scheduled for discussion immediately following the approval of the Consent Calendar, or at such other time during the meeting that is acceptable to the Authority. If more than one item is removed from the Consent Calendar, such items shall be considered in the order as the items were removed from the Consent Calendar. The Consent Calendar, after removal of any item as described above, shall stand approved without a specific motion upon the declaration by the Chair to that effect.

Rule 14. Order of Business

Items shall be placed on the agenda according to the order of business. The order of business for each regular meeting shall be as follows:

- Roll call
- Discussion and revision of the proposed agenda; adoption of an agenda
- Approval of the minutes of previous meeting(s)

Consent Calendar
 Public hearings/action on public hearing matters
 Action on other matters not requiring a public hearing
 Informal discussion and public comment
 Adjournment

By general consent of the Authority, items may be considered out of order.

Rule 15. Presiding Officer

The Chair of the Authority shall preside at Authority meetings if he or she is present. The Chair may vote in all cases. In order to address the Authority, a member must be recognized by the Chair.

If the Chair is absent, the Vice-Chair shall preside. If both the Chair and Vice-Chair are absent, another member designated by vote of the Authority shall preside as Temporary Chair. The Vice-Chair or Temporary Chair retains all of his or her rights as a member, including the right to make motions and the right to vote.

In accordance with these and other applicable rules, the Presiding Officer shall decide all points of procedure or order, unless otherwise directed by a majority of the members of the Authority in attendance on motion duly made and passed. The Presiding Officer shall maintain order and decorum, and to that end may order removal of disorderly or disruptive persons.

Rule 16. Conduct of Authority Members

16.1 Applicability of Town's Ethics Ordinance

The conduct of Authority members shall at all times conform with the requirements of the Town of Breckenridge "Code of Ethics."⁸

16.2 Ex Parte Contacts

Each member of the Authority must exercise care in responding to and reporting any ex parte contact with respect to any matter which is pending before the Authority.

- A. An ex parte contact is any contact (written, oral or electronic) concerning a matter pending before the Authority for which a hearing has been scheduled, or for which a hearing may be scheduled, that is offered to or received by a member of the Authority outside of the actual hearing process.
- B. Whenever a person attempts to make an ex parte contact with a member of the Authority, the member shall, to the extent possible, refuse to accept such ex parte contact. The member shall advise the person who is attempting to make the ex parte contact that all comments and

⁸ Pursuant to Section 2-5-11 of the Breckenridge Town Code. The Code of Ethics is found at Chapter 16 of Title 1 of the Breckenridge Town Code.

information related to the pending matter should be presented to the entire Authority, as well as all interested parties, at the time of the public hearing.

- C. Any member of the Authority who has received an ex parte contact must report the information, and identify the source and date of the contact, to the full Authority for inclusion in its formal record.⁹
- D. Any written ex parte contact transmitted to or received by a member of the Authority, including, but not limited to, printed and electronic communications (e-mails, text messages, etc.), shall be forwarded directly to the Secretary for review and inclusion in the agenda packet of the meeting at which the hearing on the matter to which the ex parte contact relates will occur. A copy of such written material shall also be provided to the applicant/licensee prior to the hearing.
- E. The rule against ex parte contacts shall not apply to preclude members of the Authority from seeking and receiving information from other members, the Secretary, the Town Attorney, or staff serving the Authority, but prior to the hearing no member of the Authority shall discuss the matter with any other person reasonably anticipated to be a witness at the public hearing.
- F. If a hearing was set based upon a complaint submitted by the Police Department, prior to the hearing no member of the Authority shall discuss the matter with any member of the Police Department.

16.3 Site Visits

- A. The Authority finds that visiting the site that is involved in a pending license application or disciplinary action can be a helpful way to gather relevant facts concerning the application or disciplinary action. A site visit may lead to a better understanding of a pending application or disciplinary action and, therefore, enhance the ability of the Authority to make an appropriate decision. However, site visits present unique problems in the context of the formal application and disciplinary hearing processes.
- B. The Authority may schedule and conduct a site visit when requested to do so by the applicant or licensee, the Police Department, the Town Attorney, or on its own initiative. In connection with any site, the applicant/licensee shall be notified not less than one week in advance and given an opportunity to attend and participate in the site visit. A site visit is to be noticed by the Secretary as a public meeting of the Authority.
- C. However, a site visit is not a public hearing. Members of the public and the media are permitted to attend the site visit to listen to the questions and comments of the staff, the applicant/licensee, and the Authority, but the public and media do not have the right to ask questions of the staff, the applicant/licensee, or the Authority members at a site visit. Authority members must avoid engaging in improper ex parte contacts during a site visit.

⁹ See Section 1-16-9(B) of the Town of Breckenridge Code of Ethics.

No minutes of a site visit shall be kept by the Secretary, although the minutes of the Authority should reflect that a site visit was conducted.

- D. Nothing in this Rule 16.3 prevents a member of the Authority from visiting a site that is involved in a pending application or disciplinary action on his or her own time for the limited purpose of becoming familiar with the site. In connection with such visit, however, the Authority member must avoid ex parte contacts.

16.4 Expressions of Bias, Prejudice, or Individual Opinion Prior to Hearing and Determination

No member of the Authority shall express any bias, prejudice, or individual opinion on the proper outcome of a matter prior to its hearing and determination.

16.5 Members Not to Vote Unless Present at Hearing

No member of the Authority shall vote on any matter requiring a public hearing, except after attending the public hearing or after listening to the tapes of the hearing, reviewing all relevant application materials, and so stating prior to the vote.¹⁰

Rule 17. Action by the Authority

The Authority shall proceed by motion, unless otherwise required by applicable law. Any member of the Authority, including the Chair, may make a motion.

Rule 18. Second Not Required

A motion does not require a second.

Rule 19. Motions

19.1 Motions May Be Written or Oral

Motions may be either written or oral. Written motions shall be read into or summarized for the record.

19.2 One Motion at a Time

A member may make only one motion at a time.

Rule 20. Adoption by Majority Vote

A motion must be adopted by a majority of the votes cast. A majority is more than half.

¹⁰ See Section 2-5-8 of the Breckenridge Town Code

Rule 21. Debate

The Chair shall state the motion and then open the floor to debate. The Chair shall preside over the debate according to the following general principles:

The maker of the motion is entitled to speak first; and
A member who has not spoken on the issue shall be recognized before someone who has already spoken.

To the extent possible, the debate shall alternate between proponents and opponents of the measure.

Rule 22. Ratification of Actions

To the extent permitted by law, the Authority may ratify actions taken on its behalf but without its prior approval.

Rule 23. Duty to Vote

Every member of the Authority must vote unless excused by the remaining members of the Authority. A member who wishes to be excused from voting shall so inform the Chair, who shall take a vote of the remaining members. No member shall be excused from voting except in cases involving a conflict of interest, as defined by the Town's Code of Ethics, or as otherwise required by law. In all other cases, a failure to vote by a member who is physically present in the Town Council Chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as a vote with the prevailing side.

Rule 24. Executive Sessions

All regular and special meetings of the Authority shall be open to the public and citizens shall have a reasonable opportunity to be heard as provided by these Rules; provided, however, that the Authority, by consent of two thirds (2/3) of the quorum present, may go into executive session for those purposes authorized by law.

No adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall occur at any executive session of the Authority which is not open to the public, except as authorized by the Colorado Open Meetings law.

Prior to the Authority going into executive session the Chair shall announce to the public the general topic of executive session, including a specific citation to the applicable provision of the Colorado Open Meetings law which authorizes the Authority to meet in an executive session, and identification of the particular matters to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized.

The Authority shall terminate the executive session by a majority vote.

Only those actions authorized by statute may be taken in an executive session. A motion to adjourn or recess a meeting shall not be in order during an executive session.

Rule 25. Transfer of Ownership; Applicant to Attend Meeting (Applicable to Both Alcohol Beverage and Marijuana Licenses)

No application for a transfer of ownership of an alcohol beverage or marijuana license shall be approved by the Authority until the applicant, or a representative of the applicant, meets with the Authority. The Secretary shall advise an applicant for a transfer of ownership of an alcohol beverage or marijuana license of the requirement of this Rule.

Rule 26. Hearings on License Renewal Applications (Applicable to Both Alcohol Beverage and Marijuana Licenses)

26.1 No Refusal to Renew Without Public Hearing

The Authority shall not refuse to renew a license issued by the Authority under the without holding a public hearing.

26.2 Setting of Public Hearing on Renewal Application

A public hearing on a renewal application shall be set by motion duly adopted by the Authority at any regular or special meeting; no formal resolution or written order setting a hearing on a license renewal application shall be required.

26.3 Date of Public Hearing on Renewal

The public hearing on the renewal application shall be scheduled for the Authority's next regular meeting after the adoption of the motion setting the hearing provided that the required notice can be given and the licensed premises posted as required by applicable law. If there is insufficient time for the giving of the required notice and the posting of the licensed premises, the public hearing shall be scheduled for the Authority's first regular meeting (or a duly called special meeting) following the time that is needed to give the required notice and to post the licensed premises. The hearing may be continued as otherwise provided in these Rules.

26.4 Special Content of Public Hearing Notice

The hearing notice that is provided to the licensee shall contain sufficient information to advise the licensee of the reason the hearing has been scheduled, and to provide the licensee with a reasonable opportunity to address the reason the hearing has been scheduled.

26.5 Licensee To Attend Renewal Hearing

At a hearing on a renewal application the licensee shall be ordered to appear before the Authority on such date and time to show cause, if any the licensee may have, why the renewal of the licensee's license for the licensed premises should not be denied. Because the application for renewal is filed

by the licensee, it is the licensee's burden of proof to demonstrate that the license should be renewed.

26.6 Failure of License to Attend Renewal Hearing Is Grounds for Nonrenewal

The failure of a licensee to appear at a properly noticed renewal hearing shall be grounds for the non-renewal of the license without further notice.

Rule 27. Public Hearings

The Authority shall establish by resolution the rules, regulations, and procedures that shall apply in connection with public hearings conducted by the Authority.

Rule 28. Petitions

Neighborhood petitions signed by inhabitants and submitted to the Authority in accordance with these Rules and applicable law shall be considered by the Authority when determining the "requirements" and "desires" of the neighborhood under the Colorado Beer Code or the Colorado Liquor Code.

Rule 29. Who May Sign Petitions

Petitions shall be circulated within the designated relevant neighborhood and signed by residents, business owners, or managers within the designated area.

29.1 Signature Requirements

All signatures shall be identifiable with a residence or business address listed on the petition, together with the date signed.

29.2 Form of Petition

All petitions shall be in substantial conformity to the format furnished or approved by the Secretary to the Authority. Petitions will not be accepted unless a signed Affidavit is submitted for each circulator and the applicant is clearly identified on the face of each petition.

29.3 Age To Sign Petitions

All petition signers must be twenty one (21) years of age or older.

Rule 30. Decisions By Authority

30.1 Time For Decision

It is within the discretion of the Authority whether to make an immediate decision upon the conclusion of a public hearing, or to require the Town Attorney to prepare written findings within a reasonable time after the hearing, not to exceed thirty (30) days.

30.2 Written Decision

The findings or decision of the Authority shall be in writing.¹¹ A copy of the written decision of the Authority shall be mailed to the applicant within thirty (30) days after the decision is adopted.

Rule 31. Execution of Documents

Any document that requires the written approval of the Authority may be executed by the Chair, or in absence or incapacity of the Chair, by the Vice-Chair. If both the Chair and the Vice-Chair are absent or are incapacitated at the same time, any member of the Authority may lawfully sign a document in the capacity of Assistant Vice-Chair.

Rule 32. Computation of Time

32.1 Meaning of “Day.” The word “day” as used in these Rules means a calendar (not a business) day.

32.2 How to Compute Time. Unless otherwise expressly provided by applicable law, in computing any period of time prescribed or allowed by the Rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded. As used in this section the term “legal holiday” includes January 1, observed as New Year’s Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Presidents Day; the last Monday in May, observed as Memorial Day; July 4, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; November 11, observed as Veterans Day; the fourth Thursday in November, observed as Thanksgiving Day; December 25, observed as Christmas Day, and any other day designated as a legal holiday by the state or federal government.

Rule 33. Suspension of the Rules

Any provision of these Rules not governed by the Charter or the ordinance that created the Authority may be temporarily suspended at any meeting of the Authority by a majority vote of the Authority. Any rule may be suspended by general consent if the presented by the Chair and there is no objection by any member.

Rule 34. Amendment of the Rules

These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment of the rules as one of the stated purposes of the meeting. Adoption of an amendment shall require an affirmative vote of a majority of the quorum present at such meeting.

¹¹ Pursuant to Section 2-5-13 of the Breckenridge Town Code

Rule 35. Conflict Between Rules and Applicable Law

In the event of any conflict between these Rules and the provisions of any applicable law, the provisions of the applicable law shall govern.

APPROVED AND ADOPTED THIS 17TH DAY OF OCTOBER, 2017

TOWN OF BRECKENRIDGE LIQUOR AND
MARIJUANA LICENSING AUTHORITY

By: _____
Chair

ATTEST:

Secretary

BEFORE THE LIQUOR LICENSING AUTHORITY
OF THE TOWN OF BRECKENRIDGE

RESOLUTION

A RESOLUTION ADOPTING AMENDED PENALTY GUIDELINES FOR USE IN CONNECTION WITH THE IMPOSITION OF DISCIPLINARY ACTION AGAINST LIQUOR LICENSEES

WHEREAS, Section 2-5-9 of the Breckenridge Town Code authorizes the Town of Breckenridge Liquor Licensing Authority to adopt rules for the transaction of its business; and

WHEREAS, the Liquor Licensing Authority desires to adopt “Penalty Guidelines” for use in connection with the imposition of disciplinary action against liquor licensees who violate certain provisions of the Colorado Liquor Code (Article 47 of Title 12, C.R.S.), the Colorado Beer Code (Article 46 of Title 12, C.R.S.), or the rules promulgated by the Liquor Enforcement Division of the Department of Revenue of the State of Colorado (1 C.C.R. 203-2).

NOW, THEREFORE, BE IT RESOLVED BY THE LIQUOR LICENSING AUTHORITY OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. In imposing disciplinary action against liquor licensees who are found to have violated the following provisions of the Colorado Liquor Code, the Colorado Beer Code, or the rules promulgated by the Liquor Enforcement Division of the Department of Revenue of the State of Colorado, the Liquor Licensing Authority shall follow the following Guidelines.

The disciplinary action described in the column of the Guidelines entitled “Presumptive Penalty” may be increased or decreased by the Liquor Licensing Authority based upon its consideration of the applicable aggravating and mitigating circumstances found to exist with respect to such violation, if any. There is no assurance given that the Presumptive Penalty will be imposed in any particular case.

PENALTY GUIDELINES

I. OFFENSE: SALE TO MINOR

	Presumptive Penalty	Fine Okay?
First offense—1 count	Suspension of license for up to 15 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period. ¹	Yes
Second offense within 1 year	No penalty guideline. To be determined at hearing.	If allowed ²

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: 1st offense wherein the patron has been a regular and the licensee was shown prior identification and/or management was not involved. Employees have been through some server/seller training. Note: A license may not be suspended or revoked if the purchase was made using a false identification. See 12-47-901(5)(a)(I) C.R.S.

General Aggravation: See Section 2 of this Resolution.

¹ Days of a suspension period which are “held in abeyance” may be required to be served if the licensee commits a subsequent violation at the licensed premises of the laws governing the operation of liquor licensed establishments during the time period fixed by the Liquor Licensing Authority.

² “If allowed” as used in these Guidelines indicates that the Liquor Licensing Authority may, in its discretion, allow payment of a fine in lieu of suspension if allowed by §12-47-601(3), C.R.S.

Specific Aggravation Related to This Particular Offense: Minor/s enter store in high school letter jackets for local school. No identification presented or checked and/or management involved.

**Note: See Reg 47-604 as listed after this penalty schedule, for recommendations for violations detected by Law Enforcement Personnel with the use of a minor*

II. OFFENSE: SALE TO VISIBLY INTOXICATED PERSON

	Presumptive Penalty	Fine Okay?
First offense—1 count	Suspension of license for up to 15 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period.	Yes
Second offense within 1 year	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: 1st offense where the patron was not in proximity of management or management was not involved and employees have been through some server/seller training.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Management participated in or endorsed sale after visible signs of intoxication were displayed; over service resulted in patron being hospitalized or receiving medical treatment as a result of intoxication; no evidence of server/seller training.

III. OFFENSE: SALE AFTER HOURS

	Presumptive Penalty	Fine Okay?
First offense—1 count	Suspension of license up to 7 days.	Yes
Second offense	Suspension of license for up to 30 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period.	If allowed

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: 1st offense occurring in close proximity to lawful business hours, i.e., 2:05 AM; management was not involved and/or no sale was made to the patron (patron hid possession of product). Single, isolated offense; employees have been through some server/seller training.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Management participated in or endorsed sale after the lawful hours; violation occurred well after the lawful hours, i.e., 3:00 AM; there were multiple offenses; employees have no server/seller training.

IV. OFFENSE: FAILURE TO MEET 25% FOOD REQUIREMENT (HOTEL AND RESTAURANT LICENSES ONLY)

	Presumptive Penalty	Fine Okay?
First offense	Written warning-30 days to correct	N/A
Second offense	Suspension of license for 15 days; 5 days to be served & 10 days held in abeyance + 30 days to correct violation.	Yes
Subsequent offense	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: An audit reveals evidence of consistent meal service and sales reflect that Licensee is close to the requirement. No prior violations; Licensee has not been licensed for an extended period of time. Licensee is close to percentage requirement, but acquires meals from external sources.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Audit reveals no evidence of meal service. Licensee doesn't have meals advertised-no menu located; Licensee provides only snacks and sandwiches; multiple violations present; no food service license.

V. OFFENSE: PURCHASE OF LIQUOR FROM OTHER THAN WHOLESALER

	Presumptive Penalty	Fine Okay?
First offense—1 count	Suspension of license up to 3 days	Yes
Second offense	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: 1st offense occurring in rural area; amount purchased barely exceeds maximum amount authorized.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Licensee seldom/never has purchased from a wholesaler; greatly exceeded amount authorized; off premises licensee purchasing from another retail licensee.

VI. OFFENSE: PERMITTING ILLEGAL GAMBLING (FOOTBALL POOLS, ATTENDANCE POOLS, SHAKE A DAY, ETC.)

	Presumptive Penalty	Fine Okay?
First offense	Written warning	N/A
Second offense	Suspension of license for up to 13 days; 1 day to be served & 3 days held in abeyance for each 4 days of the suspension period.	Yes
Second offense	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: Compliance related violations, football pools, attendance pools, shake a day and similar games usually involving small amounts of moneys; Licensee terminates use of the games and recognizes them as gambling.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Bookmaking, repeated violations, video gaming devices or repeated failure to allow access to machines, etc. Violations of this type should normally receive 15 & 30 (or Hearing) for a first offense since they may involve organized crime or other criminal activity.

VII. OFFENSE: CONDUCT OF ESTABLISHMENT

	Presumptive Penalty	Fine Okay?
First offense	Suspension of license for up to 30 days;	Yes

	1 days to be served & 2 days held in abeyance for each 3 days of the suspension period.	
Second offense	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: 1st offense involving termination of the employee and server/seller training for staff; management not directly involved or not in a position to have observed/be aware of activity.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Multiple offenses, long term investigation disclosing a pattern of violations and/or other criminal activity; lack of seller/server training; management involved or aware of activity

VIII. OFFENSE: FAILURE TO MAINTAIN BOOKS AND RECORDS

	Presumptive Penalty	Fine Okay?
First offense	Warning or suspension of license up to 5 days	N/A
Second offense	Suspension of license for up to 15 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period..	Yes

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: Issue is disclosed through routine compliance inspection and absent hidden ownership allegations (small business owner who is a sloppy record keeper); no intent to deceive, etc.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Uncovered through investigation of complaint alleging hidden ownership. Records supporting allegation are missing, etc.

IX. OFFENSE: VIOLATIONS ON INSPECTION ISSUES DETECTED WITHIN THE PREVIOUS YEAR

	Presumptive Penalty	Fine Okay?
Each offense	Suspension of license for up to 3 days; 1 day to be served & 2 days held in abeyance.	Yes

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: Employee signed for warning and management was not directly involved in violation.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Management directly involved or directed employee to violate or not conform to request. Multiple offenses in a short time frame.

X. OFFENSE: FAILURE TO REGISTER OR REPORT MANAGER, CORPORATE OR FINANCIAL CHANGES

	Presumptive Penalty	Fine Okay?
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First offense	Written warning	N/A
Second offense	Suspension of license for up to 14 days; 1 day to be served & 3 days held in abeyance for each 4 days of the suspension period.	Yes
Third offense	Suspension of license for 30 days; 10 days to be served & 20 days held in abeyance.	If allowed

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: Violations detected through routine inspection; violations resulting from recent statutory changes, i.e., tavern managers, etc.; minor financial changes requiring reports which do not involve new persons.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Changes requiring a transfer of ownership resulting in hidden ownership or create unlawful financial interest/ownership between multiple classes of licenses; Person involved has an extensive record that has not been disclosed (intent).

XI. OFFENSE: UNDERAGE PERSON SELLING OR SERVING

	Presumptive Penalty	Fine Okay?
First offense	Suspension of license for up to 7 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period.	Yes
Second offense	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: Licensee requires employees to attend seller/server training and violator/employee has attended said training. Licensee not directly involved with violation. First offense involved failure to supervise a person between 18-21 years of age, i.e., licensee left restaurant and walked across the street to go to the bank and returned during action.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Lack of seller/server training or management involvement with violation. Other conditions as listed in sale to minor offenses above.

XII. OFFENSE: HIDDEN OWNERSHIP—UNLAWFUL FINANCIAL INTEREST

	Period of Suspension	Fine Okay?
Each offense	30 days to transfer interest, or proceed to hearing.	N/A

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: Change of entity involving same owners, i.e., husband and wife incorporated. License must be transferred to the new entity within 30 days and Temporary Permit must be issued if new entity is to continue to exercise the license. Issue Notice of Proposed Denial on new entity resulting in suspension with fine on 3 days. (3 day suspension) Fine OK.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: True hidden ownership involving transfer of business assets to an unrelated 3rd party; ownership creates prohibited financial interest; business continues to operate without a Temporary Permit. Show Cause should be issued for current Licensee. N.O.P.D. should be issued for new owner. If severe aggravation exists (Licensee fails to respond to allegations and take responsibility for business or new owner fails to comply and seek its own license/temporary permit, etc.), recommend revocation of current license and denial of new owners license. Recommend a finding that continued violations would occur if a state license is issued (12-47-305(1)).

**XIII. OFFENSE: COMPLIANCE CHECK VIOLATION
(Reg. 47-604)**

This Regulation was created specifically to create a fair and equitable recommendation for the imposition of penalties when using underage persons to determine compliance. When the Liquor Licensing Authority finds that a licensee has sold alcohol beverages to a minor and that said violation was investigated or detected by using a person under twenty-one years of age to purchase alcohol beverages from the licensee, the Liquor Licensing Authority shall consider the following penalties to be imposed for the violation:

	Presumptive Penalty	Fine Okay?
First offense	A written warning up to a 15 day suspension. As an inducement for licensees to provide training for servers, because server training has proven to be an aid in the reduction of violations, where there are no aggravating circumstances, a licensee who has provided training to its staff members shall be issued only a warning on first violation.	Accepting a fine in lieu of up to 14 days of actual suspension is at the discretion of the Liquor Licensing Authority, as is holding a portion of the suspension time in abeyance for a period of time.
Second offense (within 1 year)	Suspension of license for between 5 and 30 days.	If no fine was paid or suspension served at the time of the first offense, it would be within the discretion of the Liquor Licensing Authority to accept a fine in lieu of actual days of suspension and/or to hold a portion of the suspension time in abeyance for a period of time.
Third offense (within 1 year)	Suspension of license for 20 to 45 days.	No
Fourth offense (within 1 year)	Suspension of license for 45 days, or revocation of license	No

General Mitigation: See Section 2 of this Resolution.

General Aggravation: See Section 2 of this Resolution.

Specific Mitigation and Aggravation Related to This Particular Offense:

1. Action taken by the licensee to prevent violations., i.e., training of servers.
2. Licensee's past history of success of failure with compliance checks.

3. Corrective action(s) taken by the licensee.
4. Prior violations/prior corrective action(s) and its effectiveness.
5. Willfulness or deliberateness of the violation.
6. Likelihood of recurrence of the violation.
7. Factors which might make the situation unique, such as:
 - a. Prior notification letter to the licensee that a compliance check would be forthcoming.
 - b. The dress or appearance of the underage operative, i.e., the operative was wearing a high school letter jacket.
8. Licensee or manager is the violator or has directed an employee or other individual to violate the law.

XIV. OFFENSE: LICENSEE’S EMPLOYEES NOT TO BE VISIBLY INTOXICATED

	Presumptive Penalty	Fine Okay?
First offense—1 count	Suspension of license for up to 15 days; 1 day to be served & 2 days held in abeyance for each 3 days of the suspension period.	Yes
Second offense within 1 year	No penalty guideline. To be determined at hearing.	If allowed

General Mitigation: See Section 2 of this Resolution.

Specific Mitigation Related to This Particular Offense: Offending employee been through some server/seller training; offending employee disciplined appropriately by licensee; offending employee received appropriate counseling/therapy/treatment for alcohol problem; licensee’s policies specifically prohibit employee being intoxicated while working at the licensed premises.

General Aggravation: See Section 2 of this Resolution.

Specific Aggravation Related to This Particular Offense: Offending employee was licensee, a bartender or manager; licensee’s policies do not specifically prohibit employee being intoxicated while working at the licensed premises.

Section 2. When considering the imposition of a disciplinary action against a licensee the Liquor Licensing Authority shall consider both: (i) the “general” mitigating and aggravating factors set forth below, which apply to all violations, and (ii) any “specific” mitigating and aggravating factors which are applicable only to that specific violation. The specific mitigating and aggravating factors are described in Section 1 of this Resolution.

The “general” mitigating and aggravating factors which shall be considered by the Liquor Licensing Authority in all cases are as follows:

1. the seriousness of the violation;
2. corrective action, if any;
3. prior violations and offenses at the licensed premises and the effectiveness of prior corrective action;
4. prior violations and offenses by the licensee or the licensee’s employees;
5. whether the violation is part of a repeated course of conduct or a single event;
6. the likelihood of recurrence;
7. all circumstances surrounding a violation;
8. whether the violation was willful;
9. the length of time a license has been held by the licensee;
10. previous sanctions imposed against the licensee, if any; and

11. other factors making the situation with respect to the licensee or the licensed premises unique.³

Section 3. To the extent a particular liquor violation is not covered by these Guidelines, the Liquor Licensing Authority shall retain all discretion with respect to the imposition of disciplinary action allowed by applicable law.

Section 4. That resolution adopted June 15, 2004, entitled “A Resolution Adopting Penalty Guidelines For Use In Connection With The Imposition Of Disciplinary Action Against Liquor Licensees”, is hereby repealed.

Section 45. This resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 19th DAY OF August, 2008.

TOWN OF BRECKENRIDGE LIQUOR
LICENSING AUTHORITY

By _____
Chair

ATTEST:

Secretary

³ See §2-5-19 of the Breckenridge Town Code.

