

Posted on February 4, 2022 at: 16:27



**TOWN OF WIGGINS  
WORK SESSION AGENDA**

February 9, 2022 at 7:00 P.M.

**304 CENTRAL AVENUE  
WIGGINS, CO 80654**

**NOTE: THE PUBLIC IS HIGHLY ENCOURAGED TO ATTEND THE MEETING  
VIA ZOOM DUE TO LIMITED SEATING CAPACITY**

**GO TO FOLLOWING SITE <https://us06web.zoom.us/j/88202736268> FOR THE MEETING LINK**

**MEETING AGENDA**

<u>AGENDA TOPIC</u>	<u>ESTIMATED TIME</u>
1. Follow-up Discussion on Town of Wiggins 2022 Fee Schedule	45 minutes
2. Discussion on Election to Become a Home Rule Municipality	30 minutes
3. Discussion on Regional Opioid Council	15 minutes
4. Discussion on Roberts 81 BID Inclusion	15 minutes
5. Other Items/Updates	15 minutes
6. Future Agenda Topics	5 minutes

*The Board of Trustees may adjourn for a brief Special Meeting after the Work Session.*



## STAFF SUMMARY

### Board of Trustees Work Session February 9, 2022

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**DATE:** February 2, 2022

**AGENDA ITEM NUMBER:** 1

**TOPIC:** Discussion on the Town of Wiggins 2022 Fee Schedule

**STAFF MEMBER RESPONSIBLE:** Hope Becker, Planning and Zoning Administrator

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**BACKGROUND:**

Staff updates the Town's fee schedule periodically and presents it to the Board of Trustees. The current fee schedule was adopted by the Board of Trustees in January of 2021. The schedule of fees includes fees for general records requests, licenses, building department fees, parks and recreation fees, and some police department fees. Fees are charged to recover the governmental cost to provide services to the public. Updating the fee schedule allows the Town to fund certain services it provides to the community.

The following recommended changes were presented at the January 12, 2022 Board of Trustee Work Session for their consideration. At that work Session, the Board commented on the draft and directed staff to bring the Fee Schedule for the Board of Trustees' consideration at the January 26, 2022 meeting.

*Building Permit Fees:*

It is uncertain how the Town's current building permit fee schedule was derived. The Town's current building permit application requires homeowners and contractors to provide the valuation of their projects. In the past, Staff has determined the permit fees using a Building Permit Fee Table based off of the stated valuations in the application. Using a Building Permit Fee Table is a normal part of determining the fee valuation and is encouraged by the International Code Council (ICC). The ICC also provides Appendix L in the International Residential Code as guidance to jurisdictions for setting appropriate fees. The fee table consists of different categories with ranges of valuation costs. The first three (3) categories and the last two (2) categories of the shown in Appendix L do not exist in the Town's current fee schedule. This may be an indicator that building fees were determined and/or increased in the past without following guidance provided in Appendix L.

In addition, the ICC also provides and encourages the use of the Building Valuation Data (BVD) to calculate the project valuations by square footage, allowing for similar projects to be permitted the same. Using the ICC valuation data helps create consistency in calculating

projection valuations among contractors and builders. The valuation data rates are suggested rates from ICC and updated on their website at six-month intervals. The BVD data provides the “average” construction costs per square foot, which can be used in determining permit fees. The BVD used to calculating valuations is independent of the version of IRC adopted. This allows the communities to continuously adopt fee resolutions without having to adopt new codes. The examples below were calculated using the 2021 BVD. Staff recommends using the most current BVD as it is periodically updated by ICC to stay current with construction material costs.

So how would building permits be calculated? Staff would calculate the valuation of the project using the BVD. Then the valuation would be used to determine which category to use on the Building Permit Fee Table. For Example:

Homeowner Basement Remodel/Finish: 1800 square feet  
 BVD Table (square footage table): \$40/square foot  
 Valuation Equals: \$72,000

We then take the \$72,000 and place the project in the \$40,000 - \$100,000 category  
*(\$487 for the first \$40,000; plus \$9 for each additional \$1,000 or fraction thereof, up to and including \$100,000)*

First \$40,000 = \$487.00  
 \$9/\$1,000 After \$40,000 (Valuation from above) = 32,000/1000 = 32    \$9 \* 32= \$288.00  
 Total of permit= \$487 + \$288 = \$775.00

Below is a random example using the 2021 ICC version of the BVD.

**Single Family single story, 1800 sq foot finished - 1800 unfinished basement  
 Builder Application states valuation at \$280,000.**

**2021 Valuation**

above grade @ \$148.33 * 1800	\$266,994
unfinished basement @ 50*1800	\$90,000
total of sq ft/valuation	\$356,994
Place into 100K category \$356,994 – \$100,000= \$256,994 \$256,994/1000 = \$ 256.994 * \$9.10 = \$2,338.65 \$2,338.65 + \$1,343.75 = \$3,682.40	Total Permit \$3,682.40

**Current Valuation**

Use Bldg. Permit Fee Table \$100- \$500K category
\$309,000 – \$100,000= \$209,000 \$209,000/1000 = \$209    \$209 * \$9.10 = \$1,901.9 \$1,901.9 + \$1,343.75 = \$3,245.65

In addition, it is common practice in other municipalities to have a separate fee for plan reviews to cover the cost of staff time to review building plans for compliance with the Land Development Code (LDC) and Town Ordinances. The common fee is 65% of the building permit

cost. The fee is only added to permit cost breakdowns for those applications that include building plans. It would not be required or added to fees of permits that are considered one-stop shop permits such as fences, siding, and roof permits. This is not a set fee; ICC recommends it and has codes that reference the plan review fee. Staff also recognizes that the unless plan reviews include electrical or plumbing plan reviews; a lower plan review fee could be considered. This fee is calculated by taking the building permit fee times 65% and then adding that number as a separate line item to the building permit cost breakdown.

Basement project example from above:  $\$1,135.00 * 0.65 = 737.75$   
Plan Review Fee: \$737.75

Staff has considered that previous fee schedules may have been set such to streamline the building fee calculating process by taking an average of building permit fees including the plan review fee. Separating the building valuation and plan review fee when determining the building permit allows the Town to be transparent to builders, contractors, and community members. Even if building permit fees were lowered and plan review fees were added; the fees would remain relatively about the same as the current total for the building permit

*Water Meter Fee:*

Staff also discovered in reviewing the water and sewer tap fee ordinance that the cost of water meters was to be charged along with the tap fee. Why this decision was made or not acted on is not known. The meters cost the Town and the cost should be recovered when the water meter is purchased instead of being taken out of the capital improvement funds or the Water Enterprise Fund through the water tap acquisition. This would also be added as a separate line item on the building permit cost break down provided at time of permitting.

*Health & Safety Ordinance: Emergency Alarm Fees:*

The Health & Safety Ordinance was adopted with an emergency alarm section. Within this section, residents and businesses are required to register their emergency alarm systems and renew this information each calendar year with the police department. Staff has reevaluated this requirement, and determined that this registration is not necessary and recommend it be removed from the fee schedule. Staff will amend the Health & Safety Ordinance in the near future.

*Recreation Department Fees:*

The Recreation Department is an ever-evolving program. This department has recently discontinued the volleyball program for ages 3<sup>rd</sup> grade thru 8<sup>th</sup> grade at the request of parents who wanted to create their own program under a different umbrella. The Town recognized their desire that competing with their program would not be in the best interest of the children and chose to not compete with their program. This also allowed their program to have the participants needed to succeed. Wiggins Recreation will continue the K-2 Fall volleyball division. Wiggins Recreation also has not participated in NVAA soccer. It was a program that was initiated about 4 years ago but the program did not have interest from the community members at the time. The current fee schedule states that soccer is an NVAA program.

Wiggins Recreation is moving forward with a soccer program this spring but it will not be with NVAA. Amending these recreation fees will provide accurate fee information.

In preparation for the January 26, 2022 meeting, Staff found additional information that resulted in further amendments to the fee schedule. These amendments were recommended by the Town's Attorney due to Colorado Revised State Statute requirements and processes or services that the Town provides that have not been included in recent versions of the fee schedule.

The following additional changes were recommended to Board for the fee schedule at the January 26, 2022 Board meeting:

- Public Records Request – Town Attorney, Melinda Culley, confirmed that the Colorado State Statutes have been amended regarding Public Records Requests. The fee schedule has been amended to reflect that all Public Records Requests are now free for the first hour. Any research provided to pull information for a request after one hour will be charged \$30/hour. Charges may apply for the copies, fax, thumb drives, flash drives, etc. State statutes state that the request charge per hour can not be more than \$33.50/hour. The Town is below that threshold.
- Liquor License Fees – Town Attorney, Melinda Culley, determined that the Town was not up to date on its Liquor License Fees. The Wiggins Fee Schedule has been updated to reflect Colorado State Statute Requirements. Staff realizes that Wiggins does not have many of the establishments listed in the Liquor License fees; however, staff was advised it would be better to list all of them to anticipate the possible unknowns coming forward for license requests.
- Land Development Fees – Various land development fees were added because they are processes that the Town requires in the LDC but the fees were missing from the fee schedule.

Staff presented these changes to the Board of Trustees during January 26, 2022 Board meeting, along with the draft fee schedule presented at the January 12, 2022 Work Session. At the January 26, 2022 meeting, the Trustees had additional questions on portions of the fee schedule and tabled consideration of the fee schedule resolution to a future meeting. Staff has revised the fee schedule based on the Trustees comments and questions and is presenting the revised fee schedule to the Trustees in the February 9, 2022 Work Session.

**SUMMARY:**

Although building permits essentially secure the safety, uniformity in design, and compliance with the law of certain construction; it was found that some of Wiggins' permits may not be necessary. Additionally, the fees and permits required should only be established for the purpose of recovering Town costs.

ProCode offered additional information regarding the number of inspections required for certain projects and whether certain permits were necessary based off of building codes. In addition, Staff took another look at why building permits would and/or should be required for different projects. Altogether, Staff felt that the following recommended Fee Schedule amendments would better fit the Town's needs and satisfy the Trustees' previously stated concerns.

In addition to the previously reviewed fees, the following recommended amendments are reflected in this draft of the fee schedule:

- The previous amendments to the Health and Safety Emergency Alarm Ordinance, Parks & Recreation fees, Water Meter Fees, Plan Review Fees, Liquor License fees, Public Record Requests, and Building Permit Valuation tables have remained the same as the previous draft.
- Flat Rate Fees – Flat Rate Fees are typically considered “One Stop Shop” kind of fees. There is not a lot of documentation required to pull these permits and the number of required inspections are minimal. ProCode and Staff were able to re-evaluate the type of permits Wiggins has had on the fee schedule in the past compared to building code requirements. Staff also took another look at the LDC to determine if certain permits could be stricken from the fee schedule.
  - ✦ Hot Water Heaters deleted – it was determined that inspections, beyond what DORA would provide for plumbing inspections, would not be necessary from ProCode. Therefore, it is being suggested that the Town's website will reflect information to the community that a DORA permit and inspections would be required but a permit from the Town would not be required.
  - ✦ Carports amended / deleted – Open sided carports were listed in the Flat Rate Section of the previous draft but deleted in this draft. A permit is still required as it is still considered a structure; however, the permit will be based on the Building Valuation Table 1A with project valuation provided by the applicant.
  - ✦ Siding Permit deleted – Siding permits have been on the Wiggins Fee schedule for quite some time; however, staff was able to determine that siding permits are not listed as a requirement in the LDC. ProCode also confirmed that inspections were really not necessary for such a project.
  - ✦ Window Replacement amended / deleted – Similar to the Carport scenario, window replacements will only require permits if there is structural change. For example, if a property owner is installing a smaller window or a larger window than what previously existed then they will need to pull a permit with the Town. A “like” for “like” window replacement will not require a permit. This information will be reflected on the Town's building department website. The permit fee would be valued based off of Building Permit Fee Table 1A with the valuation provided by the applicant.
- Swimming Pool is amended – Staff has concerns regarding swimming pools and protecting the Town's water supply from potential backflow events. Although the likelihood of a backflow event occurring is slim, the Town should protect its water. Above ground swimming pools has been amended and moved to the Backflow charges

on page 3 with “Water & Sewer Fees”. However, staff is making the recommends that a permit fee would not be charged unless the staff backflow technician determines through a survey that a device would be necessary at the property location. The homeowner would need to make an appointment with the Town’s backflow technician to perform the survey. There is no fee for the survey. The fee pays for the staff technician’s time to run the test on the backflow device if one is installed. Fees also pay for the cost of testing device recalibration and technician re-certification.

In ground swimming pools WILL have to pull a building permit if the 2018 International Building Codes are adopted by the Trustees as these codes include the International Swimming Pool & Spa Code. This is due to structure stability. In ground pools have more structural construction components than the average above ground pool.

- Sprinkler System Installations is amended and moved – Similar to the Swimming Pool fee, sprinkler systems have the same backflow risks as swimming pools. Many of the new developments already have the backflow risks addressed; however, the older parts of town may not. CDPH does not currently require residential homes to get backflow devices tested each year but the Town may have homeowners install the devices for new landscaping sprinkler systems to protect the Town’s water. Again, a survey provided by the Town’s backflow technician will indicate if the property owner would need a backflow device. If one is necessary, then the permit fees would be required to cover the cost of the technician’s time to perform the test on the device.
- Landscaping/Sod Installation –The fee allows property owners to water their newly installed landscaping and/or sod outside of the Town’s water restriction schedule that is established by Ordinance 03-2015. Property owners fill out a small application, pay the \$35 fee, and are provided a permit card allowing 30 days of extra watering. This fee is also not a building permit item; therefore, staff feels that the fee would be better reflected on the “Water and Sewer Fees” page.
- Driveway Permits Remain – The LDC specifically calls out “driveways” as being required to have permits. It is staff’s theory that individuals were required to pull permits for driveways to protect property owners as some contractors would not do the compaction step of the project which can then cause the driveway to crack or crumble.

Staff worked with the Town’s Engineer to determine if the permitting and inspection process for driveways could be simplified. Hard surface projects can change the historic stormwater flows even if the site is relatively new because the stormwater is not able to saturate into the ground. It is the Town’s concern that neighboring property owners and the Town’s right-of-ways are protected from unfavorable problems due to incorrect grades.

Staff recommends that the permit application remain simple, advising the property owner or contractor of the project requirements. The Town Engineer has suggested that this is a basic project that Public Works could inspect with a before and after

inspection using a simple, inexpensive, tool that the engineers use out in the field. Public Works staff is on board to do the inspections.

- Street Cut, Access Permits, and sidewalks added: Street cuts and Access Permits were added to the Land Development Fee portion of the draft fee schedule presented in both January Meetings. However, these types of projects are more related to right-of-way projects. In the interest of protecting the Town's other right-of-way's, Staff also recommends that Right-of-Way permits are expanded to include sidewalks, curbs & gutters, chase drains, and ADA access ramps. Each application would be reviewed and approved by the Public Works Department. An example of an Access permit would be: a vacant lot on Main Street creating a drive thru lane entering or exiting off of Main Street would be required to pull a ROW permit. Creating, repairing, or demolishing any type of work in the public right-of-way would require a right-of-way permit.

**FISCAL IMPACT:** Adopting this Resolution has a positive impact to the Town's 2022 Budget. The fees charged are designed to cover the cost of providing the service.

**APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:**

Having a current fee schedule supports the Town's desire to be responsible stewards of the Town resources. Having a published current fee schedule also supports the Town's desire to remain transparent to the citizens.

**QUESTIONS/INFORMATION REQUESTED FROM THE BOARD OF TRUSTEES:**

- Does the Board of Trustees have any questions of Staff?
- Does the Board of Trustees agree with staff's recommended adjustments to the fee schedule?
- Does the Board of Trustless concur with staff's recommendation to bring this forward at the next regular meeting for adoption?



**TOWN OF WIGGINS  
RESOLUTION 03-2022**

**A RESOLUTION RATIFYING AND ADOPTING THE TOWN OF WIGGINS SERVICE  
FEES**

**WHEREAS**, the Board of Trustees for the Town of Wiggins, Colorado recognizes the need for a uniform fee schedule; and

**WHEREAS**, the Board of Trustees has determined through inspection and review that some of the fees should be increased and adjusted to support use, staff implementation, and facility maintenance. The Board of Trustees has determined them to be fair, equitable, and necessary to the operation and success of Town function.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO, THAT:**

**Section 1.** This Resolution applies only to fees included in the Fee Schedule; and voids previous occurrences, mention, or implementation specific to those by Resolution.

**Section 2.** The Town may offer a discount to local non-profit entities. Such discount requests must be approved by the Town Manager.

**Section 3.** The attached fee schedule (Exhibit A), is hereby adopted and approved in its entirety and shall be effective immediately upon approval of this Resolution. Notwithstanding the foregoing, the building permit/review/inspection fees shall not become effective until the final adoption and effectiveness of an ordinance adopting the 2018 editions of the International Building and Safety Codes. Until such time, the building permit/review/inspection fees dated November 30, 2021 shall remain in effect.

**INTRODUCED, ADOPTED AND RESOLVED THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2022.**

TOWN OF WIGGINS, COLORADO

\_\_\_\_\_  
Jeffrey Palmer, Mayor

ATTEST:

\_\_\_\_\_  
Deborah Lee, Town Clerk



## TOWN OF WIGGINS FEE SCHEDULE

### GENERAL FEES

Xerox Copies (Personal)	Per Page (B&W)	\$ .10
	Per Page (Color)	\$.25
Printing from Computer	Per Page (B&W)	\$.10
	Per Page (Color)	\$.25
Faxed Copies/Certified Copies	Per Page	\$1.00
Maps 8.5 x 11		\$10.00
Maps 11 x 17		\$13.00
Maps 18 x 24	Mileage, \$15/hr. staff time, & \$5 per print	At cost
Maps 24 x 36	Mileage, \$15/hr. staff time, & \$5 per print	At cost
Maps 36 x 58	Mileage, \$15/hr. staff time, & \$5 per print	At cost
Postage/Mailing Fees	Actual cost applicable on mail requests	
Photographs	Plus, cost of copies	\$15.00
Video Thumb Drive/USB		\$15.00
Audio Thumb Drive/USB		\$15.00-\$66.00
Laminating		\$1.00
Public Records Request	First 1 hour free then fee per hour thereafter	\$30.00
	Charges may apply for copies, drives, fax, etc.	
Return Check Fee		\$25.00

### ANIMAL LICENSE FEES

Dog/Cat/Pot Bellied Pigs	Annually	\$5.00
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### LICENSE FEES

Business License	Annually – Due every January	\$10.00
Contractor's License	Annually – Due every January	\$25.00
Mobile Food Vendor License		\$50.00
Retail Fireworks License		\$50.00

### RECREATION FEES

Adult Summer Co-Ed Softball	Per Team	\$350.00
Youth Baseball – Spring League (Farm-Minor-Major-14U)	Per Player	\$45.00 / \$65.00 / \$65.00 / \$65.00
Youth Summer Baseball (Ages 3/4, 5/6, & 7/8)	Per Player	\$35.00 / \$45.00 / \$45.00
Youth Baseball – Summer League (Age 9/10 & 11/12)	Per Player	\$85.00 / \$85.00
Youth Softball – Summer League (Ages 9/10 & 11/12)	Per Player	\$85.00 / \$85.00
Youth Fall Volleyball – Grades K-2 (Wiggins Rec)	Per Player	\$25.00
Youth Soccer – Wiggins Rec	Per Player	\$35.00

**LIQUOR LICENSE FEES**

	<b>Local Fee</b>	<b>State Fee</b>
Art	\$41.25	\$308.75
Beer & Wine	\$48.75	\$351.25
Brew Pub	\$75.00	\$750.00
Club	\$41.25	\$308.75
Distillery Pub	\$75.00	\$750.00
Hotel & Restaurant	\$75.00	\$500.00
Hotel Restaurant with one Optional Premises	\$75.00	\$600.00
Each Additional OP License	Intentionally blank	\$100.00
Resort Complex	\$75.00	\$500.00
Campus Liquor Complex	\$75.00	\$500.00
Related Facility – Resort Complex	\$15.00	\$160.00
Related Facility – Campus Liquor Complex	\$15.00	\$160.00
Liquor-Licensed Drugstore	\$22.50	\$227.50
Lodging & Entertainment	\$75.00	\$500.00
Optional Premises	\$75.00	\$500.00
Racetrack	\$75.00	\$500.00
Retail Gaming Tavern	\$75.00	\$500.00
Retail Liquor Store	\$22.50	\$227.50
Tavern	\$75.00	\$500.00
Vintner's Restaurant	\$75.00	\$750.00
Fermented Malt Beverage On Premises	\$3.75	\$96.25
Fermented Malt Beverage Off Premises	\$3.75	\$96.25
Fermented Malt Beverage On/Off Premises	\$3.75	\$96.25

**POLICE SERVICES/MUNICIPAL COURT**

VIN Verification-Residents	Must pre-pay	\$15.00
VIN Verification-Non-Residents	Must pre-pay	\$25.00
Golf Cart/ATV Permits		\$25.00
Alarm Systems - False Alarms	After 3 false alarms/ per alarm	\$50.00
Court Fees		\$65.00
Deferred Judgment		\$55.00

**NUISANCE / ABATEMENT FEES**

String Trimming	\$35.00 / hour	Clean up Debris / Material	\$30.00/hour
Walk Behind Mower	\$40.00 / hour	Dump Truck Debris Hauling	\$75.00/per load & \$35/hr./staff
Riding Mower	\$65.00 / hour	Truck Debris Hauling	\$55.00/per load and \$35/hr./staff
Tractor Mower	\$85.00 / hour	Dumpster Rental	Actual Cost & \$35/hr./staff
Front End Loader	\$115.00 / hour		

# WATER AND SEWER FEES

## UTILITY FEES

Return Check Fee		\$25.00
Late Payment Fee	Pygmt not received by end of day, 5 <sup>th</sup> of ea. month	\$25.00
Disconnect/Reconnect Fee		\$50.00
Deposit - Water		\$89.00
Deposit - Sewer		\$26.00
<b>RESIDENTIAL RATES</b>		
Water Base Rate		\$69.50
Water Plus Usage	Per 1,000 gallons	\$3.20
Sewer Base Rate		\$30.00
<b>COMMERCIAL METERED WATER</b>		
Water Base Rate		\$69.50
Water Plus Usage	Per 1,000 gallons	\$3.20
Sewer Base Rate		\$30.00
Sewer Plus Usage	Per 1,000 gallons metered water usage	\$1.70
<b>BULK WATER FEES/DEPOSITS</b>		
Bulk Water Meter Deposit	Refundable	\$500.00
Bulk Water Monthly Fee	Non-Refundable	\$89.00
Bulk Water Deposit		Equal to 1 month's usage
Bulk Water Rate	Per 1,000 gallons	\$12.00

### WATER INVESTMENT FEES (WATER TAP)

5/8"	\$ 20,000.00
3/4"	\$ 23,000.00
1"	\$ 30,440.00
1 1/2"	\$ 45,660.00
2"	\$ 76,100.00
3"	\$114,150.00
4"	\$167,420.00
6"	\$409,950.00

### SEWER INVESTMENT FEES (SEWER TAP)

5/8"	\$ 8,000.00
3/4"	\$10,000.00
1"	\$14,000.00
1 1/2"	\$20,990.00
2"	\$34,110.00
3"	\$52,300.00
4"	\$83,680.00
6"	\$133,890.00

### WATERING PERMIT (Watering outside of watering restrictions per Ordinance 03-2015)

For Landscaping/Sod Installation	\$35.00
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BACKFLOW		SURVEY REQUIRED	IF PERMIT RQRD THEN FEE-
Backflow Test	\$35.00	Landscape Sprinkler Systems	\$50.00
Backflow Clean & Repair	\$15.00	Swimming Pool (Above ground)	\$25.00

## BUILDING AND CONSTRUCTION FEES

- Valuation of projects will be based on provided valuation or calculated valuation based on the most current building valuation data table provided by the International Code Council or the square footage valuation table for residential construction Table 1C of this fee schedule.

**Building Permit Fee Table 1A**

New Construction/Remodels/Additions	Based on value of project
\$1.00 to \$500.00	\$25.00
\$501.00 to \$2,000.00	\$24 for the first \$500; plus \$3 for each additional \$100 or fraction thereof, up to and including \$2,000
\$2,001 - \$40,000	\$69 for the first \$2,000; plus \$11 for each additional \$1,000 or fraction thereof, up to and including \$40,000
\$40,001 - \$100,000	\$487 for the first \$40,000; plus \$9 for each additional \$1,000 or fraction thereof, up to and including \$100,000
\$100,001 - \$500,000	\$1,343.75 for the first \$100,000 plus \$9.10 for each additional \$1,000 or fraction thereof, up to and including \$500,000
\$500,001 - \$1,000,000	\$3,827 for the first \$500,000; plus \$5 for each additional \$1,000 or fraction thereof, up to and including \$1,000,000
\$1,000,001 to \$5,000,000	\$6,327 for the first \$1,000,000; plus \$3 for each additional \$1,000 or fraction thereof, up to and including \$5,000,000
\$5,000,001 and over	\$18,327 for the first \$5,000,000; plus \$1 for each additional \$1,000 or fraction thereof

### OTHER INSPECTION AND PLAN REVIEW FEES:

Violation Fee (Work done without a permit) - 2 times the assessed fee	Residential plan review fees-65% of building permit fee* (Review of building code, Land Development Code, & Ordinance Compliance)
Pre-move house inspection fee (within Town limits)- \$300.00	Additional plan review required by changes, additions or revisions to plans- \$50.00 an hour
Re-Inspection Fee: \$50.00	Mobile/Modular/Manufactured/Temp Trailer- \$120.00 (for construction projects)
Water Meter Fee – At Cost	

**\* Plan review fees shall be equal to sixty-five percent (65%) of the total permit fee for a permit to do the work proposed. When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate which has been established.**

**One Stop and Other Fees Table 1B**

<b>FLAT RATE PERMIT FEES (RESIDENTIAL ONLY)</b>				
Furnace/AC Replacement	\$75.00		Demolition	\$50.00
Fence	\$50.00		Driveway	\$50.00
Re-Roof	\$50.00			
Siding	\$50.00			

**Residential Square Footage Valuation Table 1C**

<b>TOWN SINGLE-FAMILY, DUPLEX DWELLING AND REMODEL/ADDITION CONSTRUCTION VALUE SCHEDULE</b>	
<b>Area</b>	<b>Value per Square Foot</b>
Above Grade Floors	\$148.33
Foundation-Crawlspace	\$25.00
Foundation-Unfinished Area	\$50.00
Foundation + Basement Finished Area	\$90.00
Basement Finish	\$40.00
Garage	\$59.88
Covered Porch	\$40.00
Covered Patio	\$40.00
Deck	\$25.00

**Misc. Other Fees Table 1D**

<b>MISCELLANEOUS BUILDING OFFICIAL FEES</b>	
Inspections outside of normal business hours. (Monday to Friday 8:00 am to 5:00 pm)	\$100.00 per hour *
For use of outside consultants for plan checking and inspections, or both	Actual costs **
*This cost shall include supervision, overhead, equipment, and hourly wages. **Actual costs include administrative and overhead costs.	

### Land Development Fees Table 1E

Variance Application: Residential Non-Residential	\$250.00 \$500.00	Appeal from the Board of Adjustments to the Board of Trustees	\$ 250.00
Boundary Line Adjustment Application	\$350.00	Appeal of Administrative Decision to the Board of Trustees	\$250.00
Special Review Use Application	\$250.00		
Conditional Use Review	\$250.00	Site Specific- (Commercial Infill):	\$3,500.00
Annexation: Disconnection:	\$3500.00 \$500.00	Construction Inspection – (Major Utilities)	\$500.00
Property Rezoning	\$3,500.00	Grading Permit	\$500.00
Sketch Plan Review	\$1,000.00		
Site Development Plan	\$500.00		
Amendment to Site Development Plan	\$250.00		
Minor Subdivision	\$2,500.00	Vacation of Easement/Right-of- Way	\$1,000.00
Preliminary Development Plan	\$3,500.00	Preliminary Plat	\$3,500.00
Final Development Plat/Plan, or amendments (Residential)	\$3,000.00	Final Development Plan/Plat, or amendments (Commercial)	\$4,000.00

#### FAIR CONTRIBUTIONS FOR PUBLIC SCHOOL SITES

	Single Family Detached	Single Family Attached, Duplex, Triplex, Four-plex, Condo, Townhouse	Apartment
Site Dedication Acreage / Unit	0.0272	0.0136	0.00068
Fee-in-Lieu Per Unit	\$1,088.59	\$544.29	\$272.15

**USE TAX – 3% of material cost:** Applicable sales/use tax on anticipated material cost is collected with building permit fees. Material cost is calculated as 50% of the project valuation as determined using the building valuation tables

Building permit fees for most projects are based on valuation of the project. Valuation for residential projects involving new floor area is calculated using the gross floor area and the applicable square foot construction cost based on occupancy/use and construction type as indicated in Table 1C of this fee schedule. The fees are then determined utilizing the table 1A. Valuation provided by the applicant is utilized for commercial projects unless determined to be a gross underestimate. Copies of contract documents may be required to verify project valuation.

For projects that do not involve new floor area (Flat rate fee projects), the valuation submitted on the application is utilized unless determined to be a gross underestimate. Copies of contract documents may be required to verify project valuation.

1. The permit fee for factory-built housing units that are set on a permanent foundation (HUD or UBC approved) shall be determined by the cost of materials for the foundation or basement requirements, other on-site improvements, and electrical, plumbing and mechanical work, using the Construction Fees table from the Building Department Fee Schedule.
2. The Town Building Department will not perform real estate inspections.
3. The Town Building Department will not locate property lines. It is the responsibility of the property owner to know where they are.
4. Any person, firm or corporation who violates any provision of the Building Code or any other construction code of the Town shall be subject to the penalties found in the Wiggins Land Development Code or set forth in the adopted Building Codes.

#### ELECTRIAL & PLUMBING PERMITS AND THEIR INSPECTIONS MUST BE OBTAINED THROUGH DORA

## RIGHT-OF-WAY FEES

RIGHT-OF-WAY FEES			
<b>Standard Fee</b>	Admin, review and inspection	50.00	
<b>Annual Permit</b>	Admin, review, and inspection (Example – surveying, tree trimming, etc.)	100.00	
<b>Road Bore</b>	Road bore w/ bore pit(s) located in R.O.W. Road bore w/ bore pit(s) located outside R.O.W.	50.00 per location \$25.00 per location	
<b>Work w/in a hard surface Roadway</b>	Trench w/ structural fill or flowable fill Test Hole / Pot Hole	\$1.00 SF \$20.00 Each	Minimum \$25.00
<b>Work within a Gravel Roadway</b>	Trench w/Structural fill or Flowable fill Test Hole / Pot Hole	\$0.50 SF \$10.00 Each	Minimum \$20.00
<b>Work in R.O.W. Outside of Roadway</b>	Trenching / Plow or cable puller Test Hole / Pot Hole	\$20.00 Each \$10.00 Each	Minimum \$15.00
<b>New Appurtenance (meters, vaults, poles, etc.)</b>	3 sq/ft or less (new construction exempt from fee with paid investment fee) Greater than 3 sq/ft	\$25.00 Each \$50.00 Each	
<b>Abandonment</b>	Abandoning / retiring line in R.O.W.	\$25.00 Each	
<b>Working Prior to Permit Approval</b>	Emergency Repairs Excluded	Subtotal x 2	
<b>Inspection Outside Normal Work Hours</b>	*As determined by Town Manager (\$50.00 Minimum)	\$50.00 / hr.	