OPEN SPACE ADVISORY COMMISSION

CHAPTER 4

BRECKENRIDGE OPEN SPACE ADVISORY COMMISSION

SECTION:

- 2-4-1: Creation**
- 2-4-2: Appointment; Qualification**
- 2-4-3: Term of office; Term limits; Vacancies**
- 2-4-4: Compensation**
- 2-4-4-1: Benefits**
- 2-4-5: Duties and responsibilities**
- 2-4-6: Operation**
- 2-4-7: Meetings**
- 2-4-8: Rules and regulations**

2-4-1: CREATION:

There is created and established the town of Breckenridge Open Space Advisory Commission. The commission shall operate in accordance with and subject to the provisions, duties and limitations of this chapter. (Ord. 2, Series 1997)

2-4-2: APPOINTMENT; QUALIFICATION:

The commission shall consist of seven (7) members who shall be appointed by the town council. Members of the commission shall be residents and electors of the town. One (1) member of the commission shall be a member of the town council; provided, however, that the Mayor shall not serve on the commission. All members of the commission shall serve at the pleasure of the town council, and may be removed by the town council at any time without cause. (Ord. 2, Series 1997)

2-4-3: TERM OF OFFICE; TERM LIMITS; VACANCIES:

- A. The term of the members of the commission shall be four (4) years. In the event that a vacancy shall occur during the term of any appointed member, a successor shall be appointed by the town council to serve the unexpired portion of the term. Any appointment made to fill a vacancy on the commission shall be made in compliance with the requirements of section [9.4](#) of the town charter.
- B. In order to allow for more direct citizen participation in Town government, no member of the commission shall serve more than two (2) consecutive four-year terms in office, and no member of the commission shall be reappointed to the commission if he or she has already completed two (2) consecutive four-year terms in office. Time served on the commission resulting from an appointment made by the town council to fill a vacancy on the commission does not count in determining compliance with the limitation of this subsection B.
- C. The members of the commission who are in office on January 1, 2018, shall be subject to subsection [B](#) of this section when their current terms of office expire. Subsection [B](#) of this section shall not be applied to shorten the term of any member of the commission. In 2018 and 2019, no person shall be reappointed to the commission who has at that time served eight (8) or more consecutive years on the commission.
- D. A person who is term-limited under subsection [B](#) of this section may not be appointed to the commission until four (4) years have expired following the end of term of office that resulted in the person being term-limited.
- E. A person who is term-limited under subsection [B](#) of this section may be appointed to serve out the remainder of another person's term of office on the commission even though four (4) years have not expired following the end of term of office that resulted in the person being term-limited. (Ord. 21, Series 2017)

2-4-4: COMPENSATION:

Each member of the commission, except a member of the commission who is also a member of the town council, shall receive compensation for serving on the commission at the rate of two thousand four hundred dollars (\$2,400.00) annually, payable at the rate of two hundred dollars

(\$200.00) per month. The member of the commission who is also a member of the town council shall not receive any additional compensation for serving on the commission. Any member of the commission who fails to attend a majority of the meetings of the commission in a given month shall forfeit his entitlement to compensation for such month. All members of the commission shall be reimbursed for actual and necessary out of pocket expenses incurred in the performance of their duties. (Ord. 2, Series 1997)

2-4-4-1: BENEFITS:

In addition to the compensation described in section [2-4-4](#) of this chapter, commission members shall receive such benefits from the town as may be provided from time to time by Town policies, practices, or plans. (Ord. 25, Series 2013)

2-4-5: DUTIES AND RESPONSIBILITIES:

The commission shall have the following duties and responsibilities:

A. Formulate and recommend to the town council for adoption an open space plan. The plan shall provide a general guide for the expenditure of funds by the town council from the town's Open Space Fund, and shall be fully integrated with all open space related Town programs and policies, such as the town master plan, trails master plan and the recreation master plan. The plan shall include, without limitation, policies and guidelines which:

1. Establish the goals and objectives of a Town program for the acquisition, maintenance, protection and preservation of open space.
2. Define the types of open space to be acquired or protected by the town using funds from the town's Open Space Fund, which may include open space and historical and recreational properties and interests.
3. Identify the criteria to be used by the town council to select specific parcels for acquisition or other protection using funds from the town's Open Space Fund.

4. Provide a process for the commission and the public to provide input and recommendations to the town council concerning specific protective actions which the town should take related to open space.
- B. Periodically recommend revisions to the open space plan as and when requested by the town council.
- C. Advise the town council on all matters related to the implementation of the open space plan, including, without limitation:
1. Open Space Fund expenditures;
 2. Identification of specific parcels to be acquired or otherwise protected under the town's open space plan; and
 3. Suggested maintenance, stewardship and improvement proposals for properties to be acquired or otherwise protected under the town's open space plan.
- D. Continuously coordinate its efforts with other organizations and entities whose missions include the protection and stewardship of open space.
- E. Perform such other and further duties and responsibilities with respect to the town's Open Space Acquisition Program as may, from time to time, be delegated by the town council, or which are provided for by Town ordinance.
- F. Nothing in this chapter shall alter or abridge in any way the final authority of the town council to determine how to implement and operate the town's open space plan. Such authority shall include, without limitation, the final authority to determine which parcels of land are to be acquired or otherwise protected using funds from the town's Open Space Fund. (Ord. 2, Series 1997)

2-4-6: OPERATION:

The commission shall elect a Chair and a Vice Chair from its members, together with such other officers as the commission shall deem appropriate, and shall fix the term of such offices. The commission shall keep an electronic record of its meetings and shall further keep written

minutes thereof as required by the Colorado Open Meetings Law. Four (4) members of the commission shall constitute a quorum for the transaction of business. (Ord. 2, Series 1997)

2-4-7: MEETINGS:

The commission shall meet at Town Hall, or such other location within the town as the commission shall determine. The commission shall meet on such dates as the commission may determine. All meetings of the commission shall be subject to the same open meeting laws and requirements as are applicable to the meetings of the town council. (Ord. 2, Series 1997)

2-4-8: RULES AND REGULATIONS:

The commission shall adopt rules and regulations governing its operation. (Ord. 31, Series 2009)

The Breckenridge Town Code is current through Ord. 39, Series 2023, passed November 28, 2023.

Disclaimer: The town clerk's office has the official version of the Breckenridge Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

[Town Website: www.townofbreckenridge.com](http://www.townofbreckenridge.com)

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SOCIAL EQUITY ADVISORY COMMISSION



1 RESOLUTION NO.

2 SERIES 2022

3 A RESOLUTION CREATING A TEMPORARY ADVISORY COMMISSION KNOWN AS THE
4 "TOWN OF BRECKENRIDGE SOCIAL EQUITY ADVISORY COMMISSION"

5 WHEREAS, the Town Council of the Town of Breckenridge created a temporary
6 advisory commission to be known as the "Town of Breckenridge Social Equity Advisory
7 Commission in 2022 by the adoption of Resolution No. 17 Series 2020;" and Resolution
8 No. 32 Series 2020

9 WHEREAS, the Town of Breckenridge Social Equity Commission shall be organized
10 and shall operate as provided in this resolution.

11 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
12 BRECKENRIDGE, COLORADO, as follows:

13 Section 1. Creation. Town Council hereby amends the organization and stricture of the
14 temporary advisory commission of the Town known as the "Town of Breckenridge Social Equity
15 Advisory Commission" ("Commission"). The Commission shall operate in accordance with and
16 subject to the terms, conditions, and limitations of this resolution.

17 Section 2. Appointment: Qualification.

18 A. The Commission shall consist of not more than nine (9) members who shall be
19 appointed by the Town Council based upon such member's knowledge, experience, interest,
20 and involvement with social equity issues within the Town.

21 B. Members of the Commission shall serve at the pleasure of the Town Council. Any
22 member of the Commission may be removed at the pleasure of the Town Council.

23 Section 3. Term of Commissioners; Vacancies.

24 A member of Town Council serving on the Commission shall serve until the Mayor of the Town
25 of Breckenridge reappoints another member of Town Council. All other Commissioners shall
26 serve a three-year term and any vacancy whether due to resignation, removal or expiration of
27 their term, shall be filled by a vote of the Town Council.

28 Section 4. Compensation. Except for a Town Council member serving on the
29 Commission, Commissioners shall receive a stipend in the amount of \$200 dollars per month.
30 Any member of the Commission may, in their discretion, elect not to receive the compensation
31 provided in this Section 4.

32 Section 5. Duties and Responsibilities. The Commission shall have the following duties
33 and responsibilities:

34 1. To build culturally responsive strategies and leadership for social justice by generating
35 inclusive ideas and information to promote initiatives that advance race, social equity and social
36 justice in the organization and the larger community.

37 2. To broadly examine and identify social inequity, to work in partnership with local
38 organizations to find solutions to social inequity, and to make recommendations to the Town
39 Council on policies, practices, programs, and initiatives to achieve social equity and create
40 equitable outcomes within the Town government and the community.

41 3. To perform such other functions and duties regarding social equity as may, from time
42 to time, be delegated by the Town Council, or which are provided for by Town ordinance or
43 resolution.

44 Section 6 Rules of Procedure; Bylaws. The Commission may adopt rules or bylaws
45 governing its operating procedures.

46 Section 7. Meetings. The Commission shall meet at Town Hall, or such other location
47 designated by Town staff. Meetings of the Commission are governed by state and local open
48 meetings and open records laws and rules.

49 Section 8. Dissolution of Commission. The Commission may only be dissolved by
50 resolution duly adopted by the Town Council.

51 Section 9. Effective Date. This resolution is effective upon adoption.

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RESOLUTION APPROVED AND ADOPTED this XXth day of XX, 2022.

TOWN OF BRECKENRIDGE

By _____

Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC, Town Clerk

APPROVED IN FORM

Town Attorney Date

accordance with this Rule 3 shall be considered to be “present” at the meeting for all purposes, including, without limitation, establishing a quorum. Such member shall also be entitled to vote on all matters coming before the Commission at the meeting.

- I. The Commission may waive or modify provisions of this Rule 6 in the event a request for an accommodation has been made.

Rule 4. Quorum. A majority of members of the Commission shall constitute a quorum for the transaction of business at all Commission meetings, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date. A Commission member disqualified from acting upon a particular matter due to a conflict of interest shall not be counted in determining whether a quorum exists with respect to the matter (Note: a disqualification does not reduce the number required for a quorum; it simply means that the disqualified Commission member does not count towards the required quorum).

Rule 5. Chair and Vice Chair.

5.1 Election of Chair and Vice Chair. The Commission shall elect a Chair and a Vice Chair. No person shall hold more than one (1) Commission office at a time.

5.2 Duties Of Chair. The Chair shall preside at all Commission meetings. In accordance with these and other applicable Bylaws the Chair shall decide all points of procedure or order, unless otherwise directed by a majority of the members of the Commission in attendance at a meeting pursuant to motion made and passed. The Chair shall maintain order and decorum, and to that end may order removal of disorderly or disruptive persons. The Chair shall have such further duties and responsibilities as determined by the Commission or as required by law.

5.3 Vice Chair. The Vice Chair shall preside at those Commission meetings where the Chair is absent, disabled, or otherwise unable to act for any purpose. When acting as the presiding officer at a Commission meeting the Vice Chair shall have the same duties, responsibilities, and powers as granted to the Chair by Rule 6.2. The Vice Chair shall attest to the execution and approval of all official documents of the Commission, and perform such other duties as may be delegated to such person by the Chair.

5.4 Temporary Chair. If both the Chair and Vice Chair are absent from a Commission meeting, the members present shall appoint a Temporary Chair to preside at that meeting.

5.5 Term Of Chair and Vice Chair. The term of each elected chair shall be for one (1) year unless removed in accordance with Section 6.6, and members may be re-elected to any Commission office.

5.6 Removal Of Chair. Any Chair of the Commission may be removed by the affirmative vote of a majority of all members of the Commission or the affirmative vote of the

majority of the Town Council.

Rule 6. Recording Secretary. A Staff member shall serve as the Recording Secretary to keep the minutes of all Commission meetings, and to perform such other clerical or administrative duties as may be prescribed by the Commission.

Rule 7. Preparation Of Agenda; Posting Of Meeting Notices.

7.1 Meetings. The agenda for a Commission meeting shall be prepared by the Staff and distributed to Commission members, along with supporting documentation concerning agenda items, at least twenty-four (24) hours before each meeting.

7.2 Place For Posting of Meetings. The designated place for the posting of public notice of all meetings of the Commission shall be the “menu box” located adjacent to the southerly front door of the Breckenridge Town Hall. Specific agenda information shall be included in the meeting notice where available.

Rule 8. Order Of Business. The business of the Commission shall be handled at each meeting in the following order:

- A. Call To Order.
- B. Roll Call of Commission Members.
- C. Approval of Agenda.
- D. Approval of Minutes from previous meeting(s).
- E. Agenda Discussion.
- F. Adjournment.

The order of business for a meeting may be modified by affirmative vote of the Commission members present.

Rule 9. Action By Motion. The Commission may act by motion upon recommendation of staff. All motions shall be recorded in the official records of the Commission. The Chair may make or second a motion. A majority vote of the quorum present at a meeting shall be required for the approval of any motion.

Rule 10. Voting. The vote of “yes” or “no” shall be taken upon the consideration of passage of all motions. Except when a member is required to abstain from voting due to conflict of interest, each member shall vote on all motions or resolutions. On all votes the Chair shall vote last.

Rule 11. Conflict Of Interest. Members of the Commission are subject to the Town of Breckenridge Ethics Code. In addition to any requirements of the Town Code of Ethics, Commissioners shall not participate in commission matters if they have a reasonable expectation of personal or private financial benefit and/or a conflict in any matter proposed or pending before the Commission. In the event of a conflict, the Commissioner shall:

- A. Disclose such interest to the Commission;

B. If Commission agrees there is a conflict, such individual(s) shall abstain from voting on such matter; and

C. Refrain from attempting to influence the decisions of the other members of the Commission in voting on the matter.

The determination of whether a conflict of interest exists rests with the Commission, not the individual Commission member; provided, however, that any Commissioner may refrain from voting on a matter that they believe creates a conflict of interest.

Rule 12. Minutes. Minutes shall be kept of the Commission meetings. Following each meeting the minutes shall be prepared and shall be delivered to each Commission member along with the agenda packet for the following Commission meeting. The prepared minutes of a meeting shall stand approved as submitted unless they are corrected or revised by motion duly adopted at the next succeeding Commission meeting.

Rule 13. Public Records. All public records of the Commission shall be open for inspection and copying by any person at reasonable times in accordance with applicable law, and the administrative Rules of the Town's records custodian, as amended from time to time.

Rule 14. Amendment To Bylaws. These Bylaws may be amended at any meeting by the affirmative vote of a majority of the Commission; provided, however, that such proposed amendment has been submitted to the Commission in writing at the preceding Commission meeting so that the Commission members will have adequate time to review and consider such proposed amendment.

Rule 15. Suspension Of Bylaws. These Bylaws may be suspended at any meeting of the Commission by the affirmative vote of a majority of the quorum of the Commission present at the meeting.

SPECIAL EVENTS COMMITTEE

CHAPTER 13

SPECIAL EVENTS

SECTION:

- 4-13-1: Short title**
 - 4-13-2: Purpose**
 - 4-13-3: Findings**
 - 4-13-4: Definitions**
 - 4-13-5: Permit required**
 - 4-13-6: Exceptions**
 - 4-13-7: Event tiers**
 - 4-13-8: Breckenridge events committee**
 - 4-13-9: Application for permit**
 - 4-13-10: Fees**
 - 4-13-11: Investigation of application**
 - 4-13-12: Standards for issuance of permit**
 - 4-13-13: Relationship to other town ordinances**
 - 4-13-14: Denial of permit**
 - 4-13-15: Authority to impose conditions on permit**
 - 4-13-16: Nondiscrimination; Content neutrality**
 - 4-13-17: Decision by town manager**
 - 4-13-18: Notice of decision**
 - 4-13-19: Administrative review and court proceedings**
 - 4-13-20: Contents of permit**
 - 4-13-21: Permit not transferable**
 - 4-13-22: Notice of issuance of permit**
 - 4-13-23: Insurance requirement**
 - 4-13-24: Duties of permittee**
 - 4-13-25: Posting of permit**
 - 4-13-26: Suspension or revocation of permit**
 - 4-13-27: Penalties; Injunctive relief**
 - 4-13-28: Rules and regulations**
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4-13-1: SHORT TITLE:

This chapter shall be known and may be cited as the 2021 Town of Breckenridge Special Events Ordinance. (Ord. 15, Series 2021)

4-13-2: PURPOSE:

The purpose of this chapter is to establish a procedure for permitting and regulating special events, as that term is defined in this chapter. It is not the intent of this chapter to regulate speech or other forms of conduct protected by either the first amendment to the United States constitution or by the Colorado constitution. The permitting process established by this chapter is intended to be content neutral and not subject matter based. This chapter is intended merely to establish a nondiscriminatory mechanism by which the town can control, through appropriate regulation, the holding of special events. (Ord. 15, Series 2021)

4-13-3: FINDINGS:

The town council hereby finds and determines as follows:

- A. The town of Breckenridge is authorized to regulate businesses operating within the town pursuant to section [2.2](#) of the Breckenridge Town Charter and section [31-15-501](#), Colorado Revised Statutes.
 - B. Special events, as defined in this chapter, contribute to the economic, cultural, social, and environmental health and well being of the community.
 - C. Special events, however, create special regulatory problems and quality of life issues, including, but not limited to, the need for crowd control, sanitation, security, traffic management, parking, infrastructure, and desire to balance the quality and quantity of events.
 - D. In enacting this chapter the town council is exercising its police power as granted by the town's charter, and the constitution and statutes of the State of Colorado, as well as its power to license and regulate business activities. (Ord. 15, Series 2021)
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4-13-4: DEFINITIONS:

As used in this chapter the following words have the following meanings, unless the context clearly requires otherwise:

APPLICANT: A person who has submitted an application for permit pursuant to this chapter.

APPLICATION: An application for permit submitted pursuant to this chapter.

ARTS DISTRICT CAMPUS: Lots 1 and 2, Art District Subdivision, Town of Breckenridge, Summit County, Colorado.

DAY: A calendar day, unless otherwise indicated.

ENTERTAINMENT: Includes, but is not limited to, touring exhibitions, concerts, performances of dance, music, drama, art and comedy, parades, sporting exhibitions or contests, festivals, fairs, automotive displays, and performances of skill.

FILMING: The taking of motion pictures, the taking of still photography or the use and operation of television cameras or transmitting television equipment, including radio remotes and any preparatory activity associated therewith, and shall include events that include, but are not limited to, the making of feature or documentary films, television serials, webcasts, simulcasts or specials. The town manager shall provide in the administrative rules and regulations adopted pursuant to section [4-13-28](#) of this chapter appropriate exemptions from the permitting requirements of this chapter for filming and photography activities not significantly affecting Town property and not requiring substantial Town services.

PERMIT: A permit issued by the town pursuant to this chapter.

PERMITTEE: The person to whom a permit has been issued pursuant to this chapter.

PERSON: Has the meaning provided in section [1-3-2](#) of this Code.

SEPA COMMITTEE: A group established by the town manager in the administrative rules and regulations whose primary function is to review and make recommendations to the town manager concerning applications.

SPECIAL EVENT or (EVENT): A planned or organized occurrence the primary purpose of which is entertainment that is:

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- A. 1) A Tier Zero Event, 2) Tier One Event, 3) a Tier Two Event, 4) a Tier Three Event, or 5) a First Amendment Event, all as described in section [4-13-7](#);
 - B. An indoor or outdoor event held on Town-owned property; or
 - C. Involves filming.

TOWN: Has the meaning provided in section [1-3-2](#) of this Code.

TOWN MANAGER: The town manager of the town of Breckenridge, or his or her designee acting pursuant to section [1-7-2](#) of this Code.

TOWN SERVICE FEE(S): Fees due to the town by a permittee to reimburse the town for its costs incurred in providing services to or for the benefit of the permittee's special event. Such fees include, but are not limited to, the use of Town personnel and/or equipment, Town transportation services, Town public safety services, Town venues or facilities charges, and/or other expenses incurred or spent by the town for the benefit of or required in connection with the special event. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022)

4-13-5: PERMIT REQUIRED:

No person shall stage, hold, present, or conduct a special event within the town without a valid permit issued in accordance with this chapter. (Ord. 15, Series 2021)

4-13-6: EXCEPTIONS:

The requirements of this chapter shall not apply to:

- A. An indoor special event of any kind occurring on private property;
 - B. A special event managed or produced by Breckenridge Creative Arts that occurs at the Riverwalk Center, or on the Arts District Campus; or
 - C. A special event protected by either the First Amendment to the United States Constitution or by the Colorado Constitution; provided, however, that a person staging, holding, presenting, or conducting such an event shall submit an application and obtain a permit pursuant to this
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chapter, but there shall be no fee required and the deadline for submission of an application as provided in section [4-13-9](#) of this chapter does not apply to such an application. The town manager may also modify any other requirement of this chapter with respect to such an application if necessary to comply with applicable law. (Ord. 15, Series 2021)

4-13-7: EVENT TIERS:

Event tiers are determined by the town manager based on the following criteria:

A. Tier Zero Event: A tier zero event has the following characteristics:

1. The maximum attendance at any one time is estimated to be between one to one hundred fifty (1-150) people;
2. Occurs on one day;
3. Occurs on Town-owned property;
4. Is a private event (i.e., the general public is not permitted to attend the event: and
5. Has one or more of the following:
 - a. No anticipated impact to surrounding areas; or
 - b. Minimal impact of Town resources.
 - c. Does not require public safety staffing beyond normal operations.

B. Tier One Event: A tier one event has the following characteristics:

1. The maximum attendance at any one time is estimated to be between fifty to five hundred (50-500) people;
 2. Occurs on one day;
 3. Is not one of a series of events;
 4. The public is invited to attend the event, either by express invitation or by implication; and
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5. Has one or more of the following:

- a. Minor impact to surrounding areas and can be held within existing venue/use area;
or
- b. Minor transportation needs including minimal removal of parking, rolling road closures, and does not require increased transit; or
- c. Does not require public safety staffing beyond normal operations.

C. Tier Two Event: A tier two event has the following characteristics:

- 1. The maximum attendance at any one time is estimated to be between five hundred one to one thousand five hundred (501-1,500) people;
- 2. Occurs on not more than two (2) consecutive days or three (3) days in non-consecutive series; and
- 3. The public is invited to attend the event, either by express invitation or by implication;
and
- 4. Has one or more of the following:
 - a. Moderate impact to surrounding areas and can be held within existing venue/use area; or
 - b. Moderate transportation needs including removal of parking, requires a transportation mitigation plan, may require offsite parking plan, temporary, rolling or short term road closures, and does not require increased transit operations; or
 - c. May require limited public safety beyond normal operations.

D. Tier Three Event: A tier three event has the following characteristics:

- 1. The maximum attendance at any one time is estimated to be more than one thousand five hundred (1,500) people;
 - 2. May be a series or have consecutive days of occurrences;
 - 3. The public is invited to attend the event, either by express invitation or by implication;
and
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4. Has one or more of the following:

- a. Moderate to severe impact to surrounding areas and cannot be held within existing venue/use area; or
- b. Moderate to severe transportation needs including removal of parking, requires a transportation mitigation plan, requires offsite parking plan, temporary, rolling or long term road closures, moderate to major residential transportation mitigation and requires increased Free Ride transit operations and/or increased transportation provider outside of the town's ability to provide the services required; or
- c. Requires public safety needs beyond normal operations including moderate to major support in the venue and/or as well as support of public safety personnel from outside the town's jurisdiction.

E. **First Amendment Event:** An activity conducted for the purpose of persons expressing their political, social, religious, or other views protected by the First Amendment to the United States Constitution or the Colorado Constitution, including but not limited to speechmaking, picketing, protesting, marching, demonstrating, or debating public issues on any Town property. "First Amendment Events" shall not include:

1. Solicitations or events which primarily propose a commercial transaction;
2. Rallies, races, parades, or events conducted with motor vehicles or bicycles;
3. Footraces.

F. **Town Manager Authority To Determine Appropriate Tier:** If an application does not clearly fall into one of the tiers as described above, the town manager shall determine the appropriate tier to be used to review the application. Such determination shall be made within ten (10) days of the filing of the application. (Ord. 15, Series 2021)

4-13-8: BRECKENRIDGE EVENTS COMMITTEE:

A. *Membership on the Committee:*

1. The committee shall consist of up to fourteen (14) members approved from time to time by the town council. A member may be an individual, or either a for-profit or nonprofit business entity. Membership on the committee shall be based upon a member's relevance, interest, and involvement with events within the town, and/or the impact of events within the community. Membership of the committee will be based on the needs of the committee as determined by the town council, and may change over time.

2. *Composition:* The committee shall be comprised of entities that have a business office located within the corporate limits of the Town of Breckenridge, that may act through one (1) or more individuals to act as the member's representative on the committee. A member representative shall have full authority to act for such member with respect to all decisions and other actions of the committee.

3. *Appointment and Removal of Member Entities:* The member entities shall be appointed by and serve at the pleasure of the town council. A member may change its representative at any time in its sole and absolute discretion.

B. *Duties and Responsibilities:* The committee shall have the following duties and responsibilities:

1. To effectively function as the single, primary point of contact for evaluation of potential events, as defined in section [4-13-4](#) of this Code, against agreed upon event strategies including but not limited to attracting destination visitation; branding/media; animation/community goodwill; sustainable visitation; and quality of life for primary residents;

2. To identify potential impacts on town and citizens requiring extra vetting; street and parking closures, parking capacity, gridlock, trail use, noise, multiday events; and

3. To perform such other functions and duties regarding events as may, from time to time, be delegated by the town council, or which are provided for by town ordinance or resolution.

C. Members of the committee shall serve without compensation. Nothing herein shall limit a member entity from compensating its designated representative for its service on the committee in the member's sole and absolute discretion. (Ord. 37, Series 2022)

4-13-9: APPLICATION FOR PERMIT:

A. A person seeking to obtain a permit shall file an application with the town manager. The form of the application shall be established by the town manager in the administrative rules and regulations adopted pursuant to section [4-13-28](#) of this chapter. An application shall not be filed sooner than three hundred sixty five (365) days prior to the date on which the special event is to be held.

B. An application for a special event permit shall be filed with the town manager within the timeframe specified in the administrative rules and regulations promulgated by the town manager pursuant to section [4-13-28](#) of this chapter. The town manager may waive the minimum filing period and accept an application filed within a shorter time period if, after due consideration of the date, time, place, and nature of the special event, the anticipated number of participants, and the town services required in connection with the special event, the town manager determines that sufficient time exists for the proper investigation and review of the application; that the waiver will not present a hazard to public health, safety or welfare; and that the waiver will not create a substantial burden on the town's staff or financial resources. Applications received after the established deadline may be subject to denial or a late fee.

C. A permit issued pursuant to this Chapter eliminates the need for a development permit to authorize the special event. However, an applicant may still be required to obtain a development permit depending on the size and scale of any temporary structures proposed to be used in connection with the special event. The need for a development permit will be determined by the town manager once the application has been received and reviewed.

D. An application for a special event permit shall contain such information as shall be established by the town manager in administrative rules and regulations adopted pursuant to section [4-13-28](#) of this Chapter. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-8)

4-13-10: FEES:

A. When an application is filed an applicant shall pay to the town a nonrefundable application fee in the amount established by the town council.

B. If the application includes a request to use any Town property or any Town service in connection with the special event, or if the applicant is required as a condition of the permit to use any Town property or services in connection with the special event, the applicant will be provided with an estimate of Town Service Fees based on a fee schedule, and the applicant shall pay the estimated amount of the town Services Fees to the town at the time of the issuance of the permit. A final assessment of the amount of the Town Service Fees related to the special event will occur upon completion of the Special Event. All Town Service fees will be adjusted to reflect actual cost. The final amount of the Town Service Fees must be paid by the permittee in full within thirty (30) days of the final assessment and receipt of invoice of Town costs for the special event. Any portion of the final amount of the town Services Fees what are not paid when due shall accrue interest at the legal rate.

C. There are no fees due to the town in connection with the issuance of a First Amendment Event permit.

D. An applicant may submit a fee waiver request with its application. Fee waiver requests shall be evaluated by the SEPA Committee and the Events Committee, who will make a recommendation concerning such request to the town manager.

E. The town manager shall decide all fee waiver requests. In deciding a fee waiver request the town manager shall give due consideration to the following:

1. The reason the applicant chose Breckenridge for the event;
 2. Whether the applicant will charge admission/fees for participation, and the applicant's policy for attendees/participants unable to pay such fees;
 3. Whether the applicant will provide free programs to the community, raise funds for organizations that provide free/low cost programs benefiting local youth, seniors, or under-served populations, provide a clearly identifiable benefit to the community, and/or is aligned with the town's goals;
 4. Whether the applicant demonstrates extraordinary efforts to reduce and mitigate environmental, transportation, and residential impacts, associated with the event;
 5. Whether the applicant demonstrates that the imposition of fees would create a financial hardship on the applicants or would have a detrimental effect on services provided to the public;
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6. Whether the applicant is primarily funded by the town of Breckenridge; and
 7. Other factors deemed to be relevant by the town manager.
- F. The town manager may grant a fee waiver request in whole or in part, or the town manager may deny a fee waiver request.
- G. A fee waiver granted by the town manager shall be limited to a maximum of ten thousand dollars (\$10,000.00).
- H. The decision of the town manager on a request for a fee waiver shall be final.
- I. Prior to the filing of an application with the town manager, the town council, in its discretion, may authorize the town manager to grant a fee waiver for a tier three event in an amount greater than ten thousand dollars (\$10,000.00).
- J. The town council shall set by resolution the fees for all matters related to special events for the town's fiscal year 2021. Beginning in the town's fiscal year 2022, and continuing thereafter, the fees related to special events shall be fixed by the town council as part of its annual budget process. If for any reason such fees are not fixed by the town council as part of its annual budget process, the fees for the preceding fiscal year shall continue in full force and effect until changed by the town council. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-9)

4-13-11: INVESTIGATION OF APPLICATION:

- A. Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application fee as required by section [4-13-10](#) of this chapter, the town manager shall transmit copies of the application to such persons, agencies, or departments as the town manager shall identify in administrative rules and regulations adopted pursuant to section [4-13-28](#) of this chapter.
- B. Within thirty (30) days of receipt of a completed application those Town departments and other referral agencies described in subsection [A](#) of this section shall provide the town manager with comments concerning the application. If an application is accepted by the town manager less than ninety (90) days before the proposed special event is to be held, the town departments and other referral agencies shall use their best efforts to provide the town
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manager with their comments in a timely manner so that the town manager will have the comments before making a decision on the application. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-10)

4-13-12: STANDARDS FOR ISSUANCE OF PERMIT:

A. The town manager shall issue a permit when, from a consideration of the application and from such other information as may otherwise be obtained, the town manager determines that:

1. The proposed special event will positively impact the town culturally, economically, environmentally or socially.
 2. The application (including any required attachments and submissions) is complete and signed by the applicant.
 3. The applicant has paid the application fee and any other fees required by section [4-13-9](#) of this chapter.
 4. The application does not contain a material falsehood or misrepresentation.
 5. The application complies with all of the requirements of this Chapter.
 6. The applicant is legally competent to contract under Colorado law.
 7. The applicant or the person on whose behalf the application is made has not previously damaged Town property and failed to pay in full for such damage, and the applicant does not have other outstanding and unpaid debts to the town.
 8. If the applicant previously held a special event in the town, the applicant complied with all requirements of the town special event permit for such application, as well as all applicable requirements of this Chapter and other applicable laws.
 9. The duration of the event will not be longer than five (5) consecutive days, unless the town manager, after taking into account all relevant factors related to the event, determines that the proposed event may be longer.
 10. The proposed special event will not conflict with:
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- a. A special event for which a permit has previously been issued;
 - b. A Town sponsored event;
 - c. An annual special event which is reasonably expected to be held again, but for which an application has yet to be submitted; or
 - d. An event protected by the First Amendment to the United States Constitution or by the Colorado Constitution which due to its anticipated size, location, hours of operation, or other relevant factors, is reasonably expected to require such Town services or personnel as to make the holding of the special event for which the application was submitted a potential risk to the public health, safety or welfare.
11. The holding of the proposed special event will not cause significant disruption in the ability of the town to deliver or provide essential governmental services.
 12. Adequate sanitation, other required health facilities, and waste diversion efforts, are or will be made available at or sufficiently near to the proposed special event area(s).
 13. Sufficient parking is available near the site of the proposed special event to accommodate the number of vehicles reasonably expected for the event, or an acceptable transportation and parking plan to provide adequate parking for the proposed special event has been submitted and approved by the town manager.
 14. The proposed special event will not pose a danger to the public health, safety or welfare. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-11)

4-13-13: RELATIONSHIP TO OTHER TOWN ORDINANCES:

Notwithstanding anything contained in this Code to the contrary:

- A. A permit issued under this chapter is not a special events liquor license. If alcoholic beverages are to be served at the special event, the permittee must obtain the required permit or approval from the town clerk or the town of Breckenridge liquor and marijuana licensing authority.
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B. A permit issued under this chapter may authorize the permittee to exceed the maximum noise levels provided in title [5](#), chapter [8](#) of this Code in connection with the holding of the special event for which the permit is issued; and the town manager may establish specific maximum noise levels for any such event. The town manager shall apply the standards set forth in subsection [5-8-12A](#) of this Code in connection with any request for permission to exceed the maximum noise levels provided in title [5](#), chapter [8](#) of this Code.

C. A permit issued under this chapter shall be treated as a special event permit within the meaning of section [9-1-19-44A](#), "Policy 44 (Absolute) Radio Broadcasts", of this Code. No Class D minor development permit shall be required to authorize any radio broadcast conducted as a special event.

D. Except as specifically provided in this section, in addition to a permit a permittee must obtain all other required Town permits and approvals before holding the special event authorized by the permit, including, but not limited to, a development permit and building permit.

E. Notwithstanding section [9-1-19-43A](#), "Policy 43 (Absolute) Public Art", of this Code, a permit issued under this chapter may authorize the permittee to display a mural in connection with the holding of the special event for which the permit is issued.

F. Notwithstanding chapter [2](#) of title [8](#) of this Code, a permit issued under this chapter may authorize the permittee to display signage in connection with the holding of the special event for which the permit is issued. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-12)

4-13-14: DENIAL OF PERMIT:

A. The town manager shall deny an application for a special event permit if the town manager determines that:

1. The application fails to meet any of the standards set forth in section [4-13-12](#) of this chapter;
 2. Information contained in the application, or supplemental information requested from the applicant, is found to be false in any material respect;
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3. The time, route, or size of the event will substantially interrupt the safe and orderly movement of traffic on or contiguous to the event site or route or will disrupt the use of a street or highway at a time when it is usually subject to heavy traffic congestion;
4. The location of the event will substantially interfere with any construction or maintenance work scheduled to take place upon or along the town streets or property;
5. The applicant has failed to pay costs, fees, or deposits for a previous special event permit within the preceding five (5) years; or the applicant has failed to pay the town for damages arising from a previous special event held by the applicant, regardless of when such event was held; or
6. The applicant has failed to abide by the requirements or conditions of previous special event permits within the preceding five (5) years.

B. If an application is denied the application fee shall not be refunded. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-13)

4-13-15: AUTHORITY TO IMPOSE CONDITIONS ON PERMIT:

The town manager shall have the authority to impose such reasonable terms and conditions on a permit as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this chapter and applicable law. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-14)

4-13-16: NONDISCRIMINATION; CONTENT NEUTRALITY:

The town manager shall uniformly consider each application for a permit upon its merits, and shall not discriminate in granting or denying a permit under this chapter based upon race, creed, color, religion, national origin, ancestry, sex, age, veteran status, sexual orientation, or physical or mental disability. Further, the town manager shall be content neutral in reviewing an application, and shall not consider the subject matter of any type of speech proposed as part of the application. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-15)

4-13-17: DECISION BY TOWN MANAGER:

A. The town manager shall approve, deny or conditionally approve an application within forty (40) days of the receipt of the completed application unless, by written notice to the applicant, the decision period is extended for an additional ten (10) days; provided, however, that in any event the town manager shall render a decision on an application not less than forty eight (48) hours prior to the scheduled commencement of the special event which is the subject of the application.

B. If an application is denied, the town manager shall clearly set forth in writing the grounds for denial and, where feasible, shall propose measures to cure the defects that lead to the denial of the application. When the basis for denial is the prior receipt of a competing application for the same time and place, the town manager may suggest an alternative time or place for the special event which is the subject of the application which was denied.

C. In the event an application is conditionally approved, the town manager shall clearly set forth in writing the conditions of approval. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-16)

4-13-18: NOTICE OF DECISION:

The town manager shall notify the applicant of the town manager's decision on the application within three (3) business days of rendering the decision. Notice shall be given by e-mailing a copy of the town manager's decision to the applicant at the electronic mail address shown in the application. Notice is deemed to have been properly given upon the e-mailing of the town manager's decision. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-17)

4-13-19: ADMINISTRATIVE REVIEW AND COURT PROCEEDINGS:

A. An applicant for a special event permit who disputes any determination made by or on behalf of the town pursuant to the authority of the manager, which determination adversely affects such person, may petition the manager for a hearing concerning such determination no later than thirty (30) days after having been notified of any such determination. Compliance

with the provisions of this subsection shall be a jurisdictional prerequisite to any action brought under the provisions of this section, and failure of compliance shall forever bar any such action.

B. The manager may hold such hearing themselves or they have the sole discretion to designate a hearing officer to hold such hearing or such hearings.

C. Such petition shall be in writing, and the facts and figures submitted shall be submitted under oath or affirmation either in writing or orally at a hearing scheduled by the manager or the hearing officer. The hearing, if any, shall take place at Town Hall, and notice thereof and the proceedings shall otherwise be in accordance with rules and regulations issued by the manager.

D. The burden of proof shall be on the proponent of a claim or issue to prove such claim or issue by a preponderance of the evidence, and on the party raising any affirmative defense or matter of mitigation to prove such affirmative defense or matter of mitigation by a preponderance of the evidence. "Preponderance of the evidence" means to prove that something is more probably true than not.

E. Thereupon, the manager shall make a final determination. Such final determination shall be considered a final order of the manager and may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure by the petitioner or by the town.

F. The district court of the fifth judicial district of the State of Colorado shall have original jurisdiction in proceedings to review all questions of law and fact determined by the manager by order or writ under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 37, Series 2022)

4-13-20: CONTENTS OF PERMIT:

The required contents of a permit shall be established by the town manager in administrative rules and regulations adopted pursuant to section [4-13-28](#) of this chapter. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-19)

4-13-21: PERMIT NOT TRANSFERABLE:

A permit is nontransferable and nonassignable. Any attempt to transfer or assign such permit voids the permit. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-20)

4-13-22: NOTICE OF ISSUANCE OF PERMIT:

Immediately upon the issuance of a permit, the town manager shall send a copy of the permit to such persons, agencies, or departments as the town manager shall identify in administrative rules and regulations adopted pursuant to section [4-13-28](#) of this chapter. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-21)

4-13-23: INSURANCE REQUIREMENT:

Each permit shall require the permittee to file with the town's finance and municipal services department prior to commencement of the setup of the special event a certificate of insurance demonstrating that the permittee has in effect a policy or policies of general liability insurance covering the special event with minimum combined single limits of not less than one million dollars (\$1,000,000.00). Such insurance shall remain in full force throughout the entirety of the special event for which the permit is issued. The town shall be named as an additional insured under such insurance policy. If alcoholic beverages will be served at the special event, the permittee must also provide proof of liquor liability insurance. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-22)

4-13-24: DUTIES OF PERMITTEE:

In connection with the holding of the event for which a permit is issued, a permittee shall:

- A. Comply with all of the terms and conditions of the permit;
 - B. Comply with all applicable Town ordinances and state and federal laws, including, but not limited to, all state and local liquor laws and regulations if a special event liquor license has been issued for the event; and
-

C. Permit inspection of its records and special event facilities by the town manager for the purpose of determining the permittee's compliance with the terms and conditions of the permit. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-23)

4-13-25: POSTING OF PERMIT:

A permit shall be continuously posted in a conspicuous location at the site of the special event throughout the duration of the special event. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-24)

4-13-26: SUSPENSION OR REVOCATION OF PERMIT:

A. A permit issued pursuant to this chapter may be suspended or revoked by the town manager after hearing for the following reasons:

1. Fraud, misrepresentation or a false statement of material fact contained in the permit application;
 2. A violation of any Town, state, or federal law or regulation;
 3. A violation of any of the terms and conditions of the permit;
 4. A violation of any of the provisions of this chapter;
 5. Threatening weather conditions if the town manager determines that holding the special event under such conditions would either:
 - a. Pose a threat to the public health, safety or welfare, or
 - b. Pose a threat to any Town owned property to be used in connection with this special event;
 6. The existence of fire or drought conditions if the town manager determines that holding the special event under such conditions would pose a threat to the public health, safety or welfare;
-

7. Any unforeseen, unanticipated, or uncontrollable circumstance if the town manager determines that holding the special event under such circumstance would pose a threat to the public health, safety or welfare; or

8. An irreconcilable scheduling conflict with an event protected by either the first amendment to the United States constitution or by the Colorado constitution.

B. In connection with the suspension of a permit, the town manager may impose reasonable conditions.

C. A hearing held pursuant to this section shall be processed in accordance with title [1](#), chapter [19](#) of this code.

D. In deciding whether a permit should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the town manager shall consider:

1. The nature and seriousness of the violation;
2. Corrective action, if any, taken by the permittee;
3. Prior violation(s), if any, by the permittee;
4. The likelihood of recurrence;
5. All circumstances surrounding the violation;
6. Whether the violation was willful;
7. The number of previous special events held by the permittee;
8. The number of previous violations by the permittee; and
9. Previous sanctions, if any, imposed against the permittee.

E. The town manager shall have the authority to summarily suspend a permit during a special event if it appears to the town manager that a permittee has violated one or more of the terms and conditions of a permit or any applicable law and, based upon the available information, the town manager, in consultation with the police chief, reasonably determines that such violation results in an immediate threat to the public health, safety and welfare. No appeal is allowed from a summary suspension of a permit issued by the town manager pursuant to this subsection.

F. If the town manager suspends a permit, except for a summary suspension pursuant to subsection [E](#) of this section, or revokes a permit, the permittee may appeal the suspension or revocation to the town council in accordance with title [1](#), chapter [19](#) of this code. The burden of proof in such an appeal is on the permittee. If the town council finds by a preponderance of the evidence that the town manager acted correctly in suspending or revoking the permit, the town council shall uphold the town manager's order of suspension or revocation. If the town council finds by a preponderance of the evidence that the town manager acted improperly in suspending or revoking the permit, the appeal shall be sustained, and the town manager's order of suspension or revocation shall be set aside. Any decision made by the town council pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver of the applicant's right to contest the denial or conditional approval of the application.

G. No fee previously paid by a permittee in connection with the application shall be refunded if such permit is suspended or revoked. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-25)

4-13-27: PENALTIES; INJUNCTIVE RELIEF:

A. It is a misdemeanor offense for any person to violate any provision of this chapter. Any person convicted of having violated any provision of this chapter shall be punished as set forth in title [1](#), chapter [4](#) of this code.

B. The staging, holding, presenting, or conducting of a special event without a valid permit issued pursuant to this chapter may be enjoined by the town in an action brought in a court of competent jurisdiction, including, but not limited to, the town's Municipal Court pursuant to section [1-8-10](#) of this code. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-26)

4-13-28: RULES AND REGULATIONS:

The town manager shall have the authority from time to time to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this chapter. Such regulations shall be adopted in accordance with the procedures

established by title [1](#), chapter [18](#) of this code. (Ord. 15, Series 2021; amd. Ord. 37, Series 2022. Formerly 4-13-27)

The Breckenridge Town Code is current through Ord. 39, Series 2023, passed November 28, 2023.

Disclaimer: The town clerk's office has the official version of the Breckenridge Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

[Town Website: www.townofbreckenridge.com](http://www.townofbreckenridge.com)

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PRINCIPLES OF GOOD GOVERNANCE



Effective Governance

December 1, 2022

CML Executive Director, Kevin Bommer

CML Executive Director, Kevin Bommer

Two basic features:

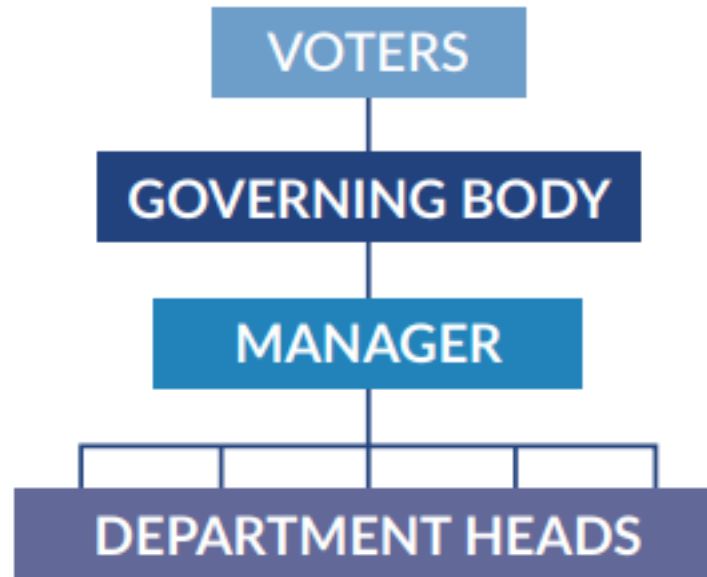
- An elected council to decide policy questions, and;
- A professionally trained manager hired by council to govern the municipal administration

In practice:

- The city council paints the big picture, and;
- Entrusts the details of administration and implementation to direct reports

Council-Manager Form of Government

The Council-Manager Form



Source: ICMA

Roles of Elected Office

1. Set public policy
2. Be professional
3. Be accountable
4. Be a big-picture thinker
5. Be a good steward
6. Be an advocate
7. Be a community builder
8. Be a decision-maker
9. Provide oversight
10. Be ethical



The public expects and deserves your best

Honesty

Decisions that put the community first

Open and fair decision-making process

Respect for individuals & the community

Accountability

Decorum and professionalism

Personal character

Lawful, ethical conduct

Your Role in the BIG Picture

- When you were elected, you became the ultimate insider!
- Misunderstanding your role can:
 - Increase the risk of liability for the city and for you
 - Reduce your own effectiveness
- Being part of an effective decision-making body requires **collaboration** and **consensus-building** among often diverse personalities and beliefs
- **Civility. Civility. Civility.**

Appropriate Conduct

- Your conduct impacts your effectiveness (+/-)
- Incivility and divisiveness need not be a part of nonpartisan local government
- You are viewed as:
 1. Leaders in the community; and
 2. Top representatives of the municipality as an employer
- You set the example and tone for the entire organization

Appropriate Conduct



As municipal elected officials:

- You hold both actual and “perceived” powers
- You are the center of the organizational universe
- Your words and actions may have an unintended but huge impact on others



No matter what, you can never put aside your elected official persona

The Ultimate Challenge



Each elected official has different goals and priorities



It is **impossible** to reconcile everything that a group of different people want



The members of the governing body must sort out the goals and priorities of you and your colleagues. Listen to different views.

- *What is most important to you?*
- *Where are you willing to compromise?*



Then establish a singular set of goals, priorities, and directions for your manager and other direct reports

In closing...

“Two things define you: your patience when you have nothing and your attitude when you have everything.” – George Bernard Shaw

1

Recognize roles when they are changing roles – both yours and others

2

Stay in your lane!

- Stay within your “job description”
- Stay out of those of others

3

Act as “WE,” not “I.”
You are on a team!
So be a team!

4

Be cautious about citizen pressures;
be deliberative

5

Check your personal motives.
Decide what you believe is best for the city/town – now and in the future

ETHICS LIABILITY AND BEST PRACTICES



CHAPTER 1

THE OATH OF OFFICE: ETHICS, LIABILITY AND BEST PRACTICES

By: Tami A. Tanoue, CIRSA Executive Director &
Sam Light, CIRSA General Counsel

A typical oath of office might go as follows:

“I solemnly swear or affirm that I will support the Constitution and laws of the United States of America and the State of Colorado, [the Charter,] the ordinances and other laws of the City/Town, and that I will faithfully perform the duties of the office upon which I am about to enter.”

With the passage of time since you took office, does your oath have continuing meaning as an ethical commitment? This chapter examines the oath as a commitment to best practices in carrying out your responsibilities, and as a path to avoiding liability. We'll focus on four key areas: allocation of responsibilities, transparency in meetings, quasi-judicial rules of engagement, and personal conduct.

Honoring the Allocation of Responsibilities

As in other levels of government, municipal powers and responsibilities are typically allocated among the governing body, judge, staff, and possibly others, according to charter or statutory requirements. Thus, for instance, the governing body is responsible for all legislation, the municipal judge is responsible for determining ordinance violations, and the manager/administrator and staff are responsible for administrative matters.

To the extent the charter or statutory provisions set forth a clear allocation of responsibilities, respecting that allocation is part of an elected official's oath. Inappropriate involvement in administrative matters, then, could be a violation of your oath.

Personnel matters are among those in which inappropriate involvement tends to occur. The governing body typically supervises a limited number of its own direct reports—for example, the chief administrator, judge, attorney, and perhaps a few others. As an individual elected official, if you are asked by an employee who's not one of the governing body's direct reports to become involved in an employment issue, or if you take the initiative to become involved, that could be a red flag in terms of your oath to respect the allocation of responsibilities.

From a best practices standpoint, inappropriate involvement in personnel matters can effectively destroy the chain of command. While most municipal offices are not operated according to a military-style chain of command, some version of a chain of command is critical for effective functioning no matter how large, small, formal, or informal your operations are. Once you allow inappropriate involvement to occur, you have effectively disempowered managers and supervisors throughout the organization, and sent the message that employees are free to disregard the chain of command.

Personnel matters are also a high-risk liability area. The more you're personally involved, the more likely it is that your name may some day appear on the wrong end of a lawsuit, or come up in an executive session where your fellow members are assessing the risks your conduct has created. So, you can see that honoring the allocation of responsibilities by staying out of most personnel matters is a means of avoiding or reducing liability.

Honoring Transparency in Meetings

In local government, transparency of the governing body in its discussions and decisions is a basic expectation of the citizenry. Citizens take great interest in the goings-on of the governing body, and are quick to notice when their transparency expectations are not met. A perception that governing body members are conducting discussions secretly, that executive sessions are being held for improper purposes, or that decisions are being made in "smoke-filled back rooms," can quickly erode trust and confidence in government.

Transparency in meetings means that governing body meetings are open to the public and held only after proper public notice, that executive sessions are strictly limited to the purposes authorized by law, and that discussions of public issues take place in a meeting setting rather than by email or in hidden locations. Is this part of your oath? Most certainly! The statewide open meetings law applies to all local public bodies, including city councils and boards of trustees. If you're a home rule municipality, there may be charter provisions concerning transparency as well.

Is honoring transparency in governing body meetings a best practice? It is, if you want to maintain the public's confidence and trust! Citizens expect and appreciate your body's commitment to discussing and deciding difficult issues with full transparency. And making a commitment to transparency can also help ensure that your municipality doesn't become Exhibit A in an effort to make draconian changes to the open meetings law. You surely don't want to be held up as a bad example in the legislature. It's happened.

Is honoring transparency a liability-reducing suggestion? At CIRSA, we've seen our members become involved in litigation over their meeting practices. Based on our experience, the answer to that question is yes. There are watchdogs out there scrutinizing you, and they will pounce on you with allegations of violations and a lawsuit if your meetings practices don't pass muster under the law. CIRSA has open meetings/executive session defense cost coverage for member governing bodies, but by honoring the letter and spirit of the open meetings laws, you can avoid costly and potentially embarrassing litigation.

Honoring the Quasi-Judicial Rules of Engagement

Governing body activities can be pigeonholed broadly into two areas: legislation and quasi-judicial decision-making. The rules of engagement differ depending on which pigeonhole fits. For legislative matters, the rules of engagement are free-wheeling. Think of the state legislature when it's in session, and the lobbying that goes on there. But for quasi-judicial matters, the rules of engagement have a basis in constitutional due process requirements: when you are making a decision that affects individual property rights, the constitution requires a properly noticed and fair hearing before a neutral decision maker—you. Thus, in quasi-judicial matters, you must conduct yourself similarly to the way a judge does in deciding a case.

No doubt your municipal attorney has discussed the quasi-judicial rules of engagement with you. The attorney is trying to protect the integrity of the hearing process, the defensibility of the outcome, and your prerogative to participate as a decision-maker. These rules of engagement include:

- You will follow the applicable legal criteria and apply those criteria to the evidence you hear at the hearing, to arrive at your decision.
- You will refrain from “ex parte” or “outside the hearing” contacts regarding a pending quasi-judicial matter.
- You will not participate in decision-making in a quasi-judicial matter in which you have a conflict of interest.

These rules flow from constitutional due process requirements, so they are most certainly a part of your oath. Following these rules is also a way to avoid or reduce liability. In quasi-judicial matters, the process by which you arrive at a decision is at least as important as the substance of the decision itself. If you've ensured that the process is letter-perfect, then you have eliminated a huge portion of the possible quarrels that could turn into a claim. And it's a best practice, because following the rules of engagement will enhance the reality and the perception that all who come before you with quasi-judicial matters will be heard and treated fairly.

Honoring Standards of Personal Conduct

The way you conduct yourself in relation to other members of the body, staff, and the community greatly impacts your effectiveness as an elected official. No matter where you are on the political spectrum, you can probably agree that politics today are infected with divisiveness and incivility. Municipal government being non-partisan, its elected officials should, at least in theory, be able to rise above the nastiness of partisan politics!

With respect to the governing body, do all members understand that governance is a team activity? An individual elected official does not have the power to accomplish anything on his or her own. Rather, the allocation of responsibilities to the governing body is to the body as a whole. Only through collaboration and consensus-building can an individual's priority become the priority of the governing body. While the governing body is comprised of individuals and will “deliberate with many voices,” all members must recognize the governing body “acts with one voice.”

Has the governing body been able to “gel” as a team, or are members viewing one another with a sense of distrust? Are you lining up along the same divisions on every issue? Are you unable to disagree without being disagreeable? Perhaps some team building is in order if these things are happening.