CONCRETE IMPROVEMENTS	FEE	MINIMUM
Sidewalk, Trail, Bike Path, Drive Approach	\$0.50 / LF	\$50.00
Combination Curb, Gutter, Sidewalk	\$0.75 / LF	\$50.00
Sidewalk Chase Drains	\$50.00 EA	\$0.00
ADA Access Ramps	\$100.00 EA	\$0.00
Street Cut	\$250.00	\$0.00
Access Permit (Driveway & Curb Cuts)	\$250.00	\$0.00





## **STAFF SUMMARY**

**Board of Trustees Work Session**

**February 9, 2022**

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**DATE:** February 2, 2022

**AGENDA ITEM NUMBER:** 2

**TOPIC:** Discussion on Election to Become a Home Rule Municipality

**STAFF MEMBER RESPONSIBLE:** Tom Acre, Town Manager

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### **BACKGROUND:**

Over the past year, the topic of Wiggins becoming a Home Rule municipality has been mentioned. An example of this is when the Board was discussing the Planning & Zoning Commission becoming a citizen led commission. Due to lack of citizen interest in serving on the commission, staff and the Board wanted to allow Wiggins' business owners owning property in Town to serve on the Planning & Zoning Commission. However, since Wiggins is a statutory Town, we are not allowed to do this by Colorado State statute. The idea of becoming a Home Rule municipality was mentioned again during the preparation of the 2022 budget.

There are several reasons that are beneficial to Towns becoming Home Rule. The one over reaching positive is that a community that becomes Home Rule can define how it is governed through the crafting of a Home Rule Charter developed by a citizen led Charter Commission. There are several reasons that support becoming Home Rule and reasons that many consider could be considered a negative.

### **SUMMARY:**

The process of becoming a Home Rule municipality begins with either a petition signed by 5% of the registered voters or an ordinance passed by the Town Board of Trustees requesting the question be placed on a ballot. The Town then must hold an election to decide if a charter commission will be formed and elect the members of the charter commission. After electing the charter commission, the charter commission has 180 days to create and submit a proposed charter to the Board of Trustees. The Town Board of Trustees must call for an election on the proposed Home Rule Charter within 30-days of receiving the proposed charter, such election must be held not less than 60 days or not more than 185 days of receiving the proposed charter from the Charter Commission.

The following are general arguments for and against Home Rule from a presentation by the Colorado Municipal League.

#### General Arguments For Home Rule:

- Article XX of the Colorado Constitution grants both general and specific powers to home rule municipalities.
- Provides greater flexibility to solve local problems because municipalities are less constrained by state requirements.
- Allows quicker response time to emergency situations as there is no need to wait for the entire state legislative process.
- Home rule municipalities are not required to follow state statutes in matters of local and municipal concern and therefore enjoy freedom from state interference regarding local and municipal matters.
- Allows municipalities to legislate with confidence on any and all matters of local concern.
- Enhances citizen control, interest, involvement and pride in their municipal government.
- The embodiment of the principle that the best government is the one that is the closest to the people.

#### General Arguments Against Home Rule:

- Restrictive charters may limit the potential flexibility of home rule.
- Dissatisfied citizens may adopt binding charter amendments, i.e., amendments which cannot be changed or repealed by the governing body without a subsequent vote of the people.
- Legal uncertainties may arise when the municipality legislates in a relatively new area; the ultimate determination of whether a matter is truly of “local concern” requires an ad hoc determination in court.
- Costs for adopting a home rule charter can burden the municipality – attorney’s or other consultant’s fees, expenses incurred from publication requirements, election costs, etc.
- A change in the status quo may create unnecessary risks in a community that is satisfied operating under existing statutes.
- Unless restricted by the charter, a home rule municipality has the potential to exercise more governmental powers than are available to statutory municipalities, which some local citizens may see as a disadvantage.
- Charter amendments must be approved by the voters at an election, which can take time and money.

Provided with this Staff Summary are several documents including the Colorado Revised Statute, Home Rule Timeline, CML Home Rule Handbook, Legislative Brief, and an article about other communities who are Home Rule.

**FISCAL IMPACT:**

If the Board of Trustees desires to pursue becoming a Home Rule municipality, the budget would be negatively impacted due to funds being expended for the Town Attorney to draft the ordinance initiating the adoption of a home rule charter, a resolution calling an election, and the required notices. If the voters approve the formation of the charter commission, there will be legal expenses associated with drafting and reviewing the proposed charter. Future funding would be needed to conduct an election on the formation of charter commission and an election on the charter itself. The costs would be dependent on when the elections are held. There will also be costs for publishing notices of the elections.

**APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:**

This action supports the Town's desire to provide an efficient and transparent government for the Town of Wiggins citizens.

**QUESTIONS/INFORMATION REQUESTED FROM THE BOARD OF TRUSTEES:**

- Do the Trustees have any questions for staff or need additional information?
- Does the Board support the concept of becoming a Home Rule municipality?
- Does the Board have the desire to place this question on the November 2022 ballot?



## Home Rule Governance in Colorado

By April Bernard

In 1902, Colorado voters authorized home rule governance for cities and towns (municipalities) by amending the state constitution. Home rule governance for counties was authorized by voters through a separate amendment to the constitution, in 1970. This *issue brief* outlines home rule governance for municipalities and counties, including the process for adopting a home rule charter and the powers that a home rule charter provides to local governments.

### What is Home Rule?

Home rule is a form or structure of governing defined by the citizens of a municipality or county that allows for more control over matters of local significance. Voters can decide to adopt home rule, and through a charter, detail the structure and powers of the local government.

Home rule empowers local governments to act and legislate on local matters. In general, home rule ordinances addressing local matters supersede state law. However, in matters of statewide or mixed concern, state laws may take precedence over conflicting home rule ordinances. Without a home rule charter, local governments are strictly subject to the laws of the state.

**Authorizing law.** While the Colorado Constitution authorizes home rule municipalities and counties<sup>1</sup>, Colorado law also provides additional details on the creation of and implementation of home rule governance<sup>2</sup>. An addition to the constitution and Colorado law

created an avenue for smaller towns to pursue home rule in 1972.<sup>3</sup>

**Number of home rule local governments.** There are currently 103 municipalities in the state that have adopted home rule charters, including the City and County of Broomfield and the City and County of Denver. Pitkin and Weld Counties have also adopted home rule charters.

### Home Rule for Municipalities

A petition, signed by 5 percent of the registered voters in a municipality, or the adoption of an ordinance by the municipal governing body begins the process to establish home rule governance. Then, the municipality must hold an election to decide if a charter commission will be formed. If approved by voters and after electing the charter members, the commission must create a charter and submit it to the governing body within 180 days after the election. The municipality must then hold another election to consider the adoption of the proposed charter.

**Legal powers.** Once a voter-approved charter is certified and filed with the Colorado Secretary of State, a municipality has the power to legislate upon, provide, regulate, conduct, and control:

<sup>1</sup> Colo. Const. art. XX, § 6 and art. XIV, § 16.

<sup>2</sup> Section 31-2-201, et. seq., C.R.S., Section 30-11-501, et. seq., C.R.S., and Article 35 of Title 30, C.R.S.

<sup>3</sup> Colo. Const. art XX, § 9.

- municipal officers, agencies, and employment, including the powers, duties, qualifications and terms or tenure of all municipal officers, agents, and employees; police courts, including the election or appointment of police magistrates;
- municipal courts, including the election or appointment of officers;
- municipal obligations, including bonds and other obligations of special districts;
- park or water districts;
- assessment of property for municipal taxation;
- imposition, enforcement, and collection of fines and penalties for the violation of any of the charter provisions, or of any ordinances adopted pursuant to the charter.

**Election provisions.** Municipalities may specify election powers within the charter, including all matters pertaining to:

- electoral votes on measures submitted under the charter or ordinances;
- calling an election or notice of election and election date;
- voter registration;
- nomination and election systems;
- judges and clerks of the election;
- form of ballot, balloting, challenging, and canvassing;
- certifying results, the purity of elections, and guarding against abuses; and
- nonpartisan elections and electoral votes.

A home rule municipality may choose to adopt portions or all of the Colorado State Municipal Election Code of 1965. In addition, charters must include procedures for submitting ballot measures and recalling elected officials.

## Home Rule for Counties

The process for adoption of a county home rule charter is generally the same as the process for a municipality. However, the election to determine if a charter will be pursued and to elect commission members must take place during the next general

election. The commission also has more time to create a charter, 240 days after the first meeting of the commission, and then, the adoption of the proposed charter is considered during a special election. The special election may be part of a coordinated or general election, depending on the timing of the charter submission.

**Legal powers.** The charter adopted by the county may include the regulation of:

- administrative powers, such as finances and property, debts and expenses, and the powers and duties of officials, including elections, terms of office, and compensation;
- public works and services, such as buildings, bridges, tunnels, sewers, water mains, hospitals, and parks;
- building codes and zoning;
- condemnation powers for the purpose of public transportation, utilities, and streets;
- ordinances to create and enforce local laws and provide for parking facilities; and
- the sale or lease of real property or facilities.

**Election provisions.** Home rule charters for counties are more limited than municipalities regarding the oversight of elections. Home rule county charters are limited to addressing election matters related to procedures for submitting ballot measures and recalling elected officials.

**Mandatory functions, services, and facilities.** Unlike municipalities, home rule counties must continue to provide all mandatory county functions, services, and facilities that are delegated to counties by Colorado law, in addition to powers identified in the charter. Mandatory functions include transportation, street lighting, jails, abandoned property, land management, and providing for the public health, safety, and welfare of its citizens.

For additional information on home rule governance, please see the [Local Government Handbook](#) prepared by Legislative Council Staff.



# What Does "Home Rule Municipality" Mean?



Gunnison, Colorado  
October 22, 2020

Of the nation's 50 states, Colorado is one of 30 recognized as a Home Rule State, having amended its constitution to grant municipalities the ability to exercise local control of their individual governments.

In Article XX of the Colorado Constitution, home rule gives local municipalities the power to make legislation relevant to their areas, exercising control over issues of "local concern" while minimizing state intervention in municipal affairs.

Home rule allows for greater flexibility in other areas of municipal government, including local elections, organizational structure and municipal courts.

A home rule charter that is specifically crafted and tailored to individual municipalities acts as the city or town's basic governing document over local issues; however, when a dispute arises, whether an issue constitutes "local concern" must be determined by courts on a case-by-case basis, and certain state laws will prevail in matters of statewide concern.

While each home rule charter includes a few mandatory provisions regarding initiative and referendum of measures and recall of officers, many of the powers and functions identified in a town's charter are decided by an individual town and its citizens through an extensive public input process, noted Ridgway Mayor John Clark in a recent interview on the subject.

Nearly 100 cities and towns in Colorado operate under home rule charter, including the City of Ouray and the Town of Ridgway.

Ouray City Administrator Patrick Rondinelli added that prior to home rule, the city followed a council-manager form of government that is still in place today. While local control was the main reason for the city's switch from a statutory to home rule municipality, Rondinelli added that the city "did not change much" in day-to-day operations by becoming home rule.

Approved by voters in 1993, the Town of Ridgway's home rule charter brought control to the town government on issues such as council structure, lodging tax and sales tax collection.

On the other hand, most of Colorado's municipalities operate as statutory cities and towns.

According to the Colorado Municipal League, statutory cities and towns are limited to exercising powers that are granted by the state and are subject to provisions and limitations imposed by the state.

Approximately an hour and a half northeast of Ridgway, the town of Paonia, with a population of 1,425 (according to 2012 data from the U.S. Census Bureau), still functions as a statutory town.

Paonia Mayor Neal Schwieterman explained that the town has never felt that the added effort to prepare a home rule charter was justified.

"It's a lot of work," Schwieterman explained. "We just haven't had the staff time."

Schwieterman said although the town had found a number of minor inconveniences in his seven years of experience, such as collecting sales tax at local events, the town did not feel hamstrung in dealing with local issues as a statutory town.

In the far southwest corner of the state, the town of Mancos, population 1,341, continues to operate as a statutory town as well.

Town Administrator Andrea Phillips acknowledged that governing as a statutory municipality does limit the town's authority on certain issues. In a recent development, Phillips stated, the town can raise sales tax on marijuana only by a certain amount in accordance with state statutes.

Clark pointed out that local collection of sales tax, which he said was a source of errors when conducted by the state, is one of the biggest areas of improvement under home rule.

A home rule charter allows cities to collect and enforce local sales and use taxes and permits a broader or narrower sales and use tax base. Further, towns are allowed additional types of excise taxes, which may include admissions, entertainment, tourism and lodging taxes.

However, under statutory rule a municipality's sales tax is collected by the state. In Paonia and Mancos, sales tax is paid and collected by the Department of Revenue, which later allocates appropriate funds to the towns.

In Paonia and Mancos, the town mayors are at the head of the government bodies and are elected to that position. Also elected are six citizens who make up the Board of Trustees, constituting the legislative body of the town. The Board of Trustees hires the town administrator, who serves as the administrative officer of the town under the direction of the board.

The driving factor in which cities and towns pursue home rule is to exercise freedom of local governing and minimizing state intervention in municipal affairs.

“Home Rule allows us to dictate how we govern ourselves, whereas statutory communities are subject to state statutes and the desires of the state legislature,” said Rondinelli.



# Home Rule Timeline

<u>Required Action</u>	<u>Action Date or Deadline</u>
1. Initiate home rule by adoption of ordinance by Board of Trustees (“Board”). C.R.S. § 31-2-204(1)(b). The ordinance should specify: a. If members of charter commission shall be elected by district. Members may be elected by district, at-large, or by a combination thereof. b. The size of the charter commission. For municipalities having a population of less than 2,000, the commission shall have nine members. For larger municipalities, the commission can be between 9 and 21 members. § 31-2-206(1).	
2. Prepare and have available from the Town Clerk nomination forms for charter commission candidacy.	
3. Call an election, by resolution, for the purpose of forming a charter commission to frame the charter and for electing members to the commission. Election must be held within 120 days after the date of the call of the election. § 31-2-204(2).	30 days after home rule initiation
4. Publish first notice of the election. <u>Id.</u>	60 days before election
5. Nomination petitions for charter commission candidates and statements of consent to serve by candidates must be filed with the Town Clerk. § 31-2-204(3). Candidates must be registered electors of the Town; petitions must be signed by at least 25 registered voters.	30 days after publication of the first election notice
6. Publish a second notice of election with names of the candidates for the charter commission. § 31-2-204(3).	As soon as possible after the filing of nomination petitions is complete
7. Election on the formation of the charter commission and the selection of commission members. § 31-2-204(2).	120 days after call for election

- |   |   |
|---|---|
| 8. Board must call the first meeting of the charter commission. § 31-2-206(4).  | Meeting to be held within twenty days after the election                            |
| 9. Charter commission holds subsequent meetings and one or more public hearings. § 31-2-206(9).   |   |
| 10. Charter commission must submit proposed charter to the Board. § 31-2-206(10).   | 180 days after the election   |
| 11. Call an election, by resolution, on the approval of the proposed charter. Publish notice of the election on charter, including the text of the proposed charter. § 31-2-207(1). | 30 days after submission of the proposed charter                                    |
| 12. Board sets ballot title for proposed charter by resolution. § 31-2-207(1.5).  | 60 days after proposed charter is submitted to Board                                |
| 13. Election on the proposed charter. § 31-2-207(1).  | Not less than 30 nor more than 120 days after publication of the notice of election |
| 14. If the charter is approved, file a certified copy of the adopted charter with the secretary of state and the municipal clerk. § 31-2-208(1).                                    | 20 days after election approving proposed charter or revised proposed charter       |
| 15. If the charter is rejected, the charter commission shall prepare a revised charter. § 31-2-207(3).  |   |
| 16. Proceedings to contest adopted charter must be commenced. § 31-2-218.   | 45 days after the election  |

**Source: L. 75:** Entire title R&RE, p. 1013, § 1, effective July 1. **L. 90:** Entire section amended, p. 1435, § 3, effective January 1, 1991.

**Editor's note:** This section is similar to former § 31-4-109 as it existed prior to 1975.

## PART 2

### MUNICIPAL HOME RULE

**Cross references:** For home rule cities and towns, see article XX of the state constitution; for home rule counties, see article 35 of title 30.

**31-2-201. Short title.** This part 2 shall be known and may be cited as the "Municipal Home Rule Act of 1971".

**Source: L. 75:** Entire title R&RE, p. 1013, § 1, effective July 1.

**Editor's note:** This section is similar to former § 31-2-101 as it existed prior to 1975.

**31-2-202. Legislative declaration.** The general assembly declares that the policies and procedures contained in this part 2 are enacted to implement section 9 of article XX of the state constitution, adopted at the 1970 general election, by providing statutory procedures to facilitate adoption and amendment of municipal home rule charters, and, to this end, this part 2 shall be liberally construed. The provisions of this part 2 shall supersede the requirements of article XX of the state constitution, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, as provided in section 9 (3) of article XX of the state constitution.

**Source: L. 75:** Entire title R&RE, p. 1013, § 1, effective July 1. **L. 94:** Entire section amended, p. 1191, § 88, effective July 1.

**Editor's note:** This section is similar to former § 31-2-102 as it existed prior to 1975.

**31-2-203. Definitions.** As used in this part 2, unless the context otherwise requires:

- (1) "Ballot title" means a ballot title as defined in section 31-11-103 (1).
- (2) "Publication" means one publication in one newspaper of general circulation within the municipality. If there is no such newspaper, publication shall be by posting in at least three public places within the municipality.

**Source: L. 75:** Entire title R&RE, p. 1014, § 1, effective July 1. **L. 2000:** Entire section amended, p. 791, § 4, effective August 2.

**Editor's note:** This section is similar to former § 31-1-103 (2) as it existed prior to 1975.

**31-2-204. Initiation of home rule.** (1) Proceedings to adopt a home rule charter for a municipality may be initiated:

(a) By the submission of a petition, signed by at least five percent of the registered electors of the municipality, to the governing body thereof; or

(b) By the adoption of an ordinance by the governing body of the municipality, without the prior submission of a petition therefor.

(2) Within thirty days after the initiation of the proceedings, in accordance with either paragraph (a) or (b) of subsection (1) of this section, the governing body of the municipality shall call an election for the purpose of forming a charter commission and of electing members thereof to frame a charter for the municipality, which election shall be held within one hundred twenty days after the date of the call of the election. The governing body shall cause notice of the election to be published not less than sixty days prior to the election.

(3) Candidates for the charter commission shall be nominated by filing with the clerk, on forms supplied by the clerk, a nomination petition signed by at least twenty-five registered electors and a statement by the candidate of consent to serve if elected. Said petition and statement shall be filed within thirty days after publication of the election notice. A second notice of the election, as soon as possible after the completion of filings, shall be published by the governing body and shall include the names of candidates for the charter commission.

**Source:** L. 75: Entire title R&RE, p. 1014, § 1, effective July 1. L. 84: (1)(a) amended, p. 831, § 1, effective April 25. L. 85: (1)(a) amended, p. 1346, § 13, effective April 30.

**Editor's note:** This section is similar to former § 31-2-104 as it existed prior to 1975.

**31-2-205. Election on formation of charter commission and designation of members.** (1) At the election voters shall cast ballots for or against forming the charter commission. If a majority of the registered electors voting thereon vote for forming the charter commission, a commission to frame a charter shall be deemed formed.

(2) At the election voters shall also cast ballots for electing the requisite number of charter commission members. Those candidates receiving the highest number of votes shall be elected. In the event of tie votes for the last available vacancy, the clerk shall determine by lot the person who shall be elected.

**Source:** L. 75: Entire title R&RE, p. 1014, § 1, effective July 1.

**Editor's note:** This section is similar to former § 31-2-105 as it existed prior to 1975.

**31-2-206. Charter commission.** (1) The charter commission shall be comprised as follows:

(a) In municipalities having a population of less than two thousand, nine members; and

(b) In municipalities having a population of at least two thousand, nine members unless the initiating ordinance or petition establishes a higher odd-number of members not to exceed twenty-one members.

(c) (Deleted by amendment, L. 94, p. 1191, § 89, effective July 1, 1994.)

(2) If the petition or ordinance initiating home rule proceedings pursuant to section 31-2-204 (1) or initiating proceedings for forming a new charter commission pursuant to section 31-2-210 (2) specifies that the members of the charter commission shall be elected by and from single- or multi-member districts or by a combination of such districts and at-large representation, the governing body, prior to publishing the notice provided for in section 31-2-204 (2) or 31-2-210 (4), shall divide the municipality into compact districts of approximately equal population. In such event the members of said charter commission shall be elected by and from districts, or partly by and from districts and partly at large, as specified in said petition or ordinance.

(3) Eligibility to serve on the charter commission shall extend to all registered electors of the municipality. Any vacancy on the charter commission shall be filled by appointment of the governing body.

(4) The charter commission shall meet at a time and date set by the governing body, which shall be not more than twenty days subsequent to the certification of the election, for the purpose of organizing itself. At such meeting, the commission members shall elect a chairman, a secretary, and such other officers as they deem necessary, all of which officers shall be members of the commission. The commission may adopt rules of procedure for its operations and proceedings. A majority of the commission members shall constitute a quorum for transacting business. Further meetings of the commission shall be held upon call of the chairman or a majority of the members. All meetings shall be open to the public.

(5) The commission may employ a staff; consult and retain experts; and purchase, lease, or otherwise provide for such supplies, materials, and equipment as it deems necessary. Upon completion of its work, the commission shall be dissolved, and all property of the commission shall become the property of the municipality.

(6) The governing body may accept funds, grants, gifts, and services for the commission from the state of Colorado, or the United States government, or any agencies or departments thereof, or from any other public or private source.

(7) Reasonable expenses of the charter commission shall be paid out of the general funds of the municipality, upon written verification made by the commission chairman and secretary, and the governing body shall adopt such supplemental appropriation ordinances as may be necessary to support such expenditures. Members of the commission shall receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(8) The charter commission may conduct interviews and make investigations in the preparation of a charter, and, to the fullest extent practicable, municipal officials and employees shall cooperate with the commission by providing information, advice, and assistance.

(9) The charter commission shall hold at least one public hearing in preparation of a proposed charter.

(10) Within one hundred eighty days after its election, the charter commission shall submit to the governing body a proposed charter.

**Source: L. 75:** Entire title R&RE, p. 1014, § 1, effective July 1. **L. 81:** (1)(b) amended and (1)(c) added, p. 1491, § 7, effective June 5. **L. 94:** (1) amended, p. 1191, § 89, effective July 1. **L. 2009:** (2) amended, (SB 09-292), ch. 369, p. 1977, § 106, effective August 5. **L. 2011:** (4) and (10) amended, (HB 11-1122), ch. 63, p. 164, § 1, effective September 1.

**Editor's note:** This section is similar to former § 31-2-106 as it existed prior to 1975.

**31-2-207. Charter election - notice.** (1) Within thirty days after the date that the charter commission submits the proposed charter to it, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved, which election shall be held not less than sixty nor more than one hundred eighty-five days after publication of the notice thereof. Such notice of the election shall contain the full text of the proposed charter.

(1.5) The governing body shall set the ballot title for the proposed charter within sixty days after the date that the proposed charter is submitted pursuant to subsection (1) of this section.

(2) If a majority of the registered electors voting thereon vote to adopt the proposed charter, the charter shall be deemed approved and it shall become effective at such time as the charter provides.

(3) If a majority of the registered electors voting thereon vote to reject the proposed charter, the charter commission shall proceed to prepare a revised proposed charter, utilizing the procedures set forth in section 31-2-206, and the governing body shall submit the revised proposed charter to an election in the manner set forth in subsection (1) of this section. If a majority of the registered electors voting on such revised proposed charter vote to adopt the revised proposed charter, it shall be deemed approved and it shall become effective at such time as the revised charter provides. If a majority of the registered voters voting thereon vote to reject the revised proposed charter, the charter commission shall forthwith be dissolved.

**Source:** **L. 75:** Entire title R&RE, p. 1016, § 1, effective July 1. **L. 2000:** (1.5) added, p. 791, § 5, effective August 2. **L. 2011:** (1) amended, (HB 11-1122), ch. 63, p. 164, § 2, effective September 1. **L. 2015:** (1) amended, (HB 15-1130), ch. 230, p. 854, § 4, effective August 5.

**Editor's note:** This section is similar to former § 31-2-107 as it existed prior to 1975.

**Cross references:** For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

**31-2-208. Filings - effect.** (1) Within twenty days after its approval, a certified copy of the charter shall be filed with the secretary of state and with the clerk.

(2) Upon such filings all courts shall take judicial notice of the charter.

(3) This section shall also apply to any amendment or repeal of a charter.

**Source:** **L. 75:** Entire title R&RE, p. 1016, § 1, effective July 1.

**Editor's note:** This section is similar to former § 31-2-108 as it existed prior to 1975.

**31-2-209. Special procedure for adopting a charter upon incorporation.** (1) Proceedings to adopt a home rule charter may be initiated at the time of incorporation.

(2) In order to initiate home rule at the time of incorporation, the petition for incorporation shall be in the form and meet the requirements required by the provisions of section 31-2-101, except that:

(a) The petition shall be signed by at least five percent of the registered electors of the territory to be embraced within the boundaries of the proposed municipality, notwithstanding any provision of section 31-2-101; and

(b) The petition for incorporation shall request the initiation of proceedings for the adoption of a home rule charter pursuant to the provisions of this part 2.

(3) The election commissioners appointed by the court pursuant to section 31-2-102 shall exercise, to the extent practicable, the powers, functions, and responsibilities otherwise assigned by this part 2 to the governing body or clerk, and the procedures for incorporation and adoption of a home rule charter shall be modified as necessary to effectuate concurrent consideration.

(4) At the incorporation election, conducted under the provisions of section 31-2-102, the registered electors shall vote upon:

(a) The question of incorporation, as set forth in section 31-2-102 (5);

(b) The question of whether a charter commission should be formed, as set forth in section 31-2-205 (1); and

(c) The election of charter commission members, as set forth in section 31-2-205 (2).

(5) If a majority of the registered electors voting thereon vote for incorporation and for formation of a charter commission, the first election of officers shall be stayed pending drafting and approval of the charter pursuant to sections 31-2-206 and 31-2-207. Upon ratification of the charter or after rejection of a charter and revised charter pursuant to section 31-2-207, the election commissioners shall proceed to the first election of officers and to completion of incorporation pursuant to part 1 of this article.

(6) If a majority of the registered electors voting thereon vote for incorporation but against the formation of a charter commission, the procedures set forth in part 1 of this article shall be followed as if the petition for incorporation had not included a request for the adoption of home rule at the time of incorporation.

**Source:** **L. 75:** Entire title R&RE, p. 1016, § 1, effective July 1. **L. 84:** (2)(a) amended, p. 831, § 2, effective April 15. **L. 85:** (2)(a) amended, p. 1346, § 14, effective April 30.

**Editor's note:** This section is similar to former § 31-2-109 as it existed prior to 1975.

**31-2-210. Procedure to amend or repeal charter.** (1) Proceedings to amend a home rule charter may be initiated by either of the following methods:

(a) Filing of a petition meeting the following requirements, in the following manner:

(I) The petition process shall be commenced by filing with the clerk a statement of intent to circulate a petition, signed by at least five registered electors of the municipality. The petition shall be circulated for a period not to exceed ninety days from the date of filing of the statement of intent and shall be filed with the clerk before the close of business on the ninetieth day from said date of filing or on the next business day when said ninetieth day is a Saturday, Sunday, or legal holiday.

(II) The petition shall contain the text of the proposed amendment and shall state whether the proposed amendment is sought to be submitted at the next regular election or at a special election. If the amendment is sought to be submitted at a special election, the petition shall state an approximate date for such special election, subject to the provisions of subparagraph (IV) of this paragraph (a) and subsection (4) of this section.

(III) A petition to submit an amendment at the next regular election must be signed by at least five percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the date of said regular election.

(IV) A petition to submit an amendment at a special election must be signed by at least ten percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the approximate date of the special election stated in the petition.

(b) An ordinance adopted by the governing body submitting the proposed amendment to a vote of the registered electors of the municipality. Such ordinance shall also adopt a ballot title for the proposed amendment.

(2) Proceedings to repeal a home rule charter or to form a new charter commission may be initiated by either of the following methods:

(a) Filing of a petition in the manner prescribed by, and meeting the requirements of, paragraph (a) of subsection (1) of this section; except that:

(I) The petition shall state the proposal to repeal the charter or to form a new charter commission;

(II) The petition must be signed by at least fifteen percent of the registered electors of the municipality, regardless of whether the petition seeks submission of the proposal at a regular or special election; and

(III) If the proposal is for formation of a charter commission, the petition must be filed with the clerk at least ninety days prior to the date of the regular election or the approximate date stated in the petition for a special election, as the case may be.

(b) An ordinance adopted by a two-thirds vote of the governing body submitting the proposed repeal or formation of a charter commission to a vote of the registered electors of the municipality.

(3) The clerk shall, within fifteen working days after the filing of a petition pursuant to paragraph (a) of subsection (1) of this section or paragraph (a) of subsection (2) of this section, certify to the governing body as to the validity and sufficiency of such petition. If the petition is sufficient, the governing body shall set a ballot title for the proposed amendment at its next meeting. If the petition is declared insufficient, such petition may be withdrawn by a majority of the persons representing the registered electors who signed such petition, may be amended or signed by additional registered electors of the municipality in accordance with paragraph (a) of subsection (1) of this section and paragraph (a) of subsection (2) of this section within fifteen days after such insufficiency is declared, and may be refiled as an original petition.

(3.5) If the subject matter of the petition is proposed for submission at a regular or special election that will be coordinated by the county clerk pursuant to section 1-7-116, C.R.S., and the municipal clerk has certified to the governing body that the petition is valid and sufficient, the clerk shall certify the proposed ballot question to the county clerk and recorder sixty days prior to the coordinated election as provided in section 1-5-203 (3), C.R.S., unless the



petition has by the sixtieth day been determined to be insufficient pursuant to section 31-2-223. Should the petition be found to be insufficient pursuant to section 31-2-223 following certification to the county clerk and recorder, the election on such question shall be deemed cancelled, and any votes cast on the question shall not be counted.

(4) The governing body shall, within thirty days of the date of adoption of the ordinance or the date of filing of the petition (if the same is certified by the clerk to be valid and sufficient), publish notice of an election upon the amendment or proposal, which notice shall contain the full text of the amendment or statement of the proposal as contained in the ordinance or petition. The election shall be held not less than sixty nor more than one hundred twenty days after publication of such notice; except that, if the proposal is for formation of a charter commission, the election shall be held not less than sixty days after publication of such notice. If the amendment or proposal is initiated by petition and is sought to be submitted at a special election, the election shall be held as near as possible to the approximate date stated in the petition, but in any event shall be held within the time limits stated in this subsection (4).

(5) The procedure for the forming and functioning of a new charter commission shall comply as nearly as practicable with sections 31-2-204 to 31-2-207, relating to formation and functioning of an initial charter commission.

(6) If a majority of the registered electors voting thereon vote for a proposed amendment, the amendment shall be deemed approved. If a majority of the registered electors voting thereon vote for repeal of the charter, the charter shall be deemed repealed and the municipality shall proceed to organize and operate pursuant to the statutes applicable to a municipality of its size.