With respect to staff, is an incoming council or board viewing staff as the “enemy”? A staff exists to carry out the goals set by the governing body. Sometimes, with the changing of the guard at the governing body level, there’s an assumption that there needs to be a changing of the guard at the staff level, too. But if this staff faithfully carried out the goals of the prior governing body, why wouldn’t you expect that they will be equally able and willing to carry out the goals of the new body?

With respect to the community, are public comment periods turning into “public inquisition” or “public argument” periods? Is “staff bashing” or “elected official bashing” happening at meetings? Perhaps another look at your rules of order, and your approach to meetings, would be appropriate. Certainly the public has every right to appear at meetings and make complaints. It’s a sign of faith in local government that people care enough to complain! But the manner in which those complaints are made, and the manner in which you respond, can mean the difference between a constructive, productive exchange or a nasty, embarrassing, unproductive, or morale-crushing attack.

Is the observance of personal conduct standards part of your oath? At least arguably, yes. After all, the oath implies faithfully performing a role where you must work with others. And you have a fiduciary duty to act in the best interests of your municipality. It doesn’t seem a far stretch to impute to your oath a commitment to respectful conduct towards one another and the best interests of the municipality.

Is it a best practice to observe personal conduct standards? It certainly seems so. Maintaining harmonious and productive working relationships with your fellow elected officials, staff, and the public can only increase your effectiveness. And keep in mind that harmony doesn’t mean you all have to agree all the time. Indeed, healthy discussion, debate, and disagreement are the engine for understanding issues and solving problems. But the idea of disagreeing without being disagreeable is important to keep in mind.

Does the observance of personal conduct standards help with liability reduction? We think so. In CIRSA’s experience, turmoil at the top levels of the municipality means turmoil throughout the organization. After all, you know what rolls downhill. Over and over, we’ve seen that disharmony and dysfunction at the top means claims throughout the organization. These types of claims not only cost dollars to defend, but also can sap the governing body’s energy, destroy staff morale and cause reputational harm, all with long-lasting impacts.

Conclusion

Honoring your oath of office isn’t just something you do when you raise your right hand at the beginning of your term. You can look at just about any arena in which you operate as an elected official, and ask yourself, “What did I commit to do when I took my oath?” By asking and answering this question, you can stay on the path of best practices, and avoid or reduce personal liability.



CHAPTER 2

HEALING DIVISIONS ON THE GOVERNING BODY: CAN'T WE ALL JUST GET ALONG

By: Tami A. Tanoue, CIRSA Executive Director

At CIRSA, we're seeing more and more instances of governing bodies with intractable divisions that cut across virtually all of the body's decision-making. This division is affecting productivity, driving away opportunity, and undermining citizen confidence. It also lends itself to disputes and claims, with corresponding risks of liability. In this chapter, we'll explore the causes and impacts of such divisions, and explore some possible ways to break out of the patterns that cause them.

Introduction

First, though, let's be clear about the situation we're discussing: Every governing body has disagreements, and there's nothing wrong with that. It would be strange, indeed, if all members agreed on all issues all the time. If that were the case, why would we even need five, seven, or nine members?

Sometimes, disagreements create a residue of misunderstanding or hurt feelings, but that's to be expected, too. Most governing body members are able to leave that residue behind and move on to the next matter at hand.

We're also not talking about the "outlier" issue, where one or some members of the governing body have made it their mission to separate themselves from the rest of the group, with the sole goal of embarrassing the rest and proving that they are the only "ethical," "transparent," or "responsive" (or insert description of your choice) member of the body, at least in their opinion. There are ways to address the "outlier" issue (see Chapter 3).

What we're talking about here is a governing body in a state that we can all agree is severely dysfunctional. We're talking about a body that's intractably divided, and whose every debate, discussion, and decision are characterized by lingering unresolved matters, mutual contempt, and hard feelings that calcify into hardline positions. We're talking about meetings that staff and citizens refer to as the "Thursday night fights" (or insert evening of your choice). We're talking about meetings where members regularly yell or snipe at each other, name-call, storm out, or maybe even resort to threats or fisticuffs.

And even if it's not that dramatic, meetings may still be characterized by tension, frustration, passive-aggressive behavior, an inability to see beyond the players and focus on the merits of any issue, and maybe an angry social media post or two after the meeting.

Whatever the level of dysfunction, destructive consequences can result. Once you "write off" or "demonize" your colleagues ("she's just clueless," "he's completely hopeless," "I can't even look at the guy," "there's no reasoning with her, so why even bother"), there may be no coming back.

Why Can't We All Get Along? A Look at Some Possible Causes

*"Happy families are all alike; every unhappy family is unhappy in its own way."
~Tolstoy*

*"Happy councils are all alike; every unhappy council is unhappy in its own way."
~Tanoue*

There are any number of reasons why the "marriage" of governing body members can go bad. Here are a few:

Underlying divisions. Underlying divisions within the community may be reflected on the governing body. Communities can have fracture lines. There may be friction between the "old timer" part of the community and more newly developed areas that are full of "newcomers." The interests of "old timers" and "newcomers" may not always be the same. "Newcomers" may not recognize the history and traditions of the community in the same way that "old timers" do. "Old timers" may discount the concerns raised by "newcomers," or vice versa. These differences may be reflected in the makeup of the governing body.

Members may have been swept into office as a result of a controversial issue that divided the community. Perhaps there was a recall election. Unless the slate was wiped clean, the governing body makeup may reflect the divisions that grew from the underlying issue. It may be difficult to get past that issue.

New or younger members may clash with veteran members. Sentiments that "you young 'uns haven't been around long enough to understand this town" or "you old timers are stuck in your ways" may cause unwarranted rifts. And expressing or acting on such sentiments can contribute to a feeling that each member isn't being accorded an equal voice in discussion and decision-making.

That sense of inequality can also be the result of partisanship, and partisanship doesn't necessarily have to spring from the type of political partisanship that exists at other levels of government. Of course, municipal government is avowedly and proudly non-partisan in the political sense (and by law its elections are non-partisan). But an "in crowd" and an "out crowd" based on other considerations can be a type of partisanship that's just as problematic.

Personalities. Voters aren't judging whether the individuals they elect will be compatible with each other, so it's possible that fundamentally incompatible personalities will end up on the body. If you have some "alpha dogs" on the body who are in constant competition, friction might be a predictable result. If others then line up behind their favorite "alpha," division can ensue. If several "alphas" dominate the meetings, resentments may arise.

Sometimes, an elected official's personality and proclivities seem to be just plain incompatible with holding elected office! Politics, at the governing body level, has to be a team sport: decision-making requires collaboration and consensus. One member's "agenda" can become the "agenda" of the body only by successful team play. A "lone wolf" who lacks the capacity or desire to be a team member is not going to be successful on the body. Add a few more "lone wolfs," and frustration and paralysis may result.

Governance is also about leadership. If the voters put someone in office who is afraid to take a stand, is perennially "on the fence," or is strictly a follower, leadership qualities may be lacking. A majority of non-leaders can create a perception of a "rubber stamp" governing body, resulting in extreme frustration for those members who are willing to stick their necks out.

Preconceived personal agenda. There are many good reasons why citizens run for public office. However, the workings of municipal government are not always clear until well after you're seated. So the agenda that a candidate ran on may collide with reality, and turn out not to be a workable agenda after all. Under those circumstances, clinging to the preconceived agenda is only going to sow the seeds of discord. If you have several members, each bent on pursuing only his or her own particular agenda, a fractured body can result.

I once spoke with a newly elected councilmember who said his one campaign promise was to ensure that water and sewer rates were lowered. But when he took office, he began to understand the economic realities of operating the town's water and sewer system, and he saw that demanding the lowering of rates was unrealistic and fiscally irresponsible. He said he had some explaining to do to the citizens, but he wasn't going to cling to his agenda given the realities he now understood. That's a smart elected official.

Impacts

The impacts of severe dysfunction and discord are manifold. They include:

- **Lack of productivity.** The body's agenda may hit a standstill. Or getting through it might be slow and painful. Even if decisions are made, they may not necessarily be the best decisions.
- **Power transfer to tie-breaker.** If you're constantly split down the middle, then you may be transferring all decision-making power to the tie-breaker (often the Mayor). Is that desirable?
- **Financial consequences.** If you've developed a public reputation as a dysfunctional body, then your community may be missing out on economic opportunities. Businesses want a predictable environment. Volatility may be driving them away.
- **Public embarrassment and loss of public confidence.** If you're airing your discord for the camera, your viewership may be up, but public confidence will be down! Residents want to be confident that their elected leaders function at a high level and in their best interests.
- **Driving away the best and brightest.** I've heard people say they were reluctant to run for office because they witnessed the discord and didn't want to be a part

of it. So you may end up repelling, not attracting, potential leaders who could make great contributions to the community. Or you may lose great members to “burnout.” Likewise, if your community’s developed a reputation for governing body dysfunction, you may not be able to attract and keep the “best and brightest” for key staff positions.

So You Think You May be Part of a Dysfunctional Governing Body?

You may have experienced some jolts of recognition in reviewing the foregoing. If so, condolences and congratulations! The condolences are self-evident, but congratulations are also due, because recognition of a problem is the first step to dealing with it! So now, what do you do? Here are some steps to consider:

- **See if you can gain a consensus that there’s a problem.** Even if you recognize it, if no one else does, you’re not going to get anywhere. If there’s a consensus, then you’re halfway to solving the problem!
- **Start by talking about “values.”** In working with CIRSA members experiencing severe governing body dysfunction, I’ve begun to realize that the “values” discussion is a critical first step. By “values,” I’m talking about the philosophical underpinnings that you want as guides for behavior in your interactions with one another. If you can agree on these values, then additional steps are possible. If you can’t, you’re going to stall out. Such values might include:
 - **Courtesy and civility towards one another, staff, and citizens?**
 - **Non-partisanship?**
 - **Equality of participation?** This would include equal opportunities to be part of the discussion and decision, and equal opportunities to gain, insofar as possible, the same information at the same time as needed for good decision-making.
 - **Acknowledgement of the role of the Mayor or presiding officer in presiding over meetings?** Every meeting needs a presiding officer, and in most communities, that’s the Mayor. The role of the presiding officer must be honored if you want to have orderly, productive, and efficient meetings. And, the presiding officer must embrace that responsibility. If there’s no acknowledgement of this fundamental need, then you won’t get anywhere.
 - **Engagement?** This includes a commitment to be prepared for meetings, to arrive on time, to stay for the whole meeting, to give your undivided attention during the meeting, to participate in decision-making, and to be absent no more than necessary.
 - **Others?**
- **Norms or rules of conduct.** If you can form a consensus around values, you’re close to the point where you can discuss (and, it’s hoped, agree upon) the norms or rules of conduct that you want for the body. The content of your norms or rules won’t be discussed here, because they’ll be specific to your community and the values that serve as the jumping-off point for them. It’s worthwhile to look at

examples from other communities around the state and nation, but it's important to develop your own norms or rules from the ground up with your values as the foundation, so there's buy-in. Why rules OR norms? It's because the level of formality to be accorded really depends on your governing body's needs and desires. If you have members whose attitude is "Rules? We don't need no stinkin' rules," then perhaps a softer approach of agreeing on "norms" of conduct may be a good starting point. On the other hand, you might see reasons to elevate the adoption process by using a resolution or even an ordinance.

In Despair? You Can Still Help

You may feel your governing body will never come together to recognize the problem, much less move on towards seeking solutions. Should you give up? No! There are still things you can do as an individual. If enough individuals on the body do these things, then perhaps there will be an opening to go further! Suggestions for individuals include:

- **Assume good faith and best intentions on the part of everyone on the body.** Some smart person once said that we judge ourselves by our intentions, and others solely by their actions. This perceptual gap can lead to misunderstandings and unfounded assumptions. Let's give everyone the same benefit of the doubt we give ourselves, by assuming that they, too, are acting on the basis of honorable intentions.
- **Listen more than you talk.** Do your best to see and understand things from the perspective of others. Ask questions before reaching your own conclusions, and repeat back what you think you're hearing from others, so that you know you're on the same page. Listen for points of agreement, and emphasize and build on them.
- **Try to meet others more than halfway.** If everyone only goes so far to try to bridge the gaps, then you may never meet in the middle. Sometimes one person's generosity in going more than halfway is the catalyst for breaking down misunderstandings.
- **Use the postures, tone, and body language of respect and engagement.** Do this even if you're not "feeling it"; "acting as if" can be helpful in bringing a hoped-for harmony closer to reality. Make sure your body language and tone of voice aren't inadvertently communicating something you didn't intend. Keep your voice DOWN, even if others are starting to yell. Avoid the hair-trigger, knee-jerk, angry response.
- **Try some things to break down barriers.** Maybe switch up positions where you sit on the dais. Suggest a pre-meeting dinner; breaking bread together can be a way to get people talking (make sure you have a "no-business" rule in effect). Team-building, especially in a retreat setting, can be productive. An outside facilitator or mediator might be helpful in identifying issues that are hard to see from the "inside."

- **If you're an experienced member, mentor the newbies!** You have valuable experience from which newer members can benefit. Show them the ropes, teach them your own hard-earned lessons, and model the behaviors you want them to emulate. And if you're a new member, seek out mentors!
- **Acknowledge and appreciate** when you see others making the same effort.

Conclusion: "Until Next Election Do You Part."

A governing body might be characterized as a kind of arranged marriage—a marriage arranged by the citizens. If the conditions for civil and productive discourse are lacking from the start, it's no wonder that such a "marriage" can go bad quickly. But divorce isn't an option! So start looking at ways to improve your relationships, as individuals and as a body. And take to heart the idea that, by "acting as if," your deepest hope for a strong, high-functioning team can come closer to becoming a reality.



CHAPTER 3

GOVERNING BODIES AND THE OUTLIER SYNDROME

By: Tami A. Tanoue, CIRSA Executive Director

Those who have been working with municipalities for an extended period have observed a phenomenon that occurs at the governing body level. Let's call this phenomenon **the Outlier Syndrome**.

The Outlier is the “lone wolf” who sits on a city council or board of trustees and steadfastly refuses to act like a member of the team. Even while isolating himself or herself as the only person on the losing side of just about every vote, the Outlier manages to create havoc with the rest of the body. The Outlier may be obstreperous and obstructionist. The Outlier may refuse to recognize and respect the norms that guide the rest of the body's conduct. The Outlier may position himself or herself as the only “ethical” or “transparent” member of the body. The Outlier's every statement and action seems to be aimed at preserving that self-assumed distinction rather than making any concrete achievements. Sometimes, a governing body is unfortunate enough to have more than one Outlier.

Have you ever experienced the Outlier Syndrome in action? We call it a syndrome because of the recognizable features or symptoms that seem to fester whenever an Outlier sits on a governing body. Do you have an Outlier on your governing body? Could you possibly be an Outlier? Should the Outlier Syndrome be viewed as an affliction or malady? And if so, what can be done? We'll explore these questions in more detail below.

Power, Goals, and the Outlier

To understand the Outlier's impact on a governing body, let's start with the idea that elected officials can only act as part of a body – a collaborative decision-making body. You can search throughout the laws governing statutory municipalities, or just about any home rule charter, and you'll likely find no powers or duties that are to be exercised by a singular elected official (other than the mayor, who may have certain defined responsibilities). This means that, as elected officials, the only way you can get anything accomplished is to have a majority of the governing body on your side.

It's likely that each elected official has an individual list of goals, goals that those who voted for you want you to accomplish. But your goals can be accomplished only if they're part of the goals of the body as a whole. That means your success depends on creating a consensus

of the majority! And where does the Outlier fit in on a collaborative decision-making body? Why, nowhere! Perpetually being on the losing side of a vote means that the Outlier gets nowhere on his or her goals...unless, of course, he or she feels that being an Outlier is its own reward.

Are You an Outlier?

Perhaps you've met your share of Outliers, who tend to share one or more of these characteristics:

- There is an element of the lone crusader in them. They feel they were elected to shake up the status quo in some way. Maybe they think their predecessors were too cozy with developers, not friendly enough with the business community, too close to the municipality's staff, not close enough to the municipality's staff, etc.
- They view themselves as independent thinkers. They are often highly intelligent, but not "people persons." In kindergarten, their report cards might have reflected a poor score on "plays well with others."
- They take a perverse glee in being the "outsider," relish arguments for argument's sake, and place little value on matters like courtesy and regard for the feelings of others.
- They hate having to endure "soft" discussions such as a council or board retreat, the establishment of a mission or vision statement, the development of consensus around rules of procedure or rules of conduct, a session to discuss goals and priorities, or a CIRSA liability training session.
- They feel they are always right, and everyone else is always wrong. They feel they are always ethical, and everyone else is not. They feel they are looking out for the citizens, and everyone else is not.
- Initially, they may just have been unfamiliar with the ways of local government, and needed to build the skills to work effectively in a new environment. One or more gaffes may have caused them to be pegged as Outliers and treated accordingly, initiating an unhealthy Outlier dynamic.
- There may have been some explosive moments in private or public with the Outlier's colleagues, or indeed, the colleagues may have made some attempt at an "intervention."

These observations may or may not be totally on the mark. But one characteristic of the Outlier cannot be denied: he or she is seldom on the prevailing side of a vote, and is often at loggerheads with the rest of the body.

Do you think you may be an Outlier? If so, you might examine what your goals as an elected official really are. Do you want to have a list of concrete accomplishments at the end of your term? Or will it be accomplishment enough to have been the "loyal opposition"? If the former, then your behavior may be working at cross-purposes with your goals. If the latter, really? Will the people who voted for you be satisfied with that accomplishment? Will you?

Is the Outlier a Problem for the Rest of the Body? For the Municipality?

Most people who've had to deal with an Outlier would say that yes, the Outlier is a problem! How? Well, here are some ways:

- Anger and frustration build when a council or board has to deal with an Outlier, siphoning away energy that could be spent on more positive endeavors. This is a particular problem if tensions have built to the point that confrontations have begun to occur. No reasonable person wants to attend or view a council meeting and have a hockey game break out! It may be entertaining, but mostly, it's embarrassing to the governing body and to the community.
- Healthy teams seek to build a sense of camaraderie and cohesiveness. That's not entirely possible when there's an Outlier. It's not healthy to build a team around a shared hatred of one of its own members, and most reasonable people would prefer not to have that happen.
- The Outlier's perspective tends to be oppositional. From a liability standpoint, such a perspective is risky. If you're taking positions on an oppositional basis, are you really meeting your fiduciary duty to look out for the best interests of the entity?
- A disharmonious governing body is a dysfunctional governing body. It's been CIRSA's experience that liability claims thrive in an environment of disharmony and dysfunction.
- Your staff members are affected by the Outlier Syndrome, too. From the staff's perspective, seeing dysfunction on the governing body is a little like watching discord between one's own parents. It's unsettling, distressing, and morale-crushing.
- Most importantly, it's a shame for the governing body to lose a potentially valuable contributing member. In a worst case scenario, the Outlier becomes completely disempowered as he or she is ignored and marginalized. But this means that the body isn't running on all cylinders, and is deprived of the valuable perspectives that the Outlier might otherwise bring. Ultimately, the voters, and the community, are the losers.

Dealing with the Outlier Syndrome

You can't cure an affliction until you recognize it. And you can't recognize what you haven't named and defined. If your municipality is afflicted with Outlier Syndrome, you've taken the first steps towards a cure by naming, defining, and recognizing it! Here are some other steps you might consider.

- Confront the issue forthrightly and compassionately in a neutral environment. A council or board meeting is likely not a neutral environment! Perhaps the matter could be discussed as one item on a retreat agenda. Be prepared with specific examples of how the Outlier has negatively impacted the body.

- Consider addressing the issue in the context of a larger discussion about governing body rules of procedure or rules of conduct. The “norms” that guide members’ interactions with one another may be obvious to some but not all, especially to newer members. Those norms could be part of the discussion, and the process of articulating them can facilitate a consensus to honor them.
- Consider bringing in an outside facilitator to assist you. A governing body is a bit like a marriage that’s been arranged for you by the citizens! There’s nothing wrong with getting some outside help for perspective and to find solutions.

If you think you might have the Outlier label pinned on you, consider these suggestions:

- First, get a reality check. Find out how you’re being perceived by your peers. It may be very different from your own perception of yourself. Ask each of your colleagues to give you a frank assessment.
- Check your motivations. If you have concrete goals you want to accomplish as an elected official, you must accept that success in your position can’t happen without collaboration and consensus building. There is nothing that you can accomplish alone. So set a goal to be on the “prevailing” side...indeed to bring others over to establish a “prevailing” side.
- If you’ve already burned some bridges, understand consensus-building can’t happen without mutual trust, respect, and a sense of cohesion. These will take time to build. Look for a retreat or other opportunities to clear the air and start fresh.
- Use staff as a resource! Your manager or administrator wants nothing more than to assist newly elected officials in learning the ropes, and understanding the best time, place, and approach to raising issues. Don’t get off on the wrong foot with blunders that might peg you as an Outlier.

What if all efforts to deal with the Outlier Syndrome fail? Well, it might be time for the rest of the governing body to cut its losses and move on. Don’t continue to agonize over the Outlier and his or her impact on the body’s functioning. Continue to accord the Outlier the same opportunities to participate in discussion and decision-making as any other member, but don’t allow the Outlier to keep pushing your buttons. Remember, arguments and confrontations require more than one participant. You may need to simply say “thank you” or move on to the next point of discussion. Ultimately, the responsibility for putting an Outlier into office rests with the citizens, so there’s only so much you can do. Try to go about your business without having the Outlier become the dysfunctional center around which the rest of you swirl.

Conclusion

Governing body members don’t all have to be in lockstep, or think and behave in the same way. On the contrary, diversity of thinking, styles, opinions, experiences, and approaches are healthy and necessary for a collaborative decision-making body. There is truly a collective wisdom that comes forth when many diverse minds work together on common goals. But the Outlier Syndrome is detrimental to a high-functioning governing body, and therefore, to the community. If your governing body is afflicted with the Outlier Syndrome, it’s time to do something about it!



CHAPTER 4

LIABILITY PROTECTIONS AND YOU

By: Tami A. Tanoue, CIRSA Executive Director &
Sam Light, CIRSA General Counsel

Are you acquainted with the protections you have through your entity's membership in the CIRSA property/casualty pool? In this chapter, we provide you with a brief introduction to the two key coverage parts of the liability policy that apply to you as elected officials of CIRSA member entities.¹

What Liability Coverages do We Have?

General Liability and Auto Liability Coverage applies to claims for bodily injury, property damage, and auto liability, among others. This is the coverage part that pertains to most allegations of “hard” injuries, such as an allegation of physical injury to a person or to tangible property. Thus, for instance, this coverage part would respond for an auto accident while you're driving your entity's vehicle on public entity business. This coverage part also includes law enforcement liability coverage.

Public Officials Liability Coverage applies to “wrongful acts” you are alleged to have committed. This coverage part applies to allegations of civil rights violations, improper activities concerning employment practices, and violations of federal and state law. Thus, for instance, this coverage part would respond when someone claims that he or she has suffered employment-related discrimination, harassment, or a violation of constitutional rights.

Who's Covered?

“Covered Parties” under the policy include, of course, your entity as a member of CIRSA. Any elected or appointed official, trustee, director, officer, employee, volunteer, or judge of a CIRSA member is also considered a covered party. So is each governing body, board, commission, authority, or similar unit operated “by or under the jurisdiction of” a member entity. Thus, elected officials, board and commission members, appointed officials, employees, and even authorized volunteers of your entity are all considered covered parties.

What Limits of Coverage do We Have?²

- For general liability and law enforcement liability, the coverage limit is \$10,000,000 per claim/occurrence.
- For auto liability, the coverage limit is \$5,000,000 million per claim/occurrence.
- For public officials' liability, the coverage limit is \$10,000,000 per claim/occurrence, subject to an annual per-member aggregate of \$10,000,000.

Defense costs are included in these limits. There is also a member-selected deductible that applies to each claim/occurrence. Members have chosen deductibles that vary from \$500 to as much as \$250,000 per claim/occurrence, so you should check with your own CIRSA contact to find out what your entity's deductibles are.

What Key Exclusions do We Need to be Concerned About?

There are several exclusions of concern, and a few are highlighted here. These exclusions are universal in most liability policies.

The “willful and wanton” exclusion is probably the exclusion of greatest concern to elected and other public officials. This exclusion applies to both coverage parts of the liability policy, and states that coverage does not apply to any loss arising out of the actions of any elected or appointed official, trustee, director, officer, employee, volunteer or judge of a member entity when such acts or omissions are deemed to be willful and wanton. And remember, you are a “Covered Party” only while in the performance of your duties for the member entity, and acting within the scope of your authorized duties for the member entity.

As you probably know, the Colorado Governmental Immunity Act's protections are lost when you are determined to have been acting outside the “scope of employment,” that is, outside the course and scope of your authorized duties as an elected official. But such conduct has a double consequence: the loss of your liability coverages through CIRSA. This is the reason that our public officials' liability training places a heavy emphasis on the need to understand your “job description” as an elected official, and the need to stay within the parameters of that “job description.”

Staying within the “scope of employment” is also important to lessening your risks of liability where federal civil rights claims are concerned. You probably know that, under 42 U.S.C. Section 1983, you can be sued for a civil rights violation in your individual or official capacity. An individual capacity suit is one that alleges that you violated someone's constitutional or other federally protected right while acting under the auspices of your public office. (An official capacity suit, on the other hand, is a suit against the entity, rather than you individually.) A finding of individual liability in a Section 1983 suit essentially means that you've violated a clearly established constitutional or statutory right of which a reasonable person should have been aware, and that your conduct was unreasonable. Such conduct can fall within the “outside the scope” exclusion; violating someone's civil rights is likely not within the “job description.” Thus, elected officials need to be especially cautious about conduct that could be actionable as an intentional civil rights violation.

The sexual harassment exclusion is another exclusion that has impacts on claims based on an individual official's conduct. This exclusion to the Public Officials Liability coverage part applies to sexual harassment claims. Let's say that a sexual harassment claim is made both against the entity, for failure to deal effectively with sexual harassment in the workplace, and against the harassing employee or volunteer. Under this exclusion, the entity will probably be covered. However, with respect to the individual official, employee, or volunteer, the entity will have the option to direct CIRSA to defend or not defend the individual. Thus, if the entity so directs, the individual will be left out in the cold as to any defense of a sexual harassment claim against him or her! And in any event, even if the entity directs CIRSA to provide a defense, any liability imposed on the individual based upon a finding that harassment occurred would not be covered through CIRSA. **The sexual abuse exclusion** operates in a similar fashion.

The punitive or exemplary damages exclusion is also pertinent in the context of an individual official's conduct. Punitive or exemplary damages can be awarded in circumstances where an individual's conduct is willful and wanton in the disregard of someone's rights, or callously indifferent or motivated by evil intent. The purpose of punitive damages is, as the term suggests, to punish a wrongdoer for such egregious conduct. Because the punitive effect would be considerably blunted if an insurer were available to cover a punitive damages award, punitive damages are deemed uninsurable by the appellate courts of many jurisdictions, including Colorado. Consistently with this judicial position, the CIRSA liability policy contains an express exclusion for punitive or exemplary damages.