**Source:** **L. 75:** Entire title R&RE, p. 1017, § 1, effective July 1. **L. 79:** Entire section R&RE, p. 1170, § 2, effective July 1. **L. 85:** (1)(a)(I), (1)(a)(II), (1)(a)(IV), and (2)(a)(II) amended, p. 1346, § 15, effective July 1. **L. 96:** (1)(a)(III) and (1)(a)(IV) amended and (3.5) added, p. 1767, § 61, effective July 1. **L. 2000:** (1)(b) and (3) amended, p. 791, § 6, effective August 2. **L. 2007:** (3.5) amended, p. 2046, § 84, effective June 1. **L. 2015:** (4) amended, (HB 15-1130), ch. 230, p. 855, § 5, effective August 5.

**Editor's note:** This section is similar to former § 31-2-110 as it existed prior to 1975.

**Cross references:** For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

**31-2-211. Elections - general.** (1) Except as otherwise specifically provided, all elections held pursuant to this part 2 shall be conducted as nearly as practicable in conformity with the provisions of the "Colorado Municipal Election Code of 1965".

(2) All necessary expenses for elections conducted pursuant to this part 2 for existing municipalities or for municipalities incorporated pursuant to part 1 of this article shall be paid out of the treasury of the municipality.

(3) A special election shall be called for any election held pursuant to this part 2 when a regular election is not scheduled within the time period provided for such election.

**Source:** **L. 75:** Entire title R&RE, p. 1017, § 1, effective July 1.

**Editor's note:** This section is similar to former § 31-2-111 as it existed prior to 1975.

**Cross references:** For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

**31-2-212. Initiative, referendum, and recall.** Every charter shall contain procedures for the initiative and referendum of measures and for the recall of officers.

**Source: L. 75:** Entire title R&RE, p. 1018, § 1, effective July 1.

**Editor's note:** This section is similar to former § 31-2-112 as it existed prior to 1975.

**31-2-213. Determination of population.** When a determination of the population or number of registered electors of the municipality is required under this part 2, said determination shall be made upon the best readily available information by the governing body, clerk, election commissioners, or court, as the case may be. Such determination shall be final in the absence of fraud or gross abuse of discretion.

**Source: L. 75:** Entire title R&RE, p. 1018, § 1, effective July 1. **L. 84:** Entire section amended, p. 831, § 3, effective April 25. **L. 85:** Entire section amended, p. 1346, § 16, effective April 30.

**Editor's note:** This section is similar to former § 31-2-113 as it existed prior to 1975.

**31-2-214. Time limit on submission of similar proposals.** No proposal for a charter commission, charter amendment, or repeal of a charter shall be initiated within twelve months after rejection of a substantially similar proposal.

**Source: L. 75:** Entire title R&RE, p. 1018, § 1, effective July 1.

**Editor's note:** This section is similar to former § 31-2-114 as it existed prior to 1975.

**31-2-215. Conflicting or alternative charter proposals.** (1) In submitting any charter or charter amendment, any alternative provision may be submitted for the choice of the voters and may be voted on separately without prejudice to others. The alternative provision receiving the highest number of votes, if approved by a majority of the registered electors voting thereon, shall be deemed approved.

(2) In case of adoption of conflicting provisions which are not submitted as alternatives, the one which receives the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

**Source: L. 75:** Entire title R&RE, p. 1018, § 1, effective July 1. **L. 84:** Entire section amended, p. 832, § 4, effective April 25.

**Editor's note:** This section is similar to former § 31-2-115 as it existed prior to 1975.

**31-2-216. Change in classification of municipalities.** Notwithstanding the provisions of part 2 of article 1 of this title, a town having a population exceeding two thousand may reclassify itself as a city, and a city having a population of two thousand or less may reclassify itself as a town, upon adoption of a home rule charter without otherwise complying with the procedures in said part 2.

**Source: L. 75:** Entire title R&RE, p. 1018, § 1, effective July 1. **L. 81:** Entire section amended, p. 1491, § 8, effective June 5.

**Editor's note:** This section is similar to former § 31-2-116 as it existed prior to 1975.

**31-2-217. Vested rights saved.** The adoption of any charter, charter amendment, or repeal thereof shall not be construed to destroy any property right, contract right, or right of action of any nature or kind, civil or criminal, vested in or against the municipality under and by virtue of any provision of law theretofore existing or otherwise accruing to the municipality; but all such rights shall vest in and inure to the municipality or to any persons asserting any such claims against the municipality as fully and as completely as though the charter, amendment, or repeal thereof had not been adopted. Such adoption shall never be construed to affect any such right existing between the municipality and any person.

**Source: L. 75:** Entire title R&RE, p. 1018, § 1, effective July 1.

**Editor's note:** This section is similar to former § 31-2-117 as it existed prior to 1975.

**31-2-218. Finality.** No proceeding contesting the adoption of a charter, charter amendment, or repeal thereof shall be brought unless commenced within forty-five days after the election adopting the measure.

**Source: L. 75:** Entire title R&RE, p. 1018, § 1, effective July 1.

**Editor's note:** This section is similar to former § 31-2-118 as it existed prior to 1975.

**31-2-219. Additional petition requirements.** Any petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, shall be subject to the provisions of sections 31-2-220 to 31-2-225, in addition to any other requirements imposed by this part 2. Any such petition which fails to conform to the requirements of this part 2 or is circulated in a manner other than that permitted in this part 2 is invalid.

**Source: L. 84:** Entire section added, p. 832, § 5, effective April 25.

**31-2-220. Warning on petition - signatures - affidavits - circulators.** (1) At the top of each page of a petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, must be printed, in plain red letters no smaller than the impression of ten-point, bold-faced type, the following:

**WARNING:  
IT IS AGAINST THE LAW:**

For anyone to sign any petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to sign such petition when not a registered elector.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR:**

Do not sign this petition unless you have read or had read to you the text of the proposal in its entirety and understand its meaning.

(2) Any such petition shall be signed only by registered electors by their own signatures to which shall be attached the residence addresses of such persons, including street and number, if any, city or town, and the date of signing the same. To each such petition shall be attached an affidavit of the person who circulated the petition stating the affiant's address, that the affiant is eighteen years of age or older, that the affiant circulated the said petition, that each signature thereon was affixed in the affiant's presence, that each signature thereon is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each of the persons signing said petition was at the time of signing a registered elector, and that the affiant has not paid or will not in the future pay and that the affiant believes that no other person has so paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to such petition. No petition shall be accepted for filing that does not have attached thereto the affidavit required by this section.

(3) (Deleted by amendment, L. 2000, p. 792, § 7, effective August 2, 2000.)

(4) The clerk shall inspect timely filed petitions and attached affidavits to ensure compliance with subsection (2) of this section. Such inspection may consist of an examination of the information on the signature lines for patent defects, a comparison of the information on the signature lines with a list of registered electors provided by the county, or any other method of inspection reasonably expected to ensure compliance with subsection (2) of this section.

**Source:** **L. 84:** Entire section added, p. 832, § 5, effective April 25. **L. 85:** (1) and (2) amended, p. 1347, § 17, effective April 30. **L. 92:** (1) amended, p. 2177, § 38, effective June 2. **L. 94:** (1) amended, p. 1772, § 37, effective January 1, 1995. **L. 96:** (2) amended, p. 1768, § 62, effective July 1. **L. 2000:** (2) and (3) amended and (4) added, p. 792, § 7, effective August 2. **L. 2013:** (1) amended, (HB 13-1303), ch. 185, p. 750, § 132, effective May 10. **L. 2014:** (1) amended, (HB 14-1164), ch. 2, p. 59, § 12, effective February 18.

**Cross references:** (1) In 2013, subsection (1) was amended by the "Voter Access and Modernized Elections Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 185, Session Laws of Colorado 2013.

(2) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

**31-2-221. Form of petition - representatives of signers.** (1) Petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, shall be printed on pages eight and one-half inches wide by eleven inches long, with a margin of two inches at the top for binding; the sheets for signature shall have their ruled lines numbered consecutively and shall be attached to a complete copy of what is proposed, printed in plain block letters no smaller than the impression of eight-point type. Petitions may consist of any number of sections composed of sheets arranged as provided in this section. Each petition shall designate by name and address not less than three nor more than five registered electors who shall represent the signers thereof in all matters affecting the same. No such petition shall be printed, published, or otherwise circulated in a municipality until the clerk has approved it as to form only, and the clerk shall assure that the petition contains only the matters required by this part 2 and contains no extraneous material. The clerk shall approve or disapprove such form within five working days of submission. All such petitions shall be prenumbered serially, and the circulation of any petition described by this part 2 by any medium other than personally by a circulator is prohibited.

(2) Any disassembly of the petition which has the effect of separating the affidavits from the signatures shall render the petition invalid and of no force and effect. Prior to the time of filing, the persons designated in the petition to represent the signers shall attach the sheets containing the signatures and affidavits together, which shall be bound in convenient volumes together with the sheets containing the signatures accompanying the same.

**Source: L. 84:** Entire section added, p. 833, § 5, effective April 25.

**31-2-222. Ballot.** Proposals to adopt, amend, or repeal home rule charters, including the formation of a new charter commission, shall appear upon the official ballot by ballot title only and, if more than one, shall be numbered consecutively in such order as the governing body may provide and shall be printed on the official ballot in that order, together with their respective numbers prefixed in boldface type. Each ballot title shall appear once on the official ballot and shall be separated from the other ballot titles next to it by heavy black lines and shall be followed by the words "yes" and "no" as follows:

(HERE SHALL APPEAR THE  
BALLOT TITLE IN FULL)

YES

NO

**Source: L. 84:** Entire section added, p. 834, § 5, effective April 25.

**31-2-223. Affidavit - evidence - protest procedure.** (1) All petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, shall have attached thereto an affidavit of the circulator of the petition stating that each signature on the petition is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the affiant each of the persons signing such petition was at the time of signing a registered elector. A protest in writing, under oath, may be filed in the office in which such petition has been filed by some registered elector of the municipality or

territory proposed to be incorporated within thirty days after such petition is filed, setting forth with particularity the grounds of such protest and the names protested. In such event the officer with whom such petition is filed shall mail a copy of the protest to the persons named in such petition as representing the signers thereof at the addresses therein given, together with a notice fixing a time for hearing the protest not less than five nor more than twenty days after such notice is mailed. If, at such hearing, such protest is denied in whole or in part, the person filing the same, within ten days after such denial, may file an amended protest, a copy of which shall be mailed to the persons named in the petition and on which a hearing shall be held as in the case of the original protest; but no person shall be entitled to amend an amended protest.

(2) All records and hearings shall be public, and all testimony shall be under oath. The officer with whom such petition is filed shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents. Upon failure of any witness to obey the subpoena, the officer may petition the district court, and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court. Hearings shall be had as soon as is conveniently possible and must be concluded within thirty days after the commencement thereof, and the result of such hearings shall be certified to the persons representing the signers of such petition. In case the petition is declared insufficient in form or number of signatures of registered electors, it may be withdrawn by a majority in number of the persons representing the signers of such petition and, within fifteen days after the insufficiency is declared, may be amended or additional names signed thereto as in the first instance and refiled as an original petition. The finding as to the sufficiency of any petition may be reviewed by the district court of the county in which such petition is filed, but any such review shall be timely made, and, upon application, the decision of such court thereon shall be reviewed by the supreme court.

**Source: L. 84:** Entire section added, p. 834, § 5, effective April 25. **L. 85:** Entire section amended, p. 1348, § 18, effective April 30. **L. 2000:** (1) amended, p. 792, § 8, effective August 2.

### **31-2-224. Receiving money to circulate petition - penalty. (Repealed)**

**Source: L. 84:** Entire section added, p. 835, § 5, effective April 25. **L. 89:** Entire section repealed, p. 861, § 156, effective July 1.

**31-2-225. Unlawful acts - penalty.** (1) With respect to any petition to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, it is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of such person, organization, association, league, or political party;

(b) For any person to sign any name other than his own to any such petition or knowingly to sign his name more than once for the same measure at one election;

(c) For any person to sign any such petition who is not a registered elector of the municipality or of the territory proposed to be incorporated at the time of signing the same;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in such affidavit to be true;

(e) For any person to certify that an affidavit attached to such petition was subscribed or sworn to before him unless it was so subscribed and sworn to before him and unless such person so certifying is duly qualified under the laws of this state to administer an oath; or

(f) For any person to do willfully any act in reviewing the petition or setting the ballot title which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election held under this part 2 or to refuse to submit any such petition in the form presented for submission at any election held under this part 2.

(2) Any person who violates any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source:** L. 84: Entire section added, p. 835, § 5, effective April 25. L. 85: (1)(c) amended, p. 1349, § 19, effective April 30. L. 2002: (2) amended, p. 1543, § 289, effective October 1.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

### PART 3

#### REORGANIZATION OF CITIES AND TOWNS FORMED UNDER PRIOR LAW

**Cross references:** For notices required in municipal dissolution and new incorporation, see § 24-32-109.

**31-2-301. Procedure.** Any city or town incorporated prior to July 3, 1877, which has not previously reorganized pursuant to this part 3 may abandon its organization and organize itself under the provisions of this title, with the same territorial limits, by pursuing the course prescribed in this part 3.

**Source:** L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

**Editor's note:** This section is similar to former § 31-4-101 as it existed prior to 1975.

**31-2-302. Petition - election.** Upon the petition of the registered electors of any such town or city equal in number to ten percent of the votes cast for all candidates for mayor at the last preceding regular election, the governing body thereof shall immediately, by ordinance or resolution, call a special election on the question of organizing under this title. Such question shall be submitted to the registered electors of the city or town at a special election to be held on

# Article 20

## Home Rule Cities and Towns

Section 1. Incorporated. The municipal corporation known as the city of Denver and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the state of Colorado, included within the exterior boundaries of the said city of Denver as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the "City and County of Denver". By that name said corporation shall have perpetual succession, and shall own, possess, and hold all property, real and personal, theretofore owned, possessed, or held by the said city of Denver and by such included municipal corporations, and also all property, real and personal, theretofore owned, possessed, or held by the said county of Arapahoe, and shall assume, manage, and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities, and shall acquire all benefits and shall assume and pay all bonds, obligations, and indebtedness of said city of Denver and of said included municipal corporations and of the county of Arapahoe; by that name may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold, and enjoy or sell and dispose of, real and personal property; may receive bequests, gifts, and donations of all kinds of property, in fee simple, or in trust for public, charitable, or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests, and donations, with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefore, for the use of said city and county and the inhabitants thereof, and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may



desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided.

The provisions of section 3 of article XIV of this constitution and the general annexation and consolidation statutes of the state relating to counties shall apply to the city and county of Denver. Any contiguous town, city, or territory hereafter annexed to or consolidated with the city and county of Denver, under any such laws of this state, in whatsoever county the same may be at the time, shall be detached per se from such other county and become a municipal and territorial part of the city and county of Denver, together with all property thereunto belonging.

The city and county of Denver shall alone always constitute one judicial district of the state.

(The preceding three paragraphs were amended by the People, November 5, 1974 ♦ Effective upon proclamation of the Governor, December 20, 1974.)

Any other provisions of this constitution to the contrary notwithstanding:

No annexation or consolidation proceeding shall be initiated after the effective date of this amendment pursuant to the general annexation and consolidation statutes of the state of Colorado to annex lands to or consolidate lands with the city and county of Denver until such proposed annexation or consolidation is first approved by a majority vote of a six ♦ member boundary control commission composed of one commissioner from each of the boards of county commissioners of Adams, Arapahoe, and Jefferson counties, respectively, and three elected officials of the city and county of Denver to be chosen by the mayor. The commissioners from each of the said counties shall be appointed by resolution of their respective boards.

No land located in any county other than Adams, Arapahoe, or Jefferson counties shall be annexed to or consolidated with the city and county of Denver unless such annexation or consolidation is approved by the unanimous vote of all the members of the board of county commissioners of the county in which such land is located.

Any territory attached to the city and county of Denver or the city of Lakewood or the city of Aurora during the period extending from April 1, 1974, to the effective date of this amendment, whether or not subject to judicial review, shall be detached therefrom on July 1, 1975, unless any such annexation is ratified by the boundary control commission on or

before July 1, 1975.

Nothing in this amendment shall be construed as prohibiting the entry of any final judgment in any annexation judicial review proceeding pending on April 1, 1974, declaring any annexation by the city and county of Denver to be invalid.

The boundary control commission shall have the power at any time by four concurring votes to detach all or any portion of any territory validly annexed to the city and county of Denver during the period extending from March 1, 1973, to the effective date of this amendment.

All actions, including actions regarding procedural rules, shall be adopted by the commission by majority vote. Each commissioner shall have one vote, including the commissioner who acts as the chairman of the commission. All procedural rules adopted by the commission shall be filed with the secretary of state.

This amendment shall be self-executing.

(The preceding seven paragraphs were adopted November 5, 1974 ♦ Effective upon proclamation of the Governor, December 20, 1974. (See Laws 1974, p. 457.))

Section 2. Officers. The officers of the city and county of Denver shall be such as by appointment or election may be provided for by the charter; and the jurisdiction, term of office, duties and qualifications of all such officers shall be such as in the charter may be provided; but the charter shall designate the officers who shall, respectively, perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable. If any officer of said city and county of Denver shall receive any compensation whatever, he or she shall receive the same as a stated salary, the amount of which shall be fixed by the charter, or, in the case of officers not in the classified civil service, by ordinance within limits fixed by the charter, and paid out of the treasury of the city and county of Denver in equal monthly payments; provided, however, no elected officer shall receive any increase or decrease in compensation under any ordinance passed during the term for which he was elected.

As amended November 7, 1950. (See Laws 1951, p. 232.)

Section 3. Transfer of government. Immediately upon the canvass of the vote showing the adoption of this amendment, it shall be the duty of the governor of the state to issue his proclamation accordingly, and thereupon the city of Denver, and all municipal corporations and that part of the county of Arapahoe within the boundaries of said city,

shall merge into the city and county of Denver, and the terms of office of all officers of the city of Denver and of all included municipalities and of the county of Arapahoe shall terminate; except, that the then mayor, auditor, engineer, council (which shall perform the duties of a board of county commissioners), police magistrate, chief of police and boards, of the city of Denver shall become, respectively, said officers of the city and county of Denver, and said engineer shall be ex officio surveyor and said chief of police shall be ex officio sheriff of the city and county of Denver; and the then clerk and ex officio recorder, treasurer, assessor and coroner of the county of Arapahoe, and the justices of the peace and constables holding office within the city of Denver, shall become, respectively, said officers of the city and county of Denver, and the district attorney shall also be ex officio attorney of the city and county of Denver. The foregoing officers shall hold the said offices as above specified only until their successors are duly elected and qualified as herein provided for; except that the then district judges, county judge and district attorney shall serve their full terms, respectively, for which elected. The police and firemen of the city of Denver, except the chief of police as such, shall continue severally as the police and firemen of the city and county of Denver until they are severally discharged under such civil service regulations as shall be provided by the charter; and every charter shall provide that the department of fire and police and the department of public utilities and works shall be under such civil service regulations as in said charter shall be provided.

Added November 4, 1902. (See Laws 1901, p. 100.)

Section 4. First charter. (1) The charter and ordinances of the city of Denver as the same shall exist when this amendment takes effect, shall, for the time being only, and as far as applicable, be the charter and ordinances of the city and county of Denver; but the people of the city and county of Denver are hereby vested with and they shall always have the exclusive power in the making, altering, revising or amending their charter and, within ten days after the proclamation of the governor announcing the adoption of this amendment the council of the city and county of Denver shall, by ordinance, call a special election, to be conducted as provided by law, of the qualified electors in said city and county of Denver, for the election of twenty-one taxpayers who shall have been qualified electors within the limits thereof for at least five years, who shall constitute a charter convention to frame a charter for said city and county in harmony with this amendment. Immediately upon completion, the charter so framed, with a prefatory synopsis, shall be signed by the officers and members of the convention and delivered to the clerk of said city and county who shall publish the same in full, with his official certification, in the official newspaper of said city and county, three times, and a week apart, the first publication being with the call for a special election, at which the qualified electors of said city and county shall by vote express

their approval or rejection of the said charter. If the said charter shall be approved by a majority of those voting thereon, then two copies thereof (together with the vote for and against) duly certified by the said clerk, shall, within ten days after such vote is taken, be filed with the secretary of state, and shall thereupon become and be the charter of the city and county of Denver. But if the said charter be rejected, then, within thirty days thereafter, twenty-one members of a new charter convention shall be elected at a special election to be called as above in said city and county, and they shall proceed as above to frame a charter, which shall in like manner and to the like end be published and submitted to a vote of said voters for their approval or rejection. If again rejected, the procedure herein designated shall be repeated (each special election for members of a new charter convention being within thirty days after each rejection) until a charter is finally approved by a majority of those voting thereon, and certified (together with the vote for and against) to the secretary of state as aforesaid, whereupon it shall become the charter of the said city and county of Denver and shall become the organic law thereof, and supersede any existing charters and amendments thereof. The members of each of said charter conventions shall be elected at large; and they shall complete their labors within sixty days after their respective election.

(2) Every ordinance for a special election of charter convention members shall fix the time and place where the convention shall be held, and shall specify the compensation, if any, to be paid the officers and members thereof, allowing no compensation in case of non-attendance or tardy attendance, and shall fix the time when the vote shall be taken on the proposed charter, to be not less than thirty days nor more than sixty days after its delivery to the clerk. The charter shall make proper provision for continuing, amending or repealing the ordinances of the city and county of Denver.

(3) All expenses of charter conventions shall be paid out of the treasury upon the order of the president and secretary thereof. The expenses of elections for charter conventions and of charter votes shall be paid out of the treasury upon the order of the council.

(4) Any franchise relating to any street, alley, or public place of the said city and county shall be subject to the initiative and referendum powers reserved to the people under section 1 of article V of this constitution. Such referendum power shall be guaranteed notwithstanding a recital in an ordinance granting such franchise that such ordinance is necessary for the immediate preservation of the public peace, health, and safety. Not more than five percent of the registered electors of a home rule city shall be required to order such referendum. Nothing in this section shall preclude a home rule charter provision which requires a lesser number of registered electors to order such referendum or which

requires a franchise to be voted on by the registered electors. If such a referendum is ordered to be submitted to the registered electors, the grantee of such franchise shall deposit with the treasurer the expense (to be determined by said treasurer) of such submission. The council shall have power to fix the rate of taxation on property each year for city and county purposes.

Added November 4, 1902. (See Laws 1901, p. 101.); as amended November 6, 1984 ♦♦ Effective upon proclamation of the Governor, January 14, 1985. (For the text of this amendment and the votes cast thereon, see L. 84, p. 1145, and L. 85, p. 1791.); as amended November 4, 1986 ♦♦ Effective upon proclamation of the Governor, December 17, 1986. (For the text of this amendment and the votes cast thereon, see L. 86, p. 1239, and L. 87, p. 1859.)

Section 5. New charters, amendments or measures. The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided;

It shall be competent for qualified electors in number not less than five percent of the next preceding gubernatorial vote in said city and county to petition the council for any measure, or charter amendment, or for a charter convention. The council shall submit the same to a vote of the qualified electors at the next general election not held within thirty days after such petition is filed; whenever such petition is signed by qualified electors in number not less than ten percent of the next preceding gubernatorial vote in said city and county, with a request for a special election, the council shall submit it at a special election to be held not less than thirty nor more than sixty days from the date of filing the petition; provided, that any question so submitted at a special election shall not again be submitted at a special election within two years thereafter. In submitting any such charter, charter amendment or measure, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by a majority of those voting thereon, a charter convention shall be called through a special election ordinance as provided in section four (4) hereof, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, and all expenses paid, as in said section provided.

The clerk of the city and county shall publish, with his official certification, for three times, a week apart, in the official newspapers, the first publication to be with his call for the election, general or special, the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which is to be

submitted to the voters. Within ten days following the vote the said clerk shall publish once in said newspaper the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which shall have been approved by majority of those voting thereon, and he shall file with the secretary of state two copies thereof (with the vote for and against) officially certified by him, and the same shall go into effect from the date of such filing. He shall also certify to the secretary of state, with the vote for and against, two copies of every defeated alternative article or proposition, charter, charter amendment, measure or proposal for a charter convention. Each charter shall also provide for a reference upon proper petition therefor, of measures passed by the council to a vote of the qualified electors, and for the initiative by the qualified electors of such ordinances as they may by petition request.

The signatures to petitions in this amendment mentioned need not all be on one paper. Nothing herein or elsewhere shall prevent the council, if it sees fit, from adopting automatic vote registers for use at elections and references.

No charter, charter amendment or measure adopted or defeated under the provisions of this amendment shall be amended, repealed or revived, except by petition and electoral vote. And no such charter, charter amendment or measure shall diminish the tax rate for state purposes fixed by act of the general assembly, or interfere in any wise with the collection of state taxes.

The city council, or board of trustees, or other body in which the legislative powers of any home rule city or town may then be vested, on its own initiative, may submit any measure, charter amendment, or the question whether or not a charter convention shall be called, at any general or special state or municipal election held not less than 30 days after the effective date of the ordinance or resolution submitting such question to the voters.

As amended November 7, 1950. (See Laws 1951, p. 232.)

Section 6. Home rule for cities and towns. The people of each city or town of this state, having a population of two thousand inhabitants as determined by the last preceding census taken under the authority of the United States, the state of Colorado or said city or town, are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in

conflict therewith.

Proposals for charter conventions shall be submitted by the city council or board of trustees, or other body in which the legislative powers of the city or town shall then be vested, at special elections, or at general, state or municipal elections, upon petition filed by qualified electors, all in reasonable conformity with section 5 of this article, and all proceedings thereon or thereafter shall be in reasonable conformity with sections 4 and 5 of this article.

From and after the certifying to and filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:

- a. The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees;
- b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;
- c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;
- d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character;
- e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;
- f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting

therein upon the question;

g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessments, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

All provisions of the charters of the city and county of Denver and the cities of Pueblo, Colorado Springs and Grand Junction, as heretofore certified to and filed with the secretary of state, and of the charter of any other city heretofore approved by a majority of those voting thereon and certified to and filed with the secretary of state, which provisions are not in conflict with this article, and all elections and electoral votes heretofore had under and pursuant thereto, are hereby ratified, affirmed and validated as of their date.

Any act in violation of the provisions of such charter or of any ordinance thereunder shall be criminal and punishable as such when so provided by any statute now or hereafter in force.

The provisions of this section 6 shall apply to the city and county of Denver.

This article shall be in all respects self-executing.

As amended November 5, 1912. (See Laws 1913, p. 669.)

Section 7. City and county of Denver single school district consolidations. The city and county of Denver shall alone always constitute one school district, to be known as District



No. 1, but its conduct, affairs and business shall be in the hands of a board of education consisting of such numbers, elected in such manner as the general school laws of the state shall provide, and until the first election under said laws of a full board of education which shall be had at the first election held after the adoption of this amendment, all the directors of school district No. 1, and the respective presidents of the school boards of school districts Nos. 2, 7, 17 and 21, at the time this amendment takes effect, shall act as such board of education, and all districts or special charters now existing are hereby abolished.

The said board of education shall perform all the acts and duties required to be performed for said district by the general laws of the state. Except as inconsistent with this amendment, the general school laws of the state shall, unless the context evinces a contrary intent, be held to extend and apply to the said "District No. 1".

Upon the annexation of any contiguous municipality which shall include a school district or districts or any part of a district, said school district or districts or part shall be merged in said "District No. 1", which shall then own all the property thereof, real and personal, located within the boundaries of such annexed municipality, and shall assume and pay all the bonds, obligations and indebtedness of each of the said included school districts, and a proper proportion of those of partially included districts.

Provided, however, that the indebtedness, both principal and interest, which any school district may be under at the time when it becomes a part, by this amendment or by annexation, of said "District No. 1", shall be paid by said school district so owing the same by a special tax to be fixed and certified by the board of education to the council which shall levy the same upon the property within the boundaries of such district, respectively, as the same existed at the time such district becomes a part of said "District No. 1", and in case of partially included districts such tax shall be equitably apportioned upon the several parts thereof.

Added November 4, 1902. (See Laws 1901, p. 105.)

Section 8. Conflicting constitutional provisions declared inapplicable. Anything in the constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for.

Added November 4, 1902. (See Laws 1901, p. 106.)

Section 9. Procedure and requirements for adoption. (1) Notwithstanding any provision in sections 4, 5, and 6 of this article to the contrary, the registered electors of each city and

county, city, and town of the state are hereby vested with the power to adopt, amend, and repeal a home rule charter.

(2) The general assembly shall provide by statute procedures under which the registered electors of any proposed or existing city and county, city, or town may adopt, amend, and repeal a municipal home rule charter. Action to initiate home rule shall be by petition, signed by not less than five percent of the registered electors of the proposed or existing city and county, city, or town, or by proper ordinance by the city council or board of trustees of a town, submitting the question of the adoption of a municipal home rule charter to the registered electors of the city and county, city, or town. No municipal home rule charter, amendment thereto, or repeal thereof, shall become effective until approved by a majority of the registered electors of such city and county, city, or town voting thereon. A new city or town may acquire home rule status at the time of its incorporation.

(3) The provisions of this article as they existed prior to the effective date of this section, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, shall continue to apply until superseded by statute.

(4) It is the purpose of this section to afford to the people of all cities, cities and counties, and towns the right to home rule regardless of population, period of incorporation, or other limitation, and for this purpose this section shall be self-executing. It is the further purpose of this section to facilitate adoption and amendment of home rule through such procedures as may hereafter be enacted by the general assembly.

Adopted November 3, 1970 ♦♦ Effective January 1, 1972. (See Laws 1969, p. 1250.); (1) and (2) amended November 6, 1984 ♦♦ Effective upon proclamation of the Governor, January 14, 1985. (For the text of this amendment and the votes cast thereon, see L. 84, p. 1146, and L. 85, p. 1791.)

Section 10. City and county of Broomfield - created

The city of Broomfield is a preexisting municipal corporation and home rule city of the state of Colorado, physically situated in parts of Adams, Boulder, Jefferson, and Weld counties. On and after November 15, 2001, all territory in the municipal boundaries of the city of Broomfield shall be detached from the counties of Adams, Boulder, Jefferson, and Weld and shall be consolidated into a single county and municipal corporation with the name "The City and County of Broomfield". Prior to November 15, 2001, the city of

Broomfield shall not extend its boundaries beyond the annexation boundary map approved by the Broomfield city council on April 28, 1998, as an amendment to the city of Broomfield 1995 master plan. The existing charter of the said city of Broomfield shall become the charter of the city and county of Broomfield.

The city and county of Broomfield shall have perpetual succession; shall own, possess, and hold all real and personal property, including water rights, the right to use water, and contracts for water, currently owned, possessed, or held by the said city of Broomfield; shall assume, manage, and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities of, shall acquire all benefits of, and shall assume and pay all bonds, obligations, and indebtedness of said city of Broomfield and its proportionate share of the general obligation indebtedness and, as provided by intergovernmental agreement, its proportionate share of revenue bond obligations of the counties of Adams, Boulder, Jefferson, and Weld on and after November 15, 2001.

The city and county of Broomfield may sue and defend, plead, and be impleaded in all courts and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may grant franchises; may purchase, receive, hold, and enjoy, or sell and dispose of real and personal property; may receive bequests, gifts, and donations of real and personal property, or real and personal property in trust for public, charitable, or other purposes, and do all things and acts necessary to carry out the purposes of such gifts, bequests, donations, and trusts with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, donation, or trust.

The city and county of Broomfield shall have the power within and without its territorial limits to construct, condemn, purchase, acquire, lease, add to, maintain, conduct, and operate water works, water supplies, sanitary sewer facilities, storm water facilities, parks, recreation facilities, open space lands, light plants, power plants, heating plants, electric and other energy facilities and systems, gas facilities and systems, transportation systems, cable television systems, telecommunication systems, and other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefor, for the use of said city and county and the inhabitants thereof; to purchase in whole or in part any such systems, plants, works, facilities, or ways, or any contracts in relation or connection thereto that may exist, and may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain; and to issue bonds in accordance with its charter in any amount necessary to carry out any said powers or purposes, as the charter may provide and limit. The city and county of Broomfield shall have all of the powers of its

charter and shall have all of the powers set out in section 6 of this article, including the power to make, amend, add to, or replace its charter as set forth in section 9 of this article. The charter provisions and procedures shall supersede any constitutional or statutory limitations and procedures regarding financial obligations. The city and county of Broomfield shall have all powers conferred to home rule municipalities and to home rule counties by the constitution and general laws of the state of Colorado that are not inconsistent with the constitutional provisions creating the city and county of Broomfield.

Prior to November 15, 2001, the charter and ordinances of the city of Broomfield shall govern all local and municipal matters of the city. On and after November 15, 2001, the constitutional provisions creating and governing the city and county of Broomfield, the city and county charter adopted in accordance with these constitutional provisions, and the ordinances existing and adopted from time to time shall govern all local and municipal matters of the city and county of Broomfield.

On and after November 15, 2001, the requirements of section 3 of article XIV of this constitution and the general annexation and consolidation statutes of the state relating to counties shall apply to the city and county of Broomfield. On and after November 15, 2001, any contiguous territory, together with all property belonging thereto, hereafter annexed to or consolidated with the city and county of Broomfield under any laws of this state, in whatsoever county the same may be at the time, shall be detached from such other county and become a municipal and territorial part of the city and county of Broomfield.

On and after November 15, 2001, no annexation or consolidation proceeding shall be initiated pursuant to the general annexation and consolidation statutes of the state to annex lands to or consolidate lands with the city and county of Broomfield until such proposed annexation or consolidation is first approved by a majority vote of a seven-member boundary control commission. The boundary control commission shall be composed of one commissioner from each of the boards of commissioners of Adams, Boulder, Jefferson, and Weld counties, respectively, and three elected officials of the city and county of Broomfield. The commissioners from each of the said counties shall be appointed by resolution of the respective county boards of commissioners. The three elected officials from the city and county of Broomfield shall be appointed by the mayor of the city and county of Broomfield. The boundary control commission shall adopt all actions, including actions regarding procedural rules, by majority vote. Each member of the boundary control commission shall have one vote, including the commissioner who acts as chairperson of the commission. The commission shall file all procedural rules

adopted by the commission with the secretary of state.

Enacted by the people November 3, 1998 -- Effective upon proclamation of the Governor, January --, 1999. (For the text of this amendment and the votes cast thereon, see L. 98, p. 2225.)

#### Section 11. Officers - city and county of Broomfield

The officers of the city and county of Broomfield shall be as provided for by its charter or ordinances. The jurisdiction, term of office, and duties of such officers shall commence on November 15, 2001. The qualifications and duties of all such officers shall be as provided for by the city and county charter and ordinances, but the ordinances shall designate the officers who shall perform the acts and duties required of county officers pursuant to this constitution or the general laws of the state of Colorado, as far as applicable. All compensation for elected officials shall be determined by ordinance and not by state statute. If any elected officer of the city and county of Broomfield shall receive any compensation, such officer shall receive the same as a stated salary, the amount of which shall be fixed by ordinance within limits fixed by the city and county charter or by resolution approving the city and county budget and paid in equal monthly payments. No elected officer shall receive any increase or decrease in compensation under any ordinance or resolution passed during the term for which such officer was elected.

Enacted by the people November 3, 1998 -- Effective upon proclamation of the Governor, January --, 1999. (For the text of this amendment and the votes cast thereon, see L. 98, p. 2227.)

#### Section 12. Transfer of government

Upon the canvass of the vote showing the adoption of the constitutional provisions creating and governing the city and county of Broomfield, the governor shall issue a proclamation accordingly, and, on and after November 15, 2001, the city of Broomfield and those parts of the counties of Adams, Boulder, Jefferson, and Weld included in the boundaries of said city shall be consolidated into the city and county of Broomfield. The duties and terms of office of all officers of Adams, Boulder, Jefferson, and Weld counties shall no longer be applicable to and shall terminate with regard to the city and county of Broomfield. On and after November 15, 2001, the terms of office of the mayor and city council of the city of

Broomfield shall terminate with regard to the city of Broomfield and said mayor and city council shall become the mayor and city council of the city and county of Broomfield. The city council of the city and county of Broomfield, in addition to performing the duties prescribed in the city and county charter and ordinances, shall perform the duties of a board of county commissioners or may delegate certain duties to various boards and commissions appointed by the city council of the city and county of Broomfield. The city and county of Broomfield shall be a successor district of the city of Broomfield under section 20 of article X of this constitution. Any voter approval granted the city of Broomfield under section 20 of article X of this constitution prior to November 15, 2001, shall be considered voter approval under said section for the city and county of Broomfield. The city and county of Broomfield shall have the power to continue to impose and collect sales, use, and property taxes that were imposed by the city of Broomfield and the counties of Adams, Boulder, Jefferson, and Weld within the areas where said taxes were imposed on November 14, 2001, until the voters of the city and county of Broomfield approve uniform sales, use, and property taxes within the city and county of Broomfield or approve increased sales, use, or property taxes within the city and county of Broomfield. Any violation of any criminal statutes of the state of Colorado occurring on or before November 14, 2001, shall continue to be prosecuted within the county where the violation originally occurred.

Enacted by the people November 3, 1998 -- Effective upon proclamation of the Governor, January --, 1999. (For the text of this amendment and the votes cast thereon, see L. 98, p. 2228.)

### Section 13. Sections self-executing - appropriations

Sections 10 through 13 of this article shall be in all respects self-executing and shall be construed so as to supersede any conflicting constitutional or statutory provision that would otherwise impede the creation of the city and county of Broomfield or limit any of the provisions of those sections. Except as otherwise provided in sections 10 through 13, said sections shall be effective on and after November 15, 2001. After the adoption of the constitutional provisions creating and governing the city and county of Broomfield, the general assembly may appropriate funds, if necessary, in cooperation with the city and county of Broomfield to implement these constitutional provisions at the state level.

Enacted by the people November 3, 1998 -- Effective upon proclamation of the Governor,

January --, 1999. (For the text of this amendment and the votes cast thereon, see L. 98, p. 2228.)

# Overview of Colorado Municipal Home Rule

by Sam Mamet, Executive Director  
Colorado Municipal League



*The Voice of Colorado's Cities and Towns*

Your source for advocacy, information and training.

The views expressed at this forum are those solely of the presenter, and  
any legal advice should be obtained by appropriate legal counsel

Prepared in 2017



# Municipal Home Rule in Colorado

- Municipalities lacking home rule status are limited to exercising those powers that have been granted by the state

1902 - Citizens in cities of the first and second class may adopt home rule under amendment to the Colorado Constitution

1912 - Section 6 of Article XX specifically enumerated various municipal home rule powers with a “catch-all” paragraph

1970 - Section 9 extended the right to adopt home rule to the citizens of every municipality

- Article XX of the Colorado Constitution reserves both *structural* and *functional* home rule powers to municipalities and “the full right of self government in local and municipal matters “ to citizens

# General Arguments For Home Rule

- Article XX of the Colorado Constitution grants both general and specific powers to home rule municipalities
- Provides greater flexibility to solve local problems because municipalities are less constrained by state requirements
- Allows quicker response time to emergency situations as there is no need to wait for the entire state legislative process
- Home rule municipalities are not required to follow state statutes in matters of *local and municipal concern* and therefore enjoy freedom from state interference regarding local and municipal matters

# General Arguments For Home Rule

- Allows municipalities to legislate with confidence on any and all matters of local concern
  - Authority granted by state statutes is sometimes ambiguous.
- Enhances citizen control, interest, involvement and pride in their municipal government
- The embodiment of the principle that the best government is the one that is the closest to the people

# General Arguments Against Home Rule

- Restrictive charters may limit the potential flexibility of home rule
- Dissatisfied citizens may adopt binding charter amendments, i.e. amendments which cannot be changed or repealed by the governing body without a subsequent vote of the people
- Legal uncertainties may arise when the municipality legislates in a relatively new area; the ultimate determination of whether a matter is truly of “local concern” requires an ad hoc determination in court

# General Arguments Against Home Rule

- Costs for adopting a home rule charter can burden the municipality – attorney's or other consultant's fees, expenses incurred from publication requirements, election costs, etc.
- A change in the status quo may create unnecessary risks in a community that is satisfied operating under existing statutes
- Unless restricted by the charter, a home rule municipality has the potential to exercise more governmental powers than are available to statutory municipalities, which some local citizens may see as a disadvantage

# Timeline for Home Rule Election

- Within 180 days of its election, the charter commission shall submit to the governing body a proposed charter
- Within 30 days after the date that the charter commission submits the proposed charter to it, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved
- The election shall not be held less than 30 nor more than 185 days after publication of the notice

# Drafting a Home Rule Charter

**Under Colorado law, the charter is principally an instrument of limitation in Colorado.**

**The charter sets forth the basic:**

- (1) structure and organization of government;
- (2) procedures to be followed by municipal government in the conduct of its business;
- (3) powers of municipal officials and agencies, including any limitations.

**It is not necessary for the charter to spell out the details of municipal operations**

- Details can be left to the city council.
- State law applies in the absence of a charter or ordinance provision.

**Charters are not easily or readily amended; consequently, great care must go into their drafting and unnecessary details and verbiage should be avoided.**

# Contents of a Municipal Charter

- **Mandatory provisions:**
  - Initiative and referendum of measures
  - Recall of officers
  - Provisions continuing, amending, or repealing existing ordinances
  - Prefatory synopsis
- **Other examples of charter provisions**
  - Form of government – allocation of legislative and administrative powers
  - Qualifications, terms of office, number of councilmembers and method of election
  - Election procedures
  - Administrative organization
  - Boards and commissions
  - Procedures for passage of ordinances, resolutions and motions
  - Personnel, merit or civil service system
  - Legal and judicial affairs
  - Budget control and financing
  - Municipal borrowing
  - Eminent domain
- **Borrowing provisions from other charters is helpful and time saving, but be wary of using charters from Colorado municipalities that were adopted years ago, guard against lifting unnecessary detail from other charters and be aware that charter provisions borrowed from the municipalities may not be relevant or appropriate for your community.**



# Considerations in Drafting a Charter

- Be aware of the tight timeline
- Research and organize resource information beforehand
- Use your staff or consultant extensively and effectively
- Obtain competent legal advice
- Provide adequate opportunity for citizen input before finalized decisions
- Charter commissions may adopt an organization similar to their existing organization
- Think long term

# Considerations in Drafting a Charter

- Define which actions must be by ordinance as opposed to resolution or motion and the procedures applicable to enactment of ordinances. Make clear who votes and how many votes are necessary for the council to act
- Include fundamental and priority features, leaving other provisions to subsequent action by city council and staff. Leave the elected officials with sufficient flexibility to act and be responsive
- Cross-reference state statute where appropriate, such as municipal election procedures
- Financing provisions, such as municipal bonding and use of local improvement districts, are important
- Be careful about including unnecessary provisions sought by special interests

# Considerations in Drafting a Charter

- A good process can facilitate drafting of a good charter and enhance chances for its approval by the citizens
- Constructive debate can be healthy – remember the debate which was carried out at the Constitutional Convention in Philadelphia.
- **Work as a team!**

# Authority and Flexibility Afforded to Home Rule Municipalities

- **Form of Government:**
  - City manager who answers to council, strong mayor - weak council, or strong council - weak mayor system
  - Clear authority to adopt the council/manager form of government
  
- **Elected Officials**
  - Clarification of powers for mayor, council, manager, other officers, and boards and commissions
  - Disqualifying circumstances, grounds and procedures for discipline, or removal from office
  - Minimum age requirements

# Authority and Flexibility Afforded to Home Rule Municipalities

- **Elective Offices**
  - Number and types of offices, the date when newly elected officials take office, and provide flexibility for being elected at-large, by districts and redistricting
  - Modify or eliminate term limits for mayor and council
- **Elections**
  - Regular election dates and times other than the dates required by statute
  - Flexibility for special election dates
  - Procedures for initiative, referendum and recall
  - Expand the right to vote in municipal elections
  - Expand certain citizen powers, like initiative, referendum and recall

# Authority and Flexibility Afforded to Home Rule Municipalities

- Procedures
  - Enactment of local ordinances to expedite consideration and effective dates, such as one-reading procedure for emergency ordinances in cities
  - Option to delegate decisions to administrative staff
  - Repeal or modify statutory provisions governing bidding and awarding of public projects and disposal of public property
  - Establish local zoning, subdivision and other land use procedures which are different from those applicable to statutory municipalities
  - Provide council procedures and bind elected officials to them

# Authority and Flexibility Afforded to Home Rule Municipalities

- **Finances**
  - Collection and enforcement of local sales/use taxes
  - Broader or narrower sales and use tax base
  - Additional types of excise taxes: admissions, entertainment, tourism, and lodgers' taxes
  - Clarify, simplify, or otherwise revise procedures for budget and appropriation and municipal enterprises
  - Authorize refunds and exemptions not authorized by state law
  - Increase general obligation bond authority and streamline requirements for issuance of bonds
  - Facilitate formation of special improvement districts and expand purposes for which they can be formed
- **Home rule does not exempt municipalities from TABOR requirements.**

# Authority and Flexibility Afforded to Home Rule Municipalities -

- **Miscellaneous Powers**
  - Alternative procedures for management and operation of municipal utilities
  - Terms and conditions of municipal employment
  - Broaden municipal court jurisdiction
  - Provide additional tools for economic development
  - Clarify authority for or expand the types of services which the municipality can provide
  - Set forth more specific ethics and conflict of interest rules



# Decisions To Be Made By The Town Board

- **Size of the Charter Commission**
  - If your municipal population is over 2,000, then the commission may be composed of 9 to 21 members (must be an odd-number)
  - If your municipal population is under 2,000, then the commission shall be composed of 9 members
- **Date & time that the charter commission meets**
  - Eligibility to serve on the charter commission shall extend to all registered electors of the municipality
  - The commission may employ a staff; consult and retain experts.
- **Calendar for placing a home rule initiative on the ballot**

# Growth in Home Rule Municipalities

- **Most Colorado residents benefit from home rule**
- **Number of Colorado home rule cities and towns**
  - **1940 – 10**
  - **1960 – 22**
  - **1980 – 56**
  - **2000 – 80**
  - **2017 – 101**
- **93% of municipal residents in home rule cities/towns**
- **69% of Colorado residents in home rule cities/towns**



The Voice of Colorado's Cities and Towns

## Home Rule

### CML Publications

[History of Home Rule](#) 

[Overview of Municipal Home Rule](#) 

[Home Rule Handbook](#) 

### Other Resources

[Bullet Point Overview of Home Rule](#) 

### Training Materials

[2012-05-01 Overview of Colorado Municipal Home Rule](#) 

# Resources at the League

- **Matrix of Home Rule Charters (2017) publication**
- **Home Rule Handbook (2017) publication**
- **Copies of every home rule charter**
- **Sample educational materials to distribute to citizens**

# Questions

**Feel free to contact Sam Mamet via e-mail at [smamet@cml.org](mailto:smamet@cml.org) and via phone at (303) 831-641.**

# HOME RULE HANDBOOK

## FOR COLORADO'S CITIES & TOWNS





# TABLE OF CONTENTS

FOREWORD .....	i
CHAPTER I: A HISTORY OF HOME RULE .....	1
Municipal Home Rule Defined; Origin and History of Home Rule in Other States; Origin and History of Home Rule in Colorado; A Perspective on Home Rule Versus State Jurisdiction; Conclusion	
CHAPTER II: HOME RULE POWERS .....	6
Sources of Power to Act; Limitation on Power to Act; Matters of “Local and Municipal,” “Statewide,” and “Mixed Concern”; How to Determine Whether a Matter is of Local, Statwide, or Mixed Concern; Local Regulation in Areas of Statewide or Mixed Concern; Advantages and Disadvantages of Home Rule; Table of Areas of Local, Statewide, and Mixed Concern Determined by the Courts	
CHAPTER III: MUNICIPAL HOME RULE ACT OF 1971 .....	22
Introduction; General Provisions; Procedures for Adopting a Home Rule Charter; Procedures for Amending a Home Rule Charter; Procedures for Repealing a Home Rule Charter; Procedures for Home Rule Municipalities to Adopt a New Charter; Ballot Requirements; Unlawful Acts Concerning Petitions; Procedures for Adopting a Charter Upon Incorporation	
CHAPTER IV: PREPARING THE CHARTER .....	31
Introduction; Pre-Commission Preparation; Charter Commission Organization; Special Consultants; Drafting the Charter; Contents of the Charter	
CHAPTER V: PUBLICIZING HOME RULE .....	39
Introduction; General Suggestions; Suggestions for the Charter Commission	
CHAPTER VI: SPOTLIGHT ON FOUR AREAS OF LOCAL CONCERN — EMPLOYMENT, TAXATION, LAND USE AND EMINENT DOMAIN .....	41
Introduction; Employment; Taxation; Land Use; Eminent Domain	
APPENDIX A: CONSTITUTION OF THE STATE OF COLORADO: ARTICLE XX: HOME RULE CITIES AND TOWNS .....	47
APPENDIX B: CHRONOLOGY OF AMENDMENTS TO ARTICLE XX .....	53
APPENDIX C: COLORADO REVISED STATUTES TITLE 31 GOVERNMENT — MUNICIPAL .....	55
APPENDIX D: HOME RULE MUNICIPALITIES IN COLORADO .....	61
APPENDIX E: TIME SCHEDULES .....	65
APPENDIX F: SAMPLE ORDINANCE INITIATING THE ADOPTION OF A HOME RULE CHARTER .....	67
APPENDIX G: SAMPLE PETITION INITIATING THE ADOPTING OF A HOME RULE CHARTER .....	69
APPENDIX H: SAMPLE ORGANIZATIONAL AND PROCEDURAL RULES FOR THE CHARTER COMMISSION. .	71
APPENDIX I: SUMMARY OF GENERAL ARGUMENTS FOR AND AGAINST HOME RULE .....	75
APPENDIX J: EXAMPLES OF ADDITIONAL AUTHORITY AND FLEXIBILITY AFFORDED TO HOME RULE MUNICIPALITIES .....	77



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# FOREWORD

This *Home Rule Handbook* has been developed by the Colorado Municipal League as a starting point for Colorado municipal officials considering home rule or amending existing home rule charters. It is designed to be an introduction to the establishment and exercise of municipal home rule rather than a comprehensive discussion of the subject.

Readers looking to begin the home rule process can locate guidance in Chapter III.

Attorneys will find the handbook to be a thorough source of case law, including an extensive table of case law defining areas of local and statewide concern.

Any municipality considering the adoption, amendment, or repeal of a home rule charter or adopting an ordinance asserting home rule powers should obtain the advice of legal counsel.

The *Home Rule Handbook* was first published in 1972. The current edition was updated by CML Law Clerk Audrey Johnson, attorney Marty McCullough, CML Municipal Research Analyst Mark Radtke, and Communications & Design Specialist Traci Stoffel. Added as the first chapter to this edition is the history of home rule in Colorado, authored by Kenneth Bueche, CML executive director from 1974 to 2005. A companion CML publication, *Matrix of Home Rule Charters*, details how more than 80 different elements are addressed in each Colorado municipal charter.

Sam Mamet  
Executive Director

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*Most stress was laid upon home rule, nonpartisanship, elections-at-large, and development of neighborhood centers. Naturally, there were other arguments for each of these. Among them was the thought that each would help weaken the power of spoils, the machine, and corrupt politics, at the state, city, and ward levels ... Government by the state, an agency outside the control of the voters of the individual city, was naturally the subject of further attack by the exponents of city self-government. The demand on the part of the city was insistent for a greater voice in its own affairs.*<sup>4</sup>

Numerous states, including Colorado, adopted municipal home rule during the Progressive Era. The progressive movement and the rush for home rule slowed down greatly after the commencement of World War I; however, additional states have adopted home rule over the years since then.<sup>5</sup>

The National Municipal League was probably the most prominent and influential national organization in promoting home rule and other municipal reforms during the Progressive Era and thereafter. The organization was founded in 1894 by local citizen groups and individuals interested in reforming municipal government. In later years, the League would devote attention to reforming county and state government.

In 1899, the National Municipal League adopted a "Municipal Program," publishing it the following year. Later it was to be referred to as a "Model City Charter." Over the years, the National Municipal League has published several revised editions. (The National Municipal League has changed its name to the National Civic League; it is not to be confused with the National League of Cities, which is the national association of cities and towns.) This "Municipal Program" contained provisions regarding municipal home rule to be incorporated in the state constitution and provisions for a Model City Charter. Its home rule features were described as follows:

*Special legislation for cities was not absolutely prohibited, but it was surrounded by certain safeguards designed to protect the city from unwarranted interference with its local affairs. Home rule, the right to adopt and amend charters, was given to cities with a population of 25,000 or more. As Chairman Deming said, "The city's independence is guaranteed. The state legislature cannot meddle with purely local affairs." Elsewhere Mr. Deming defined the fundamental principle of the program in these words: "... ample power in the city to conduct the local government, without possibility of outside assistance or of outside interference save by such supervision of a central state administrative authority as may be necessary to enforce a state law applicable alike to all the cities or all the inhabitants of the state." All else in the program was detail in the application of this principle. And Professor Rowe declared that the object of the program was to provide such a position in the political system of the state and such a framework of government as would give to the city the widest possible freedom of action in formulating the details of its own organization and in the determination of its local policy.*<sup>6</sup>

Home rule has remained a foundation of the National Municipal League's municipal reform agenda through the years, including its latest model state constitution and city charter.<sup>7</sup>

## ORIGIN AND HISTORY OF HOME RULE IN COLORADO

Municipal home rule in Colorado was adopted by state voters in 1902 and clarified and expanded by voters in 1912. Colorado's adoption in 1902 was probably influenced by developments in other states and by recommendations of the National Municipal League. The National Municipal League's 1900 Model City Charter has been credited to have "formed the basis for a sweeping amendment to the Colorado Constitution."<sup>8</sup>

Historically, Colorado's own home rule movement appears to have been fueled primarily by actions of state government affecting Denver and its citizens and a desire to form a consolidated city and county of Denver.

Denver had been granted a charter in 1861 by the territorial legislature. Denver and those other cities that were still operating under territorial charters retained the right to continue to operate under their special charters rather than being governed by general municipal laws when the constitution was adopted and statehood granted in 1876. (Georgetown is the only municipality still operating under a territorial charter.)

Following statehood, Denver's territorial charter, because it was not yet constitutionally based, was periodically amended or replaced by the General Assembly, and Denver eventually became the "political football" of the party in power. Classic examples of state interference were charter amendments enacted by the General Assembly in 1889 providing for a board of public works, and in 1891 for a fire and police board, with members of both boards appointed

<sup>4</sup> GRIFFITH, *supra* note 3, at 123.

<sup>5</sup> GRIFFITH, *supra* note 3, at 123-125 and 258; RUSH, *supra* note 2, at 150-158.

<sup>6</sup> STEWART, *supra* note 1, at 38, 53.

<sup>7</sup> The early history of municipal reform and home rule efforts and developments of the National Municipal League have been published in the following publications: STEWART, *supra* note 1; Alfred Willoughby, *The Involved Citizen: A Short History of the National Municipal League*, NAT'L CIVIC REVIEW (Dec. 1969); NAT'L MUN. LEAGUE, *Proceedings of the Milwaukee Conference for Good City Government and Sixth Annual Meeting of the National Municipal League* (1900).

<sup>8</sup> STEWART, *supra* note 1, at 48.

by the governor. Thus, the state took over the control of Denver's public improvements, public safety, and other related activities.

Armed conflict nearly broke out in 1894 when Gov. Davis H. Waite had a dispute with two of his appointees to Denver's Fire and Police Commission over their failure to follow his policies and their subsequent failure to accept his attempt to remove them from office. Armed forces for the state and city faced off before cooler heads prevailed and weapons were withdrawn.

In addition to the desire for local control, civic leaders in Denver wanted to establish a consolidated city and county. Combining these two objectives in one movement proved to be powerful in terms of voter appeal.

A historic breakthrough in Colorado's home rule movement occurred in 1901 when Denver Sen. John A. Rush, with the support of Gov. James Orman, passed legislation to refer to statewide voters Article XX of the Colorado Constitution forming Denver as a consolidated home rule city and county and also conferring on the citizens of first- and second-class cities the right to adopt local charters and become home rule municipalities. Gov. Orman, in his inaugural address, gave strong support to the home rule amendment:

*The question of home rule for Denver has been a disturbing one ever since the enactment of the law under which the governor appoints the Denver board of public works and the fire and police board. It may occur that governors will be elected that have little or no knowledge of the governmental affairs of such a city as Denver [and] the responsibilities for all city employees should be cast upon the people who live in the cities. Place the responsibility where it belongs — upon the voters of the city.<sup>9</sup>*

The amendment was approved overwhelmingly by a vote of 59,750 to 25,767.<sup>10</sup>

While the right of citizens in cities of the first and second class to adopt home rule was provided, the history is unclear to what extent these cities sought that right and to what extent voters in 1902 were influenced by the extension of home rule prerogatives statewide. A *Colorado Municipalities* article published by the Colorado Municipal League in 1925 identified the following charters as adopted between the 1902 and the 1912 constitutional amendments: Denver (1904), Colorado Springs (1909), Grand Junction (1909), Pueblo (1911), Durango (1912), and Delta (1912).<sup>11</sup>

Subsequent to passage of the amendment in 1902, a great deal of legal and political controversy and turmoil occurred, primarily involving Denver.<sup>12</sup> This caused supporters of home rule to initiate in 1912 a clarifying and strengthening amendment.

The 1912 measure rewrote Section 6 of Article XX to specifically enumerate various municipal home rule powers and included a powerful "catch-all" paragraph:

*It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.<sup>13</sup>*

Incidentally, the 1912 measure was placed on the ballot by initiative, not referral by the General Assembly. The right of initiative had been made possible by the 1910 voter-approved measure granting initiative and referenda powers to voters statewide.

The 1912 measure also changed the 1902 provision by extending home rule status from cities of the first and second class to any city or town "having a population of two thousand inhabitants." In addition, the measure "ratified, affirmed, and validated" the charters and related elections of Denver, Pueblo, Colorado Springs, Grand Junction, and of any other unnamed city that had adopted a home rule charter. The title of the 1912 initiative just referred to home rule for cities and towns, again not singling out Denver. The 1912 initiative passed by a vote of 49,596 for to 44,778 against.

Prior to the 1912 election, besides Denver, five Colorado cities had chosen home rule, including Colorado Springs, Pueblo, Delta, Durango, and Grand Junction.

The principal common theme of the charters adopted by these five cities was the adoption of the commission form of government — a popular structure in that era that vested both administrative and legislative authority in a small

9 Marjorie Hornbein, *Denver's Struggle for Home Rule*, DENV. MAG. 345 (Fall 1971).

10 COLO. CONST. art. XX §§ 2, 5 (1902) (amended 2000) (originally published in Colo. Sess. L. 97-106 (1901)). The primary sources of the Colorado experience discussed above include RUSH, *supra* note 2; Hornbein, *supra* note 9; JEROME C. SMILEY, HISTORY OF DENVER (Times-Sun Publ'g Co.) (1901); CLYDE LYNDON KING, THE HISTORY OF THE GOVERNMENT OF DENVER WITH SPECIAL REFERENCE TO ITS RELATIONS WITH PUBLIC SERVICE CORPORATIONS (Fisher Book Co.) (1911).

11 Don C. Sowers, *How to Secure a Home Rule Charter in Colorado*, 1 COLO. MUNICIPALITIES, 9-10 (Oct. 1925).

12 KING, *supra* note 1.

13 COLO. CONST. art. XX § 6 (originally published in Colo. Sess. L. 669-671 (1913)).

number of elected officials. Eventually, each city amended its charter to establish the council–manager form. In contrast, Denver’s first locally adopted charter of 1904 provided for a mayor–council structure that has evolved into its current strong mayor–council form. Colorado Springs instituted a strong mayor–council form in 2011.

Complaints appearing in the newspapers suggest a variety of systemic problems that drove the home rule movements in these cities. Although efforts to adopt home rule initially were opposed or delayed by some councils and others with political influence, the persistence of those citizens supporting home rule ultimately prevailed.

The prefatory synopsis to Grand Junction’s charter stated eloquently in 1909 what supporters of home rule today might repeat:

*The intent and purpose of this Charter is to establish a free and independent City, so far as the Constitution of the state will permit, their natural, inherent, and inalienable right of local self-government, with all its powers, duties, and responsibilities.*

A third measure affecting home rule was approved in 1950. In 1949, the General Assembly passed HCR 10 that referred the amendment to voters. According to its records, the Colorado Municipal League (CML) sponsored the 1949 legislation and spearheaded the successful vote in 1950.<sup>14</sup> The 1950 measure amended Section 2 of Article XX relating to compensation of Denver officers and, more important for municipalities statewide, amended Section 5 to allow charter amendments and the question of whether to form a charter convention to be referred to voters by action of the governing body as well as by initiative. Before 1950, charter measures could be initiated only by local voters. It was a cumbersome process, especially when minor changes were needed. The amendment passed by a vote of 145,780 for, to 91,700 against.

Another important home rule amendment was approved by voters in 1970 as part of a local government reform measure referred by the General Assembly in 1969. The home rule portion of the measure was included with the support of CML. It added a new Section 9 to Article XX to extend the right to adopt home rule to the citizens of each municipality, regardless of population or when incorporated, and directed the General Assembly to enact statutory procedures to facilitate the adoption, amendment and repeal of home rule charters. The referred measure also authorized the General Assembly to enact a more limited “structural” form of home rule for counties. Only a few counties have taken advantage of this form of home rule. The 1970 measure was approved by an overwhelming vote of 325,512 for, to 170,986 against.<sup>15</sup>

The 1970 amendment has enabled many towns with less than 2,000 people to become home rule and led to the CML-drafted Municipal Home Rule Act of 1971, which has remained substantially unchanged since its adoption as the procedure utilized in the adoption and amendment of charters.<sup>16</sup>

There have been other amendments over the years affecting home rule, such as the Taxpayer Bill of Rights (TABOR) in 1992 and the Term Limits Amendment in 1994, and a few specialized amendments, including the 1998 amendments to Article XX that created the City and County of Broomfield. As is the case for any other constitutional enactment, the provisions of Article XX and the parameters of home rule authority can be amended or overridden by later enacted constitutional amendments approved at a statewide election.

## A PERSPECTIVE ON HOME RULE VERSUS STATE JURISDICTION

Considerable tension has existed and will continue to exist between local and state control. Municipal home rule has not eliminated that tension; however, home rule has established a constitutional relationship between the state and home rule municipalities that has

- enabled home rule municipalities to utilize diverse powers, organizations and procedures without the need for state enabling legislation;
- protected home rule municipalities from state interference in matters local and municipal in nature; and
- helped establish and preserve an atmosphere of state respect for local control for other local governments, resulting in fairly broad statutory authority for non-home rule local governments and a certain level of disinclination on the part of state officials to micromanage local governments; yet
- maintained for state government certain authority to manage and control matters determined to be of statewide or mixed state and local concern.