The breach of contract exclusion can be pertinent to the activities of governing bodies. Governing bodies approve a wide variety of contracts, and sometimes are alleged to have dishonored them. It is not the intent of a liability policy to cover the kinds of liability that can arise when someone alleges a breach of contract, so there is an exclusion for the breach of an express or implied contract. This exclusion does not apply when a claim is based upon an allegation by an official or employee of wrongful termination of employment.

The condemnation/inverse condemnation exclusion can be relevant to a land use action taken by a governing body. A landowner may claim that all or a portion of his or her property was "taken" by governmental action, or that vested property rights were impaired by governmental action. These types of claims, involving the value of private property, are not covered. As you can imagine, liability policies aren't suited to cover these types of claims, because they would require insurers to try to underwrite the risk of having to pay for the property values of privately owned real estate throughout the state!

The bonds or taxes exclusion applies to any liability based upon or arising out of the issuance of bonds, securities, or other financial obligations, or taxes, fees, or assessments, or the collection, retention, or expenditure of funds. Thus, when a claim is made of an improperly levied tax, or retention of funds in violation of the Taxpayer's Bill of Rights, or impropriety in the issuance of bonds or other financial obligations, this exclusion would apply.

What Else Should You Know About Coverage Issues?

A lawsuit against you may involve one of several responses from CIRSA. We may determine, based on the allegations, that we owe you an unconditional duty of defense (i.e., the assignment of a defense attorney) and indemnity (i.e., covering any judgment or settlement). Or we may determine that none of the allegations invoke any duty of defense or indemnity, and send you a denial letter. Sometimes, though, a suit will contain a mixture of covered claims and uncovered/potentially uncovered claims and, in this case, we will defend you under a “reservation of rights.” A “reservation of rights” letter will be sent telling you of the areas where there may be no coverage, and reserving our right not to indemnify you, and our right to terminate your defense (and potentially seek reimbursement of legal fees paid on your behalf) should circumstances warrant.

One or more CIRSA defense counsel will be assigned in circumstances where we find that there is a duty to defend. In some cases, a single attorney can represent multiple defendants; however, in cases where defenses may be inconsistent between or among the covered parties, or other circumstances for a conflict of interest may exist in representation, we will assign multiple counsel. CIRSA-assigned defense attorneys, although paid by CIRSA, owe their duty of loyalty to you, their client.

We hope that you never have to delve into the details of these coverages in the context of an actual claim against you, but it’s a good idea to be familiar with the broad outlines of those coverages. As always, if you have questions, please contact CIRSA.

Footnotes:

1. This is only a summary of certain provisions of the CIRSA liability coverage documents. The language of the applicable coverage document must be reviewed for a complete and accurate understanding of the applicable coverages, and the application of the coverage document to any specific situation will require the advice of your entity’s attorney.
2. Please refer to the Declarations pages of the Liability Coverage form for more specific information on the limits and sublimits for all coverages.



CHAPTER 6

ETHICAL CONDUCT IN LOCAL GOVERNMENT

By: Robert Widner, Widner Juran LLP

Introduction

Citizens have a right to expect ethical behavior from local government officials. In the municipal context, “ethical behavior” generally means the conduct of public business in a manner that will preserve or restore the public’s trust in government. In many instances, local government officials are unaware of the rules and guidelines governing their official behavior. This chapter outlines a basic regulatory framework for ethical behavior for local government officials and advocates on the premise that limited but enforceable local regulation is necessary to protect the public trust. The first part of this chapter focuses upon “*what*” ethical activity should be regulated at the local level. The second part focuses upon “*how*” local ethical standards should be enforced.

Why Regulate Local Ethics?

Both media stories and national studies of local government decision-making highlight the need for regulation of ethical behavior by local government officials. Unfortunately, ethical violations do occur at all levels of government and may range from the use of a public office to help a friend secure special treatment from the government to corruption, self-dealing, or just plain poor decision-making. Although the vast majority of public officials ably conduct official business without ethical missteps, a single publicized violation can cast a cloud upon the entire government organization and raise suspicion that other public officials are engaged in similar misconduct. Simply put, ethical violations erode public trust.

Colorado state law attempts to describe appropriate standards of conduct for local government officials in Title 18, Article 24 of the Colorado Revised Statutes. The state law fails in many respects to articulate clearly the standards for ethical behavior or to define key statutory phrases, such as what constitutes “personal or private interest.” State law further fails to serve the needs of local government by delegating the enforcement of alleged local ethical violations to the local district attorney’s office. This delegation often proves ineffective as it requires district attorneys to divert their limited resources from the enforcement of criminal conduct to the investigation and enforcement of

state misdemeanor ethical misconduct. Moreover, enforcement of statutory standards of conduct against elected public officials by elected district attorneys can—fairly or unfairly—lead observers to assume that politics, rather than justice, will dictate the outcome.

In addition to state statutory law, in 2006 the Colorado voters enacted Amendment 41, a constitutional citizen initiative. Amendment 41 was codified into Article XXIX of the Colorado Constitution. The purpose of Article XXIX was to establish new statewide rules governing the receipt of gifts and other considerations by government officials. It also allows a state independent ethics commission to hear complaints, issue findings, and assess penalties in connection with ethics issues arising under Article XXIX and under any other state standards of conduct and reporting requirements. The state's independent ethics commission has proven a less than effective means of addressing ethics at the local level due to lengthy hearing timelines and the need for local officials to defend conduct in a state tribunal located in Denver using state, and not locally, created and imposed ethics regulations. Of significant importance to the creation of local ethics regulation, Article XXIX includes an explicit exemption which limits the state's independent ethics commission's jurisdiction: Home rule municipalities that have enacted local ethics codes which address the topics of Article XXIX are not subject to the jurisdiction of the independent ethics commission.

Municipalities may overcome these state statutory and constitutional shortcomings through local regulation and local enforcement of ethical behavior. Effective local regulation of public officials' ethics necessarily involves two distinct elements. The first is a set of clearly written directives identifying what constitutes unacceptable or unethical behavior. The second is a process for enforcing the written directives in a reasonable, fair, and efficient manner.¹

What Should be Regulated?

The most common problems with local rules of ethical conduct are vagueness and overbreadth. Sweeping general statements such as “city officials should comport themselves at all times in a professional manner” are too vague to help either the officials or their constituents understand what is and is not acceptable. Likewise, regulations that attempt to set standards for the officials' personal life may seem admirable, but are really beyond the scope of good ethical regulation. Consequently, any set of ethical regulations should focus on the conduct of public officials while performing their public duties and should be specific enough to clearly define what constitutes an ethical violation.

Engaging in criminal conduct while in the course of one's public responsibilities should always be an ethical violation. However, criminal acts committed by public officials outside of their official role and in their private capacity are best left to local law enforcement or, as discussed below, the public's right of recall. It may be true that a public official's criminal activity unrelated to public office can still undermine public trust, but if your ethical code provides that “any felony or misdemeanor criminal activity” committed by a public official constitutes an ethical violation, are you prepared to sanction a board or council member who receives a jaywalking ticket?

A criminal act committed by a public official in his private life will typically only call into question the qualifications of that particular public official to serve the public. To that end,

state law provides a remedy in the right of recall, a process by which the voters can decide whether that individual should continue to serve. Local ethical regulations, however, should avoid putting members of the municipal governing body in the role of overseeing and enforcing the private activities of one of their own.

It is also customary, and a good idea, for local ethics regulations to incorporate as an ethical violation any failure of the public official to adhere to important provisions of the municipal charter or ordinances, such as provisions that prohibit elected officials' interference with the city manager's supervisory role over city employees. In addition, ethics regulations should prohibit:

- the intentional disclosure of confidential governmental information;
- the acceptance of gifts of substantial value;
- the misuse of public resources or public equipment; and
- engaging in contractual relationships for the personal benefit of the public official and/or the official's relatives or any business in which the official has an interest.

In summary, local ethical regulations should prohibit the conduct that will most directly impair the public's trust in the local government organization as a whole. If drafted with appropriate attention to specificity, effective local regulation will put public officials on notice of precisely what constitutes inappropriate behavior related to their public service, and will clearly inform constituents of what is expected of their local representatives. Accompanying the regulations should be well-defined steps for disclosure and recusal in circumstances giving rise to conflicts of interest. Finally, local codes should include terms and phrases designed to avoid vagueness and ambiguity.

How Should Ethics Codes be Enforced?

Ethics regulations effectively inform officials what conduct is permitted and prohibited in public service. However, without a means to enforce the ethical requirements, the regulations become largely meaningless.

Creating a process to enforce ethical regulations requires careful thought. Ensuring that the regulations are enforced fairly is a paramount concern. Fair enforcement is fostered when regulations clearly articulate the requirements and expectations of every step of the enforcement action. Where a step is optional, such as whether an investigation of the ethics complaint will be performed, the criteria and procedures for determining whether the step will be employed should be clearly identified and followed. The regulations should contemplate the need for issuing subpoenas for documents and compelling witness testimony and attendance.

The typical process will include a complaint, the identification of the hearing body or hearing officer, an initial review, investigation, a hearing, a decision and, if appropriate, a penalty.

Complaint

The initiation of the process to enforce an ethical standard should require a written complaint or allegation of unethical conduct. The form of the written complaint is

important. The person charged with unethical conduct has a right to know what conduct is alleged to have violated the ethical rules.

At a minimum, the complaint should include a detailed description of the action alleged to have violated the rules and citation to the ethical rules alleged to be violated by such conduct. Requiring the complaining party to verify or certify under penalty of perjury or other sanction that the allegations are truthful may aid in preventing complaints that are merely intended to harass or which might be politically motivated. Once received, the complaint must be must formally delivered or served upon the person alleged to have violated the rules.

Hearing Body or Officer

A critical decision for any ethical enforcement action is the selection of the appropriate hearing body or officer to hear the allegations, render a decision, and impose a penalty, if appropriate. The enforcement regulations should identify the process for selection, composition, and qualifications of the hearing body or hearing officer. The options are numerous. The hearing body might, for example, be composed of the entire governing body of the local government, a governing body subcommittee, a citizen ethics board, or an independent hearing officer. Moreover, the decision of the hearing body or officer can be considered advisory and made subject to final review and ratification by the governing body.

Each option presents advantages and disadvantages. The elected governing body is a logical selection when judging the conduct of its fellow members or public servants due to its role as representing the citizens who demand ethical action by government. However, selecting the governing body or individual members of the governing body risks injecting elements of political favoritism into the ethics process, and raises complications where other members are necessary witnesses to facts alleged in the complaint. Similarly, while citizen members have a direct interest in ethical governmental action, citizens can oftentimes be politically aligned with elected officials or lack the experience to understand the allegations in the context of public service. Individual hearing officers, while perhaps free of any political motivations, may lack accountability to the citizens.

Initial Review

A preliminary or initial review of the complaint may be a beneficial step. A complaint may fail to assert any actions by the public servant that constitute an ethical misstep or may assert actions that are unrelated to the servant's public duties. In addition, a complaint may, on its face, be submitted for the sole purpose of harassing the public servant. At a preliminary review, the hearing body or officer can elect to dismiss the complaint, thereby saving the local government time and money in processing spurious or specious allegations. Any decision to dismiss the complaint should be made in writing and provided to the complaining party and the person against whom the allegations were raised.

Investigation

For some but not all complaints, an investigation might be warranted. If warranted and approved by the hearing body or officer, the investigation should be undertaken by an independent and neutral party. This investigation might involve the interview of witnesses and review of the evidence, and may culminate in a written summary of disputed and undisputed facts relevant to the issues to be decided by the hearing body or officer.

Hearing

For complaints that warrant prosecution, a hearing should be held to consider the complaint. In some circumstances, the hearing may include a preliminary stage whereby the hearing body or officer reviews the investigative report and, if appropriate, may elect to dismiss the allegations if the investigation established that the evidence does not support a finding of wrongdoing. Conducted in a manner similar to a judicial proceeding, the hearing should permit the presentation of evidence to support the allegations of unethical conduct and an opportunity to provide a defense against the allegations. The local government may employ a prosecutor to present the allegations and evidence. Any decision by the hearing body or officer should be made in writing to ensure an adequate record and formally conclude the proceeding.

Decision and Penalty

In the event that the hearing body or officer finds a violation of the ethical standards, a penalty may be in order. Obviously, the severity of the penalty can vary depending upon the seriousness of the violation. Penalties may range from a simple letter of admonition or censure, to removal of the public servant from certain duties or responsibilities, to more drastic action including removal from elective office.

It is exceedingly rare for ethical violations to result in a monetary fine. A monetary fine or action to void a contract resulting from unethical conduct is most appropriate where the ethical violation caused probable financial harm to the community. These types of violations are best prosecuted by the district attorney under the public trust provisions of state law.

Importantly, removal from office is a power best reserved for the governing body which holds the power of removal pursuant to the charter (for home rule municipalities) or state statutes (for statutory cities and towns). Moreover, it is important to acknowledge that elected officials remain accountable to the citizens and are subject to recall from office should their constituents feel the ethical standards of their official are lacking. For that reason, removal from office should be considered only in the most egregious cases.

Footnote:

1. Many home rule and statutory municipalities in Colorado have adopted local ethics regulations, ranging from comprehensive charter provisions and ordinances to a few local supplements to state law. CIRSA members can obtain examples of local ethics ordinances by contacting saml@cirsa.org.

A decorative graphic consisting of a series of vertical bars of varying heights, arranged in a symmetrical arch shape. The bars are a golden-yellow color. The tallest bars are in the center, and they gradually decrease in height towards the left and right sides, creating a smooth, curved silhouette.

CHAPTER 7

HARASSMENT ISSUES: WHAT ELECTED OFFICIALS NEED TO KNOW

By: Tami A. Tanoue, CIRSA Executive Director

Introduction

Harassment allegations have been a media fixture for the past few years, as the “me too” movement spreads across the world of entertainment, media, the corporate sector, and even into federal, state, and local government.

In municipal government, many of us feel like seasoned veterans in dealing with harassment issues. At least in the employment arena, we know how to deal with harassment. We have the policies in place, and we take them seriously. We do regular training on the issues. We know how to undertake a fair and credible investigation when allegations surface, and we understand the need to impose appropriate consequences for well-founded allegations.

But now, harassment issues are surfacing at the level of governing bodies and elected officials. Like an unexpected virus variant, this permutation has left some municipalities unprepared to deal with the consequences. The results have included ineffective responses, public embarrassment, and loss of public confidence.

Why Should You Care About Harassment Issues at Your Level?

You might be thinking that the governing body working environment is not the same as the employee workplace. You’re all co-equals, elected by and accountable only to the voters. The people “hired” you, and the people are the only ones who should be able to “fire” you. You each got into this voluntarily for the love of your municipality, and not as your livelihood, and those who can’t stand the heat should get out of the kitchen. Right?

Well, wrong! Let’s start by looking at your place in the municipal organization. You’re at the very top of the organizational chart and the chain of command. As such, you are a key influencer of the organizational climate. A recent study concludes that the organizational climate is the most potent predictor of harassment in the workplace!¹ You’re setting the tone for how people throughout the organization interact with one another. If the tone you set is disrespectful, inhumane, or dysfunctional, then that behavior will be modeled and replicated throughout the organization! Do you want that?

Another reason you should care: the higher up in the organization a harassment issue surfaces, the more difficult it is to deal with. Because of legal requirements and public expectations for transparency, you must necessarily conduct most of your work in public. If you think that a harassment allegation at your level can be dealt with behind closed doors, you may be disappointed.

Also, the consequence for a well-founded allegation of harassment isn't straightforward when it comes to an elected official. How is an elected official to be "disciplined" by his or her peers? Concepts such as "corrective action up to and including termination" don't necessarily translate well when applied to elected officials.

And assuming you've laid out a process for dealing such allegations, who gets involved in that process? Those in the administrative team who normally provide you with support, advice, and assistance may well say, "sorry, this is above my pay grade," requiring you to go outside your organization, at great expense, for help.

Policies, Legal Definitions, Civil Liability Laws, and Their Limitations

The definition of "harassment" differs from policy to policy. One common factor, though, is that harassment generally must be "severe or pervasive" in order to constitute a policy violation. The "severe or pervasive" standard is consistent with the U.S. Equal Employment Opportunity Commission's (EEOC) view of offensive conduct that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, or the Americans with Disabilities Act of 1990: the conduct must be severe enough that enduring the offensive conduct "becomes a condition of continued employment"; or must be "severe or pervasive" enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.²

Thus, policies, as well as civil rights laws affording protection from harassment, set a high bar for liability. A common question, then, becomes: "well, if my conduct is short of 'severe or pervasive,' there's no problem, right?" Stated differently, if someone's behaving badly, but the behavior doesn't quite hit the high bar for a policy violation or for civil liability, does that make the conduct acceptable?

Another form of liability is criminal culpability. How often have you heard someone justifying their bad behavior in this way: "Well, I haven't committed any conduct that could be described as criminal." Does that make the conduct OK?

Let's think about this! In any other aspect of your work as a public official, is the standard for acceptable conduct this low? When it comes to ethical or conflict of interest issues, for example, would we be able to get by with a low bar like "well, just don't commit a crime," or "just don't expose yourself or our municipality to civil liability"? No! Municipal officials pride themselves in meeting the highest standards of conduct when it comes to ethical issues or conflicts of interest. So why should we set such a low bar for the way we behave towards one another?

And here's another critical issue. Harassment laws are generally aimed at employment matters: employee-employee issues, supervisor-employee relationships, employer-employee responsibilities, and the like. These laws aren't designed for issues between elected officials, who aren't employees, aren't accountable to an employer, and are beyond

the reach of common workplace remedies like termination, suspension, demotion, etc. Thus, you'll run across investigations of elected officials' conduct that might reach a conclusion along these lines: "The allegation of a hostile work environment based on sexual harassment was unfounded. This conclusion is reached because the Civil Rights Act of 1964 does not apply to elected officials." But, does that make the conduct acceptable? Should exposure to civil liability be the standard by which conduct is gauged?

Most reasonable people would not live their lives by the guideline, "I'm OK as long as I avoid civil or criminal liability." We would want to hold ourselves to a much higher standard! And, as leaders, we certainly wouldn't want to model such a low bar for the rest of the organization. So let's ditch the legal parsing. Let's focus away from the "h" word, harassment. Let's not spend too much time arguing over definitions. What we need to do is to confront and articulate the expectations we should have for ourselves, and for our colleagues, in the environment in which we operate.

Risk Factors for Harassment

The EEOC has been doing some interesting work around harassment issues in recent years. Risk factors have been identified that, if present, increase the likelihood that there will be harassment issues in the workplace. You can view the complete list on the EEOC's website,³ but some of the risk factors include:

- Homogeneity – lack of diversity, "currently only one minority among us."
- Workplaces where some employees don't conform to workplace norms – "rough and tumble" or single-sex dominated workplace culture.
- Cultural and language differences – arrival of new personnel with different cultures or nationalities; segregation of personnel with different cultures or nationalities.
- Workplaces with "high value" personnel.
- Workplaces that rely on customer service or client satisfaction.

Could any of these factors apply to your governing body? For example, if diversity in terms of gender, race, ethnicity, age, and other factors is a new phenomenon on your governing body, then one might expect misunderstandings and gaffes to occur. Certainly, elected officials are "high value" personnel within the organization; there's no one higher in the org chart than you! And most municipalities pride themselves on a high degree of customer service and customer satisfaction. These are all things to be proud of—but they are also factors for the presence of harassment issues.

So, What Can We Do?

If you've read this far, congratulations! You're more than halfway towards dealing with these complex issues in a positive and successful way. The recent work of the EEOC includes a recognition that a "committed and engaged leadership" is one of the most important factors in preventing and addressing harassment.⁴ So the fact that you, as an organizational leader, care about this issue is a great thing in itself.

First, take a look at the prevailing culture on the governing body. Are old ways of interacting with one another no longer working well? Or making some members feel like less than equal participants on the governing body? Have you had complaints or concerns raised about the behavior of one or some members? If so, it may be time to discuss the prevailing dynamics openly and honestly to start identifying the concerns.

Once you know what the concerns are, then you can begin discussing how to deal with them. You can identify what types of conduct are not acceptable. You can identify the values that are important to the group. You can work towards commitments about how you will communicate and interact with one another. Those commitments can form the basis for norms or standards of conduct. Not everyone may end up on the same page, but the “peer pressure” brought about by the consensus of a majority is powerful!

If you can get on the same page on norms or standards of conduct, it may be desirable to put them into a written document, perhaps a set of governing body rules of conduct. The rules can articulate the standards explicitly, so that everyone understands what is expected. A process for bringing forward concerns or complaints can be identified, as well as the manner in which such concerns or complaints will be investigated. CIRSA members can obtain an example of such rules by contacting tami@cirsa.org.

And very importantly, the rules can provide consequences for violations of the standards. Those consequences may be limited by your home rule charter (for home rule municipalities) or the state statutes (for statutory cities and towns). But even if the consequences don’t necessarily include a severe consequence like expulsion from the governing body, they are still powerful! Even a “public censure” is a powerful consequence; your wayward colleague, as well as the citizens, will understand that you take your conduct standards seriously and that violations are unacceptable.

Bystanders and Peers

It’s important to stress that we are all leaders, and we all have a role to play. Each of us is likely a supervisor, role model, or mentor to someone else. We may be part of a peer’s support system, sounding board, or confidant. We may even just be a witness. And that’s where the concept of “bystander” empowerment or intervention—another concept recently embraced by the EEOC⁵ — comes in. Perhaps “peer” would be a better term than “bystander,” but the idea is this: that someone who doesn’t directly experience concerning behavior, but who observes it happening, can step in and make a difference.

This doesn’t necessarily mean that you, as a bystander or peer, should intervene superhero-style, to swoop in and “rescue” someone that you think may be in a problematic situation. Indeed, you don’t need to expose yourself to a situation that could escalate. But what you can do is to talk to that person away from the situation: let him or her know that you saw what was happening. Say something like, “Hey, I happened to hear what Kyle said (or did) to you, and I didn’t think it was OK. Were you OK with that?” If the person responds in the affirmative, fine; you can all move on.

But if the person indicates that the behavior to which he or she was subjected was a problem, then think of the impacts of your intervention! First, that person knows that he or she is not alone: you are a witness. Second, you are affirming that the behavior is not

acceptable. And third, you can be of help in identifying resources for further follow-up. Bystander intervention is about empowering yourself to be part of the solution.

If you're comfortable doing so, you can talk to the person engaging in the problem behavior: "That joke wasn't funny." Or, maybe the situation calls for some kind of interruption...maybe standing in proximity will extinguish the behavior. Or, perhaps, drop something on the floor and create a small diversion!

There are other ways in which a bystander or peer can positively affect a problem situation. Training on this topic is available and can provide a powerful peer-to-peer tool for communicating and reinforcing workplace values.⁶ Although a formal complaint/follow-up process should always be available, an effective bystander or peer intervention may help resolve issues without the need to escalate them into a formal process.

Conclusion: It's All About Respect

In the final analysis, this discussion shouldn't be about the "h" word, harassment. It should be about the "r" word, respect. A working environment where everyone's scrutinizing whether the harassment line has or hasn't been crossed in any given interaction is not a good working environment. A working environment where everyone's striving for a sense of mutual respect, trust, collegiality, and inclusion, is an environment where things are going to get done, and done well.

Footnotes:

1. National Academies of Sciences, Engineering, and Medicine, 2018: *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/24994>.
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CHAPTER 8

ELECTED OFFICIALS' INVOLVEMENT IN PERSONNEL MATTERS

By Tami A. Tanoue, CIRSA Executive Director and
Sam Light, CIRSA General Counsel

Introduction

CIRSA doesn't take many member cases all the way through trial. When we do, it's usually because we expect a jury verdict in our member's favor. But one area where we've sometimes been disappointed by a jury has been in the area of employment liability.

CIRSA members' experience with employment claims in the judicial system reflects certain realities. Every juror has probably had to deal with a "bad boss" at some time in his or her working life. It's much harder to find a juror who's had to deal with "bad employees" as a manager or supervisor. So juries are naturally tilted in the employee's favor rather than the employer's.

Another reality is that employment litigation is extremely stressful. Careers and reputations are at stake. The supervisor's and manager's (and sometimes elected official's) every move is subjected to scrutiny, and the documents they've generated are nit-picked by attorneys and blown up into super-sized exhibits. One's fate is entrusted to the decision of a group of complete strangers. Sometimes, that fate is a dire one, indeed. One mayor in New Mexico (which is in the same federal circuit that encompasses Colorado) was handed a verdict in which a jury determined that his retaliatory and discriminatory conduct in an employment matter warranted a punitive damages award of \$2,250,000 against him.¹

Even when the stakes aren't that high, no one who's ever been through employment litigation relishes the thought of ever going through it again. The suggestions in this chapter are intended to help you, as an elected official, to minimize the chances that you'll be caught up in employment-related litigation and, if you are, to maximize the chances of a better outcome than that faced by the New Mexico mayor.

Establish a Structure That Allows Delegation of Personnel Functions

In a word, the single most important suggestion is: delegate! The chances that you'll be pulled into an employment claim, much less sued successfully, go way down if you've appropriately delegated the responsibility to hire, train, evaluate, supervise, manage, and discipline all but your key employee or employees. To do this, you need to have an administrative structure in place that will permit delegation, such as a manager or administrator form of government.

If your entity is fortunate enough to have a manager/administrator, the governing body should take full advantage of the organizational structure this position allows. The manager/administrator should be the **only** position (except for city/town attorney, municipal judge, and similar positions) that reports directly to the governing body. All other personnel should be accountable to the organization solely through the manager/administrator. Every organization that has more than a few employees should strive to put such a structure into place.

Honor the Structure

Once you've achieved a manager/administrator form of government, you must honor it. These types of actions, if allowed, would violate your commitment to that form and waste the resources that you've allocated to it, and encourage dysfunction and disorder:

- Elected officials reaching down below the level of the manager/administrator to influence what goes on with personnel administration below that level.
- Elected officials reaching down below the level of manager/administrator to give orders to employees below that level on how to do their job, particularly if the orders are contrary to the established policies and/or the direction of their supervisors.
- Elected officials permitting an employee below the level of manager/administrator to bypass his/her own supervisor and take personnel issues directly to them.

Thus, for instance, if your entity has committed to a manager/administrator form, there's no call for elected officials, individually or collectively, to demand the hiring or firing of a specific employee below the level of manager/administrator. Such an action raises questions of propriety from several perspectives:

- **Do your personnel enactments reserve any such authority to the elected officials?** If you have a manager/administrator, your charter, ordinances and/or personnel handbook probably don't (and shouldn't) call for you to be involved in decisions involving subordinate employees. If you get involved in such decisions, you may be outside the scope of your authority and could get in trouble (see "Be aware of the scope of your authority" below).
- **What's the reason for doing an "end run" around the manager/administrator?** Do you have a "favorite" candidate for employment, or an employee who's on your "hit list"? Why are you championing or condemning someone rather than trusting your manager/administrator to make the right decision? Do you question his or her judgment or ability to make the right choice? If so, confront that concern;

don't skirt it with an "end run." And, if the governing body does not share your concern about the manager/administrator, don't "end run" your governing body's collective decisions on oversight of its direct reports.

- **Could what you're doing be perceived as retaliatory?** Along with all the other reasons why involvement in personnel matters can be very risky, consider the retaliation claim. Everyone is potentially in the category of persons who are legally protected from acts of retaliation. Retaliation claims are among the most difficult to defend. And, these kinds of claims can lead to massive liability.

But often, it's not the elected official who seeks, in the first instance, to become inappropriately involved in a personnel matter. Rather, there's pressure put on the official from outside. For instance, a department head may have curried disfavor with a segment of the citizenry because of the perceived manner in which a service or program is being carried out. Either way, though, such involvement is the wrong thing to do. Don't be pressured by a member of the public, for instance, to interfere in a personnel issue that's been delegated to the manager/administrator. That citizen's not going to be around to help you if you get into trouble at his or her urging!

Similarly, don't give in when a subordinate employee is trying to use you to get around his or her supervisor, or when an applicant is trying to get a leg up on employment through you. Let the process unfold the way it's meant to unfold. If you have a concern about the way the manager/administrator is handling things, address that concern directly. If you cave in to pressure to involve yourself inappropriately, though, you may be enabling someone who wants to "game the system," or unfairly disempowering a manager or supervisor.

Be Aware of the Scope of Your Authority, and Stay Within That Scope

From a liability standpoint, one of the worst things you can do is to act outside the scope of your legal authority. An area where authority issues often arise, particularly in smaller communities, is in the "committee," "commissioner" or "liaison" format for personnel administration. In this format, an individual councilmember or trustee is in a supervisory or oversight relationship with respect to a department, department head, or employee. Thus, a town might designate a trustee as "water commissioner," "police commissioner," etc.

What's troubling about this format is that it's often not described anywhere in the community's enactments, nor is the authority of each commissioner set forth in writing. Rather, this format seems to be a relic of oral history and tradition. But the lack of written guidelines means that there are significant personal risks to the commissioner. What if the commissioner takes an adverse job action, such as seeking to terminate an employee? Under what authority is the commissioner acting?

If the commissioner can't prove that the action was within the scope of his or her authority, there may be consequences from a liability and insurance coverage standpoint. The Governmental Immunity Act, for instance, provides protections for public officials only when in the performance of their *authorized duties*. Likewise, liability coverage

protections through CIRSA only apply when a public official is acting *within* the scope and performance of official duties. Finally, even if there is authority on the books, this format in particular can lend itself to uncertainty over who does what—“Is this a decision for the board, commissioner or department head?”

Similar questions arise when an individual elected official chooses to become involved in a personnel matter in a way that isn’t authorized by the entity’s personnel enactments. Where is the authority for such involvement? If you can’t find a firm source of authority, you may be heading for trouble. An individual elected official’s inappropriate action can not only create liability exposure for the official, but put him or her crosswise with the other members of the governing body.

Respect the Principle That Each Employee Should Have Only One Boss

This seems like an obvious principle that every organization should follow. You don’t want an employee confused by multiple directions from multiple supervisors. You also don’t want an employee playing one supervisor off against another. When elected officials become inappropriately involved in personnel matters, this basic principle is violated, and the result is chaos.

If you allow yourself to become embroiled in a personnel matter involving a subordinate employee, the employee may then feel that the word of his or her supervisor can be disregarded. You may have forever undermined that supervisor’s authority, or allowed the subordinate to do so. Likewise, if you were involved in lobbying for the hiring of a favorite applicant (even if it was for good reasons), that person may always feel that you, not his or her supervisor, are the go-to person on personnel issues.

Similar principles apply with respect to your governing body’s oversight of its manager/administrator and other direct reports. Elected officials should recognize the council/board is not a group of seven or other multiple number of bosses, but one boss. Therefore, members of the body should commit themselves to speaking with one voice to their direct reports and to exercising their oversight role—e.g. performance reviews, goal setting, etc.—as a group. Even when there are differences of opinion as to how to address an issue with the manager/administrator, the body should arrive at its position. If the governing body does not work to speak with one voice to its direct reports, it’s undermining its credibility as a board and its ability to gain accountability at the highest levels in the organization.

This is not to suggest that a militaristic chain of command is required in every workplace. In fact, flexibility in reporting relationships is desirable in some situations. For instance, you wouldn’t want to lock your employee into reporting a harassment claim only to an immediate supervisor, if the immediate supervisor is the one alleged to be engaging in the harassment. But you can maintain the needed flexibility without collapsing into the chaos that your inappropriate involvement in personnel matters will beget.

Conclusion

There's certainly a place for elected official-level decision-making in personnel matters, but those decisions should be reserved for the high-level issues that involve the entire organization. Examples of such high-level issues could include establishing overall policies for the entity; selection, evaluation, and discipline for the council/board's few "direct reports"; salary and benefits plan for the workforce; and overall goals and priorities for departments. But when these issues begin devolving into the details of hiring, training, evaluating, supervising, managing, or disciplining particular employees below the level of your direct reports, it's time to delegate them to your manager/administrator.

Footnote:

1. The award was later reduced to \$1,500,000 but affirmed by the 10th Circuit Court of Appeals. *Hardeman v. City of Albuquerque*, 377 F.3d 1106 (10th Cir. 2004).



CHAPTER 9

SOCIAL MEDIA USE BY ELECTED OFFICIALS

By: Tami A. Tanoue, CIRSA Executive Director &
Sam Light, CIRSA General Counsel

Social media engagement has become a regular part of life. Daily, we check our emails and texts, and then probably go on to check our favorite social media sites, such as Facebook, Instagram, Twitter, and others. Local governments and their constituents are also mutually interested in connecting via social media, whether to conveniently transact business or provide timely information about everything from street closures to street festivals. So it's no wonder that elected officials, too, have integrated social media into their public lives. But if you're an elected official, you should know that, because of the powers and responsibilities conferred on you by virtue of your position, your social media use has some legal dimensions that may not apply to the rest of us. This chapter explores a few of them.

Open Meetings Law

While Chapter 5 outlines the basics of the Colorado open meetings law (COML), it's worth examining more specifically how its requirements can extend to your social media use. Consider this scenario: You have a Facebook page for yourself under the category of "Politician." You post information about city happenings and resources, and welcome others to post there as well. One day, you post on a controversial topic that the council will be tackling at its next meeting, and two of your fellow councilmembers get wind. All three of you go back and forth posting about your respective views and how you intend to vote on the topic.

Is this a "meeting" within the meaning of the open meetings law? Well, it seems at least arguable that it is! Remember, a "meeting" under the law includes a gathering convened electronically to discuss public business. When there are three or more members of the local public body (or a quorum, whichever is less) participating in such a gathering, that can trigger the notice and "open to the public" requirements of the law. If triggered in this type of social media discussion, how do you comply with the 24-hour "timely" posting requirement in the COML when you're posting on Facebook? How do you meet the "open to the public" requirement? These are questions for which there are not clear answers, but you see the point...discussions of public business by the requisite number of governing

body members can certainly take place in an electronic forum, and then these questions (and others) may come into play.

Constitutional Concerns

A scenario: You post about the upcoming agenda item on your Facebook page featured in the previous scenario. For some reason, the discussion on the post starts to go completely sideways, with lots of negative comments, including some hateful attacks from the citizen you defeated in the last election, and some uncalled-for memes and photos. You decide the hateful attacks aren't helpful to the discussion—keep it positive, people!—and so you “block” your prior campaign rival from posting and you start deleting some of the particularly disagreeable comments. A few days later you ultimately decide that the better part of valor is to just delete the whole darn post.

Did your act of “blocking” your rival raise free speech concerns? It may well have! Remember, the constitution provides strong protections for free speech and generally prohibits the government from censoring speech that occurs within those venues established for the open exchange of ideas on matters of public concern. These principles have raised the question of whether a public official's Facebook page or Twitter account is a public forum such that commenters cannot be blocked, or their comments removed, based on their content.

While the law in this area is still developing, a few courts have concluded that if a public official has a social media page or feed that essentially “walks and talks” like a governmental forum, then the medium is a public forum subject to the principles regulating free speech. So, for example, where an elected official designates the page as their official page as a member of an elected body, uses the page to communicate with constituents as an elected official about government events, and invites followers to use that page for discussion of any topics relating to the government, the official cannot block persons who post critical content. The takeaway? A social media site can be a great way to communicate with constituents but if that's how you use your accounts, don't block people from posting.

Also in the above scenario, if you've decided to delete the whole darn post: Are the post, and the comments, considered “public records” within the meaning of the Colorado Open Records Act (CORA)? Again, it seems at least arguable that they are! The term “public records” is defined to include “the correspondence of elected officials,” subject to certain exceptions. And public records are open for public inspection and copying. Your municipality has most likely adopted a records retention and destruction schedule that governs how long various documents, including electronic documents, must be maintained prior to destruction.

So, could someone request a copy of a post that was on your Facebook page under CORA? What if you deleted the post? Is there a record retention schedule that applied? Was that schedule violated when you deleted the post? More of those infernal questions for which there isn't a clear answer...but you see the point! If there's a chance that the posts are subject to CORA, then it might be smart to tolerate the replies you get on your post. Alternatively, make sure you have some reasonable and defensible posting rules in place so that everyone knows up front your expectations for your page.

Quasi-Judicial Rules of Engagement

A further word of caution on social media concerns your duties as a decision-maker in quasi-judicial matters. Consider this scenario: A site-specific land use application is scheduled to be considered by the planning commission on an upcoming agenda, with the commission's recommendation to be referred to the council for final action at a later date. You consider the proposed use to be an extremely controversial one. But you're worried that it's a bit "under the radar," what with summer vacations, holidays, and all. Of course, proper notice has been given by the planning department, but you're still concerned that the proposal may get a favorable recommendation from the commission without any citizen testimony. You decide to post this on your Facebook page: "Citizens, please read this IMPORTANT NOTICE! You need to know that the planning commission is going to be considering a proposal for _____ at its upcoming meeting on _____ at 7:00 p.m. As a councilmember, I am taking no position on the proposal at this time. But if you care about our community's future, then you will want to attend this very important hearing before the planning commission."

See any problems here? You've certainly stated that you're "taking no position" at this time, right? But it may appear to others, particularly the applicant, that you are opposed to the proposal and are trying to "gin up" opposition to it! Is that congruent with the "neutral decision-maker" role that you will need to take on once this quasi-judicial proposal goes up to the council? Could the applicant take the position that it looks like you made up your mind, without evidence, long before the council hearing, and therefore, you should be recused from participation?

"But, but, all I'm doing is making sure the public knows about this proposal," you protest. Well, do you do that with EVERY proposal that comes before the planning commission, or did you just happen to pick out this one for the Facebook spotlight? The essence of procedural "due process" rights that attach to a quasi-judicial matter is notice and a fair hearing before neutral, impartial decision-makers. With a post like this you can see how, even if your intentions may have been honorable, doubts can be cast on your impartiality and neutrality. Those doubts increase if your involvement goes beyond this scenario—say, for example, that you are also posting or responding to comments about the merits of the application.

When it comes to social media buzz around quasi-judicial matters, remember that due process requires you to be impartial and base your decision upon evidence presented at your public hearing. Remember also that defensible quasi-judicial decisions are about good process. As part of that process you will ultimately hear the case and have the power to make the decision—at the time that it's ripe for your body's decision! Avoid the temptation to leap into the social media fray, as that will protect your ability to serve as a quasi-judge, and protect your governing body's decision.

Some Suggestions

Social media use by elected officials implicates new and evolving legal issues, and this chapter only touches upon a few of them. The uncertainty is real! But you can avoid uncertainty and stay on solid ground if you follow these suggestions:

- Consider whether you really need to be on social media in your elected official capacity. If only 23 people “like” your page, it may not be worth the hassle. And keep in mind that only a fraction of those 23 people may even be seeing your posts.
- If you feel that the use of social media is a net plus and/or a service to your constituents, be extremely careful about what is posted! Stay away from discussions of items that will be or could be on your governing body’s agenda. There’s a time and place for discussion of those items, and it’s most likely not social media. Stick to public service announcements, photos and posts about things you did (“It was great to meet so many of you when I volunteered at City Cleanup Day last week”), upcoming events like “Town Halls,” re-posts of City newsletters, links to articles that tout your great city, and the like. If you’re careful about what you post, you’re not going to have to confront the uncertainties of COML, CORA, and other laws. If you stick with helpful but non-controversial posts, then there won’t be much of a need to delete posts.
- Be particularly careful to stay away from commenting on a pending quasi-judicial matter. This is where the stakes are highest! In a worst case scenario, an imprudent post could require your recusal from participating in the matter on the basis that you’ve revealed your non-neutrality, buttress someone’s constitutional claim, serve as a basis to attack the body’s decision, or all of the above.
- Check to make sure you created your page under the right category. “Politician” is more accurate than “Governmental Organization.” And don’t use the official city/town logo, to avoid any implication that yours is an “official” city/town page.

CHAPTER 10APPOINTMENT AND REMOVAL OF OFFICIALS
IN STATUTORY TOWNS

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Introduction

Colorado law grants elected officials in statutory towns the power to appoint and remove certain municipal officials, including members of the governing body and officers such as the clerk or treasurer. If you're an elected official in a statutory town, it's important for you to have a working understanding of the rules and potential pitfalls in this area. An improper appointment or removal can not only result in disputes or claims, but also create uncertainty within the organization and a cloud over the governing body. This chapter provides information on appointment and removal of officials in statutory towns, including the filling of vacancies and guidance regarding best practices. In general, statutory cities operate under different statutes, and home rule municipalities operate under charter provisions that are likely different than the statutory requirements outlined in this chapter, and so neither are addressed here.¹

Filling Vacancies on the Town Board

A vacancy on the town board can occur under a variety of circumstances, including: resignation; inability to fulfill the duties of office; failure or refusal to take the oath of office; failure to meet residency requirements (including moving out of the ward or municipality); removal from office; a seat left unfilled after an election, or an official passing away during the term of office. Once a vacancy arises, the town board is faced with several considerations.

- **Sixty-day time frame.** First, state law provides that a vacancy on the town board may be filled either by appointment or by election. However, this option only lasts for 60 days. If the town board does not fill the vacancy by appointment or order an election within 60 days, then the board is required to order an election to fill the vacancy.
- **Resolution declaring vacancy.** The board should consider adopting a resolution that declares the vacancy, sets forth the vacancy effective date, and states whether the board chooses to fill the vacancy by appointment or by election. While such a resolution is not required for a statutory town, the board should consider this

approach, as passing a resolution declaring a vacancy provides a written record of when the statutory 60-day clock begins and makes known the intent of the town board regarding its choice on how to fill the position.

- **Special considerations for vacancy in mayor’s office.** Generally, a vacancy in the office of mayor is filled in the same manner as vacancies of other members of the town board. However, if the town board will appoint someone, it may wish to consider qualifications or circumstances unique to the position, including the mayor’s voting rights and role as presiding officer.

Term of Office for an Appointee Filling a Vacancy

The term of office of a vacated seat filled by appointment or election only runs until the next regular election. This is true even if the original term would not be expiring at such election. There is no authority in state law for a statutory town to extend the term of office of an appointee filling a vacancy. If terms of office are four years, this rule can sometimes create confusion at the next regular election, where some seats are up for a full four-year term while another seat is on the ballot solely for purpose of electing a person to fill a vacant seat for the remainder of the term. Proper parlance can reduce the confusion—candidates running for that vacant seat aren’t running for an office having a new two- or four-year term but for a shortened, two-year term to fill the vacancy.

Qualifications of an Appointee Filling a Vacancy

Colorado statutes do not separately mandate qualifications for an appointee who is to serve in the event of a vacancy. However, the Colorado Constitution and related statutes require that persons holding any elective office shall be qualified. To be qualified, an appointee must be: at least 18 years old as of the date of the election [or appointment]; a U.S. citizen; a resident of Colorado for at least 22 days prior to the election [or appointment]; a resident of the municipality (and ward, if applicable) for at least 12 consecutive months prior to the date of the election [or appointment]; not serving a sentence in any public prison; and registered to vote.

An appointment is void if the person appointed is not qualified. Therefore, it is important to ensure that a person appointed to fill a vacancy in an elective office has the qualifications set forth in state law, as summarized above.

Although state law does not dictate the process for selecting a qualified person to fill a vacancy, governing bodies should be mindful that appointments to elective positions, to some extent, remove the people’s opportunity to choose their own representative. Therefore, it is prudent to implement a formal process with sufficient advertisement of the vacancy to provide transparency and ample opportunity for participation. Other considerations and pitfalls to avoid include:

- Making an appointment that benefits or appears to benefit any member of the governing body personally (see chapter 6);
- Appointing someone who will create turmoil or dysfunction within the governing body or other areas of municipal government (see chapters 1 - 3); or

- Failing to provide the appointee with proper training once appointed. Like any other person serving in an elective position, an appointee should receive proper training.

Appointment of Officers in Statutory Towns

State law requires the town board appoint or provide for the election of certain officers, including a clerk, treasurer and town attorney. The applicable statute, C.R.S. Section 31-4-304, states in pertinent part:

The board of trustees shall appoint a clerk, treasurer, and town attorney, or shall provide by ordinance for the election of such officers, and may appoint such other officers, including a town administrator, as it deems necessary for the good government of the corporation.... **[N]o appointment of any officer shall continue beyond thirty days after compliance with section 31-4-401 by the members of the succeeding board of trustees.**

In some cases, the town board fails to act within 30 days to appoint or re-appoint officers of the town. Further, in many cases, these positions are staffed with municipal employees, which can lead to uncertainty in employment when the town board fails to re-appoint an employee to one of these appointed positions. These and other circumstances raise the question: What is the impact of not making appointments within the 30-day period after the new board members are seated? In short, if the 30-day period set forth in this section passes, the term of the officer expires.

However, it is important to note that the expiration of the term does not necessarily or automatically oust the individual holding the office from that position and create a vacancy. Rather, absent provisions to the contrary in state law or local ordinance, the public interest requires that public offices should be filled at all times without interruption. The Colorado Constitution adheres to this principle, stating in Article XII, Section 1 that “[e]very person holding any civil office under the state or any municipality therein, shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified....”

Therefore, an individual holding an appointive office in a statutory town remains in that position after his or her term has expired (i.e. holds over) until a successor properly appointed by the town board takes office. Moreover, if the incumbent is an employee, he or she would remain in their appointive position and on the town’s payroll as a holdover.

To avoid confusion and conflict regarding holdovers, when the term of an appointive office expires, the town board should timely act to either re-appoint the incumbent or appoint a new person to the office. The board should also seek advice of legal counsel before deciding to not re-appoint an incumbent appointive officer who is also an employee of the town.

Removal from Office in Statutory Towns

The following identifies some of the key requirements pertaining to the removal of an elected official in a statutory town pursuant to a proceeding under C.R.S. Section 31-4-307. Many of these requirements are not present in the statute itself; rather, they are found in some old judicial decisions concerning the statute. Removal of an elected official by

the governing body essentially overrides the will of the people who elected the official. For this reason, it is critical that any removal proceedings take place in accordance with the guidance provided by these decisions. The advice of counsel is also critical given the potential for missteps.

While these decisions are more than a century old, they came into play more recently in the recommendation of a United States Magistrate Judge in a case involving a CIRSA member municipality.² While the Magistrate Judge's recommendation is unpublished and does not serve as precedent, it was cited with approval by the Colorado Supreme Court.³ Thus, the Magistrate Judge's recommendation highlights the importance of these older decisions and may offer some good guidance to a statutory town contemplating a removal proceeding.

Given this recent resurrection of old case law, the way in which a town may have applied Section 31-4-307 in past proceedings may not serve as a sound guide to the conduct of such proceedings today. Thus, past practice should not be used as a basis to avoid compliance with the following requirements gleaned from the old but resurrected case law:

- **The basis for removal (unless the elected official has moved out of town) must be “misconduct or malfeasance in office,” as those terms are used in Article XIII, Section 3 of the Colorado Constitution.** These constitutional provisions contemplate official misconduct of such a magnitude that it affects the performance of the officer's duties, and offenses against the town “of a character directly affecting its rights and interests.”⁴ Political or personal disagreements, or a stalemate resulting from failure to obtain a requisite number of votes on matters coming before the town board, may not be sufficient grounds to effect a removal.
- **The removal proceeding is quasi-judicial in nature, subject to the safeguards commonly found in judicial proceedings.** This means:
 - There must be a charge or charges against the official sought to be removed. The charges must be specific and stated with substantial certainty.⁵ Vague or general charges likely will not meet this requirement.
 - There must be a hearing in support of the charges, and an opportunity to make a defense.⁶ The charges must in the first instance be proven by testimony and evidence, with the opportunity given to the officer sought to be removed to rebut such testimony and evidence, and offer his or her own.
 - The hearing must be held under the same limitations, precautions, and sanctions as in other judicial proceedings.⁷

A basic requirement of judicial proceedings is that decision-makers must be neutral and impartial. This is why in most judicial proceedings, investigative, prosecutorial, and adjudicatory functions are separated. However, in removal proceedings, the adjudicatory body (the town board) may also have carried out an investigative function by establishing the charges that are the basis for the proceeding. Involvement in presenting

testimony and evidence would further diminish the separation of these functions, and the lack of separation may compromise the appearance or reality of a neutral and impartial decision-maker.

These requirements highlight one of the most difficult procedural aspects of a removal proceeding: who will present the evidence and testimony? The town board serves as the decision-maker. It would likely be problematic, from a fairness standpoint, if the decision-makers also served as witnesses. One option to address this issue is use of a hearing officer whose decision is made subject to final review and action by the town board. Another option is to limit involvement in non-adjudicatory functions to one (or at most two) members of the governing body who understand their need to then recuse themselves from the board's decision-making.

- **The decision will be subject to judicial review.**⁸ This means that under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, a transcript of the proceedings as well as the evidentiary record, will be produced to the district court for review. The standard of review will be whether the governing body's decision was "arbitrary or capricious." Constitutional due process violations may be raised, and considerations of bias may be raised to set aside a decision as well.

Other questions and issues to consider in holding the proposed removal hearing include:

- Have provisions been made for the issuance of subpoenas to compel the attendance of witnesses, the administration of oaths, the right of discovery, and the cross-examination of witnesses?
- Are rules of procedure in place, has a standard of proof been established, and will rules of evidence be followed?
- Does the officer sought to be removed have the right to be represented by counsel? Is the governing body working with the advice of counsel?
- Have adequate time and opportunity been given to the officer sought to be removed to prepare his or her case in answer to the charges? Have provisions been made for the granting of reasonable continuances?
- Has some means of recording the hearing been arranged, preferably by a stenographer who can prepare a verbatim transcript?
- Who will prepare written findings of facts, conclusions of law, and a final decision and order?

Conclusion

A town board's powers of appointment are effective tools. They can be used to timely fill a board vacancy and appoint key staff who will help drive the town's vision and success. But, if not handled appropriately, appointments can become the source of intractable disputes and potential liability. Thus, board members should work together to understand their options, duties and obligations when it comes to making appointments, and make wise use of their appointment powers.

Likewise, a town board's power of removal is undoubtedly an important one; but, an imprudent or improper removal proceeding can be the source of significant liability. As noted, recently resurrected case law suggests the bar for exercising the removal power is high, for situations where serious misconduct or malfeasance in office can be proven. Further, the removal power should be exercised only with the procedural safeguards summarized above in place, and only with the assistance of legal counsel. Otherwise, the governing body may be taking on an unacceptable risk of liability.

Footnotes:

1. Officials in statutory cities and home rule municipalities should obtain from their counsel and staff information on the appointment and removal requirements specific to their organization.
2. *Russell v. Buena Vista*, 2011 WL 288453 (D. Colo. 2011).
3. *Churchill v. University of Colorado*, 2012 WL 3900750 (Colo. 2012).
4. *Board of Trustees v. People ex rel. Keith*, 59 P. 72, 74 (Colo.App. 1899).
5. *Board of Alderman v. Darrow*, 22 P. 784, 787 (Colo. 1889).
6. *Darrow*, 22 P. at 787.
7. *Keith*, 59 P. at 75.
8. *Id.*

TOWN CODE OF ETHICS

CHAPTER 16

TOWN CODE OF ETHICS

SECTION:

- 1-16-1: Citation**
- 1-16-2: Declaration of policy**
- 1-16-3: Finding of local concern**
- 1-16-4: Finding concerning article xxix of the Colorado constitution; Statutory gift reporting form**
- 1-16-5: Authority**
- 1-16-6: Effect of common law**
- 1-16-7: Definitions**
- 1-16-8: Conflict of interest - Town officer**
- 1-16-9: Prohibited conduct - Town officers and employees**
- 1-16-10: Exemptions - Town officers and employees**
- 1-16-11: Restrictions on appearance before town bodies; Exceptions**
- 1-16-12: Restrictions after leaving town employment or office**
- 1-16-13: Prohibited conduct - Temporary boards**
- 1-16-14: Prohibited conduct - Town contractors**
- 1-16-15: Town contracts**
- 1-16-16: Enforcement**
- 1-16-17: Penalties and remedies**
- 1-16-18: Authority of town attorney to issue opinions**
- 1-16-19: Distribution of code of ethics**

1-16-1: CITATION:

This chapter is to be known and may be cited as the 2014 Town of Breckenridge Code of Ethics.
(Ord. 24, Series 2014)

1-16-2: DECLARATION OF POLICY:

A. The proper operation of democratic government requires that public officers and employees be independent, impartial, and responsible to the people; that government decisions and policy be made within the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

B. The purpose of this chapter is to establish minimum ethical standards of conduct for the members of the town council, the members of all town boards and commissions, the members of all temporary boards, all town employees, and all town contractors. (Ord. 24, Series 2014)

1-16-3: FINDING OF LOCAL CONCERN:

The town council finds and determines that the subject of ethical municipal government is a matter of local concern upon which home rule municipalities in Colorado are fully empowered to legislate and to supersede conflicting state statutes. Accordingly, this chapter supersedes all conflicting state statutes, including, but not limited to: a) article [18](#) of title [24](#), Colorado Revised Statutes; b) section [24-6-203](#), Colorado Revised Statutes; and c) section [31-4-404](#), Colorado Revised Statutes. (Ord. 24, Series 2014)

1-16-4: FINDING CONCERNING ARTICLE XXIX OF THE COLORADO CONSTITUTION; STATUTORY GIFT REPORTING FORM:

A. The town council finds, determines, and declares that this chapter addresses the matters covered by article [XXIX](#) of the Colorado constitution. Therefore, the provisions of article XXIX are inapplicable to the town, the town council, all town boards and commissions, all temporary boards, all town employees, and all town contractors. As such, the independent ethics commission created by section 5 of article XXIX has no jurisdiction over any member of the town council, any member of a town board or commission, any member of a temporary board, any town employee, or any town contractor.

B. Notwithstanding the inapplicability of article [XXIX](#) of the Colorado constitution and section [24-6-203](#), Colorado Revised Statutes, members of the town council shall file the periodic reports required by section [24-6-203\(2\)](#), Colorado Revised Statutes. (Ord. 24, Series 2014)

1-16-5: AUTHORITY:

The town council finds, determines, and declares that it has the power to adopt this chapter pursuant to the authority granted to home rule municipalities by article [XX](#) of the Colorado constitution, and the powers contained in the Breckenridge town charter. (Ord. 24, Series 2014)

1-16-6: EFFECT OF COMMON LAW:

This chapter supersedes and overrides the common law as to the subject matter of this chapter. (Ord. 24, Series 2014)

1-16-7: DEFINITIONS:

A. As used in this chapter, unless the context otherwise requires:

BUSINESS: Any corporation, limited liability company or entity, limited or general partnership, sole proprietorship, trust or foundation, or other organization operated for the purpose of attempting to make a profit. The term "business" includes any activity conducted primarily for the purpose of making a profit, including, but not limited to, any activity that substantially advances a person's private monetary interest or position.