14 J. Glenn Donaldson, *Victory!*, 26 COLO. MUNICIPALITIES, 230, 235 (Dec. 1950); Colo. Mun. League, *Make Home Rule Work*, 26 COLO. MUNICIPALITIES, 153 (Aug. 1950); William A. Grelle, *Legislative Round-Up*, 25 COLO. MUNICIPALITIES 72, 72 (May 1949). See also COLO. CONST. art. XX §§ 2, 5 (1950) (*amended* 2000) (originally published in Colo. Ses. Laws 775-776 (1949)).

15 COLO. CONST. art. XX § 9 (1970) (*amended* 1985) (originally printed in Colo. Sess. Laws 1247-1251 (1969)).

16 C.R.S. §§ 31-2-201 et seq. All statutory references refer to the Colorado Revised Statutes as amended through 2016.

Preserving home rule authority has, nevertheless, required constant vigilance by CML, municipalities, and other home rule supporters. State officials and legislators, private entities, special interests, and even individuals often have challenged home rule authority in the General Assembly and before the courts. In recent years, legislators have attempted to pass legislation challenging home rule authority, arguing that a subject matter is of state or mixed state–local authority, such as local tax policy, regulation of weapons, employee residency requirements, breed-specific animal controls, and planning and zoning regulations.

The first line of defense for home rule municipalities has been to defeat the legislation or delete the pre-emption language where it affected important local interests. This often has been effective.

When legislation pre-empting home rule authority has been enacted, the second line of defense has been the courts. Affected home rule municipalities often have challenged such legislation in the courts and, when necessary, have asserted their home rule powers in other litigation in which their authority to regulate or enforce their laws against private parties has been challenged. CML often has filed *amicus* briefs in support of the home rule position. Only by continuing to defend home rule prerogatives before the General Assembly and the courts on important local control matters can the important principles of home rule be protected.

It should be noted, however, that there may be times when state jurisdiction is viewed as being in the better public interest and there may be other situations in which it may be wise for home rule municipalities to act in concert to preemptively address issues that are or may be of concern to state legislators. For example, CML has coordinated voluntary actions among home rule municipalities on tax administration and simplification, rather than simply relying on home rule prerogatives. Municipal officials need to exercise good judgment and restraint in some circumstances, choosing not always to play the home rule “card.”

## CONCLUSION

Municipal home rule in Colorado has truly stood the test of time. From its modest birth more than a century ago, it has grown to be utilized in 2016 by 101 cities and towns serving more than 93 percent of the municipal population of the state. Colorado voters statewide have consistently supported municipal home rule by authorizing it in 1902, clarifying and expanding it in 1912, and extending its availability in 1970 to municipalities of all sizes. Moreover, there is no known instance in which local citizens have voted to repeal the home rule status of their municipality.

Home rule does not translate to local control under all circumstances, and it should be expected that the scope of home rule authority will continue to be challenged by the General Assembly and in the courts. Because the very definitions of local and statewide concerns continue to evolve in an ever-growing body of home rule case law, what falls within municipal or state jurisdiction is sometimes in doubt and may always remain in some degree of flux. In addition, constitutional amendments affecting home rule, such as TABOR and term limits, have been and probably will continue to be a significant factor. The continued viability of home rule will depend, as in the past, on the vigilance, assertiveness, and loyalty of municipal officials and others who understand and value local control.

In the final analysis, municipal home rule has immeasurably strengthened local control and facilitated flexibility and diversity in addressing local needs and desires. Home rule also has benefited statutory municipalities and other local governments by paving the way to greater local control and reinforcing a longstanding Colorado ethic favoring local authority to address local problems.



# CHAPTER II: HOME RULE POWERS

## SOURCES OF POWER TO ACT

The manner of determining whether a municipality has the power to act in a certain area is different for home rule and statutory municipalities. Statutory municipalities must have a specific grant of authority, either from the state constitution or state statutes, in order to act.

In matters of statewide concern, a home rule municipality also must have a specific grant of authority to act. However, a home rule municipality, in local and municipal matters, does not need a specific grant of authority, but if there is a limitation on its ability to act in the Colorado Constitution or in its own charter, it cannot act. In other words, a home rule municipality does not need a specific grant of authority to act — it has the authority to act in local and municipal matters unless there is a specific limitation in the Colorado Constitution or its own charter. This is the reason home rule charters are considered documents of limitation. Because home rule municipalities derive their authority to act from the constitution, terms in the charter limit the general constitutional authority.

Failure to comply with a charter limitation renders the action taken invalid.<sup>17</sup>

## LIMITATION ON POWER TO ACT

Section 8 of Article XX provides that Article XX supersedes all other constitutional provisions. However, several state constitutional provisions have been enacted containing express language or have been interpreted by the courts as superseding home rule powers.<sup>18</sup>

A home rule municipality generally can exercise the same powers as those granted to statutory municipalities.<sup>19</sup> However, a home rule municipality has more power than a statutory municipality because of the specific and general constitutional grants of authority contained in Article XX. Nevertheless, the powers of home rule municipalities may be limited by their charters, federal law, the state constitution, court decisions, and at times, legislation enacted by the General Assembly on matters determined to be of legitimate state concern.

## MATTERS OF “LOCAL AND MUNICIPAL,” “STATEWIDE” AND “MIXED CONCERN”

Section 6 of Article XX provides:

*It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.*

This provision indicates that home rule municipalities are not limited to exercising only the specific powers mentioned in Article XX, but that they have *every power* essential or proper to the exercise of the right of self-government in *local and municipal matters*. Thus, the determination of whether a particular matter is one of “local and municipal” concern under Article XX is key to home rule authority.

In court cases challenging the authority of home rule municipalities to act, the courts have created three classifications:

- a. Matters of local and municipal concern
- b. Matters of statewide concern
- c. Matters of mixed statewide and local concern<sup>20</sup>

Section 1 of Article XX applies specifically to the City and County of Denver. However, the courts have interpreted the two sections using substantially the same approaches as outlined below.

17 City & Cty. of Denver v. Miller, 368 P.2d 982 (Colo. 1962); McNichols v. City & Cty. of Denver, 230 P.2d 591 (Colo. 1950); Cherry Creek Aviation, Inc. v. City of Steamboat Springs, 958 P.2d 515 (Colo. App. 1998).

18 COLO. CONST. art. X, § 17 (originally enacted 1935) (levy of income taxes); COLO. CONST. art. XXV (originally enacted 1955) (regulatory powers over privately owned utilities); COLO. CONST. art. X, § 20 (Taxpayers Bill of Rights); COLO. CONST. art. XVIII, § 11 (originally enacted 1995) (term limits on elected officials); See also City & Cty. of Denver v. Sweet, 329 P.2d 441 (Colo. 1958).

19 Leek v. City of Golden, 870 P.2d 580 (Colo. App. 1993); C.R.S. § 31-1-102.

20 Webb v. City of Black Hawk, 788 P.2d 764 (Colo. 2013); City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003); City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002); City & Cty. of Denver v. State, 788 P.2d 764 (Colo. 1990) (hereinafter *Denver v. State*); City & Cty. of Denver v. Bd. of Cty. Comm’rs, 782 P.2d 753 (Colo. 1989); Nat’l Adver. Co. v. Dept. of Highways, 751 P.2d 632 (Colo. 1988); City & Cty. of Denver v. Colo. River Water Conservation Dist., 689 P.2d 730 (Colo. 1985).

### Matters of Local and Municipal Concern

If a matter is of “local and municipal” concern and the home rule municipality has not adopted legislation (ordinances or charter provisions) regulating the matter, then state statutes apply within the home rule municipality.<sup>21</sup>

If a matter is of local and municipal concern and both the state and the municipality have legislation regulating it, the municipal ordinance or charter provision will supersede the state statute if the statute actually conflicts with the ordinance or charter.<sup>22</sup>

### Matters of Statewide Concern

If a matter is of purely “statewide” concern, a home rule municipality cannot adopt legislation regarding the matter except as specifically provided in the statute,<sup>23</sup> and without such authorization a home rule municipality has no power to adopt legislation relating to a subject of solely “statewide” concern.<sup>24</sup> Thus, in general terms, a home rule municipality may adopt nonconflicting ordinances regulating even matters of statewide concern, at least if the state legislature specifically permits consistent local regulations.<sup>25</sup> It should be noted, however, that the courts have held that when the matter involves a specific constitutionally granted home rule power, even though the matter may be of statewide concern, the legislature has no power to enact any law that denies the home rule municipality a right specifically granted by the constitution.<sup>26</sup>

### Mixed Statewide and Local Concern

On subjects of “mixed” statewide and local concern, the home rule municipality has the power to legislate if the charter or ordinance provision does not conflict with the state legislation or if the state has not preempted the field.<sup>27</sup>

In reaching a conclusion to invalidate an ordinance based on its conflict with a state statute, a court may fail to articulate whether it is because the matter is of mixed state and local concern or exclusive statewide concern, when the result would be the same.<sup>28</sup>

## HOW TO DETERMINE WHETHER A MATTER IS OF LOCAL, STATEWIDE, OR MIXED CONCERN

The Colorado Supreme Court, not the General Assembly, has the power to make the final decision of whether a matter is of local, statewide, or mixed concern.<sup>29</sup> However, the court makes the decision on a case by case basis, generally after extensive litigation. So how does a municipal official determine ahead of time whether a home rule municipality has the power to act? There are several sources and guidelines:

1. Article XX sets forth specific areas of local and municipal concern.
2. Several court decisions have declared matters of local, statewide, or mixed concern.
  - See Table “Areas of Local, Statewide, and Mixed Concern Determined by the Courts” (pages 12 to 21).
3. The General Assembly has granted numerous powers to statutory municipalities, and a home rule municipality has at least as many powers as a statutory municipality.<sup>30</sup> It is important to remember two issues when looking to state statutes for home rule municipality authority:
  - a. The charter may limit what the state statute allows, in which case the charter controls.
  - b. The General Assembly may attempt to limit home rule powers by declaring legislation a matter of statewide concern. The court will consider such a declaration; however, the courts are not bound by the declaration.

21 COLO. CONST. art. XX, § 6; *Vela v. People*, 484 P.2d 1204 (1971).  
 22 *Webb v. City of Black Hawk* 788 P.2d 764 (Colo. 2013); *City of Northglenn v. Ibarra*, 62 P.3d 151 (Colo. 2003); *City of Commerce City v. State*, 40 P.3d 1273 (Colo. 2002); *Denver v. State*, 788 P.2d 764 (Colo. 1990); *City & Cty of Denver v. Colo. River Water Conservation Dist.*, 696 P.2d 730 (Colo. 1985); *Vela v. People*, 484 P.2d 1204 (Colo. 1971); *Winslow Constr. Co. v. City & Cty. of Denver*, 960 P.2d 685 (Colo. 1998); *Fraternal Order of Police v. City & Cty. of Denver*, 926 P.2d 582 (Colo. 1996).  
 23 *Fraternal Order of Police v. City & Cty. of Denver*, 926 P.2d 582 (Colo. 1996); *City & Cty. of Denver v. Colo. River Water Conservation Dist.*, 696 P.2d 730 (Colo. 1985).  
 24 *See, e.g., City & Cty. of Denver v. Tihen*, 235 P. 777 (Colo. 1925) (overruled on other grounds by *State Farm Mut. Auto. Ins. Co. v. Temple*, 491 P.2s 1371, 1372 (Colo. 1971)).  
 25 *See, e.g., Pierce v. City & Cty. of Denver*, 565 P.2d 1337 (Colo. 1977); *Conrad v. City of Thornton*, 553 P.2d 822 (Colo. 1976).  
 26 *City of Thornton v. Farmers Reservoir and Irrigation Co.*, 575 P.2d 382 (Colo. 1978) (the right of eminent domain); *Gosliner v. Denver Election Comm'n*, 552 P.2d 1010 (Colo. 1976) (elections).  
 27 *Denver v. State*, 788 P.2d 764 (Colo. 1990); *Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988); *see also City of Northglenn v. Ibarra*, 62 P.3d 151 (Colo. 2003); *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000); *Voss v. Lundvall*, 830 P.2d 1061 (Colo. 1992).  
 28 *See, e.g., Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988).  
 29 *Denver v. State*, 788 P.2d 764, n.6 (1977) (“While the statutory declaration is relevant, it is not binding. If the constitutional provisions establishing the right of home rule municipalities to legislate as to their local affairs are to have any meaning, we must look beyond the mere declaration of a state interest and determine whether in fact the interest is present.”); *see also, e.g., Winslow Construction Co. v. City & Cty. of Denver*, 960 P.2d 685 (Colo. 1998); *Four Cty. Metro. Capital Improvement Dist. v. Bd. of Cty. Comm'rs*, 369 P.2d 1204 (1971); *City & Cty. of Denver v. Sweet*, 329 P.2d 441 (1958).  
 30 *Woolverton v. City & Cty. of Denver*, 361 P.2d 982 (Colo. 1961) (overruled on other grounds by *Vela v. People*, 484 P.2d 1204 (1971)); *Leek v. City of Golden*, 870 P.2d 580 (Colo. App. 1993).

In fact, courts have declared several matters as local concern which the General Assembly had declared to be of statewide concern.<sup>31</sup>

4. Federal or state constitutional provisions may limit a home rule municipality's power to act in a specific area. For example, Article X Section 17 of the Colorado Constitution adopted after Article XX has been construed to preempt home rule municipalities from levying an income tax.<sup>32</sup> Similarly, constitutionally imposed tax and spending limits and term limits on elected officials apply equally to home rule municipalities.<sup>33</sup>
5. If the issue is a felony under state law, it will likely be considered a matter of statewide concern.<sup>34</sup>

## SUPREME COURT GUIDANCE

In *City and County of Denver v. State of Colorado* (the case deciding that the General Assembly could not preempt local employee residency requirements), the Colorado Supreme Court set forth the factors it considers in determining whether a matter is of local, statewide, or mixed concern. The Court emphasized that there was no particular test to be applied in every instance, but it would apply several factors on a case by case basis. The Court stated that it balances the relative interests of the state and the home rule municipality, recognizing that every issue will include interests of each.<sup>35</sup>

The court considers:

- a. the need for statewide uniformity of regulation;<sup>36</sup>
- b. the impact of municipal regulation on persons living outside the municipality;<sup>37</sup>
- c. the historical considerations, i.e., whether a particular matter is traditionally governed by state or local government;<sup>38</sup>
- d. the necessity of cooperation among government units and local interests;<sup>39</sup> and
- e. whether the Colorado Constitution commits a matter to state or local regulation.<sup>40</sup>

Since the landmark decision in *Denver v. State*, the appellate courts in Colorado have more or less systematically applied the five factors enumerated in that case to determine whether other matters should be considered of local or statewide concern.

## LOCAL REGULATION IN AREAS OF STATEWIDE OR MIXED CONCERN

### STATEWIDE CONCERN

The fact that a subject has been declared to be of statewide concern does not necessarily mean that a home rule municipality cannot legislate on the subject. The state legislation may specifically leave room for local legislation. For

31 See *Denver v. State*, 788 P.2d 764 (Colo. 1990) (employee residency requirements); see also *City of Commerce City v. State*, 40 P.3d 1273, 1280 (Colo. 2001) (quoting *City & Cty. of Denver v. Quest Corp.*, 18 P.3d 748 (Colo. 2001)).

32 *City & Cty. of Denver v. Sweet*, 329 P.2d 441 (Colo. 1958).

33 COLO. CONST. art. X, § 20 (Taxpayers Bill of Rights); COLO. CONST. art. XVIII, § 11 (term limits on elected officials).

34 *City of Aurora v. Martin*, 507 P.2d 868 (1973); *Quintana v. Edgewater Mun. Court.*, 498 P.2d 931 (Colo. 1972).

35 *City of Northglenn v. Ibarra*, 62 P.3d 151 (Colo. 2003); *City of Commerce City v. State*, 40 P.3d 1273 (Colo. 2002); *Denver v. State*, 788 P.2d 764 (Colo. 1990); see also *City & Cty. of Denver v. Bd. of Cty. Comm'rs*, 782 P.2d 753 (Colo. 1989) (comparing interest of Denver in construction of water projects outside its boundaries with the interest of the state and of the counties in which the water projects are located). See, e.g., *Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988) (comparing city's interest in controlling outdoor advertising signs within its municipal borders, i.e., safety, recreation, aesthetics, with state's interest in continued eligibility for federal highway funds threatened by inconsistent local regulations); *Denver & Rio Grande W. R. R. v. City & Cty. of Denver*, 673 P.2d 354 (Colo. 1983) (comparing city's interest in construction of certain viaducts with the "paramount" interest of those living outside of Denver and holds that the construction of the viaducts was of mixed concern); *City of Craig v. Pub. Util. Comm'n*, 656 P.2d 1313 (Colo. 1983) (finding that although city has interest in safety of railroad crossings, state's interest is predominant).

36 *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000); *Winslow Constr. Co. v. City & Cty. of Denver*, 960 P.2d 685, 693 (Colo. 1998); *Fraternal Order of Police v. City & Cty. of Denver*, 926 P.2d 582, 589 (Colo. 1996); *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061, 1067 (Colo. 1992); see also *Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988) (holding uniform regulation of highway advertising signs necessary to preclude potential loss of federal revenue); *Benion v. City & Cty. of Denver*, 504 P.2d 350 (Colo. 1972) (finding that state residents have an expectation of uniformity in local criminal laws); *Denver v. State*, 788 P.2d 764 (Colo. 1990) (citing with approval *State ex rel. Hennig v. City of Milwaukee*, 373 P.2d 680, 684 (Or. 1962)) ("In the appropriate case the need for uniformity in the operation of the law may be a sufficient basis for legislative preemption. But uniformity in itself is no virtue, and a municipality is entitled to shape its local law as it sees fit if there is no discernible pervading state interest involved.").

37 See *Denver & Rio Grande W. R. R. v. City & Cty. of Denver*, 673 P.2d 354 (Colo. 1983) (finding Denver's decision to construct viaduct had important impact on people residing beyond the municipal limits); see also *Klemme*, at 342 (finding that "statewide concern" means those things which are of significant interest to people living outside the home rule municipality).

38 1 C. Antieau, *Municipal Corporation Law* § 3.40 at 3-115 (1989); *Denver v. State*, 788 P.2d 764, 771 (Colo. 1990).

39 Antieau, § 3.40 at 3-119 to 3-120; *Denver v. State*, 788 P.2d 764, 768. ("where not only uniformity is necessary, but cooperation among governmental units, as well, as where action of state and county officials within the limits of the city is imperative to effectuate adequate protection outside the city, the matter will in all likelihood be considered a state concern.").

40 *Denver v. State*, 788 P.2d 764, 771 (Colo. 1990) ("Although we agree with the state that the enumeration in Section 6 of matters subject to regulation by home rule municipalities is not dispositive, we also agree with the cities that it is significant. If the state is unable to demonstrate a sufficiently weighty state interest in superseding local regulation of such areas, then pursuant to the command of Section 6, statutes in conflict with such local ordinances or charter provisions are superseded.").

instance, liquor regulation has been declared a matter of statewide concern;<sup>41</sup> however, several liquor statutes specifically allow some local regulation.<sup>42</sup>

There must be a conflict between the state statute and the ordinance for preemption of the local ordinance to occur.<sup>43</sup> The test for determining whether a conflict exists is whether the ordinance authorizes what the statute forbids, or forbids what the statute has expressly authorized.<sup>44</sup> There is no conflict to the extent the municipal ordinance is merely more restrictive than the state statute.<sup>45</sup>

## MIXED CONCERN

In matters of mixed concern, the charter or ordinance of a home rule municipality can coexist with the statute so long as the local ordinance and the state statute do not conflict. In the event of a conflict, the conflicting portion of the charter or ordinance is superseded by the statute.<sup>46</sup> In an area of mixed concern, the Colorado Supreme Court has held that any state preemption must derive from a state statute, and not some other type of state action such as a P.U.C. tariff.<sup>47</sup>

If the home rule municipality decides, on some basis, that it does have the power to legislate on a particular subject, it must still look to its charter for any limitations on the municipality's power to act in the area. If the charter contains a limitation, the municipality must act in accordance with the charter limitation, or its action may be invalid.

## ADVANTAGES AND DISADVANTAGES OF HOME RULE

When considering the adoption of a home rule charter, the citizens of each municipality must decide whether home rule would be beneficial, considering the municipality's own needs and problems. Municipal officials should consider or understand the possible advantages and disadvantages of home rule.

Home rule allows flexibility in the exercise of governmental powers. As discussed in the previous section, when a local problem arises, a statutory municipality can look only to the state statutes and a few constitutional provisions for its power or authority to act. If no power has been granted, the municipality must either ignore the problem or ask the state legislature to adopt a statute granting the necessary power. Home rule municipalities, on the other hand, can look both to the state statutes and to the specific and general grants of power found in Article XX of the Colorado Constitution. Thus, where no statutory authority to act exists, home rule municipalities may still have the power to solve their local problems and solve them quickly, without resort to the state legislature.

If a statute does grant statutory municipalities the power to act, it may additionally require the municipalities to follow certain procedures and other limitations when acting. In other words, the state may control not only the question of whether the municipality has the power to act, but also the question of how that power should be exercised. On the other hand, in matters of local and municipal concern, home rule municipalities are not required to follow procedures outlined in the statutes and thus may shape solutions for local problems to fit local needs.

As an example of the flexibility of home rule power, the following is a *partial* list of actions that home rule municipalities can take but which statutory municipalities may not pursue or for which statutory authority is doubtful. A home rule municipality may:

- within certain limits, create new tax sources to meet local financial needs;<sup>48</sup>
- provide a method for the simple and expeditious transfer of funds among municipal departments;<sup>49</sup>
- establish its own maximum debt limitations or have no maximum limitation, as it desires;<sup>50</sup>
- establish its own time limitations for the repayment of municipal bonds;<sup>51</sup>
- create its own governmental form and administrative structure, including such matters as the size of its governing body; the powers of elected and appointed officials; terms of office of the members of its governing

41 Kelly v. City of Fort Collins, 431 P.2d 785 (Colo. 1967); People *ex rel* Carlson v. City & Cty. of Denver, 153 P. 690 (Colo. 1915).  
42 See C.R.S. § 18-13-122(11) (allowing municipalities to regulate underage possession or consumption of alcohol, as long as municipal regulations are at least as strict as state regulations).  
43 Vela v. People, 484 P.2d 1204 (Colo. 1971); *DeLong v. City & Cty. of Denver*, 576 P.2d 537 (Colo. 1918).  
44 City of Aurora v. Martin, 507 P.2d 868 (Colo. 1973).  
45 City & Cty. of Denver v. Howard, 622 P.2d 568 (Colo. 1981); Vela v. People, 484 P.2d 1204 (Colo. 1971); Ray v. City & Cty. of Denver, 121 P.2d 886 (Colo. 1942).  
46 *Denver v. State*, 788 P.2d 764 (Colo. 1990); *Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988); *City & Cty. of Denver v. Colo. River Water Conservation Dist.*, 696 P.2d 730 (Colo. 1985); *Voss v. Lundvall*, 830 P.2d 1061 (Colo. 1992).  
47 *U. S. West Commc's, Inc. v. City of Longmont*, 948 P.2d 509 (Colo. 1997).  
48 *Deluxe Theatres, Inc. v. City of Englewood*, 596 P.2d 771 (Colo. 1979); *Security Life and Accident Co. v. Temple*, 492 P.2d 63 (Colo. 1972); *Farmers Mut. Auto Ins. Co. v. Temple*, 491 P.2d 1371 (Colo. 1971); *City & Cty. of Denver v. Duffy Storage & Moving Co.*, 450 P.2d 339 (Colo. 1969); *Berman v. City & Cty. of Denver*, 400 P.2d 434 (Colo. 1965); *City of Englewood v. Wright*, 364 P.2d 569 (Colo. 1961).  
49 *City & Cty. of Denver v. Blue*, 500 P.2d 970 (Colo. 1961).  
50 COLO. CONST. art. XX, § 6(e). Note that the Constitution arguably requires a charter provision because it does not include the customary language, "or an ordinance adopted pursuant to the charter."  
51 *Davis v. City of Pueblo*, 406 P.2d 671 (Colo. 1965).

body and whether they are elected from districts or at-large; quorum and voting requirements; the manner of filling vacancies; the allocation of powers among elected and appointed officials, boards and commissions, and staff;<sup>52</sup>

- establish its own procedures for providing street, sidewalk, and other special improvements;<sup>53</sup>
- establish procedures and dates for municipal elections differing from those established by the statutes, including such matters as regular and special election dates, the dates when elected officials will take office, the creation of an election commission, the procedure for conducting elections, and who may vote in municipal elections;<sup>54</sup>
- establish procedures by which ordinances and resolutions may be adopted, including methods of adopting codes by reference; determining whether actions will be taken by ordinance, resolution, or motion; procedures for notice, hearing, publication, or posting with regard to ordinances; and determination of the effective date of ordinances;<sup>55</sup>
- establish procedures and requirements pertaining to regular and special meetings and executive sessions;<sup>56</sup>
- establish, within certain bounds, municipal court procedures;<sup>57</sup>
- establish, within limits, greater penalties and jail sentences for ordinance violations than those provided for by statute;<sup>58</sup>
- establish procedures for the sale or disposal of public property and the awarding of contracts;<sup>59</sup>
- have available broader powers of eminent domain outside municipal boundaries;<sup>60</sup>
- have available broader and more flexible taxing powers, including the ability to collect, administer, and enforce sales and use taxes and to determine what transactions are subject to or exempt from sales and use taxes; the ability to establish procedures for the adoption, amendment, increase, or decrease of taxes; the authority to levy taxes not available to statutory municipalities, such as lodgers taxes, admissions taxes, real estate transfer taxes, and other excise taxes; and the ability to provide property tax increase limits different from those provided for in the statutes;<sup>61</sup>
- have available broader and more flexible land use, zoning, and planning powers;<sup>62</sup> and
- have greater authority over the qualifications of municipal officers and employees.<sup>63</sup>

The limits of home rule power have not been rigidly established since the municipality's power to act may depend in part on how the subject of legislation is classified, i.e., of local and municipal, statewide, or mixed concern. Depending upon the particular viewpoint, this lack of definite limits on home rule power may constitute either an advantage or disadvantage of home rule. It may be a disadvantage in the sense that it creates some legal uncertainty when a home rule municipality legislates in a relatively new area. However, it may also be termed an advantage of home rule since the lack of rigid legal boundaries allows home rule municipalities to maintain flexibility when attempting to find new solutions to local problems.

In addition to providing flexibility in the exercise of governmental powers and increasing local control over local problems, home rule places decision-making in the hands of those officials who are closest to the people and makes those officials totally responsible for their decisions. The legislature cannot be blamed for a lack of authority to solve local problems, nor can it be blamed for limiting the choices of solutions to those problems. Thus, the citizens of a home rule municipality may find they have a greater voice and interest in the conduct of municipal affairs.

A home rule charter is legally viewed as a document of limitation; that is, the charter provisions are limitations on the powers granted by the Colorado Constitution to a home rule municipality. If a restrictive home rule charter is

52 COLO. CONST. art. XX, § 6; *Evert v. Quren*, 549 P.2d 791, 794 (Colo. 1976); C.R.S. § 31-1-102(2).

53 COLO. CONST. art. XX, § 6(g); *County Comm'rs of El Paso Cty. v. City of Colo. Springs*, 180 P. 301, 302 (Colo. 1919).

54 *Kingsley v. City & Cty. of Denver*, 247 P.2d 805 (Colo. 1952); *Cook v. City of Delta*, 64 P.2d 1257 (Colo. 1937); *Clough v. City of Colo. Springs*, 197 P. 896 (Colo. 1921); *Englewood Police Benefit Ass'n. v. City of Englewood*, 811 P.2d 464 (Colo. App. 1990); *May v. Town of Mountain Village*, 969 P.2d 790 (Colo. App. 1997).

55 *Gosliner v. Denver Election Comm'n*, 552 P.2d 1010 (Colo. 1976); *Artes-Roy v. City of Aspen*, 856 P.2d 823 (Colo. App. 1993).

56 *Gosliner v. Denver Election Comm'n*, 552 P.2d 1010 (Colo. 1976); *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761 (Colo. App. 1986).

57 C.R.S. §§ 13-10-103 et seq.; *Artes-Roy v. City of Aspen*, 856 P.2d 823 (Colo. App. 1993).

58 *City of Aurora v. Martin*, 507 P.2d 868 (Colo. 1965).

59 COLO. CONST. art. XX, § 6.

60 *Town of Telluride v. San Miguel Valley Corp.*, 785 P.3d 161, 172 (Colo. 2008); *City of Thornton v. Farmers Reservoir and Irrigation Co.*, 575 P.2d 382 (Colo. 1978); *City & Cty. of Denver v. Bd. of Cty. Comm'rs of Arapahoe Cty.*, 156 P.2d 101 (Colo. 1945); *Town of Parker v. Norton*, 939 P.2d 535 (Colo. App. 1997). See Chapter V.

61 See Chapter I; Table One "Taxation and Finance."

62 See Chapter I; Table One "Real Property and Land Use."

63 COLO. CONST. art. XX, § 6(a); *Fraternal Order of Police v. City & Cty. of Denver*, 926 P.2d 582 (Colo. 1996); *Denver v. State*, 788 P.2d 764 (Colo. 1990).

adopted, the flexibility offered by home rule may well be lost. It may be preferable to remain a statutory municipality than to be a home rule municipality with a restrictive charter that requires numerous votes of the citizens, establishes restrictive mill levy limits, itemizes the internal administrative organization of the government, contains severe bonding requirements, or intentionally or unintentionally limits the powers of the municipality. Thus, home rule may be either an advantage or disadvantage depending upon the nature of the charter.

One of the threshold problems faced by those municipalities considering the adoption of home rule is its cost. The Municipal Home Rule Act provides that the costs incurred in the process of adopting a home rule charter are to be paid by the municipality. Those costs may vary and may include attorney fees and other special consultant fees, expenses incurred in publishing notices of elections and publishing the final charter, services and general supplies for the charter commission, and the expenses of holding special elections. Other than special consultant fees, the highest costs to the municipality may be publication costs and the costs of holding special elections.

Finally, the adoption of a home rule charter does not ensure good local government. The quality of the municipal government will still depend upon the quality of the municipal officials and the degree of interest and concern shown by citizens in their government. Perhaps home rule can be seen as a means of placing the responsibility for the quality of municipal government more firmly in the hands of the municipality's own citizens and officials.