CONFIDENTIAL INFORMATION: All information, whether transmitted orally or in writing, that is of such a nature that it is not, at that time, a matter of public record or public knowledge.

EMPLOYEE (OR TOWN EMPLOYEE): Any person in an employer-employee relationship with the town. The term "town employee" includes, but is not limited to, the town manager, town attorney, municipal judge, and associate municipal judge(s), but does not include a town officer, a member of a temporary board, or a town contractor.

FINANCIAL INTEREST: An interest held by an individual or by the individual's spouse or dependent children which is: an ownership interest in a business; a creditor interest in a business; an employment relationship or a prospective employment relationship for which negotiations have begun; an ownership interest in real or personal property; a loan or any other debtor interest; a directorship or officership in a business; a close and continuing business relationship involving regular purchase or sale of goods, services or property not generally available to the public.

IMMEDIATE FAMILY: A town officer's or a town employee's spouse, domestic partner, or dependent child under the age of eighteen (18) years.

OFFICIAL ACT (OR OFFICIAL ACTION): Any vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

PERSONAL INTEREST: A close blood, family or marital relationship, or any other close personal relationship which imparts the appearance, to a reasonable person, of undue partiality or undue influence.

TEMPORARY BOARD: Any temporary (nonpermanent) board, commission, or advisory board created by the town council.

TOWN BOARD OR COMMISSION: The town's planning commission, open space advisory commission, and the liquor and marijuana licensing authority.

TOWN CONTRACTOR: An independent contractor as defined by state law who is under contract to perform work for the town, or a person or business that has submitted a bid to do work for the town as an independent contractor, which bid is still pending.

TOWN OFFICER: A member of the town council or the member of any town board or commission.

B. Terms not defined in this chapter or this code are to be given their common meaning. (Ord. 24, Series 2014; amd. Ord. 4, Series 2017; Ord. 23, Series 2022)

1-16-8: CONFLICT OF INTEREST - TOWN OFFICER:

A. A town officer shall not vote on any question or participate in the discussion by the body of which the town officer is a member with respect to any question as to which the member has a substantial personal or financial interest as determined by majority of the body.

B. For the purpose of this section, and section [5.7](#) of the Breckenridge town charter, a town officer has a "substantial personal or financial interest" with respect to a particular question if a majority of the body determines that the body's final decision on the question would have a:

1. Reasonably foreseeable;
2. Material; and
3. Beneficial financial effect,

distinguishable from its effect on the public generally, on:

1. The town officer, or his or her immediate family;
2. Any business in which the town officer, or a member of his or her immediate family, has an investment or owns a ten percent (10%) or greater interest;
3. Any real property in which the town officer, or a member of his or her immediate family, has an interest;
4. Any source of income of the town officer, or a member of his or her immediate family; or
5. Any business of which the town officer, or a member of his or her immediate family, is a director, officer, partner, trustee, employee, independent contractor, or holds any position of management.

C. A town officer does not have a conflict of interest with respect to any matter determined by the body to involve the common public interest. For members of the town council, examples include the adoption of the town's budget, adoption of general land use regulations, the formation of a special or local improvement district within which the town officer owns real property, the imposition of taxes, the authorization of bonds, and similar actions.

D. A town officer who may have a conflict of interest on a particular matter shall disclose the potential conflict of interest to the body before it begins its consideration of the matter. Any other member of the body who believes a town officer may have a conflict of interest may bring the issue to the attention of the body before it begins its consideration of the matter.

E. A town officer who may have a conflict of interest on a particular matter is entitled to be heard by the body on the issue before the body determines whether a conflict of interest exists; however, the town officer may not vote with respect to the question of whether he or she has a conflict of interest.

F. The body's determination of whether a conflict of interest exists is final and conclusive for all purposes, but the affected town officer may request the body to reconsider its determination for the purpose of presenting additional relevant facts. Whether to reconsider its determination lies in the sound discretion of the body.

G. If a town officer is determined to have a conflict of interest on a particular matter:

1. The town officer may not attempt to influence other members of the body in connection with the matter;
2. Except as provided in subsection [H](#) of this section, the town officer may not vote upon the matter; and
3. The town officer shall leave the council chambers during the body's discussion and action on the matter, and may return only when the body has taken up the next agenda item.

H. Notwithstanding subsection [G2](#) of this section, a town officer may vote upon a matter as to which he or she has a conflict of interest if:

1. His or her participation is necessary to obtain a quorum or to otherwise enable the body to act; and
2. Not later than seventy two (72) hours before voting the town officer gives written notice to both the Colorado secretary of state and the body. The notice shall clearly state the nature of his or her conflict of interest.

Exception: This subsection H shall not be applied to permit a town council member to vote to approve a contract in which he or she has a personal interest. (Ord. 24, Series 2014)

1-16-9: PROHIBITED CONDUCT - TOWN OFFICERS AND EMPLOYEES:

A. A town officer or town employee shall not:

1. Disclose or use confidential information acquired in the course of the officer's or employee's duties in order to further substantially his or her personal monetary interests.
2. Disclose any confidential information acquired in the course of the officer's or employee's duties to any person under circumstances where the officer or employee knows, or reasonably should know, that the person to whom the confidential information is disclosed will use the confidential information for a private business purpose.
3. Solicit or accept a present or future gift, favor, loan, service, or thing of value from a person under circumstances that would lead a reasonably prudent person to believe that the gift, favor, loan, service, or thing of value was made or given primarily for the purpose of influencing or attempting to influence the officer or employee in connection with an official act, or as a reward for official action he or she has previously taken.
4. Perform an official act directly and substantially affecting to its economic benefit any business when the officer or employee, or a member of the officer's or employee's immediate family: a) is an employee of the business; b) owns a ten percent (10%) or greater interest in the business; or c) is a director, officer, partner, trustee, or holds any management position in the business.
5. Affirmatively act to obtain employment for a member of his or her immediate family, a gift of substantial value, or an economic benefit tantamount to a gift of substantial value, from a person whom the officer or employee is in a position to reward with official action, or has rewarded with official action in the past.

B. A town officer shall not make or accept an ex parte communication or contact concerning a quasi-judicial matter pending before the town body of which he or she is a member without making the contents of the communication or contact a part of the record of the public hearing. This section does not apply to a legislative or administrative matter.

C. A town employee shall not:

1. Engage in a substantial financial transaction for the employee's private business purposes with a person whom the employee inspects or supervises in the course of his or her employment with the town.
2. Perform an official act that directly and substantially affects to its economic detriment a business in which the employee, or a member of the officer's or employee's immediate family: a) is an employee of a competing business, b) owns a ten percent (10%) or greater ownership interest in a competing business; or c) is a director, officer, partner, trustee, or holds any management position in a competing business.
3. Acquire or hold an interest in any business that the employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the town department over which he or she has substantive authority. (Ord. 24, Series 2014)

1-16-10: EXEMPTIONS - TOWN OFFICERS AND EMPLOYEES:

- A. Section [1-16-9](#) of this chapter does not prohibit a town officer or town employee from:
1. Accepting or receiving a benefit as an indirect consequence of the performance of an official act.
 2. Taking official action when the town officer or employee is similarly situated with other town residents, or generally acting when the matter involves the common public interest.
 3. Accepting gifts or loans that are:
 - a. An occasional nonpecuniary gift, insignificant in value;
 - b. A gift publicly presented to all members of the body of which a town officer is a member;
 - c. A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;
 - d. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which the officer or

employee is scheduled to participate as a speaker or other contributor in his or her official capacity if the paying or reimbursing party has no current or anticipated business with the town. Any honorarium or other monetary compensation received by the officer or employee in connection with the convention or meeting shall be turned over to the town;

e. Reimbursement for or acceptance of an opportunity to participate in a social function or meeting that is not extraordinary when viewed in light of the position held by the officer or employee;

f. Items of perishable or nonpermanent value, including, but not limited to, meals and tickets to sporting, recreational, educational, or cultural events, unless prohibited by the body of which the town official is a member, or by an employee's departmental rules;

g. Payment for speeches, debates, or other public events, reported as honorariums to the town manager; or

h. A loan at a rate of interest that is not substantially lower than the commercial rate then currently prevalent for similar loans within the town.

4. Receiving compensation for his or her services to the town as may be fixed by ordinance, pay plan, budget, or other similar official town action.

5. Personally contracting with a town contractor for the performance of work so long as the contract will not interfere with or delay the contractor's performance of any contract with the town, and the contractor is paid by the officer or employee at substantially the generally prevailing market rate for the services within the town. Before entering into the contract the officer or employee shall notify the town manager in writing.

B. Section [1-16-9](#) of this chapter does not prohibit a town council member from accepting a campaign contribution reported as required by law, or any gift reported as required by subsection [1-16-4B](#) of this chapter. (Ord. 24, Series 2014)

**1-16-11: RESTRICTIONS ON APPEARANCE BEFORE TOWN BODIES;
EXCEPTIONS:**

A. Except as authorized by subsection [B](#) of this section, a town officer shall not appear as an applicant, witness, or party in interest with respect to any matter that comes before the town body of which he or she is a member, nor shall a town officer appear before or address the body of which he or she is a member in his or her capacity as a citizen.

B. Nothing in subsection [A](#) of this section prohibits a town officer from appearing before the town council or the planning commission in connection with a planning or development matter pertaining to the town officer's primary residence; provided that a town council member appearing before the town council pursuant to this section, or a planning commission member appearing before the planning commission, pursuant to this section, shall be deemed to have a conflict of interest with respect to such matter.

C. If a town employee has a financial interest in an application that comes before the town council or any town board or commission, he or she shall not be involved in the town staff processing, analyzing, reporting, or presenting the application.

D. Except as provided in subsection [C](#) of this section, nothing in this chapter prohibits a town employee from:

1. Appearing before the town council, any town board or commission, any temporary board, or the municipal court in the course of the performance of the employee's duties for the town; or
2. Appearing with respect to any matter of public concern before the town council, planning commission, a town board or commission, or any temporary board in his or her capacity as a citizen.

E. A town officer or town employee shall not appear before the town council, planning commission, a town board or commission, or a temporary board, as counsel, consultant, representative, or agent for any person or business. (Ord. 24, Series 2014)

1-16-12: RESTRICTIONS AFTER LEAVING TOWN EMPLOYMENT OR OFFICE:

A. For a period of one year after leaving town employment no former town employee may personally represent a person before the town council, any town board or commission, any temporary board, or any town department, with respect to any matter that the former employee worked on while employed by the town.

B. No former member of the town council may be appointed to serve on any town board or commission for a period of one year after leaving office. (Ord. 24, Series 2014)

1-16-13: PROHIBITED CONDUCT - TEMPORARY BOARDS:

A member of a temporary board shall not perform an official act that would have a direct economic benefit on a business in which he or she has a financial interest. Except as provided in this section, the provisions of this chapter do not apply to the members of any temporary board. (Ord. 24, Series 2014)

1-16-14: PROHIBITED CONDUCT - TOWN CONTRACTORS:

A. A town contractor may not offer or give to a town officer or a town employee a present or future gift, favor, loan, service, or thing of value under circumstances that would lead a reasonably prudent person to believe that the gift, favor, loan, service, or thing of value was offered or given primarily for the purpose of influencing or attempting to influence the member or employee in connection with an official act, or as a reward for official action the member or employee has previously taken.

B. Nothing in this chapter prevents a town contractor who provides instructional services to customers at a town recreational facility from accepting tips or gratuities for services provided by the contractor if the acceptance of tips or gratuities is authorized by the town contractor's contract, or by the town manager. (Ord. 24, Series 2014)

1-16-15: TOWN CONTRACTS:

A. Except as provided in subsection [C](#) of this section, a town officer or employee shall not hold a substantial financial interest in any business or enterprise which is a party to a contract made by such town official or employee in his or her official capacity, or by any governing body of which he or she is a member or he or she serves, when such official or employee exercises any substantial discretionary authority in connection with such contract.

B. Every contract made in violation of this section is voidable at the request of any party to the contract, except the town officer or employee interested in such contract.

C. *Exceptions:* Subsection [A](#) of this section does not apply to:

1. Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;
2. Merchandise sold to the highest bidder at public auction;
3. Investments or deposits in financial institutions that are in the business of loaning or receiving monies;
4. A contract between the town and a town officer or employee if, because of geographic restrictions, the town could not otherwise reasonably afford itself of the subject of contract. It is presumed that the town could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the town is greater than ten percent (10%) of a contract with a town officer or town employee, or if the contract is for services that will be performed within a limited time period and no other contractor can provide those services within that time period;
5. A contract awarded pursuant to a lottery, or other method when the person to whom the contract is awarded is selected by chance;
6. A contract obligating the town to pay five thousand dollars (\$5,000.00) or less; or
7. A development agreement entered into pursuant to title [9](#), chapter [9](#) of this Code.

D. For a contract entered into pursuant to subsections [C\(1\)](#) through [C\(7\)](#) of this section, before the town enters into a contract with a member of the town council the town council member must disclose a personal interest in the proposed contract, and either:

1. The town council itself (and not the town manager or other town employee) approves the contract at a public meeting; or
 2. The town manager approves the contract; provided, that prior to approving the contract the town manager must notify the town council of the proposed contract and explain how the proposed contract satisfies the requirements of subsections [C\(1\)](#) through [C\(7\)](#) of this section.
- E. Any town officer or employee with a financial interest in a business entity involved in any transaction or contract with the town shall disclose such an interest and shall abstain from voting and/or officially acting thereon. In addition, such official or employee shall not personally attempt to influence other town officials or employees on the matter.
- F. The prohibition on contracts with the town under subsection [A](#) of this section does not apply to contracts governing employment terms, conditions, compensation, and benefits, including benefits available as part of duly administered workforce housing programs or contracts to lease or acquire real property from the town for employee housing as defined in section [9-1-5](#) of this Code and/or as authorized under title [9](#), chapter [16](#) of this Code, Workforce Housing. (Ord. 24, Series 2014; amd. Ord. 35, Series 2020; Ord. 23, Series 2022)

1-16-16: ENFORCEMENT:

- A. The town manager has the responsibility for the enforcement of this chapter as to all town employees, other than those town employees appointed or hired by the town council. The town manager may investigate any complaint, and direct the filing of appropriate legal action against any person as to whom he or she has enforcement authority if the town manager believes such action is appropriate. The town manager may exempt from the provisions of this chapter the conduct of any person as to whom he or she has enforcement authority upon the finding that the enforcement of this chapter with respect to the employee's conduct would not be in the public interest.
- B. The town council has the responsibility for the enforcement of this chapter as to all other persons who are subject to the provisions of this chapter. The town council may investigate any complaint, and direct the filing of appropriate legal action against any person as to whom it has enforcement authority if the town council believes such action is appropriate. The town council

may exempt from the provisions of this chapter the conduct of any person as to whom it has enforcement authority upon the finding that the enforcement of this chapter with respect to such person's conduct would not be in the public interest.

C. The town manager or town council, as the case may be, may direct the town attorney to investigate or prosecute any apparent violation of this chapter, or the town manager or town council may employ or appoint any qualified attorney to investigate or prosecute any violation of this chapter.

D. Any person who believes that a violation of this chapter has occurred may file a complaint with the town manager or town council, as the case may be, which complaint shall be promptly investigated and such action taken thereon as the town manager or town council determines to be appropriate. (Ord. 24, Series 2014)

1-16-17: PENALTIES AND REMEDIES:

A. It is unlawful and a misdemeanor offense for any person to knowingly violate any provision of this chapter. "Knowingly" has the meaning provided in section [6-3-5](#) of this code.

B. Any person convicted of violating any provision of this chapter shall be punished as provided in chapter [4](#) of this title. Additionally, upon conviction such person is liable to the town for such damages as may have been suffered or incurred as a result of the violation, together with any costs (including, but not limited to, attorney fees and expert witness fees) incurred by the town in the investigation and prosecution of the violation. (Ord. 24, Series 2014)

1-16-18: AUTHORITY OF TOWN ATTORNEY TO ISSUE OPINIONS:

A. Notwithstanding anything contained in this chapter to the contrary, no person who is subject to the provisions of this chapter may be convicted of violating this chapter if, prior to engaging in the conduct that would otherwise have resulted in a violation of this chapter, such person obtains a written opinion from the town attorney that the particular conduct in question would not violate this chapter, and such person acts in accordance with the opinion of the town attorney.

B. The town attorney shall promptly render an opinion as to legality of proposed conduct or action under this chapter upon request.

C. The town attorney has no authority to finally determine whether a conflict of interest exists with respect to any town officer. Such determination may only be made by the town body of which the officer is a member. (Ord. 24, Series 2014)

1-16-19: DISTRIBUTION OF CODE OF ETHICS:

A. Within thirty (30) days after the effective date hereof, the town clerk shall notify the following persons of the adoption of this chapter and provide such persons with a link to this chapter on the town's website:

1. Each current member of the town council;
2. Each current member of all town boards and commissions;
3. Each current member of any temporary board; and
4. All current town employees.

B. Within thirty (30) days after they assume office the town clerk shall provide the following persons with a link to this chapter on the town's website:

1. Each new member of the town council;
2. Each new member of all town boards and commissions; and
3. Each new member of any temporary board.

C. Within thirty (30) days after their appointment or hiring the town clerk shall provide each newly hired town employee with a link to this chapter on the town's website.

D. Not later than the date a contractor commences work for the town, the town clerk shall provide the town contractor with a link to this chapter on the town's website. (Ord. 24, Series 2014)

The Breckenridge Town Code is current through Ord. 39, Series 2023, passed November 28, 2023.

Disclaimer: The town clerk's office has the official version of the Breckenridge Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

[Town Website: www.townofbreckenridge.com](http://www.townofbreckenridge.com)

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OPEN MEETINGS AND EXECUTIVE SESSIONS





CHAPTER 5

OPEN MEETINGS AND EXECUTIVE SESSIONS

By: Tami A. Tanoue, CIRSA Executive Director &
Sam Light, CIRSA General Counsel

At CIRSA, we've seen a steady stream of claims against our members for alleged violations of the open meetings law in the conduct of meetings and executive sessions. These types of claims are usually excluded from most commercial insurance coverages. However, CIRSA provides some defense cost coverage for claims alleging executive session violations by governing bodies. In this chapter, we'll go over the basics of the open meetings law and summarize CIRSA's coverage for allegations of open meetings violations.

The Open Meetings Law

Under the Colorado open meetings law, C.R.S. Section 24-6-401 *et seq.* (COML), it is “the policy of this state that *the formation of public policy* is public business and may not be conducted in secret.” Note this statement's focus on the formation of public policy. Thus, the law intends openness in the policymaking process, and councils and boards are well-served by honoring not only the letter of the COML but the spirit of this purpose statement.

The core requirement of this law is that all meetings of a local public body (a term which includes the governing body and other formally constituted bodies of a public entity), at which public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times. “Full and timely notice” must be given of all meetings. The COML deems this requirement to have been met if notice of the meeting is posted at least 24 hours prior to the holding of the meeting; however, your charter or local ordinances may require posting further in advance. The notice shall include specific agenda information where possible. No action taken at a meeting is valid unless it meets the requirements of the open meetings law. A “meeting” under the open meetings law includes “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.”

There are a few exceptions to this core requirement of public openness, and a properly convened executive session may be held to discuss matters that fall into those exceptions.

Some of the more commonly arising subjects that are proper matters for an executive session include:

- The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest;
- Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions;
- Certain personnel matters; and
- Determining positions on matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators.

The open meetings law should be reviewed in its entirety for all of the applicable legal requirements, and legal advice should be obtained on its meaning. Home rule municipalities may have their own meeting and executive session procedures established pursuant to their home rule powers; this discussion is not intended to cover the variances in local practice in home rule municipalities.

The “courts of record” of the state have jurisdiction to issue injunctions to enforce the purposes of the open meetings law. Any citizen of the state may apply for such an injunction. The open meetings law states that, in any case in which the court finds a violation of the law, the court shall award the citizen prevailing in such action his or her costs and reasonable attorney fees. In addition, a citizen may apply to the court for access to the record of an executive session; if the court determines, after listening to the record, that the local public body engaged in substantial discussion of any matters that were not proper subjects for an executive session, or took formal action while in executive session, then the record may be made accessible to the public.

Executive Session Coverage Through CIRSA

Defense costs coverage for executive session claims is provided to CIRSA property/casualty members by way of an amendment to the “non-monetary damages, fines or penalties” exclusion in the public officials liability section of the coverage document. This coverage is subject to the following terms:

- It applies only to reasonable attorney’s fees and reasonable and necessary costs included in the defense of an action brought solely under C.R.S. Section 24-6-402(9) of the open meetings law.
- It applies only to such an action brought against the member’s governing body; subordinate boards and commissions holding executive sessions do not have this coverage.
- It does not apply to any plaintiff’s attorney fees or costs that are assessed against the member as a result of losing such an action. Such fees and costs must be borne by the member.
- There is a sublimit for this coverage that is shared with certain other non-monetary defense coverages. The sublimit is \$10,000 any one action, subject to a \$30,000 annual aggregate per member. The member deductible does not apply to this coverage.

- Submitting an executive session claim to CIRSA is optional with the member; the member may choose to defend such a claim itself. If a member wants to avail itself of this coverage, the claim must be submitted to CIRSA, for handling by CIRSA-assigned defense counsel, at the time of commencement of the action.

A Few Suggestions

The risks of open meetings violations can be greatly reduced by favoring transparency and using caution in cases of uncertainty. After all, the courts interpret the rules and will resolve doubts in favor of openness. Toward that end, elected and appointed officials should be cognizant of when their discussions will trigger open meetings requirements, so that violations can be avoided. To avoid claims of improper notice, a full meeting agenda should be timely posted, and the body and staff alike should avoid adding substantive items to the agenda at the meeting (as claims and distrust can result from such surprises).

Of course, claims of executive session violations could be avoided entirely by never having an executive session! However, this may be an unrealistic goal because, as discussed above, there is a legitimate need for confidentiality in some matters. But consider the following:

- Hold executive sessions to the absolute minimum necessary to protect legitimately confidential matters.
- Confirm with your city or town attorney that the proposed subject of the executive session is authorized under the law. The statutory bases for having an executive session are specific and narrowly construed, and bodies should resist efforts to pound a square peg in a round hole in searching for authority where it does not exist.
- Utilize an executive session “script” to help guide you in the proper procedures for convening an executive session. CIRSA members may obtain a CIRSA sample by contacting saml@cirsa.org.
- When participating in an executive session, be vigilant of yourself and others to make sure that the discussion doesn’t stray from the specific subject that was announced in the motion to go into executive session. Participants in the executive session must commit to “stay on topic” and not stray from the specific subject.
- Make sure you keep an electronic record of each executive session as required by the open meetings law. The only exception to the recording rule is an executive session for an attorney-client conference; these sessions should not be recorded.
- Stay out of the loop on personnel matters when feasible. One of the more common reasons for holding an executive session is the discussion of a personnel matter. However, if the employee who is the subject of the executive session so demands, the discussion must be done in public. Moreover, personnel matters that are not personal to a particular employee are not proper subjects for an executive session (unless some other lawful basis for holding an executive session applies). These and other complexities of the “personnel matters” basis for holding an executive session can be avoided if your personnel policies have been set up in a manner that delegates most personnel matters to your staff.

- If you have to take one of your own governing body members to the “woodshed,” don’t do it in an executive session. Some years ago, the “personnel matters” basis for holding an executive session was amended to state that executive sessions are not permitted for discussions concerning any member of the local public body or appointment of a person to fill a vacancy on the local public body. Thus, the idea that the governing body can convene in executive session to discuss one of its own members as a governing body “personnel matter,” is no longer viable.
- If the confidentiality of a matter is such that it warrants an executive session, then be sure to honor that confidentiality once the executive session is over, until and unless public discussion of the matter becomes legally permissible. Don’t act outside the scope of your legal authority as an individual member of the governing body to waive confidentiality on your own. If the executive session concerns negotiations or other matters where some information will be shared with third parties in follow up to the session, ask “Who are our spokespersons?” and “What information will we share at this time?” and honor the answers arrived at in the session.

Conclusion

Open meetings missteps are hard to overcome in terms of maintaining your constituents’ trust in you. Further, each and every executive session your entity holds exacts a price in terms of expectations of open government and, if done improperly, can subject your entity to claims. By complying with the strict requirements of the open meetings law, keeping executive sessions to the minimum necessary, and observing all of the formalities for holding meetings and executive sessions, you can keep that price low and public confidence high.

OPEN RECORDS AND SPECIAL ISSUES WITH EMAIL



CIRSA Training: Email Suggestions for Elected & Appointed Officials

By Sam Light, CIRSA General Counsel

The use of email by elected or appointed officials to discuss public business raises issues under both the Colorado Open Meetings Law (“OML”), C.R.S. § 24-6-401 et seq., and the Colorado Open Records Law (“CORA”), C.R.S. § 24-72-201 et seq. The OML recognizes that discussions by email can trigger notice and openness requirements. Specifically, the OML provides that any meeting of a quorum, or three or more members of a local public body (whichever is less), at which public business is discussed or at which formal action may occur must be open to the public. Also, the meeting must be preceded by proper notice if a quorum will be present, or any action will be taken. A meeting can include a discussion that occurs by phone or email.

Additionally, CORA recognizes that public records can include emails of elected and appointed officials where the communications involve City/Town business or public funds and are made, maintained or kept by the City/Town as part of its operations. Under CORA, emails may be public records even if they do not trigger open meetings rules. Based on these rules, the following are suggested email “dos and don’ts:”

Email – Okay to Do

- Have a one-on-one discussion with another council/board member.
- Respond to constituent emails consistent with “role discipline.”
- Correspond directly with City/Town staff.
- Email other council/board members concerning scheduling and availability, or posing a question for later discussion, or sharing “FYI” only information. But, such communications must not morph into a discussion of the merits or substance of any public business.
- Copy other council/board members on an email, subject to the same limitation.
- Do use your City/Town-assigned email address and device, if applicable.

Email – Don’ts

- Do not use email (or similar technology) to discuss the merits or substance of any matter of public business among a quorum or more than two members (whichever is less), whether simultaneous and/or serial or not.
- Do not use email as a substitute for open public meeting discourse.
- Do not use email as a substitute for taking any official action.
- Do not “reply to all” on emails sent to more than two council/board members, excepting only emails that clearly have no policy purpose (e.g., “FYI” emails).
- Do not send messages that discuss both personal matter and public business.
- Most importantly, do not use email to discuss pending quasi-judicial matters.



QUASI-JUDICIAL HEARINGS



CIRSA Handout - Basics of Quasi-Judicial Decision-Making CML Annual Conference June 2022

What does it mean to be acting in a quasi-judicial capacity?

- Acting like a judge
- Deciding the rights, duties or obligations of a specific person or entity
- Making a decision based on facts developed at a hearing
- Applying existing standards or criteria to the facts

Are we always in a quasi-judicial capacity?

- No, some actions are legislative, and others are administrative
- *Legislative* actions are more general and permanent, typically involve policy-making, usually don't relate to a single person or entity, and affect their rights only in the abstract
- *Administrative* actions carry out existing policies and purposes, are generally temporary in operation or effect, and typically don't involve the need for notice or a hearing

So, what are some examples?

<u>Think:</u> <u>Quasi-Judicial</u>	<u>Legislative</u>	<u>Administrative</u>
<i>Judge</i>	<i>Legislator</i>	<i>Executive</i>
Zoning/rezoning	Health/safety ordinance	Buying equipment
Development application	Master plan approval	Appointing boards
Subdivision request	Adoption of tax	Acting on contracts
Liquor licensing	Annexation	Operating policies
Variance request	Vacating a road	License agreements
Conditional or special review use	Amending development regulations	Determining benefits

Why are there special constraints on how we handle quasi-judicial matters?

- Because the due process clause and other laws require we ensure *fundamental fairness in the decision-making process*, which mandates the applicant and other interested parties have notice and a meaningful opportunity to be heard before a neutral and impartial decisionmaker
- Failure to adhere to these principles can increase the risk of personal liability and the risk that your decision will be overturned

So, what should I do/not do in relation to quasi-judicial matters?

- DO stick to your criteria – use the criteria list from your staff report or another summary if needed
- DO avoid ex parte (outside the hearing) contacts; that is, do not discuss quasi-judicial matters outside of the noticed hearing
- DO disclose unavoidable ex parte contacts
- DO avoid inappropriate confrontations or inquisitions
- DO take time (and ink) to decide – use a resolution and, particularly for complex or contentious cases, consider making a tentative decision and directing staff to prepare a draft resolution or order with conclusions of law and factual findings, for further consideration at your next meeting
- DO ask for staff advice on how the criteria operate
- DON'T make your decision based on irrelevant criteria
- DON'T become a witness in a proceeding where you are the “quasi-judge”
- DON'T participate if you weren't there for the whole hearing (or at least listened to the tape of any portion you missed)
- DON'T participate if you have a conflict of interest...and know that even an appearance of impropriety can be as damaging as an actual conflict
- DON'T sign any "pro" or "con" petitions
- DON'T make up your mind before the hearing (bias)
- DON'T ignore the record; if all the evidence points to yes. . .

Another way to look at quasi-judicial decision making is to remember that you are acting like a judge, and ask yourself:

- Would a judge seek out citizens and invite or ask them to come and testify as witnesses in a case pending before the judge?
- Would a judge allow himself/herself to be “lobbied” on a pending matter at home or at the local supermarket?
- Would a judge compromise the appearance (and possibly reality) of fairness by singling out one side or another to be overly friendly with?
- Would a judge decide a matter in which the judge had a financial interest, or on which the judge's mind was already made up?
- Would a judge make a public statement that could come back to haunt him/her later on in terms of displaying a possible bias?

****This handout is for general reference only and not legal advice. Specific legal and other questions should be referred to the entity's own legal counsel and staff as appropriate.***

CALL-UP PROCEDURES

ORDINANCE NO. 31

Series 2021

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," AND CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE SUBDIVISION STANDARDS," CONCERNING CALL UP HEARINGS

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

Section 1. Section 9-1-18-1E6 is amended to read as follows:

6. Notice And Council Call Up: The Director shall notify the Council of all Planning Commission decisions on Class A applications at the Council's next regular meeting after the decision. At that meeting, the Council may, by an affirmative vote of the members present call up any decision of the Planning Commission for their own review. The Town Council's call up hearing shall be held in accordance with Section 9-1-18-5A of this Chapter. In lieu of calling up a Planning Commission decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission, or add any condition of approval. All Planning Commission decisions on Class A applications shall stand as presented unless called up or modified by the Town Council.

Section 2. Section 9-1-18-2(E)(6) is amended to read as follows:

6. Notice And Council Call Up: The Director shall notify the Council of all Planning Commission decisions on Class A applications at the Council's next regular meeting after the decision. At that meeting, the Council may, by an affirmative vote of the members present call up any decision of the Planning Commission for their own review. The Town Council's call up hearing shall be held in accordance with Section 9-1-18-5A of this Chapter. In lieu of calling up a Planning Commission decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission, or add any condition of approval. All Planning Commission decisions on Class B applications shall stand as presented unless called up or modified by the Town Council.

Section 3. Section 9-1-18-3C3 of the Breckenridge Town Code is amended to read as follows:

3. The Director shall forward his or her decision to the Planning Commission at its next regularly scheduled meeting. At that meeting the Planning Commission may, by an affirmative vote of the members present, call up any decision of the Director for its own review. If called up, the Planning Commission's call up hearing shall be held in compliance with Section 9-1-18-5B of this Chapter. In lieu of calling up a Director's decision, the Planning Commission may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Director or add any condition of approval.

Section 4. Section 9-1-18-3C4 of the Breckenridge Town Code is amended to read as follows:

4. The Director shall then forward the decision to the Town Council at its next regularly scheduled meeting following the decision having been presented to the Planning Commission if the Director's decision was not called up by the Planning Commission, or the Planning Commission's decision on the application if the Director's decision was called up, whichever is applicable. At that meeting, the Town Council may, by an affirmative vote of the members present, call up any decision for its own review. The Town Council's call up hearing shall be held in accordance with Section 9-1-18-5A of this Chapter. In lieu of calling up the Director's decision or the Planning Commission's decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission or add any condition of approval. If the decision forwarded to the Town Council is not called up or modified, it shall stand as presented.

Section 5. Section 9-1-18-5 of the Breckenridge Town Code is amended to read as follows:

9-1-18-5: CALL UP PROCESS:

A. Town Council Call Up:

1. A call up may be requested by the applicant, a member of the public, the Director, or a member of the Town Council.
2. If the Town Council calls up a final Planning Commission decision on a Class A, Class B, or a Class C development permit application the procedure for the Town Council's call up hearing shall be as follows.
3. The Town Council shall fix a date and time for a call up hearing on a Class A or B development permit application which date shall not be later than one hundred twenty (120) days from the date of the call up unless the applicant consents to a later hearing date. Notice of the Town Council's call up hearing on a Class A or Class B development permit application shall be given in the same manner as for a final hearing on the same class of development permit application held before the Planning Commission.
4. The Town Council shall fix a date and time for a call up hearing on a Class C development permit application which date shall not be later than forty five (45) days from the date of the call up unless the applicant consents to a later hearing date. The call up hearing shall be listed on the Town Council's agenda at the meeting at which the hearing will be held. Written notice of the time and place of a call up hearing on a Class C development permit application shall be mailed by the Director to the applicant by regular mail, postage prepaid, not less than seven (7) days before the date the hearing is to be held. No further notice is required to be given of a call up hearing on a Class C development permit application.
5. The scheduled date of a Town Council call up hearing may be continued for good cause as described in this subsection:
 - (a) For purposes of this section, "good cause" may include, but is not limited to: (i) the unavailability of the applicant, the applicant's attorney, the applicant's architect, or other key person necessary to the proper presentation of the applicant's application before the Town Council; (ii) a showing that more time is necessary to obtain relevant information or analysis related to the applicant's application; or (iii) a showing that more time is legitimately necessary to allow adequate preparation for the hearing. "Good cause" normally shall not include the failure of an attorney or a party to prepare for the hearing.
 - (b) A motion for a continuance by an applicant must be timely made.
 - (c) Before a call up hearing is convened the Mayor or the Director may continue a call up hearing. Once a hearing is convened, only the Town Council may continue a call up hearing.
 - (d) The Director shall notify the applicant if a continuance of the call up hearing is granted outside of a meeting of the Town Council.
6. All Town Council call up hearings shall be conducted as de novo public hearings.
7. At a call up hearing the applicant may appear with or without counsel. If the applicant retains counsel, it shall be at the applicant's cost.
8. At a call up hearing the applicant shall have the right to present such evidence as may be relevant, and to cross examine all witnesses.
9. The strict rules of evidence shall not apply to a call up hearing.
10. The burden of proof in a call up hearing shall be on the applicant.

11. An audiotaped record of the call up hearing shall be made. The Town shall retain the original audiotape for not less than one year. A copy of an audiotaped record of a call up hearing shall be made available by the Town to the applicant upon written request and payment of a fee determined by the Town Clerk to be sufficient to reimburse the Town for the cost of providing such copy. The Town shall not be obligated to provide a transcript of a call up hearing unless required by law, and any party desiring such transcript shall obtain and pay the cost thereof. A court reporter may be employed by any party, at the expense of such party, to prepare a verbatim written record of the call up hearing.
 12. The Department of Community Development is not a party to a call up hearing. Therefore, it is not a violation of the rule against ex parte contacts for the applicant or any member of the Town Council to talk to a member of the Department of Community Development concerning the application prior to a call up hearing.
 13. In its decision on a development permit application that has been called up the Town Council shall have the right to approve the application with or without conditions, or deny it because it does not comply with the requirements of this Chapter.
 14. The Town Council shall have thirty (30) days from the date of the call up hearing to make a final decision on a Class C development permit application, and sixty (60) days from the date of the call up hearing to make a final decision on Class A or Class B development permit application.
 15. It is not a ground for disqualification that a Town Council member read or reviewed the minutes of the Planning Commission with respect to the application that is the subject of the call up hearing unless the applicant can prove by a preponderance of the evidence that such member cannot fairly hear and decide the application.
 16. The Town Attorney shall not be involved in the presentation of any evidence at the call up hearing and shall remain available to advise the Town Council with respect to all matters pertaining to the call up hearing.
 17. The Town Council's final decision on an application that has been called up shall be in writing, and the time for an appeal of the Town Council's decision shall not begin to run until the Town Council has issued its written decision on the matter.
 18. The record of a call up hearing held before the Town Council shall consist of: (i) the relevant pages concerning the application from the Town Council's agenda packet for the meeting at which the call up hearing was held; (ii) all documents admitted into evidence by the Town Council; (iii) all documents offered into evidence at the hearing, but not admitted, if any; (iv) copies of the applicable provisions of the Development Code, and other applicable Town ordinances; (v) a transcript of the public hearing; and (vi) such other documents as may properly be included in the record.
 19. The Town Council's decision on a development permit application that has been called up shall be the final decision of the Town on such matter, and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision shall be a waiver of the applicant's right to contest the denial or conditional approval of the application.
 20. The procedures described in this Section 9-1-18-5A shall control over the hearing procedures set forth in Chapter 19 of Title 1 of this Code.
- B. Planning Commission Call Up: If a decision made by the Director on a Class C development permit application is called up by the Planning Commission, the Commission shall then act on the application as follows:
1. Hearing, Notice And Decision: If the applicant is present and ready to proceed the Planning Commission may conduct the call up hearing at the same meeting at which the application was called up. If the applicant is not present or is not

ready to proceed at the meeting at which the application was called up the Planning Commission shall fix a date and time for the call up hearing which date shall not be later than forty five (45) days from the date of the call up unless the applicant consents to a later hearing date. If the call up hearing is to be held at any meeting other than the meeting at which the application was called up, written notice of the time and place of the call up hearing shall be mailed by the Director to the applicant by regular mail, postage prepaid, not less than seven (7) days before the date the hearing is to be held. Additionally, the call up hearing shall be listed on the Planning Commission's agenda for such meeting. Otherwise, no notice of the call up hearing is required.

2. At the call up hearing the Planning Commission shall approve the application with or without conditions, or deny it because it does not comply with the requirements of this Chapter.
3. The scheduled date of a Planning Commission call up hearing may be continued for good cause as described in this subsection:
 - (a) For purposes of this section, "good cause" may include, but is not limited to:
 - (i) the unavailability of the applicant, the applicant's attorney, the applicant's architect, or other key person necessary to the proper presentation of the applicant's application before the Planning Commission; (ii) a showing that more time is necessary to obtain relevant information or analysis related to the applicant's application; or (iii) a showing that more time is legitimately necessary to allow adequate preparation for the hearing. "Good cause" normally shall not include the failure of an attorney or a party to prepare for the hearing.
 - (b) A motion for a continuance by an applicant must be timely made.
 - (c) Before a call up hearing is convened the Chair of the Planning Commission or the Director may continue a call up hearing. Once a hearing is convened, only the Planning Commission may continue a call up hearing.
 - (d) The Director shall notify the applicant if a continuance of the call up hearing is granted outside of a meeting of the Planning Commission.
4. Except as otherwise provided in this Section 9-1-18-5B, a call up hearing by the Planning Commission shall be conducted in accordance with the requirements of this Chapter and the normal rules and procedures of the Planning Commission.
5. All Planning Commission call up hearings shall be conducted as de novo public hearings.
6. At a call up hearing the applicant may appear with or without counsel. If the applicant retains counsel, it shall be at the applicant's cost.
7. At a call up hearing the applicant shall have the right to present such evidence as may be relevant, and to cross examine all witnesses.
8. The strict rules of evidence shall not apply to a call up hearing.
9. The burden of proof in a call up hearing shall be on the applicant.
10. An audiotaped record of the call up hearing shall be made. The Town shall retain the original audiotape for not less than one year. A copy of an audiotaped record of a call up hearing shall be made available by the Town to the applicant upon written request and payment of a fee determined by the Town Clerk to be sufficient to reimburse the Town for the cost of providing such copy. The Town shall not be obligated to provide a transcript of a call up hearing unless required by law, and any party desiring such transcript shall obtain and pay the cost thereof. A court reporter may be employed by any party, at the expense of such party, to prepare a verbatim written record of the call up hearing.

11. The Department of Community Development is not a party to a call up hearing. Therefore, it is not a violation of the rule against ex parte contacts for the applicant or any member of the Planning Commission to talk to a member of the Department of Community Development concerning the application prior to a call up hearing.
12. The Town Attorney shall not be involved in the presentation of any evidence at the call up hearing and shall remain available to advise the Planning Commission with respect to all matters pertaining to the call up hearing.
13. The record of a call up hearing held before the Planning Commission shall consist of: (i) the relevant pages concerning the application from the Planning Commission's agenda packet for the meeting at which the call up hearing was held; (ii) all documents admitted into evidence by the Planning Commission; (iii) all documents offered into evidence at the hearing, but not admitted, if any; (iv) copies of the applicable provisions of the Development Code, and other applicable Town ordinances; (v) a transcript of the public hearing; and (vi) such other documents as may properly be included in the record.
14. The Planning Commission's decision on an application that has been called up may itself be called up by the Town Council in the manner provided in this Chapter.
15. The procedures described in this Section 9-1-18-5B shall control over the hearing procedures set forth in Chapter 19 of Title 1 of this Code.

Section 6. Section 9-2-3-1D3f of the Breckenridge Town Code is amended to read as follows:

f. Notice And Council Call Up: The Director shall notify the Council of all Planning Commission decisions on Class A subdivision applications at the Council's next regular meeting after the decision. At that meeting, the Council may, by an affirmative vote of a majority of the members present, call up any decision of the Planning Commission for their own review under authority granted in section 9-2-3-4 of this Chapter. The Town Council's call up hearing shall be held in accordance with Section 9-2-3-4 of this Chapter. In lieu of calling up a Planning Commission decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission or add any condition of approval. All Planning Commission decisions on Class A subdivision applications shall stand as made unless called up or modified by the Town Council.

Section 7. Section 9-2-3-2D3f of the Breckenridge Town Code is amended to read as follows:

f. Notice And Council Call Up: The Director shall notify the Council of all Planning Commission decisions on Class B subdivision applications at the Council's next regular meeting after the decision. At that meeting, the Council may, by an affirmative vote of a majority of the members present, call up any decision of the Planning Commission for their own review under authority granted in section 9-2-3-4 of this Chapter. The Town Council's call up hearing shall be held in accordance with Section 9-2-3-4 of this Chapter. In lieu of calling up a Planning Commission decision, the Council may, with the consent of the applicant, modify or eliminate any condition of approval imposed on the application by the Planning Commission or add any condition of approval. All Planning Commission decisions on Class B subdivision applications shall stand as made unless called up or modified by the Town Council.

Section 8. Section 9-2-3-4 of the Breckenridge Town Code is amended to read as follows:

9-2-3-4: CALL UP PROCESS:

- A. Town Council Call Up: If the Town Council calls up a Planning Commission decision on a Class A or Class B subdivision permit application, the procedure for the Town Council's call up hearing shall be as follows:

1. A call up may be requested by the applicant, a member of the public, the Director, or a member of the Town Council.
2. The Town Council shall fix a date and time for a call up hearing on a Class A or B subdivision permit application which date shall not be later than one hundred twenty (120) days from the date of the call up unless the applicant consents to a later hearing date.. Notice of the Town Council's call up hearing on a Class A or Class B subdivision permit application shall be given in the same manner as for a final hearing on the same class of subdivision permit application held before the Planning Commission.
3. The scheduled date of a Town Council call up hearing may be continued for good cause as described in this subsection:
 - (a) For purposes of this section, "good cause" may include, but is not limited to: (a) the unavailability of the applicant, the applicant's attorney, the applicant's architect, or other key person necessary to the proper presentation of the applicant's application before the Town Council; (b) a showing that more time is necessary to obtain relevant information or analysis related to the applicant's application; or (c) a showing that more time is legitimately necessary to allow adequate preparation for the hearing. "Good cause" normally shall not include the failure of an attorney or a party to prepare for the hearing.
 - (b) A motion for a continuance by an applicant must be timely made.
 - (c) Before a call up hearing is convened the Mayor or the Director may continue a call up hearing. Once a hearing is convened, only the Town Council may continue a hearing.
 - (d) The Director shall notify the applicant if a continuance of the call up hearing granted outside of a meeting of the Town Council.
4. All Town Council call up hearings shall be conducted as de novo public hearings.
5. At a call up hearing the applicant may appear with or without counsel. If the applicant retains counsel, it shall be at the applicant's cost.
6. At a call up hearing the applicant shall have the right to present such evidence as may be relevant, and to cross examine all witnesses.
7. The strict rules of evidence shall not apply to a call up hearing.
8. The burden of proof in a call up hearing on a subdivision permit application shall be on the applicant.
9. An audiotaped record of the call up hearing shall be made. The Town shall retain the original audiotape for not less than one year. A copy of an audiotaped record of a call up hearing shall be made available by the Town to the applicant upon written request and payment of a fee determined by the Town Clerk to be sufficient to reimburse the Town for the cost of providing such copy. The Town shall not be obligated to provide a transcript of a call up hearing unless required by law, and any party desiring such transcript shall obtain and pay the cost thereof. A court reporter may be employed by any party, at the expense of such party, to prepare a verbatim written record of the call up hearing.
10. The Department of Community Development is not a party to a call up hearing. Therefore, it is not a violation of the rule against ex parte contacts for the applicant or any member of the Town Council to talk to a member of the Department of Community Development prior to a call up hearing.
11. In its decision on a subdivision application that has been called up the Town Council shall have the right to approve the application with or without conditions, or deny it because it does not comply with the requirements of this Chapter.

12. The Town Council shall have sixty (60) days from the date of the call up hearing to make a final decision on Class A or Class B subdivision permit application.
13. It is not a ground for disqualification that a Town Council member read or reviewed the minutes of the Planning Commission with respect to the application that is the subject of the call up hearing unless the applicant can prove by a preponderance of the evidence that such member cannot fairly hear and decide the application.
14. The Town Attorney shall not be involved in the presentation of any evidence in at the call up hearing and shall remain available to advise the Town Council with respect to all matters pertaining to the call up hearing.
15. The Town Council's final decision on an application that has been called up shall be in writing, and time for an appeal of the Town Council's decision shall not begin to run until the Town Council has issued its written decision on the matter.
16. The record of a call up hearing held before the Town Council shall consist of: (i) the relevant pages concerning the application from the Town Council's agenda packet for the meeting at which the call up hearing was held; (ii) all documents admitted into evidence by the Council; (iii) all documents offered into evidence at the hearing, but not admitted, if any; (iv) copies of the applicable provisions of the Development Code, and other applicable Town ordinances; (v) a transcript of the public hearing; and (vi) such other documents as may properly be included in the record.
17. The Town Council's decision on an application that has been called up shall be the final decision of the Town on such matter, and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision shall be a waiver of the applicant's right to contest the denial or conditional approval of the application.
18. The procedures described in this Section 9-2-3-4 shall control over the hearing procedures set forth in Chapter 19 of Title 1 of this Code.

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

Section 10. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 11. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers contained in the Breckenridge Town Charter.

Section 12. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 12th day of October, 2021.

This ordinance was published in full on the Town of Breckenridge website on October 13, October 14, October 15, October 16 and October 17, 2021.

A public hearing on this ordinance was held on October 26, 2021.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 26th day of October, 2021. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

TOWN GUIDELINES GOVERNING ADVOCACY ON STATE LEGISLATION



Town Of Breckenridge Policy Pertaining to Advocacy On State and/or Federal Legislation

Policy Statement

In order to further the best interests of the community, the Town must have a coordinated and cohesive approach to working with lobbyists, legislators and government agencies at all levels of government. When Town elected/appointed officials or individual employees engage with state or federal officials, lobbyists, special interest groups or undertake advocacy activities directly and without coordination, there is a risk of inconsistent positions that will dilute the effectiveness of the Town's advocacy efforts.

Advocacy means activities and services carried out for the purpose of advancing the Town's position on proposed policies or legislation through contacts with federal or state legislative or executive branch officials, staff or agency representatives.

The final decision as to whether and how to advocate on the Town's behalf lies solely with the Town Council and its appointed Legislative Policy Review Committee, described below. This policy governs both direct contact with state and federal officials but also with engaging the services of lobbyists and advocacy firms, including consultants and contractors whose activities on behalf of the Town may overlap in these areas.

Applicability

The Town's legislative policy governs all Town officials, including elected and appointed officials, staff and boards and commissions (hereinafter "Town representatives"). The policy applies to both state and federal policies. Because state legislation and policies more frequently impact the Town, references hereinafter are to state, but are equally applicable to federal policies.

Legislative Policy Review Committee

The Legislative Policy Review Committee ("LPRC") will be comprised of a member of Town Council approved by the Mayor, the Town Attorney, and a member of the Town administration. The purpose of the LPRC is to gather input from internal and external stakeholders and make recommendations on policies in a rapidly moving environment.

The LPRC will meet each week during the Colorado General Assembly's Regular Session. The LPRC will make recommendations to Town Council as to whether there is cause to take a position on Bills and present those recommendations to Town Council at its regular business meeting. The LPRC is authorized to make decisions about positions on Bills without seeking input from Council in circumstances where a Bill is being heard between Council meetings. The LPRC will make recommendations and decisions as the case may be as to whether there should be resources and time spent on taking action on a policy or bill. Such action may include drafting position letters, adopting Council proclamations, providing hearing testimony, or making contact with state legislators, etc.

Rules Governing Advocacy

1. *Bill Proposals or Drafts Prior to Introduction:* The Town will not offer an official position on draft legislation until it is introduced. While nothing precludes providing input and thoughts on draft bills, this policy discourages the Town from offering any official position on a policy, concept or even draft legislation before it is introduced.
2. *Bill Tracking Dossier:* Once a bill is introduced and assigned a bill number, if the Bill has an operational impact on the Town, the Bill will be added to the Town's tracking sheet. In order to preserve the strength of the Town's advocacy efforts, the Town will not expend resources on Bills that do not impact the Town operationally, unless there are other circumstances warranting otherwise as determined by Town Council. By way of example, the Governor has signed into law SB23-190 which makes it a deceptive trade practice for a health care provider to advertise or perform a practice known as abortion reversal. While this is a law that Town officials support, it has no operational impact on the Town and, thus, under this policy, the Town would not advocate or take a position otherwise on this law. In the event the Town Council wants to weigh in on laws with no operational impact, the Town Council may reflect such position by proclamation or resolution.
3. *Stakeholder Input:* The Town has numerous constituents that are interested in state and federal policies both internal within the governmental organization and external groups and Town partners. By way of example:
 - *Internal stakeholders* may include Town Council, Town Administration, Town Boards and Commissions, Municipal Court, and internal Town agencies. It is common that different Town agencies will have different perspectives on the pros and cons of a proposal.
 - *Special Circumstances with Board and Commissions.* Appointed members of a Town board or commission may be asked by Council or may desire to weigh in on a particular policy for other reasons. Appointed boards may not engage in advocacy without authorization from Town Council or the LPRC. Unless a request is made by Town Council, a board or commission must contact the LPRC before adding a discussion of state policies to a public agenda. LPRC

will work with the board and Town Council to determine the appropriate next steps.

- *External stakeholders* may include special interest groups we communicate with regularly about state and federal policies and may include officials of Summit County, municipalities within Summit County, CAST, CUA, Municipal Clerk's Association, Colorado Association of Chiefs of Police, IACP, etc.

The Town may request that stakeholders fill out a position request form to better inform the Town's position. The Town shall also work with CAST on Bills that impact mountain resort towns. When receiving requests from external stakeholders, the Town will initially determine whether the Bill has an operational impact to the Town. Any feedback that Town representatives receive from internal and/or external stakeholders on state bills that have an operational impact to the Town will be forward to the Town Attorney to include in the Tracking Dossier (sample Dossier attached).

4. *Authorized Advocacy Representatives:*

The Colorado Municipal League: The Town along with 269 other cities and towns is a member of the Colorado Municipal League, a nonprofit, nonpartisan organization which provides lobbying services to us. Major policies of CML are established by the membership at the annual business meeting and by the CML Executive Board and various committees. The Town Attorney currently serves as the Town's representative on the CML policy committee and is the point of contact during the state legislative session. The Town will look first to CML for lobbying on our behalf as they will identify any bills that may undermine the Town's home rule authority or "local control." Historically, state legislators seek input from CML early and often when proposing policies that may impact local authority.

Contract Lobbyists and Use of Town Resources for Lobbying and Advocacy. The Town may contract for lobbying services as determined needed by Town Council in consultation with LPRC.

5. *Communication Loop*

Most commonly, CML will be the lead entity advocating on Bills that impact the Town. When Town Council or the LPRC determine there is a need to augment those efforts, the Town will determine the appropriate strategy. Examples of when and how this might occur are as follows:

- CML may contact the Town if there is a Bill unique to certain municipalities and request the Town assistance which can be provided in a number of forms such as:
 - Opposition Letters
 - Calls and Contacts to State Representatives and Senators
 - Staff Testimony
 - Attorney Assistance with Review, Analyzing, or Proposing Draft Bill Language.

- Town has a different position than CML. Because CML represents all municipalities in the state, it must take positions on Bills that consider a variety of local government interests from urban, rural, and mountain resort communities. There are times when CML may take a position on a Bill that is different from what the Town deems appropriate. In those circumstances, LPRC will make recommendations to Council to formulate the Town's position and strategy.
 - SB23-213 example: In the 2023 session, we saw an unprecedented attempt by the Governor and his appointees to work directly with local elected officials in lieu of working through CML. Where CML is not in a lead advocacy position, like the situation presented in 213, there will be an extraordinary demand on Town resources to engage in independent advocacy.
6. *Town Representatives Speaking in their Individual Capacities.* Nothing prohibits a Town representative from communicating with state or federal officials about policies that impact them in their personal capacity. Nevertheless, it is important to keep in mind, especially with respect to an elected official, that the lines can easily blur as to whether an individual is speaking on behalf of the Town or from their personal views. Therefore, whenever a Town representative is involved in policymaking outside the scope of their employment and in their personal capacity, it is critical to preface your position, testimony or communication by explicitly stating that you are *"representing your individual interests, not authorized to speak on behalf of the Town or Town Council, and state any official position of the Town to the extent the Town has taken an official position."*