## AREAS OF LOCAL, STATEWIDE, AND MIXED CONCERN DETERMINED BY THE COURTS

TOPIC	LOCAL/MUNICIPAL
<b>BEER &amp; LIQUOR</b>	
<b>BUSINESS REGULATIONS</b>	<p><b>Regulation of the Sale and Distribution of Milk</b> <i>Independent Dairymen's Ass'n v. City &amp; County of Denver</i>, 142 F.2d 940 (10th Cir. 1944).</p> <p><b>Business Occupational Privilege Tax</b> <i>State Farm Mutual Automobile Insurance Co. v. Temple</i>, 491 P.2d 1371 (Colo. 1971).</p> <p><b>Regulation of Telephone Charges for Local Service within Territorial Limits</b> <i>City &amp; County of Denver v. Mountain States Tele. &amp; Tele. Co.</i>, 184 P. 604 (Colo. 1919) (cert. dismissed 251 U.S. 545, (1920)).</p> <p><b>Weights and Measures Ordinance</b> <i>Blackman v. County Court In &amp; For City &amp; County of Denver</i>, 455 P.2d 885 (Colo. 1969).</p> <p><b>Notification of Use of Pesticides</b> <i>COPARR v. City of Boulder</i>, 735 F. Supp. 363 (D. Colo. 1989) (aff'd, 942 F.2d 724 (10th Cir. 1991)).</p> <p><b>Sunday Closing Ordinances</b> <i>Rosenbaum v. City &amp; County of Denver</i>, 81 P.2d 760 (Colo. 1938).</p> <p><b>Ability and Quality of Ambulance Service</b> <i>DuHamel v. City of Arvada</i>, 601 P.2d 639 (Colo. App. 1979).</p>
<b>CAPITAL IMPROVEMENTS</b>	<p><b>Construction of Off Street Parking Facilities</b> <i>Davis v. City of Pueblo</i>, 406 P.2d 671 (Colo. 1965).</p> <p><b>Charter Provision for the Erection of an Auditorium, Purchase of Site &amp; Issuance of Bond Therefor</b> <i>City &amp; County of Denver v. Hallett</i>, 83 P.2d 1066 (Colo. 1905).</p> <p><b>Organization of Mass Transportation Systems within Territorial Limits</b> <i>Durango Transportation, Inc. v. City of Durango</i>, 807 P.2d 1152 (Colo. 1991).</p> <p><b>Ordinances Requiring Plans for Public Buildings to be Prepared and Submitted by a State Licensed Architect</b> <i>Heron v. City &amp; County of Denver</i>, 283 P.2d 647 (Colo. 1955).</p>

STATEWIDE	MIXED
<p><b>Liquor Manufacture, Sale and Traffic</b>  <i>Walker v. People</i>, 135 P. 794 (Colo. 1913).  <i>Big Top v. Schooley</i>, 368 P.2d 201 (Colo. 1962).  <i>City of Colorado Springs v. Campbell</i>, 63 P.2d 1244 (Colo. 1936).  <i>City &amp; County of Denver v. People</i>, 88 P.2d 89 (Colo. 1939).  <i>People v. City &amp; County of Denver</i>, 153 P. 690 (Colo. 1915).</p> <p><b>Regulation of Fermented Malt Beverages</b>  <i>Kelly v. City of Fort Collins</i>, 431 P.2d 785 (Colo. 1967).</p>	
<p><b>Requirement of Use of Colorado Materials in Construction of a Municipal Building</b>  <i>City &amp; County of Denver v. Bossie</i>, 266 P. 214 (Colo. 1928).</p> <p><b>Licensing of Electrical Contractors and Electricians</b>  <i>Century Electric Service v. Stone</i>, 564 P.2d 953 (Colo. 1977).</p> <p><b>Regulation of Telephone Company and Rates Charged</b>  <i>Mountain States Tele. &amp; Tele. Co. v. City &amp; County of Denver</i>, 243 P.2d 397 (Colo. 1952).  <i>City of Englewood v. Mountain States Tele. &amp; Tele. Co.</i>, 431 P.2d 40 (Colo. 1967).</p> <p><b>Regulation of Public Utilities</b>  Colorado Constitution Article XV  <i>City of Craig v. Public Utilities Comm'n</i>, 656 P.2d 1313 (Colo. 1983).</p> <p><b>Providing a Coordinated System of Emergency Care</b>  <i>DuHamel v. City of Arvada</i>, 601 P.2d 639 (Colo. App. 1979).</p> <p><b>Rent Control</b>  <i>Town of Telluride v. Lot Thirty-Four Venture, L.L.C.</i>, 3 P.3d 30 (Colo. 2000).</p>	<p><b>Uniform Safety Code</b>  C.R.S. §§ 42-4-101 et seq.</p> <p><b>Regulation of Utilities Serving in Areas of Local and Municipal Concern</b>  <i>Zelinger v. Public Service Co. of Colo.</i>, 435 P.2d 412 (Colo. 1967).</p> <p><b>Control of Outdoor Advertising Devices along Roads of State Highway System</b>  <i>National Advertising Co. v. Dept. of Highways</i>, 715 P.2d 632 (Colo. 1988).  <i>City of Fort Collins v. Root Outdoor Advertising Co.</i>, 788 P.2d 149 (Colo. 1990).</p> <p><b>Licensing of Hospitals</b>  <i>Spears Free Clinic &amp; Hospital v. State Board of Health</i>, 220 P.2d 872 (Colo. 1950).</p> <p><b>Regulation of Peddlers</b>  <i>McCormick v. City of Montrose</i>, 99 P.2d 969 (Colo. 1940).</p> <p><b>Regulation of Oil and Gas Drilling</b>  <i>Voss v. Lundvall Bros.</i>, 830 P.2d 1061 (Colo. 1992).</p> <p><b>Regulation of Relocation of Public Utilities</b>  <i>U.S. West Communications, Inc. v. City of Longmont</i>, 948 P.2d 509 (Colo. 1997).</p>
<p><b>Location of a Waste Disposal Facility and Site</b>  <i>City &amp; County of Denver v. Eggert</i>, 647 P.2d 216 (Colo. 1982).</p>	<p><b>Site Selection and Construction of Municipal Water Facility Outside of Municipality</b>  <i>City &amp; County of Denver v. Board of County Commissioners</i>, 782 P.2d 753 (Colo. 1989).  <i>City of Colorado Springs v. Board of County Commissioners of Eagle County</i>, 895 P.2d 1105 (Colo. App. 1994).</p>



TOPIC	LOCAL/MUNICIPAL
<b>CRIMINAL ACTIVITIES</b>	<p><b>Vagrancy</b>  <i>Zerobnick v. City &amp; County of Denver</i>, 377 P.2d 11 (Colo. 1959).  <i>Dominguez v. City &amp; County of Denver</i>, 363 P.2d 661 (Colo. 1961).</p>
<b>EMPLOYMENT</b>	<p><b>Retirement of City Employees</b>  <i>Coopersmith v. City &amp; County of Denver</i>, 399 P.2d 943 (Colo. 1965).</p> <p><b>Employee Residency</b>  <i>City &amp; County of Denver v. State of Colorado</i>, 788 P.2d 764 (Colo. 1990).</p> <p><b>Tenure of Firemen with Respect to Mandatory Retirement Age</b>  <i>Coopersmith v. City &amp; County of Denver</i>, 399 P.2d 943 (Colo. 1965).</p> <p><b>Termination of City Clerk Pursuant to Procedures Set Forth in Charter Provision</b>  <i>Ratcliff v. Kite</i>, 541 P.2d 88 (Colo. 1975).</p> <p><b>Employment Qualifications and Training Requirements</b>  <i>Fraternal Order of Police v. City &amp; County of Denver</i>, 926 P.2d 582 (Colo. 1996).</p> <p><b>Employee Benefits</b>  <i>Shaefer v. City &amp; County of Denver</i>, 973 P.2d 717 (Colo. App. 1998).</p>

STATEWIDE	MIXED
<p><b>Granting of a Jury Trial in Petty Offense Cases</b>  <i>Hardamon v. Municipal Court of the City of Boulder</i>, 497 P.2d 1000 (Colo. 1972).</p> <p><b>Obscenity</b>  <i>Pierce v. City &amp; County of Denver</i>, 565 P.2d 1337 (Colo. 1977).</p> <p><b>Larceny</b>  <i>Gazotti v. City &amp; County of Denver</i>, 352 P.2d 963 (Colo. 1960).</p>	<p><b>Gambling</b>  <i>Woolverton v. City &amp; County of Denver</i>, 361 P.2d 982 (Colo. 1961) (overruled on other grounds by <i>Vela v. People</i>, 484 P.2d 1204 (1971)).  <i>Vick v. People</i>, 445 P.2d 220 (Colo. 1968) (cert. denied, 394 U.S. 945 (1969)).</p> <p><b>Shoplifting</b>  <i>Quintana v. Edgewater Municipal Court</i>, 498 P.2d 931 (Colo. 1972).</p> <p><b>Resistance to Arrest</b>  <i>Bennion v. City and County of Denver</i>, 504 P.2d 350 (Colo. 1972).</p> <p><b>Assault and Battery</b>  <i>City of Aurora v. Martin</i>, 507 P.2d 868 (Colo. 1973).</p> <p><b>Pawnbrokers</b>  <i>Provident Loan Soc. v. City &amp; County of Denver</i>, 172 P. 10 (Colo. 1918).</p> <p><b>Interference with a Police Officer</b>  <i>City &amp; County of Denver v. Howard</i>, 622 P.2d 568 (Colo. 1981).</p> <p><b>Juvenile Prosecution</b>  <i>R.E.N. v. City of Colorado Springs</i>, 823 P.2d 1359 (Colo. 1992).</p>
<p><b>Restriction of Hours of Labor on Public Works</b>  <i>Keefe v. People</i>, 87 P.791 (Colo. 1906).</p> <p><b>Matters Covered by the Labor Peace Act</b>  <i>City of Golden v. Ford</i>, 384 P.2d 951 (Colo. 1960).</p> <p><b>Entitlement of Home Rule Municipal Employee to Unemployment Compensation</b>  <i>City of Colorado Springs v. Industrial Commission</i>, 749 P.2d 412 (Colo. 1988).</p> <p><b>Police and Fire Pensions</b>  <i>Board of Trustees v. People</i>, 203 P.2d 490 (Colo. 1949) (overruled on other grounds by <i>Police Pension &amp; Relief Board v. McPhail</i>, 338 P.2d 694 (Colo. 1959)).  <i>Police Pension &amp; Relief Board v. McPhail</i>, 338 P.2d 694 (Colo. 1959).  <i>Huff v. Mayor of Colorado Springs</i>, 512 P.2d 632 (Colo. 1973).  <i>City of Colorado Springs v. State of Colorado</i>, 626 P.2d 1122 (Colo. 1981).  <i>Conrad v. City of Thornton</i>, 553 P.2d 822 (Colo. 1976).</p> <p><b>Unemployment Compensation</b>  <i>City of Colorado Springs v. Industrial Commission</i>, 749 P.2d 412 (Colo. 1988).</p> <p><b>Workers Compensation</b>  <i>City &amp; County of Denver v. Industrial Claims Office</i>, 328 P.3d 313 (Colo. App. 2014).</p>	<p><b>Certain Police Duties</b>  <i>Police Protective Association v. Warren</i>, 76 P.2d 94 (Colo. 1938).</p> <p><b>Charter Providing for Collective Bargaining and Compulsory Arbitration of Unresolved Disputes with Police Union</b>  <i>Greeley Police Union v. City Council of Greeley</i>, 533 P.2d 790 (Colo. 1976).</p> <p><b>Fire and Police Pension Fund</b>  <i>Board of Trustees v. People</i>, 203 P.2d 490 (Colo. 1949) (overruled on other grounds by <i>Police Pension &amp; Relief Board v. McPhail</i>, 338 P.2d 694 (Colo. 1959)).</p>

TOPIC	LOCAL/MUNICIPAL
<b>REAL PROPERTY AND LAND USE</b>	<p><b>Exercise of Power of Eminent Domain</b></p> <p><i>City of Thornton v. Farmers Reservoir &amp; Irrigation Co.</i>, 575 P.2d 382 (Colo. 1987).  <i>Town of Parker v. Norton</i>, 939 P.2d 535 (Colo. App. 1997).  <i>City &amp; County of Denver v. Board of County Commissioners of Arapahoe County</i>, 156 P.2d 101 (1945).  <i>Town of Telluride v. San Miguel Valley Corp.</i>, 185 P.3d 161 (Colo. 2008).</p> <p><b>Acquisition of Light Plants</b></p> <p><i>Cook v. City of Delta</i>, 64 P.2d 1257 (1937).</p> <p><b>Preservation of Value of City Property</b></p> <p><i>Board of County Commissioners of Adams County v. City of Thornton</i>, 629 P.2d 605 (Colo. 1981).</p> <p><b>Zoning</b></p> <p><i>Moore v. City of Boulder</i>, 484 P.2d 134 (Colo. 1971).  <i>Averch v. City &amp; County of Denver</i>, 242 P. 47 (Colo. 1925).  <i>Roosevelt v. City of Englewood</i>, 492 P.2d 65 (Colo. 1971).  <i>City of Colorado Springs v. Smartt</i>, 620 P.2d 1060 (Colo. 1980).  <i>Service Oil Co. v. Rhodus</i>, 500 P.2d 807 (Colo. 1972).  <i>City of Greeley v. Ells</i>, 527 P.2d 538 (Colo. 1974).  <i>Sherman v. City of Colorado Springs</i>, 680 P.2d 1060 (Colo. App. 1983).  <i>Sellon v. City of Manitou Springs</i>, 745 P.2d 229 (Colo. 1987).  <i>VFW v. City of Steamboat Springs</i>, 575 P.2d 835 (Colo. 1978).  <i>Zavala v. City &amp; County of Denver</i>, 759 P.2d 664 (Colo. 1988).</p>

STATWIDE	MIXED
<p><b>Annexation</b></p> <p><i>City of Greenwood Village v. Petitioners for the Proposed City of Centennial</i>, 3 P.3d 427 (Colo. 2000).</p>	<p><b>Regulation of Sex Offenders</b></p> <p><i>Ryals v. City of Englewood</i>, 364 P.3d 900 (Colo. 2016).</p> <p><i>City of Northglenn v. Ibarra</i>, 62 P.3d 151 (Colo. 2003).</p> <p><b>Sale of Real Property</b></p> <p><i>Stinson v. City of Craig</i>, 202 F.3d 283 (10th Cir. 1999).</p> <p><b>Slum Clearance, Urban Renewal, Housing Standards</b></p> <p><i>People ex rel. Stokes v. Newton</i>, 101 P.2d 21 (Colo. 1940).</p> <p><i>Denver Urban Renewal Authority v. Byrne</i>, 618 P.2d 1374 (Colo. 1980).</p> <p><b>Control of Outdoor Advertising Devices along Roads of State Highway System</b></p> <p><i>National Advertising Co. v. Dept. of Highways</i>, 751 P.2d 632 (Colo. 1988).</p> <p><i>City of Fort Collins v. Root Outdoor Advertising Co.</i>, 788 P.2d 149 (Colo. 1990).</p> <p><b>Regulation of Oil and Gas Drilling</b></p> <p><i>Voss v. Lundvall</i>, 830 P.2d 1061 (Colo. 1992).</p> <p><i>Colorado Mining Association v. Board of County Commissioners of Summit County</i>, 199 P.3d 718 (Colo. 2009).</p> <p><i>City of Longmont v. Colorado Oil &amp; Gas Association</i>, 369 P.3d 573 (Colo. 2016).</p> <p><i>City of Fort Collins v. Colorado Oil &amp; Gas Association</i>, 369 P.3d 586 (Colo. 2016).</p> <p><b>Regulation of Telecommunications Industry</b></p> <p><i>City &amp; County of Denver v. Quest Corp.</i>, 18 P.3d 748 (Colo. 2001).</p> <p><b>Rent Control</b></p> <p><i>Town of Telluride v. Lot Thirty Four Venture</i>, 3 P.3d 30 (Colo. 2000).</p>

TOPIC	LOCAL/MUNICIPAL
<b>TAXATION AND FINANCE</b>	<p><b>Imposition of Purely Local Excise and Sales Taxes</b>  <i>Security Life and Accident Co. v. Temple</i>, 492 P.2d 63 (Colo. 1972).  <i>Berman v. City &amp; County of Denver</i>, 400 P.2d 434 (Colo. 1965).</p> <p><b>Financing of a Program of Capital Improvements</b>  <i>Security Life &amp; Accident Co. v. Temple</i>, 492 P.2d 63 (Colo. 1965).  <i>Berman v. City &amp; County of Denver</i>, 400 P.2d 434 (Colo. 1965).</p> <p><b>Assessment against Property for Local Improvements</b>  <i>Commissioners of El Paso County v. City of Colorado Springs</i>, 180 P. 301 (Colo. 1919).</p> <p><b>Occupation Tax</b>  <i>City &amp; County of Denver v. Duffy Storage &amp; Moving Co.</i>, 450 P.2d 339 (Colo. 1969).  <i>State Farm Mutual v. Temple</i>, 491 P.2d 1371 (Colo. 1971).</p> <p><b>Issuance of Bonds to Buy Land for Donation to United States</b>  <i>McNichols v. City &amp; County of Denver</i>, 74 P.2d 99 (Colo. 1937).</p> <p><b>Levy of Tax on Admissions to Public Places</b>  <i>Deluxe Theatres, Inc. v. City of Englewood</i>, 596 P.2d 771 (Colo. 1979).</p> <p><b>Collection of Charges for Utility Services</b>  <i>Sant v. Stephens</i>, 753 P.2d 752 (Colo. 1988).</p> <p><b>Procedures for Creating and Assessing Special Improvement Districts</b>  <i>Board of County Commissioners v. City of Colorado Springs</i>, 180 P. 301 (Colo. 1919).  <i>Sanborn v. City of Boulder</i>, 221 P. 1077 (Colo. 1924).</p> <p><b>Establishing Charges for Municipal Services</b>  <i>Western Heights Land Corp. v. City of Fort Collins</i>, 362 P.2d 155 (Colo. 1961).</p> <p><b>Sales and Use Taxes</b>  <i>Berman v. City &amp; County of Denver</i>, 400 P.2d 434 (Colo. 1965).  <i>Security Life &amp; Accident Co. v. Temple</i>, 492 P.2d 63 (Colo. 1965).  <i>Winslow Construction Co. v. City &amp; County of Denver</i>, 960 P.2d 685 (Colo. 1998).</p> <p><b>Admissions Taxes</b>  <i>Deluxe Theatres, Inc. v. City of Englewood</i>, 596 P.2d 771 (Colo. 1979).  <i>City of Boulder v. Regents of University of Colorado</i>, 501 P.2d 123 (Colo. 1972).</p> <p><b>Budgeting of Anticipated Revenue</b>  <i>City and County of Denver v. Blue</i>, 500 P.2d 970 (Colo. 1972).</p> <p><b>Collection of Delinquent Utility Charges by Creation of a Lien on Property</b>  <i>City of Craig v. Hammat</i>, 809 P.2d 1034 (Colo. App. 1990).  <i>Sant v. Stephens</i>, 753 P.2d 752 (Colo. 1988).</p>
<b>MUNICIPAL COURTS</b>	<p><b>Procedures for Appointment and Compensation of Municipal Court Judges</b>  <i>Artes-Roy v. City of Aspen</i>, 856 P.2d 823 (Colo. App. 1993).</p> <p><b>Jurisdiction over Civil Matters Arising Under Local Law</b>  <i>Town of Frisco v. Baum</i>, 90 P.3d 845 (Colo. 2004).</p>

STATEWIDE	MIXED
<p><b>Income Taxation</b>  <i>City and County of Denver v. Sweet</i>, 329 P.2d 441 (Colo.1958).</p> <p><b>Streets and Highways of Home Rule City with Respect to Taxation of Gasoline</b>  <i>People v. City &amp; County of Denver</i>, 10 P.2d 1106 (Colo. 1932).</p> <p><b>Exempting Cemeteries from Local Assessments</b>  <i>City &amp; County of Denver v. Tihen</i>, 235 P. 777 (Colo. 1925) (limited in <i>State Farm Mutual v. Temple</i>, 491 P.2d 1371 (Colo. 1971)) (overruling proposition that the matter of assessment for local improvement districts is of statewide concern).</p> <p><b>Taxpayer Appeals of Home Rule Taxing Decisions</b>  <i>Walgreen Co. v. Charnes</i>, 819 P.2d 1039 (Colo. 1991).  <i>Winslow Construction Co. v. City &amp; County of Denver</i>, 960 P.2d 685 (Colo. 1998).  <i>MDC Holdings, Inc. v. Town of Parker</i>, 223 P.3d 710 (Colo. 2010).</p>	<p><b>Construction and Apportionment of Cost for Viaducts over Railroad Tracks</b>  <i>Denver &amp; Rio Grande Western Railroad Co. v. City &amp; County of Denver</i>, 673 P.2d 354 (Colo. 1983).</p> <p><b>Rates Charged by Small Loan Companies</b>  <i>Ray v. City &amp; County of Denver</i>, 121 P.2d 886 (Colo. 1942) (by implication).</p> <p><b>Sentencing Authority Restrictions for Municipal Court on Subjects of Mixed State and Local Concern</b>  <i>City of Commerce City v. State</i>, 40 3d 1273 (Colo. 2002).</p>

TOPIC	LOCAL/MUNICIPAL
<p><b>MUNICIPAL ELECTIONS</b></p>	<p><b>Municipal Elections</b>  <i>Gosliner v. Denver Election Commission</i>, 552 P.2d 1010 (Colo. 1976).  <i>Englewood Police Benefits Ass'n v. City of Englewood</i>, 811 P.2d 464 (Colo. App. 1990).</p> <p><b>Purchase of Voting Machines</b>  <i>Kingsley v. City &amp; County of Denver</i>, 247 P.2d 805 (Colo. 1952).</p> <p><b>Voter Qualifications</b>  <i>May v. Town of Mountain Village</i>, 969 P.2d 790 (Colo. Ct. App. 1998).</p> <p><b>ID Requirements</b>  <i>ACLU of New Mexico v. Santillanes</i>, 546 F.3d 1313 (10th Cir. 2008).</p> <p><b>Single Subject Rule</b>  <i>Bruce v. City of Colorado Springs</i>, 252 P.3d 30 (Colo. App. 2010).  <i>McCarville v. City of Colorado Springs</i>, 338 P.3d 1033 (Colo. App. 2013).  <i>Colorado Springs Citizens for Community Rights v. City of Colorado Springs</i>, 360 P.3d 271 (Colo. App. 2015).</p> <p><b>Campaign Disclosure Violations</b>  In re the complaint filed by the City of Colorado Springs and concerning the Colorado Ethics Watch, 227 P.3d 937 (Colo. App. 2012).</p>
<p><b>TRAFFIC REGULATIONS</b></p>	<p><b>Regulation of Traffic at Street Intersections</b>  <i>City &amp; County of Denver v. Henry</i>, 38 P.2d 895 (Colo. 1934).  <i>People v. Graham</i>, 110 P.2d 256 (Colo. 1941).</p> <p><b>Careless and Reckless Driving</b>  <i>People v. Thompson</i>, 437 P.2d 537 (Colo. 1968).  <i>Retallick v. City of Colorado Springs</i>, 351 P.2d 884 (Colo. 1960).</p> <p><b>Requirement for Stopping Cars when School Bus has Flashing Lights</b>  <i>Pickett v. City of Boulder</i>, 356 P.2d 489 (Colo. 1960).</p> <p><b>Regulation of Traffic Speeds upon Municipal Streets</b>  <i>Wiggins v. McAuliffe</i>, 356 P.2d 487 (Colo. 1960).  <i>People v. Hizhniak</i>, 579 P.2d 1131 (Colo. 1978).</p> <p><b>Unauthorized Parking on Private Property</b>  <i>Lehman v. City &amp; County of Denver</i>, 355 P.2d 309 (Colo. 1960).</p> <p><b>Rights-of-Way at Street Intersections</b>  <i>City &amp; County of Denver v. Henry</i>, 38 P.2d 895 (Colo. 1934).</p>
<p><b>MISCELLANEOUS</b></p>	<p><b>Impounding of and Charging Fee for Animals Running at Large</b>  <i>City of Pueblo v. Kurtz</i>, 182 P. 884 (Colo. 1919).</p> <p><b>Procedures for Adopting Ordinances in a Home Rule Municipality</b>  <i>Artes-Roy v. City of Aspen</i>, 856 P.2d 823 (Colo. App. 1993).</p>

<p><b>STATEWIDE</b></p>	<p><b>MIXED</b></p>
	<p><b>Right to Use Voting Machines in General Elections</b>  <i>Kingsley v. City &amp; County of Denver</i>, 247 P.2d 805 (Colo. 1952).</p>
<p><b>Driving Under the Influence</b>  <i>City of Canon City v. Merris</i>, 323 P.2d 614 (Colo. 1958) (limited in <i>Vela v. People</i>, 484 P.2d 1204 (Colo. 1971)) (overruling dicta that state law and ordinance are mutually exclusive on matters of local concern even where there is no conflict).</p> <p><b>Driving with Suspended or Revoked License</b>  <i>City &amp; County of Denver v. Palmer</i>, 342 P.2d 687 (Colo. 1959).  <i>Davis v. City &amp; County of Denver</i>, 342 P.2d 674 (Colo. 1959).</p> <p><b>Prohibition on Leaving the Scene of the Accident</b>  <i>People v. Graham</i>, 110 P.2d 256 (Colo. 1941).</p> <p><b>Duties of Drivers of Motor Vehicles to Stop after an Accident to give Information and Aid</b>  <i>People v. Graham</i>, 110 P.2d 256 (Colo. 1941).</p>	<p><b>Regulation of Bicycle Traffic</b>  <i>Webb v. City of Black Hawk</i>, 295 P.3d 480 (Colo. 2013).</p>
<p><b>Regulation of Automobiles by License</b>  <i>Armstrong v. Johnson Storage &amp; Moving Co.</i>, 268 P.2d 978 (Colo. 1928).</p> <p><b>Registration of Vital Statistics</b>  <i>People ex rel. Hershey v. McNichols</i>, 13 P.2d 266 (Colo. 1932).</p> <p><b>Appeals form Municipal Courts of Home Rule Cities to State Courts</b>  <i>City &amp; County of Denver v. Bridwell</i>, 224 P.2d 217 (Colo. 1950).</p>	<p><b>Health</b>  <i>Spears Free Clinic &amp; Hospital v. State Board of Health</i>, 220 P.2d 872 (Colo. 1950).</p> <p><b>Governmental Immunity for Tortious Acts of Municipal Officers</b>  <i>Lipira v. City of Thornton</i>, 585 P.2d 932 (Colo. App. 1978).  <i>DeLong v. City &amp; County of Denver</i>, 576 P.2d 537 (Colo. 1978).</p> <p><b>Indemnification of Police Officers for Exemplary Damage Awards</b>  <i>Frick v. Abell</i>, 602 P.2d 852 (Colo. 1979).</p>



# CHAPTER III: MUNICIPAL HOME RULE ACT OF 1971

## INTRODUCTION

Every municipality wishing to adopt, amend, or repeal a home rule charter; adopt a new home rule charter; or adopt a home rule charter at the time of incorporation, must comply with the requirements of the Municipal Home Rule Act of 1971, C. R. S. §§ 31-2-201 et seq.

Prior to the addition of Section 9 to Article XX of the Constitution and prior to the adoption of the act, the procedures for adopting and amending a home rule charter could be found in Sections 4 and 5 of Article XX. However, subsection (3) of Section 9 states that the various provisions in Article XX “as they related to *procedures* for the initial adoption of home rule charters and for the amendment of existing home rule charters, shall continue to apply until superseded by statute.” (Emphasis added.) Adoption of the act thus superseded the procedural requirements for adopting and amending home rule charters previously found in Sections 4 and 5 of Article XX.

There are certain procedures required in Sections 4 and 5 that are not found in the act (such as, for instance, the requirement that officers and members of the convention sign the charter prior to the charter’s submission, and the requirement that votes for and against a charter or charter amendment be certified to the secretary of state). While one might argue that the act superseded only conflicting procedural requirements found in Sections 4 and 5, the better view would be to look upon the act as a complete document which does, and was intended to, contain the complete procedural requirements for charter adoption and amendment.

This is not to say, however, that Section 9 and the act supersede any requirements contained in other sections of Article XX relating to the contents of home rule charters. The wording of Section 9 states only that the procedures found in Article XX would be superseded.<sup>64</sup>

The following is a general summary of the basic procedural requirements found in the act. Because this information is only a summary of the language of the act, it should not be used as a substitute for the act itself.

## GENERAL PROVISIONS

### ELECTION REQUIREMENTS

**Procedures.** Except as otherwise provided in the act, every election held pursuant to the act must be conducted, as closely as possible, in accordance with the requirements of the Municipal Election Code of 1965, Article 10 of Title 31, C.R.S. (Election Code).<sup>65</sup>

One question raised by this requirement is whether a home rule municipality that has its own election procedures can follow those procedures rather than the Election Code procedures. That question might arise, for instance, in proceedings to amend or repeal an existing charter. Although the act does not answer this question, it would seem that the election procedures of the home rule municipality could be followed since C.R.S. § 31-2-211(1) provides that elections will be conducted in conformity with the provisions of the Election Code. The Election Code provides that home rule municipalities are not required to follow the procedures outlined in the code except those parts of the code adopted by the municipality.<sup>66</sup>

**Expenses.** The act requires that the municipality pay the expenses of any elections.<sup>67</sup>

**Special Elections.** Every election required by the act must be held within certain specific time periods. If a regular election is scheduled within the time period required by the act, then the home rule election may be held at the time of the regular election. If no regular election is scheduled within the required time period, a special election on home rule must be called.<sup>68</sup>

**Publication** Wherever the term “publication” is used in the act, it means one publication in one newspaper of general circulation in the municipality. If there is no newspaper of general circulation, then publication shall be by posting in at least three public places within the municipality.<sup>69</sup>

<sup>64</sup> See “Contents of the Charter,” (page 34 of this handbook) for provisions which that either must be or need not be included in the charter.

<sup>65</sup> C.R.S. § 31-2-211(1).

<sup>66</sup> C.R.S. § 31-10-1539(2).

<sup>67</sup> C.R.S. § 31-2-211(2).

<sup>68</sup> C.R.S. § 31-2-211(3).

<sup>69</sup> C.R.S. § 31-2-203(1).

## CONFLICTING OR ALTERNATIVE PROPOSALS

Any alternative provision or provisions may be submitted and voted on separately when a charter or charter amendment is submitted to the voters. The alternative provision receiving the highest number of votes, if approved by a majority of the votes of the registered electors voting, shall be deemed approved.<sup>70</sup> If conflicting provisions are adopted that are not submitted as alternatives, the provision that receives the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.<sup>71</sup>

## CHANGE IN CLASSIFICATION OF A MUNICIPALITY

The act establishes a simplified procedure for reclassifying a town with a population greater than 2,000 as a city, or a city with a population of 2,000 or less as a town, by allowing the town or city to simply reclassify itself upon adoption of its home rule charter. If the town or city reclassifies itself by adoption of a charter, it need not comply with the more detailed procedures for reclassification found in part 2 of article 1 of title 31.<sup>72</sup>

## TIME LIMITS ON SIMILAR PROPOSALS

If voters reject a proposal for a charter commission, charter amendment, or repeal of a charter, no substantially similar proposal may be initiated within 12 months after the rejection.<sup>73</sup>

## FILING

If voters approve a charter, charter amendment, or charter repeal, a certified copy of the approved measure must be filed with the secretary of state and the municipal clerk within 20 days after voter approval of the measure.<sup>74</sup>

## FINALITY OF ELECTIONS

No proceeding to contest the adoption of a charter, charter amendment, or charter repeal may be brought unless it is commenced within 45 days after the election adopting the measure.<sup>75</sup>

## INITIATIVE, REFERENDUM, AND RECALL

Every charter must contain procedures for initiative and referendum and for the recall of municipal officers.<sup>76</sup> These requirements raise questions concerning a municipality's ability to deny the exercise of initiative and referendum powers on certain types of municipal ordinances. Article V, Section 1 (9) of the Colorado Constitution states:

*The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws, except that cities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the registered electors may be required to order the referendum, nor more than fifteen percent to propose any measure by the initiative in any city, town, or municipality. (Emphasis added).*

An emergency ordinance adopted by a municipality is not subject to referendum.<sup>77</sup> And the constitutional reservation of the referendum power applies only to acts that are "legislative" in character, not to acts that are "administrative" in character.<sup>78</sup> A home rule charter may, however, provide that all ordinances are subject to a referendum.<sup>79</sup>

It is not clear whether a home rule charter may prohibit a referendum on any types of ordinances other than emergency or administrative ordinances, although many home rule charters do contain additional prohibitions. It should be noted that Article V, Section 1 specifically grants municipalities the right to establish only the "manner of exercising" initiative and referendum powers as to municipal legislation.

Special requirements exist in Article XX, Section 4 of the Colorado Constitution for the initiative and referendum as applied to franchises.

Any recall provision in the charter must not be in conflict with the Colorado Constitution.<sup>80</sup>

70 C.R.S. § 31-2-215(1).

71 C.R.S. § 31-2-215(2).

72 C.R.S. § 31-2-216.

73 C.R.S. § 31-2-214.

74 C.R.S. § 31-2-208.

75 C.R.S. § 31-2-218.

76 C.R.S. § 31-2-212; COLO. CONST. art. XX, § 5.

77 *Shields v. City of Loveland*, 218 P. 913 (Colo. 1923).

78 *Vagneur v. City of Aspen*, 295 P.3d 222, 505 (Colo. 2013) (discussing *Witcher v. City of Canon City*, 716 P.2d 445 (Colo. 1986)); see also *City of Aurora v. Zwerdinger*, 571 P.2d 1074 (Colo. 1977).

79 *Burks v. City of Lafayette*, 349 P.2d 692 (Colo. 1960).

80 *Berzen v. City of Boulder*, 525 P.2d 416 (Colo. 1974).

The charter commission should obtain legal advice particularly when drafting the initiative, referendum, and recall sections of the charter.

## VESTED RIGHTS

No charter, charter amendment, or charter repeal measure approved by a municipality may destroy or affect rights vested in or against the municipality prior to the adoption of the particular measure.<sup>81</sup>

## PROCEDURES FOR ADOPTING A HOME RULE CHARTER

### INITIATION

Home rule may be initiated by submission to the governing body of a petition signed by not less than 5 percent of the registered electors of the municipality, or by ordinance of the governing body.<sup>82</sup>

### ELECTION ON FORMING THE CHARTER COMMISSION AND ON COMMISSION MEMBERS

**Call.** Within 30 days after initiation, the governing body must call an election on the question of whether a charter commission shall be formed, and for the purpose of electing members to the charter commission.<sup>83</sup>

**Time of Election.** The commission election must be held within 120 days after the call of the election.<sup>84</sup>

**District or At-Large Representation.** The petition or ordinance initiating home rule may specify that commission members are to be elected from districts or from a combination of districts and at-large. If the petition or ordinance requires some type of district election, the governing body must divide the municipality into compact districts of approximately equal population before publishing the first notice of the commission election.<sup>85</sup> Any determination of population for the purpose of establishing districts must be made on the best readily available information.<sup>86</sup> Acceptable sources of population information would probably include the latest United States Census Reports and Colorado Department of Local Affairs.

**First Notice.** Notice of the election must be published by the governing body at least 60 days prior to the election.<sup>87</sup>

**Candidates for the Commission.** Candidates for the charter commission must be nominated by petition (on forms supplied by the municipal clerk) signed by at least 25 registered electors of the municipality. The nomination must be filed with the municipal clerk within 30 days after publication of the first election notice and must be accompanied by a statement from the nominated candidate of his or her consent to serve if elected.<sup>88</sup>

If the petition or ordinance initiating home rule provides for the election of some charter commission members by districts, the question may arise whether the petition nominating a commission member to represent a district must be signed only by electors residing in that district. This question is not directly answered in the act. However, C.R.S. § 31-2-211(1) requires that, except as otherwise provided, every election held pursuant to the act should be conducted, as closely as possible, in accordance with the requirements of the Election Code. The Election Code provides, in C.R.S. § 31-10-302, that where a candidate for the municipal governing body is to be elected from a ward, electors residing in the candidate's ward shall sign the nomination petition. While this requirement might not be specifically applicable to the nomination of commission members, the better view might be to require petitions for commission candidates to be signed by the required number of electors residing within the candidate's district.

**Second Notice.** As soon as possible after the filing of the nomination petitions and the consent to serve statements, the governing body must publish a second notice of the election including the names of the candidates for the charter commission.<sup>89</sup>

**Election Results.** At the election, voters cast ballots for or against forming the charter commission and to elect the commission members. A majority of the registered electors voting is required to approve the formation of a charter commission.<sup>90</sup>

If voters approve the formation of the commission, those candidates receiving the highest number of votes are elected as members of the commission. If there are tie votes for the last available vacancy on the commission, the municipal clerk decides, by lot, who shall be elected.<sup>91</sup>

81 C.R.S. § 31-2-217.  
82 C.R.S. § 31-2-204(1).  
83 C.R.S. § 31-2-204(2).  
84 C.R.S. § 31-2-204(2).  
85 C.R.S. § 31-2-206(2).  
86 C.R.S. § 31-2-213.  
87 C.R.S. § 31-2-204(2).  
88 C.R.S. § 31-2-204(3).  
89 C.R.S. § 31-2-204(3).  
90 C.R.S. § 31-2-205(1).  
91 C.R.S. § 31-2-205(2).

## CHARTER COMMISSION

**Duties of the Commission.** The commission must hold at least one public hearing while preparing the charter, submit a proposed charter to the governing body within 180 days after the commission election, and prepare and submit a revised proposed charter if the proposed charter is rejected by the voters.<sup>92</sup>

**Organization of the Commission.** The governing body calls the first meeting of the commission within 20 days after the election of the commission.<sup>93</sup> Because the commission has a limited time in which to work (180 days), and because that time begins running from the date of the commission election, the governing body should call the first meeting of the commission as soon as possible after the election.

Further meetings of the commission are called either by the chairperson of the commission or by a majority of the members of the commission. All meetings of the commission must be open to the public.<sup>94</sup>

At the first meeting, the commission is required to elect a chairperson and a secretary from among its members and may elect any other officers as it feels necessary from among its members. In addition, the commission may adopt its own rules of procedure. A quorum of the commission consists of a majority of the commission members.<sup>95</sup>

**Number of Members.** The number of commission members is determined by the population of the municipality as follows: population of less than 2,000, nine members; population of at least 2,000, nine members unless the initiating ordinance or petition establishes a higher odd-number of members not to exceed 21 members.<sup>96</sup>

**Powers of the Commission.** The commission has the power to employ a staff; consult and retain experts; purchase, lease, or otherwise obtain necessary supplies, materials, and equipment; accept funds, grants, gifts, and services from any public or private source; conduct interviews; and make investigations. After completion of the commission's work and dissolution of the commission, the commission's property becomes the property of the municipality.<sup>97</sup>

**District or At-Large Representation.** The petition or ordinance initiating home rule may require district representation or a combination of district and at-large representation.<sup>98</sup> If the petition or ordinance initiating home rule is silent on how commission members shall be elected, all members will be elected at-large.

**Qualifications of Commission Members.** Any registered elector of the municipality is eligible to serve on the commission.<sup>99</sup>

**Compensation of Commission Members.** Commission members receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.<sup>100</sup>

**Vacancies on the Commission.** The governing body of the municipality fills, by appointment, any vacancy on the commission.<sup>101</sup>

**Expenses of the Commission** The municipality pays the reasonable expenses of the commission, upon written verification of the expenses by the chairperson and secretary of the commission. The governing body of the municipality must enact any supplemental appropriation ordinances as necessary to cover the commission's expenses.<sup>102</sup>

## ELECTION ON THE CHARTER

**Call and Publication.** Within 30 days after the date on which the commission submits the proposed charter to the governing body, the governing body must publish notice of and call an election on the proposed charter. The notice must contain the full text of the proposed charter.<sup>103</sup>

**Time of Election.** The election on the proposed charter must be held not less than 60 days nor more than 185 days after publication of the notice of the election.<sup>104</sup>

**Ballot Requirements.** Ballot requirements are discussed on page 29 under "Ballot Requirements."

**Election Results.** A charter is adopted if a majority of the registered electors voting approve the charter, and the approved charter takes effect at the time established in the charter.<sup>105</sup>

92	C.R.S. § 31-2-206(4).
93	C.R.S. § 31-2-206(4).
94	C.R.S. § 31-2-206(4).
95	C.R.S. § 31-2-206(4).
96	C.R.S. §§ 31-2-206(1)(a), (1)(b).
97	C.R.S. § 31-2-206(5).
98	C.R.S. § 31-2-206(2).
99	C.R.S. § 31-2-206(3).
100	C.R.S. § 31-2-206(7).
101	C.R.S. § 31-2-206(3).
102	C.R.S. § 31-2-206(7).
103	C.R.S. § 31-2-207(1).
104	C.R.S. § 31-2-207(1).
105	C.R.S. § 31-2-207(3).

If electors reject the proposed charter, the charter commission must prepare a revised proposed charter in the same general manner as it prepared the proposed charter, and the governing body must submit the revised proposed charter to an election in the same manner as the original proposed charter.<sup>106</sup> If voters reject the revised proposed charter, then the charter commission is dissolved.<sup>107</sup>

## PROCEDURES FOR AMENDING A HOME RULE CHARTER

### INITIATION

Amendments to existing home rule charters may be initiated by a petition signed by a minimum number of registered municipal electors or by ordinance adopted by the governing body.<sup>108</sup>

### PETITION REQUIREMENTS

The following requirements pertain to a charter amendment initiated by petition.

**Commencement.** The petition process is commenced by filing with the municipal clerk a statement of intent to circulate a petition. The statement must be signed by at least five registered electors of the municipality.<sup>109</sup>

**Circulation and Filing.** The petition is circulated for a period not to exceed 90 days from the date of the filing of the statement of intent. The petition must be filed with the municipal clerk before the close of business on the 90th day, or on the next business day if the 90th day falls on a Saturday, Sunday, or legal holiday.<sup>110</sup>

**Form and Contents.** The petition must contain the text of the proposed amendment and must state whether the proposed amendment is sought to be submitted at the next regular election or at a special election. If the petition seeks to submit the proposed amendment at a special election, the petition must state an approximate date for the election.<sup>111</sup> The petition also must meet the additional requirements set forth in Colorado Revised Statutes § 31-2-220 through 225; those additional requirements are summarized on page 28 under “Additional Petition Requirements.”

**Number of Signatures.** If the petition seeks to submit an amendment at the next regular election, at least 5 percent of the electors of the municipality who are registered on the date of filing of the statement of intent must sign the petition. If the petition seeks to submit an amendment at a special election, at least 10 percent of the electors of the municipality registered on the date of filing the statement of intent must sign the petition.<sup>112</sup>

**Date of Filing.** If the petition seeks to submit an amendment at the next regular election, it must be filed with the municipal clerk at least 90 days prior to the date of the regular election. If the petition seeks to submit an amendment at a special election, it must be filed with the municipal clerk at least 90 days prior to the approximate special election date stated in the petition.<sup>113</sup>

**Certification by Municipal Clerk.** Within 15 working days after the filing of the petition, the municipal clerk must provide certification to the governing body as to the validity and sufficiency of the petition.<sup>114</sup>

### ELECTION ON THE PROPOSED AMENDMENT

**Notice and Call.** Within 30 days after the adoption of the ordinance or the date of filing of the petition (assuming the clerk certifies the petition to be valid and sufficient), the governing body must call and publish notice of an election on the proposed amendment. The notice must contain the full text of the proposed amendment.<sup>115</sup>

**Ballot requirements.** Ballot requirements are discussed on page 29 under “Ballot Requirements.”

**Time of Election.** The election on the amendment must be held not less than 60 days nor more than 120 days after publication of the notice of election. If the amendment was initiated by petition and is sought to be submitted at a special election, the election must be held as near as possible to the approximate date stated in the petition, subject to the foregoing time requirements.<sup>116</sup>

**Election Results.** An amendment is deemed approved if a majority of the registered electors voting approve the proposed amendment.<sup>117</sup>

106 C.R.S. § 31-2-207(3).  
107 C.R.S. § 31-2-207(3).  
108 C.R.S. § 31-2-210(1).  
109 C.R.S. § 31-2-210(1)(a)(I).  
110 C.R.S. § 31-2-210(1)(a)(I).  
111 C.R.S. § 31-2-210(1)(a)(II).  
112 C.R.S. §§ 31-2-210(1)(a)(III), (IV).  
113 C.R.S. §§ 31-2-201(1)(a)(III), (IV).  
114 C.R.S. § 31-2-210(3).  
115 C.R.S. § 31-2-210(4).  
116 C.R.S. § 31-2-210(4).  
117 C.R.S. § 31-2-210(6).

## PROCEDURES FOR REPEALING A HOME RULE CHARTER

### INITIATION

Action to repeal a charter may be initiated by petition, or by a two-thirds vote of the governing body adopting an ordinance to submit the proposed repeal to a vote of the registered electors of the municipality.<sup>118</sup>

### PETITION REQUIREMENTS

The requirements for commencement, circulation, filing, and contents of the petition are similar to those applicable to a petition to amend a charter, except that the petition:

- must state the proposal to repeal the charter; and
- must be signed by at least 15 percent of the registered municipal electors, whether the petition seeks submission of the proposal at a regular election or at a special election.<sup>119</sup>

### ELECTION ON THE PROPOSED REPEAL

**Notice and Call.** Within 30 days after initiation, the governing body must call and publish notice of an election on the proposed repeal. The notice must contain a statement of the proposal as contained in the ordinance or the petition.<sup>120</sup>

**Ballot Requirements.** Ballot requirements are discussed on page 29 under “Ballot Requirements.”

**Time of Election.** The election must be held not less than 60 nor more than 120 days after publication of the notice of election. If the proposed repeal was initiated by petition and is sought to be submitted at a special election, the election must be held as near as possible to the approximate date stated in the petition, subject to the foregoing time requirements.<sup>121</sup>

**Election Results** A charter is repealed when a majority of the registered electors voting approve the repeal. If the charter is repealed, the municipality must then begin to organize and operate in accordance with the statutes applicable to a municipality of its size.<sup>122</sup>

## PROCEDURES FOR HOME RULE MUNICIPALITIES TO ADOPT A NEW CHARTER

When extensive revision of a charter is desired, or when an entire change in the form of government is proposed (such as from mayor–council to council–manager), a new charter commission might be preferable to a charter amendment.<sup>123</sup>

### INITIATION

Action to form a new charter commission may be initiated by petition or by the governing body adopting by a 2/3 vote of its members an ordinance submitting the proposed formation of a new charter commission to a vote of the registered electors of the municipality.<sup>124</sup>

### PETITION REQUIREMENTS

The requirements for commencement, circulation, filing, and contents of the petition are similar to those applicable to a petition to amend a charter, except that the petition:

- must state the proposal to form a new charter commission;
- must be signed by at least 15 percent of the registered municipal electors, whether the petition seeks submission of the proposal at a regular election or at a special election; and
- must be filed with the municipal clerk at least 90 days prior to the date of the regular election or the approximate date stated in the petition for a special election, as the case may be.<sup>125</sup>

### ELECTION ON THE PROPOSED FORMATION OF A NEW CHARTER COMMISSION

**Notice and Call.** Within 30 days after initiation, the governing body must call and publish notice of an election on the proposal. The notice must contain a statement of the proposal as contained in the ordinance or the petition.<sup>126</sup>

**Ballot Requirements.** Ballot requirements are discussed on page 29 under “Ballot Requirements.”

118 C.R.S. § 31-2-210(2).

119 C.R.S. § 31-2-210(2).

120 C.R.S. § 31-2-210(4).

121 C.R.S. § 31-2-210(4).

122 C.R.S. § 31-2-210(6).

123 See City & Cty. of Denver v. New York Trust Co., 229 U.S. 123 (1913); Speer v. People, 122 P.768 (Colo. 1912); Moore v. Perkins, 137 P. 55 (Colo. 1913).

124 C.R.S. § 31-2-210(2).

125 C.R.S. § 31-2-210(2).

126 C.R.S. § 31-2-210(4).

**Time of Election.** The election must be held not less than 60 days nor more than 120 days after publication of the notice of election. If the proposal was initiated by petition and is sought to be submitted at a special election, the election must be held as near as possible to the approximate date stated in the petition, subject to the foregoing time requirements.<sup>127</sup>

**Procedures.** The procedures for the forming and functioning of a new charter commission must comply as nearly as possible with the procedures for the forming and functioning of an initial charter commission.<sup>128</sup> This means that the time and method requirements for nominating candidates to the initial charter commission should be followed, as should other procedures contained within Colorado Revised Statutes § 31-2-204 through § 31-2-207.

### ADDITIONAL PETITION REQUIREMENTS

The following petition requirements, in addition to other applicable requirements, apply to any petition to initiate the adoption, amendment, or repeal of a charter, including the formation of a new charter commission. Any petition that fails to meet the applicable requirements or that is circulated in a manner other than that permitted by the applicable requirements is invalid.<sup>129</sup>

**Warning on Petition.** At the top of each page of the petition, the following must be printed in plain red letters no smaller than 10-point, boldface type:<sup>130</sup>

WARNING: IT IS AGAINST THE LAW:

For anyone to sign any petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to sign such petition when not a registered elector.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR:

TO BE A REGISTERED ELECTOR, YOU MUST BE:

1. At least eighteen years of age.
2. A citizen of the United States.
3. A resident of the state of Colorado and have resided in the state for at least thirty days.
4. A resident of the municipal election precinct in which you live for at least thirty days.
5. Registered to vote pursuant to part 2 of article 2 of title 1, Colorado Revised Statutes.

Do not sign this petition unless you have read or had read to you the text of the proposal in its entirety and understand its meaning.

**Signatures.** The petition must be signed only by registered electors by their own signatures; next to each signature, the signer's residence address, including street and number (if any) and the municipality, and the date of signing, must be included.<sup>131</sup>

**Affidavit.** Each petition must have attached an affidavit of some registered elector stating the elector's address; that the affiant is a registered elector of the municipality or of the territory proposed to be incorporated; that the affiant circulated the said petition; that each signature thereon was affixed in his or her presence; that each signature thereon is the signature of the person whose name it purports to be; that to the best knowledge and belief of the affiant each of the persons signing said petition was at the time of signing a registered elector; and that the affiant has not paid or will not in the future, and that the affiant believes that no other person has so paid or will pay, directly or in-directly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his or her signature to such petition. No petition may be accepted for filing if it does not have the affidavit attached.<sup>132</sup>

**Form of Petition.** The petition must be printed on pages 8.5-inches wide by 11-inches long, with a margin of two inches at the top for binding; the sheets for signature must have their ruled lines numbered consecutively and must be attached to a complete copy of what is proposed, printed in plain block letters no smaller than eight-point type. Petitions may consist of any number of sections composed of sheets arranged as required.<sup>133</sup>

**Representatives of Signers.** Each petition must designate by name and address not less than three nor more than five registered electors to represent the signers thereof in all matters affecting the petition.<sup>134</sup>

127 C.R.S. § 31-2-210(4).  
128 C.R.S. § 31-2-210(5).  
129 C.R.S. § 31-2-219.  
130 C.R.S. § 31-2-220(1).  
131 C.R.S. § 31-2-220(2).  
132 C.R.S. § 31-2-220(2).  
133 C.R.S. § 31-2-221(1).  
134 C.R.S. § 31-2-221(1).

**Approval of Form.** No petition may be printed, published, or otherwise circulated until the municipal clerk approves it as to form only. The clerk must ensure that the petition contains only the matters required by the statute and contains no extraneous material. The clerk must approve or disapprove the form of the petition within five working days of submission. The petitions must be prenumbered serially.<sup>135</sup>

**Disassembly.** Any disassembly of the petition that has the effect of separating the affidavits from the signatures will render the petition invalid. Prior to the time of filing, the persons designated in the petition to represent the signers must attach the sheets containing the signatures and affidavits together; the sheets must be bound in convenient volumes together with the sheets containing the signatures accompanying the same.<sup>136</sup>

**Protest.** A petition that has attached an affidavit by a registered elector that each signature thereon is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the affiant each of the persons signing such petition was at the time of signing a registered elector is *prima facie* evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors, unless a protest in writing, under oath, is filed in the clerk's office by some registered elector of the municipality (or territory proposed to be incorporated, if the petition is for the adoption of a home rule charter in connection with incorporation of a municipality) within 30 days after such petition is filed, setting forth with particularity the grounds of the protest and the names protested.<sup>137</sup>

**Notice of Hearing** If a protest is filed, the clerk must mail a copy of the protest to the persons named in the petition as representing the signers at the addresses given in the petition, together with a notice fixing a time for a hearing on the protest. The hearing must be not less than five nor more than 20 days after the notice is mailed. If, at the hearing, the protest is denied in whole or in part, the person filing the protest may file, within 10 days after the denial, an amended protest. A copy of the amended protest must be mailed to the persons named in the petition. A hearing must be held on the amended protest as in the case of the original protest. No amendment to an amended protest is permitted.<sup>138</sup>

**Hearing.** All records and hearings must be public, and all testimony at the hearing must be under oath. The clerk has the power to issue subpoenas to compel the attendance of witnesses and the production of documents at the hearing. If any witness fails to obey the subpoena, the clerk may petition the district court for an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court is punishable as a contempt of court.<sup>139</sup> Hearings must be held as soon as is conveniently possible and must be concluded within 30 days after the commencement thereof. The result of the hearing must be certified to the persons representing the signers of the petition.<sup>140</sup>

**Insufficiency of Petition** If the petition is declared insufficient in form or number of signatures of registered electors, a majority of the persons representing the signers of the petition may withdraw it. Within 15 days after the insufficiency is declared, the petition may be amended or additional names signed, and the petition may then be refiled as an original petition.<sup>141</sup>

**Review of Determination.** The finding as to the sufficiency of a petition may be reviewed by the district court of the county in which the petition is filed; the district court's decision is subject to review by the supreme court.<sup>142</sup>

## BALLOT REQUIREMENTS

The following requirements apply to the official ballot for a proposal to adopt, amend, or repeal a home rule charter, including the formation of a new charter commission.

**Ballot.** The proposal must appear upon the official ballot by ballot title only and, if there is more than one proposal, they must be numbered consecutively in the order determined by the governing body and must be printed on the official ballot in that order, together with their respective numbers prefixed in boldface type. Each ballot title must appear once on the official ballot, must be separated from the other ballot titles next to it by heavy black lines, and must be followed by the words "yes" and "no" as follows: C.R.S. § 31-2-222.<sup>143</sup>

**(HERE SHALL APPEAR THE BALLOT TITLE IN FULL)**

YES

NO

- 135 C.R.S. § 31-2-221(1).
- 136 C.R.S. § 31-2-221(2).
- 137 C.R.S. § 31-2-223(1).
- 138 C.R.S. § 31-2-223(1).
- 139 C.R.S. § 31-2-223(2); 13-10-112(2) (allowing municipal courts to enforce subpoenas issued by the clerk).
- 140 C.R.S. § 31-2-223(2).
- 141 C.R.S. § 31-2-223(2).
- 142 C.R.S. § 31-2-223(2).
- 143 C.R.S. § 31-2-222.



## UNLAWFUL ACTS CONCERNING PETITIONS

The following acts are unlawful with respect to any petition to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission:

- for any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of such person, organization, association, league, or political party;
- for any person to sign any name other than his own to any such petition or knowingly to sign his name more than once for the same measure at one election;
- for any person who is not a registered elector of the municipality or of the territory proposed to be incorporated at the time of signing the same to sign any such petition;
- for any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in such affidavit to be true;
- for any person to certify that an affidavit attached to such petition was subscribed or sworn to before him unless it was so subscribed and sworn to before him and unless such person so certifying is duly qualified under the laws of this state to administer an oath; or
- for any person willfully to do any act in reviewing the petition or setting the ballot title which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election or to refuse to submit any such petition in the form presented for submission at any election.

Any person who violates any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in Colorado Revised Statutes § 18-1.3-501.<sup>144</sup>

## PROCEDURES FOR ADOPTING A CHARTER UPON INCORPORATION

(Incorporation procedures found in Colorado Revised Statutes §31-2-101 et seq., as amended, should be referred to while reading this summary.)

**Initiation.** The petition for incorporation (C.R.S. § 31-2-101) must also petition for initiation of home rule and must be signed by at least 5 percent of the registered electors of the territory to be embraced within the boundaries of the proposed municipality.<sup>145</sup>

**Procedures.** The court-appointed election commission will exercise the powers, functions, and responsibilities assigned in the Act to the governing body or municipal clerk.<sup>146</sup>

The procedures required for incorporation and for adoption of a home rule charter are to be modified as necessary to allow simultaneous consideration of incorporation and home rule.<sup>147</sup>

**Election on Incorporation and Home Rule.** At the incorporation election, the electors also vote on whether a charter commission should be formed and on the candidates for the charter commission. C.R.S. § 31-2-209(4).<sup>148</sup>

**Election Results.** If a majority of the registered electors voting approve incorporation and forming a charter commission, the first election of officers of the municipality must be stayed pending drafting and approval of the home rule charter pursuant to the requirements of §§ 31-2-206, 207.<sup>149</sup>

When the charter or revised charter is finally approved, or when the revised charter is rejected, the election commission then proceeds with the first election of municipal officers and the completion of incorporation as required in part 1 of article 2 of title 31, C.R.S.<sup>150</sup>

144 C.R.S. § 31-2-225(2).  
145 C.R.S. § 31-2-209(2).  
146 C.R.S. § 31-2-209(3).  
147 C.R.S. § 31-2-209(3).  
148 C.R.S. § 31-2-209(4).  
149 C.R.S. § 31-2-209(5).  
150 C.R.S. § 31-2-209(5).

# CHAPTER IV: PREPARING THE CHARTER

## INTRODUCTION

The opportunity to draft a charter may arise only once in the lifetime of a community. When it does, those responsible for drafting the charter, the charter commission members, usually face two major problems: a limited amount of time in which to write the charter and a lack of experience in writing charters. This chapter offers some assistance with both problems.

## PRE-COMMISSION PREPARATION

Partly because of the time limitations placed on the charter commission's work, several municipalities have, prior to the initiation of home rule, established study groups composed of both citizens and councilmembers. These groups usually provide background work by studying whether the municipality will in fact profit by the adoption of a home rule charter and the advantages and disadvantages of home rule in relation to the needs of their own municipality; they also review various charters to determine what might be contained in their own charter; and they possibly may even draft a charter that would reflect the individuality of the municipality's needs. A study group then reports its results to the municipal governing body.

Study group work may assist in the adoption of a home rule charter. A study group will bring the idea of home rule to the attention of the municipality's citizens and, by so doing, begin the process of educating citizens on home rule and creating citizen interest in home rule. The study group also may provide invaluable background work that can be used later by the charter commission, which, because of time limitations placed on the charter commission, might be impossible to obtain otherwise.

Whether the study group should prepare a charter may be open to question. It might be useful to the charter commission as a starting point for deliberations; however, it also might cause the commission to limit the scope of its work unduly if the commission assumes that its only duty is to modify and adopt the study group's charter. Because commission members are elected by the citizens to write the charter and because there is a variety of possible charter provisions available, such a limitation on the commission's work might not be in the best interests of the community. Regardless of whether the study group writes a charter, its other services may be of invaluable assistance to the commission.

There may, in fact, be several study groups organized within a community prior to the initiation of home rule. Organizations such as the local League of Women Voters might form their own groups and offer their results to a citizen-council group or to the charter commission.

The council of one municipality considering the adoption of home rule asked the city attorney to compile samples of various possible charter provisions. Prior to the first meeting of the charter commission, the attorney compiled a volume of material containing three or four samples of possible charter provisions and an outline analysis of the differences among the samples. The material was presented to the commission at one of its early meetings and apparently expedited debate and work of the commission.

The Colorado Municipal League has prepared a matrix of charter provisions of all the home rule municipalities in Colorado. The matrix allows for comparison of how home rule municipalities have addressed issues in their respective charters. This matrix and copies of charters that have been adopted are available from the League. Sample procedural and organizational rules used by charter commissions are located in Appendix H.

Finally, the charter commission itself should be representative of the whole community and should not be dominated by municipal officials or by one or a few interest groups. Those interested in initiating home rule might encourage people who represent various community interests to run for membership on the charter commission.

## CHARTER COMMISSION ORGANIZATION

To create a charter of high quality within the statutory time limits, the charter commission itself must be well organized. The Municipal Home Rule Act of 1971 provides that the first meeting of the charter commission must be called by the governing body within 20 days after the election of the commission members.<sup>151</sup> The first meeting should be called as soon as possible, and the governing body should select a public place for the meeting and set a time and day that is convenient for the commission members.

151 C.R.S. § 31-2-206(4).

At the first meeting, the commission might organize its work, establish its operating procedures, and, if necessary, acquaint the members of the commission with each other. The following are suggestions for action at the first meeting:

- If the members of the commission are not well acquainted, it might be best to elect only temporary officers as chairperson pro tem and secretary pro tem. (If the members are well acquainted, the commission may wish to select permanent officers and a permanent steering committee to expedite the work of the commission.)
- Select a small temporary steering committee that would be responsible for reporting at the second meeting its suggestions on the following:
  - a simple plan of organization and set of procedural rules to be followed in commission meetings;
  - nominations for any offices required by the organization plan;
  - a tentative schedule of general commission meetings and a tentative date for the public hearing or hearings on the charter;
  - a tentative estimate of the financial needs of the commission;
  - suggestions for the employment of any needed consultants; and
  - a program for meetings which might include speakers on municipal home rule law and on the powers and duties of the charter commission.
- Make a list of commission members with their addresses and phone numbers. (This list might be copied and distributed to all commission members.)
- Obtain suggestions from the members concerning the most convenient times and places for future meetings. Set the time and place for the second meeting.
- Discuss the preliminary needs of the commission.
- Schedule a short time during the meeting to receive any citizen petitions, suggestions, or study group results.
- If possible, provide loose-leaf binders to commission members for keeping material pertaining to the work of the commission.

At the second meeting, the commission might complete the organizational work of the commission and inform members of their legal powers, duties, and responsibilities. The second meeting might include:

- hearing and discussing the report of the temporary steering committee;
- adopting a plan of organization;
- receiving nominations for officers, as well as electing and installing officers;
- discussing and adopting rules of procedure including such matters as scheduling meetings, the duties of the elected officers, and the adoption of a standard book on parliamentary rules;
- discussing and possibly establishing time limits for various phases of the commission work in order to avoid a rush to meet last-minute deadlines;
- hearing any speakers on the commission's legal powers, duties, and responsibilities; and
- considering whether consultants should be utilized to advise the commission.

It is vital that the content of each meeting be planned in advance to ensure the completion of the commission's work within necessary time limits. The commission might consider establishing a permanent steering committee to plan and give direction to the meetings. This committee might be composed of the elected officers plus a few other members, remembering to keep the size of the committee workable.

Minutes of each committee and commission meeting should be kept and made available to the members of the commission to keep each member up to date on the commission's work.

The commission might prepare a proposed budget and present it to the municipality's governing body. Because the municipality is required to pay the expenses of the commission, it should, if possible, receive estimated budgets from the commission to plan for the payment of commission expenses.

Perhaps the greatest need, in addition to well-planned meetings, is well-conducted meetings. Rules of procedure should be followed to provide a sound structure for commission discussions and decisions, and the presiding officer must keep the commission focused on the business at hand. Again, because of statutory time limitations, wasted time in commission work can only reduce the quality of the final charter.

To save hours of work for the commission as a whole, one home rule charter commission appointed a five-member drafting committee at its first organizational meeting. This committee met independently of the total charter commission and drafted proposed sections of the charter. Prior to each meeting of the entire commission, drafted sections were given to the members of the commission to review. The commission then discussed and offered amendments and corrections to the sections drafted by the committee.

Another charter commission selected a different procedure. The first two meetings of the commission were concerned almost wholly with establishing the organization and procedural rules of the commission. At the first meeting a president, vice president, and secretary were elected, and two committees were established. The Rules and Organization Committee drafted the rules of organization and procedure for the commission and answered questions regarding interpretation of the rules during the term of the commission. The second committee, the Publicity and Steering Committee, was responsible for all publicity related to the work of the charter commission, and for formulating plans to promote and explain the charter to the people after the commission completed its work. At the commission's second meeting, the organizational structure and procedural rules recommended by the Rules and Organization Committee were adopted, and three additional standing committees were named. The Drafting Committee was responsible to draft various charter provisions. The Calendar Committee established programs and a schedule for the commission's work. This committee decided what topics would be discussed at each meeting and provided commission members with all necessary information relating to the particular topic under discussion. The Finance and Personnel Committee cleared budget expenditures with the municipality's administrator and arranged for necessary consultant, clerical, or stenographic help.

Finally, it should be remembered that the act contains several requirements pertaining to the work of the charter commission. These requirements are summarized on page 25 of this handbook. One particular provision to keep in mind is § 31-2-206(9), which requires the charter commission to hold at least one public hearing while preparing the proposed charter.

## **SPECIAL CONSULTANTS**

The charter commission can minimize its understandable lack of experience in charter writing by obtaining the services of an attorney or other special consultant experienced in the areas of charter drafting, home rule, public finance, and municipal law generally. If the commission does not have sufficient funds to hire a special consultant it might consider, at a minimum, requesting the assistance of persons in other home rule communities who are experienced in the problems and procedures of drafting charters.

Remember that commissions hire special consultants to assist the commission in drafting the charter. If used properly, a special consultant, with practical experience or technical knowledge can be of invaluable assistance to the commission.

## **DRAFTING THE CHARTER**

Because the charter likely will not be amended frequently, special care should be taken in drafting charter provisions. Provisions should be written in clear, simple, and concise language. The charter is a legal document; thus, words used in the charter must be chosen with care to ensure that those words clearly state the intended meaning. If they do not, litigation may result, and numerous amendments to the charter may be required.

The charter should be viewed as a single, unified instrument, consistent in language and content. Inconsistent charter provisions also can lead to unnecessary litigation regarding the real meaning or intent of the charter.

The charter should be viewed as a lasting document. As noted previously in this handbook, the charter is to the municipality what a constitution is to the federal or state government; the United States Constitution has lasted for centuries, and the Colorado Constitution has lasted for decades. Opportunities to amend the charter may be infrequent, and such amendments may be difficult to accomplish. Thus, when evaluating the need for or desirability of a particular charter provision, the commission may wish to take a long-range view of the charter. It may be helpful, for instance, to evaluate whether the provision addresses a long-range issue appropriate for inclusion in the charter or addresses an immediate or ephemeral issue that may change with time and may thus be better addressed by ordinance.

As noted previously, the charter is also a document of limitation; a home rule municipality has the power to act unless the charter limits such action. Therefore, the most flexible charter is a document that contains the minimum requirements stated in general and broad terms.

Finally, a simple, flexible numbering system for charter provisions should be used so that future amendments to the charter can be easily inserted in their proper place.

## CONTENTS OF THE CHARTER

### PHILOSOPHY OF THE COMMISSION

A charter is the central document governing a home rule municipality. It is to the municipality what the constitution is to the state. It outlines the organizational structure of the municipality, establishes the basic procedures to be followed when the governing body acts, and imposes restrictions on the powers of the municipality.

Because charter provisions are legally viewed as limitations on the powers of the municipality, the charter commission must first determine whether the proposed charter should be of a broad and general nature, or of a detailed and restrictive nature. The commission should answer this question before it begins drafting specific charter sections since the decision will affect not only the contents of the charter but also the wording of the charter provisions.

The experiences of several Colorado municipalities suggest that the best charters are broad and general in nature, since broadly worded charters generally create more flexible and responsive governments.

One of the major advantages of home rule is that it frees the municipality from the often excessive or outdated restrictions found in state statutes. If the home rule charter is itself extremely detailed or restrictive, the municipality and its citizens may not obtain the benefits offered by home rule. In contrast to the charter, ordinances are more easily adopted, amended, and repealed, thus allowing the municipality to seek new methods to solve local problems, to respond more quickly and effectively to local problems, to create an effective administrative system based on continuing experience, and to correct or change previous judgments as needed.

Some people argue that a charter with few restrictions on the local government is a dangerous document; however, this should not be so. The charter should contain the basic structure of the government and will, to some degree, limit the authority of municipal officials. Moreover, there are limits set by the state and federal constitutions, by the state legislature in matters that are not purely local and municipal, and by court interpretations of municipal powers. There are financial limitations on the administration. There are citizen powers to hold the administration in line: elections, initiative, referendum, and recall procedures. If broad, general powers granted by a charter result in abuses, the citizens will likely amend the charter quickly to restrict those powers; in contrast, it may be more difficult to remove restrictions on the powers granted by a charter once those restrictions are in place.

### REQUIRED CHARTER PROVISIONS

**Initiative, Referendum, and Recall Procedures** The act requires the charter to contain initiative, referendum, and recall procedures; Section 5 of Article XX and Section I of Article V of the Colorado Constitution similarly requires the charter to contain initiative and referendum procedures. See page 23 of this handbook for a brief discussion of the problems concerning the content of these provisions.

**Continuing, Amending, or Repealing Existing Ordinances.** Section 4 of Article XX of the Colorado Constitution requires the charter to contain a provision for continuing, amending, or repealing ordinances in force at the time the charter is adopted.

**Prefatory Synopsis.** (Although a prefatory synopsis is probably not a charter provision, it is included here for the sake of convenience.) Section 4 of Article XX requires that a prefatory synopsis be written for the charter.

### RESTRICTIONS ON CHARTER PROVISIONS

**Tax Rate.** No charter or charter amendment can diminish the tax rate established for state purposes by the General Assembly or in any way interfere with the collection of state taxes for state purposes.<sup>152</sup>

**Franchises.** Franchises are one area in which home rule municipalities may be subject to more restrictions than statutory municipalities. The initiative and referendum powers are guaranteed with respect to franchises even if the ordinance granting the franchise contains an emergency clause, and the signatures of not more than 5 percent of the registered electors may be required in order to order a referendum on a franchise.<sup>153</sup>

See page 6 for a general discussion of other restrictions on the municipality's power to adopt various charter provisions or ordinances.

### POSSIBLE CHARTER PROVISIONS

The following material includes some examples of provisions taken from the charters of various Colorado home rule municipalities. These examples are not offered here as suggestions for adoption but merely as examples of how some municipalities have solved, through their charter, various problems that were created for them by state statutes

<sup>152</sup> COLO. CONST. art. XX, § 5.  
<sup>153</sup> COLO. CONST. art. XX, § 4.

or constitutional provisions, or by the lack of such statutes and provisions. Because different problems are faced by different municipalities, these examples may not be applicable to any particular municipality. All municipalities preparing a home rule charter, however, should use the charter to solve at least some existing municipal problems. The following is a discussion of only some of the possible charter provisions. Many other provisions are and should be included in charters.

**Form of Government** After deciding whether the charter should be of a broad or restrictive nature, the commission should decide what form of government will be adopted by the municipality. The commission should make this decision early in its work since the form of government affects many other important charter provisions, such as the size of the council, methods of nominating and electing municipal officials, terms of office, duties of the mayor and council, etc. The following is a brief description of some possible forms of government:

- a. **Commission Form.** A typical commission plan of government provides for five commissioners, elected at-large by the voters, to serve as a legislative and administrative body. The board of commissioners generally controls all administrative departments within the municipality, with each commissioner heading a particular department.  
This form of government has, for several reasons, been abandoned by an increasing number of municipalities in recent years. Commissioners, though good policy makers, may not have administrative expertise. There is usually no single executive to coordinate activities of the various departments and to accept responsibility for administrative decision making. And the commission government often fails to provide sufficient checks within itself to control spending since those who appropriate funds also spend the funds.
- b. **Weak Mayor Council.** This form of government began in the 19th century and also has been discarded by numerous municipalities in past years. This form is characterized by a mayor elected by the voters, an elected council that confirms departmental appointments by the mayor, separately elected department heads, and administrative boards that are either elected or appointed for overlapping terms. The problems of a weak mayor form are similar to those in the commission form. There is no single, unifying, and responsible executive; different persons may control various administrative departments, thereby creating a lack of coordination and unity of effort; and the numerous elective positions may result in voter confusion and lack of effective voter control.
- c. **Strong Mayor Council.** The strong mayor–council form of government corrects many of the problems found in the weak mayor and commission forms. Both the mayor and council are elected; however, the elected mayor usually has the authority to hire and fire department heads without confirmation of the council, to veto acts of the council, to prepare the municipal budget for council approval, and to administer the budget after it has been adopted. Thus, the strong mayor plan corrects one of the most serious defects of the prior two forms by providing a single, responsible executive.  
The major problems within this form arise because there may be few individuals who are both sufficiently expert administrators to run a city organization and sufficiently adept politicians to be elected. Thus, expertise may bow to political qualifications at election time. Another possible hazard in the strong mayor plan is that sufficient political differences may arise between the mayor and council to impede daily governmental functions since the mayor may veto actions of the council, and the council controls the finances necessary to the administration of the government.
- d. **Mayor Administrator.** To correct some of the defects found in the strong mayor plan, some cities have experimented with the mayor-administrator form of government. The structure of the government is similar to that in the strong mayor plan except that much of the mayor’s administrative responsibility is delegated to a single chief administrator who is responsible directly to the mayor. This form of government has been adopted in some of the larger cities in the nation.
- e. **Council–Manager.** The council–manager plan has two basic features: a small elected council to decide policy questions and a professionally trained manager hired by the council and subject to dismissal by the council to govern the municipal administration. The mayor may be elected at large or from the council but generally has a limited role conducting council meetings and acting in a ceremonial role without additional administrative powers. Major advantages of this plan of government are: policy making and administrative functions are separated; the manager provides expert guidance in administrative matters; responsibility is centralized in a single, chief executive who is held directly accountable to the council; municipal spending may be more easily controlled; and the manager, as an employee, may be readily dismissed by the council if the manager’s work is unsatisfactory.

Disadvantages sometimes cited for this form of government are that the municipality lacks a strong political figure in a position of leadership since the administrative executive (the manager) is appointed by the council; voter control over the municipal government may be decreased since voters elect only the council and have no direct control over the manager; and the cost of hiring a qualified manager may be relatively high.

See Appendix D for a complete list of Colorado home rule municipalities and their forms of government.

**Qualifications of Elective Officials.** When establishing qualifications for elective office, the charter commission might consider whether the qualification under consideration will, to any degree, help ensure the election of high quality officials. The commission also should obtain assistance to avoid establishing any qualifications that are not permitted by law.

**Size of the Council.** The number of councilmembers should be sufficiently large to ensure adequate representation of the citizens, yet not so large as to become unworkable.

**At-Large or District Representation** Councilmembers may be elected at-large, from districts, or from a combination of at-large and districts; the size of the municipality might influence which type of representation to select. The assurance of representation from discrete neighborhoods or areas of the municipality might be balanced against the assurance that councilmembers will represent the community as a whole rather than the sometimes parochial interests of a particular district. Any applicable legal restrictions on districting should be observed as well.

**Terms of Office** Many home rule charters provide staggered terms of office for councilmembers to establish some continuity in the government. The length of the terms of office for councilmembers generally range from two years to four years. A longer term of office allows councilmembers to learn their jobs and to function effectively on the basis of their knowledge. However, too long a term of office might prevent the citizens from quickly changing the complexion of their governing body if they desire to do so. Perhaps the commission should attempt to decide what term of office would provide continuity and stability in the governing body without resulting in stagnant government and without excessively reducing the voters' control over the governing body. While a limitation on the total number of terms that may be served is now imposed by the Colorado Constitution,<sup>154</sup> the charter may provide a different number of terms or eliminate term limits altogether. If the charter is silent on term limits, the constitutional restriction will apply.

**Filling of Vacancies.** Most home rule charters provide that the city council will fill any vacancies on the council. Some charters require an election to fill vacancies where numerous vacancies exist at one time.

**Powers of the Council** This is one of the charter sections in which the commission's decision on the general or restrictive nature of the charter is important. If the commission attempts to itemize the powers of the city council it may inadvertently omit important powers or phrase specific grants of power in too restrictive a manner. Most recent home rule charters include broad grants of power to the council and, for reasons expressed earlier in this handbook, a broad grant would appear advisable.

**Mayor.** Any decisions relating to the office of mayor depend largely on the form of government selected by the commission. Under a council–manager plan, the mayor (sometimes called “president of the council”) often is elected by the council from its members to preside over council meetings and to be recognized legally as head of the municipal government. At least one home rule charter provides, within its council–manager plan, for the at-large election of a mayor with a specific term of office.

In a mayor–council plan, the mayor is normally elected at-large from the municipality. The mayor's powers and duties will necessarily be more extensive than those of a mayor in the council–manager plan because he or she is charged with the administration of the municipal government.

**City Manager.** The manager usually is appointed by vote of the council to serve at the council's pleasure. The mayor's powers and duties may be defined more specifically than those of the council, and the charter may establish methods to be followed when removing the manager. The manager might not be required to be a resident of the municipality or state, at least prior to appointment, since the primary qualifications for the position are usually administrative ability and experience. In addition, some charters contain a provision specifically defining the relationship between the council, mayor, and the city manager in order to prevent the mayor or council from interfering with the administrative functions of the municipal government.

**Election Procedures.** While the Election Code does not apply to a home rule municipality, the code does provide that the municipality may adopt it in whole or in part.<sup>155</sup> Because of the comprehensive and modern nature of the Election Code, many home rule municipalities have elected to adopt its provisions with only minor variations. In this

<sup>154</sup> COLO. CONST. art. XVIII, § 11.  
<sup>155</sup> C.R.S. § 31-10-1539(2).

regard, whenever the commission considers adopting state statutes or constitutional provisions in the charter, care should be taken to indicate that these statutes or provisions are adopted either with or without future amendments. If the charter does not mention future amendments, a question may later arise as to whether future statutory or constitutional amendments apply to the municipality.

The charter often names the municipal election date. Many Colorado home rule charters require that the municipal election be held in odd-numbered years. Because state and federal elections are held in even-numbered years, holding municipal elections in odd-numbered years may allow the voters an opportunity to concentrate more closely on local problems, issues, and candidates.

Other election-related issues that may be resolved in the charter are methods of establishing election precincts, procedures for calling special elections (some home rule charters provide that special elections may be called by resolution rather than by ordinance), hours of voting during elections, and the establishment of an election commission.

**Administrative Organization.** This is another area where the charter provision should be worded generally, rather than specifically. That is, the charter might specify the methods of establishing administrative departments and identify the person — manager or mayor — who shall supervise and control the administrative departments. However, a charter that itemizes the various departments, their duties, functions, and organization might seriously impair the ability of the chief administrator or council to change the administrative structure to meet problems as they arise. It should be possible to alter the administrative organization quickly to ensure efficient municipal administration as the municipality's needs change.

**Boards and Commissions.** If boards and commissions are to be established, it again might be best not to go into great detail in the charter regarding the powers, duties, qualifications of members, etc. of the boards and commissions. The charter may be phrased in general language, to be supplemented later by ordinance, and perhaps should be worded so as to permit the governing body to add or delete boards and commissions as the need arises.

**Ordinances and Resolutions** Most home rule charters contain a provision stating when the council must act by ordinance and when it may act by resolution or motion. Often, certain actions are required to be taken only by ordinance, e.g., creating an indebtedness, levying a tax, and establishing a rule which includes a penalty if violated.

Some municipalities have found that publication costs constitute a rather large portion of their annual budget. As a result, some charters provide that the title of an ordinance and a statement that the ordinance is on file in the clerk's office for public inspection is sufficient publication. Some charters also provide that copies of the ordinance will be posted in public places within the municipality. The charter also may allow for publication of notices and ordinances in a more cost-efficient manner than that dictated by state statute. This charter provision is an example of how the charter can be used to solve some of the problems existing for the municipality under present state statutes.

Several of the older charters contain provisions stating that ordinances and resolutions shall be confined to one subject clearly expressed in the title.<sup>156</sup> Omission of such a provision may be sound; however, with such a provision, if the governing body errs and places more than one subject in the ordinance, the validity of the ordinance may be attacked and the costs of adopting ordinances under this type of provision may be increased since the municipality might have to adopt a larger number of ordinances.

In the area of emergency ordinances, the charter commission faces the problem of establishing procedures that will allow the governing body to act quickly, yet prevent arbitrary action. Some charters contain a provision that an emergency ordinance may be enacted at either a regular or special meeting by an affirmative vote of a greater number of councilmembers than is required for a nonemergency ordinance. The ordinance then takes effect on the date of passage.

The commission might consider including a provision in the charter to establish, or to allow the council by ordinance to establish, procedures to be followed when adopting codes by reference.

The charter also might include requirements for codifying ordinances; establishing the number of votes necessary for adopting ordinances, resolutions, and motions; and the basic ordinance form.

**Personnel.** The commission may include a charter provision providing basic requirements for the establishment of a personnel system. It might again be advisable to leave the detail of the system to ordinance.

<sup>156</sup> The Colorado General Assembly has long operated under a "single subject rule" for state legislation and, via a 1994 constitutional amendment; this rule was extended to statewide initiatives and referenda. COLO. CONST. art. V, § 1(5.5). The state's single subject rule, particularly as applied to initiated legislation, has been subject to considerable litigation.



**Legal and Judicial Departments.** The charter might contain a provision establishing the method of selecting the municipal attorney, and who the municipal attorney represents. If the attorney represents more than just the council (i.e., the mayor, manager, or department heads), practical and ethical problems may arise in the event of a conflict between one of these administrative officers and council. In addition, the charter might outline the procedures to be followed when hiring special counsel. The charter also should include a provision establishing the municipal court.

Article 10 of title 13, C.R.S. as amended, relates to the establishment of municipal courts and contains a section allowing home rule cities to supersede any section of the article except for those “provisions relating to the method of salary payment for municipal judges ... the right to a jury trial for petty offenses ... rules of procedure promulgated by the supreme court, and appellate procedure.”<sup>157</sup>

**Budget, Control, and Financing** Most present charters contain provisions relating to the scope of the annual budget, methods to be used when adopting the budget, and requirements for public hearings prior to the adoption of the budget. In addition, charters often contain general provisions establishing various types of funds; however, care should again be taken so that unnecessary details will not be included to facilitate the transfer by the governing body of money among the various funds since transfers are not easily accomplished under present state statutes. Such a review may help the municipality avoid provisions that unnecessarily restrict future solutions to fiscal problems and increase financing costs.

**Municipal Borrowing.** The commission should provide reasonable limitations on borrowing without being too restrictive. It might be noted that there are outside limitations on a municipality’s borrowing power in that, if the municipality is not considered a sound financial risk, the municipality’s bonds may not be purchased. The charter itself may contain general provisions creating the methods or procedures to be followed when issuing or refunding the various types of bonds, and setting certain general limitations on bond sales. Bond counsel assistance in this area may be helpful.

The authority of home rule municipalities to structure their own charter provisions for debt and borrowing was curtailed considerably by the adoption of the Taxpayer Bill of Rights (TABOR) amendment in 1992. TABOR requires virtually any “multiple fiscal year direct or indirect district debt or other financial obligation whatsoever” to be put to a vote of the people. It also specifies how and when such an election must be conducted.<sup>158</sup>

**Eminent Domain.** If the commission decides to include a charter section on eminent domain, it should consider wording the section to state that the municipality will have the power of eminent domain both inside and outside municipal boundaries. If this is not clearly stated, the municipality’s powers might be unnecessarily restricted by court interpretation.

157 C.R.S. §§ 13-10-103 et seq.; see *also* City of Thornton v. Horan, 556 P.2d 1217 (Colo. 1976); Hardamon v. Mun. Ct., 497 P.2d 1000 (Colo. 1972); Artes-Roy v. City of Aspen, 856 P.2d 823 (Colo. App. 1993) (discussing home rule authority related to municipal judges).  
158 COLO. CONST. art. X, § 20(3), (4)(b).

# CHAPTER V: PUBLICIZING HOME RULE

## INTRODUCTION

The approval of a home rule charter is not guaranteed. A number of Colorado municipalities have, in fact, rejected home rule as a concept in the first election. One individual, who was instrumental in the initiation of home rule for a Colorado municipality that eventually rejected the idea, stated that public apathy was the primary reason for the rejection. Home rule as a philosophy of government may not generate the election excitement or interest as does an individual contest for an elective office. In addition, in the municipality rejecting home rule, those persons initiating it were overconfident, and many people who favored the idea simply did not bother to vote because they assumed it would be approved by others.

Home rule represents a change from the existing system of government. There are people who oppose change itself, and little can be done to encourage these people to consider home rule thoughtfully. However, there are others who oppose change because they are satisfied with the present system. There are also those who assume that home rule will cost more. These people may support home rule if they can be shown that the proposed change is needed and will result in an improved local government.

For all of the above reasons, those involved and interested in the adoption of a home rule charter must spend a considerable amount of time and effort in educating local citizens on the need for a home rule charter and on the advantages of a particular charter proposed for the community. The effort to win public understanding and acceptance of home rule must begin with the group or groups planning to initiate the concept; and the effort to win public understanding and acceptance of a particular home rule charter must begin the day the charter commission is elected. Those supporting home rule should attempt to inform the municipality's citizens of the need for a change and of the way in which a particular proposed charter will fulfill that need. Limitations in the present system of government may be emphasized; the advantages of home rule in general, and of a particular proposed charter, may be emphasized; and the citizens should be shown how home rule will benefit them as well as their community.

The following material offers some methods that may be used to obtain public acceptance and understanding of home rule.

## GENERAL SUGGESTIONS

Those supporting home rule should attempt to plan an educational program designed to reach all segments of the community.

- Hold both neighborhood and general public meetings on home rule.
- Distribute material and discuss home rule on a door-to-door basis.
- Obtain the cooperation of the local newspaper, issue press releases, and if possible, run a series on the various aspects, advantages, and disadvantages of home rule.
- Create a speaker's bureau to talk to all community groups about home rule.
- If possible, ask local TV or radio stations for time on news programs to conduct interviews and debates on home rule.
- Obtain endorsements from as varied a portion of the public as possible: municipal officials, social, civic, and fraternal organizations, business organizations, etc.
- Contact local schools in order to develop classroom projects on home rule, particularly for civics classes.
- Print and distribute pamphlets and other material including re-printed articles, editorials, endorsements, "Questions and Answers" booklets, and simple fliers.
- Immediately before the elections, distribute sample ballots and create a "get out the vote" campaign.
- Observe all applicable limitations on involvement by municipalities and officials in election campaigns.<sup>159</sup>

## SUGGESTIONS FOR THE CHARTER COMMISSION

The general methods of publicizing home rule should be used prior to the first election to form a charter commission and should also be used to publicize the work of the charter commission. In addition, the following suggestions are offered specifically to the commission.

<sup>159</sup> See, e.g., C.R.S. § 1-45-117.

- The charter commission should invite all citizen groups — including labor, business, professions, churches, civic groups, and veterans groups — to submit suggestions and to send representatives to the public hearing or hearings on the charter.
- At least one public hearing should be held after completing the draft of the proposed charter so that the commission can explain the charter and gather information on the public's attitude toward specific charter provisions.
- City officials and employees should be consulted to obtain suggestions and advice from persons experienced in the operation of municipal government.
- The public should be informed concerning the progress of the commission's work. Perhaps a tentative charter draft could be published with an invitation for public comments and criticisms. This would enable the commission to make any necessary adjustments in the charter, thus improving its chance for success.
- The commission should encourage the development of a broad organization of individual citizens and groups to promote the formulation and adoption of a sound charter.
- Create and distribute material to show how the proposed charter will solve problems existing in the present governmental structure and how it will benefit the citizens as individuals as well as the community as a whole. Avoid partisan politics, and instead, attempt to obtain support from a coalition of the leading political figures in the municipality.

# CHAPTER VI: SPOTLIGHT ON FOUR AREAS OF LOCAL CONCERN – EMPLOYMENT, TAXATION, LAND USE AND EMINENT DOMAIN

## INTRODUCTION

Under Article XX, section 6 of the Colorado Constitution, home rule municipalities have the power to regulate matters of local and municipal concern, confident that their regulations cannot be superseded by conflicting state laws. While some such matters are easily labeled, others are more complex, raising controversy over their classification as local, statewide, or mixed. Employment, taxation, land use, and eminent domain are four areas in which home rule prerogatives have been commonly litigated through the years. Following is a discussion of home rule powers in these four areas.

## EMPLOYMENT

The landmark case of *Denver v. State* stands as only one of many decisions that touch upon issues related to employment in home rule municipalities. Notwithstanding the fact that an employee may work for a home rule municipality, some employment matters are governed by state law. While fundamental employment issues related to qualifications, tenure, powers, and duties of home rule municipal employees and officers are consistently found to be matters of local concern, certain aspects of compensation are subject to state laws of general applicability.

Article XX, section 6 expressly grants to the people of a home rule municipality the authority to regulate the method of selection and tenure of an officer designated to carry out the duties of a specific position, even though the officer might be required to perform duties that are of statewide concern.<sup>160</sup> Therefore, a home rule charter provision relating to tenure does not interfere with any state statute because power over tenure is expressly delegated to home rule cities.<sup>161</sup> A charter provision for the termination of employees in a home rule municipality also has been found to take precedence over any statutory or common law rule to the contrary, as it too is solely a matter of local concern.<sup>162</sup> Section 6 grants home rule municipalities “exclusive control over creation and terms of municipal offices.”<sup>163</sup>

Article XX, section 2 vests in a home rule municipality the exclusive control over public officers, their powers, and duties.<sup>164</sup> Other sections of article XX make it clear that a municipality’s power to determine the limits of its public officer’s authority, by charter or amendment to its charter, is all exclusive.<sup>165</sup>

On the other hand, the Colorado courts have acknowledged the distinction between basic home rule authority to determine whom to employ and under what circumstances, and statewide concern over certain aspects of compensation incidental to employment. For example, in *City of Colorado Springs v. Industrial Commission*, the court held that, while the determination of whether a city employee should be reinstated in a city job may be a matter of local concern, the determination of whether an employee is subject to unemployment compensation is a matter of statewide concern.<sup>166</sup>

Therefore, not every aspect of employment in home rule municipalities is immune from state regulation. Courts have found there to be an overriding state interest when reviewing conflicts between state law and local regulation in the areas of fire and police pensions,<sup>167</sup> unemployment compensation,<sup>168</sup> and workers compensation.<sup>169</sup> These cases are consistent in that they dealt with a particular aspect of employment (i.e., certain forms of compensation that are purely incidental to the employment relationship) that is not enumerated specifically as a matter of local and municipal concern in Article XX, section 6 of the Colorado Constitution. In comparison, every reported case to date addressing authority of home rule municipalities to regulate other personnel matters has come down on the side of home rule authority.

<sup>160</sup> *City & Cty. of Denver v. Rinker*, 366 P.2d 548, 551 (Colo. 1961).

<sup>161</sup> *Coopersmith v. City & Cty. of Denver*, 399 P.2d 943 (Colo. 1965).

<sup>162</sup> *Ratcliff v. Hite*, 541 P.2d 88, 90 (Colo. App. 1975).

<sup>163</sup> *Int’l Bhd. of Police Officers v. City & Cty. of Denver*, 521 P.2d 916, 917 (Colo. 1974) (noting that the ability of home rule municipalities to control the “terms” of elected officers was superseded by the 1994 adoption of a constitutional amendment providing uniform term limitation for all local elected officials including those in home rule municipalities); COLO. CONST. art. XVIII, § 11.

<sup>164</sup> *Int’l Bhd. of Police Officers v. City & Cty. of Denver*, 521 P.2d 916, 917 (Colo. 1974).

<sup>165</sup> *Int’l Bhd. of Police Officers v. City & Cty. of Denver*, 521 P.2d 916, 917 (Colo. 1974).

<sup>166</sup> *City of Colo. Springs v. Indus. Comm’n*, 749 P.2d 412, 416 (Colo. 1988).

<sup>167</sup> See *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1981); *Conrad v. City of Thornton*, 553 P.2d 822 (Colo. 1976); *Huff v. Mayor of Colo. Springs*, 512 P.2d 632 (Colo. 1973); *Police Pension and Review Bd. v. McPhail*, 338 P.2d 694 (Colo. 1959).

<sup>168</sup> See *City of Colo. Springs v. Indus. Comm’n*, 749 P.2d 412 (Colo. 1988).

<sup>169</sup> See *City & Cty. of Denver v. Thomas*, 491 P.2d 573 (Colo. 1973).

In addition to *Denver v. State*, confirming the authority of home rule municipalities to establish residency requirements for their own employees without interference from the state, other recent decisions simply have underscored the essential home rule prerogative over employment matters. For example, the Supreme Court held that employment qualifications for certain law enforcement personnel in a home rule municipality are matters of local concern, and a municipality could establish training requirements different from those set forth in statute.<sup>170</sup> The Court of Appeals held that employee health benefits in general and “the power to grant health insurance benefits to spousal equivalents” in particular are matters of local concern, and home rule municipalities need not rely on state statutes for authority to offer group health insurance policies.<sup>171</sup>

## TAXATION

The adoption of the Taxpayer Bill of Rights (TABOR) amendment in 1992 imposed uniform tax and spending limits on all local governments, including home rule municipalities.<sup>172</sup> Prior to TABOR, home rule municipalities exercised considerable latitude to formulate their own tax structure. For example, they could impose real estate transfer taxes; however, TABOR now bans new real estate transfer taxes.<sup>173</sup> Nevertheless, even in the post-TABOR era, home rule municipalities still may exercise broader taxing authority than do statutory municipalities.

In 1965, the Colorado Supreme Court upheld the authority of a home rule municipality to adopt a sales and use tax under the home rule taxing power conferred by Article XX of the Colorado Constitution.<sup>174</sup> As a result, home rule municipalities have broad sales and use tax authority.

Among the advantages of levying a sales tax under home rule powers rather than pursuant to the state statutes are:

- the sales tax base need not be uniform with the state sales tax (numerous home rule municipalities have a broader tax base or fewer exemptions); and
- collection by the state Department of Revenue is optional (many home rule municipalities collect their sales taxes locally and have more extensive tax enforcement programs).

Additionally, home rule municipalities are not limited to imposing use taxes only on motor vehicles and building and construction materials; consequently, many apply their use tax as broadly as their sales tax.

Statutory municipalities are authorized but not required to exempt from the municipal sales tax the sales of certain machinery and machine tools; sales of electricity and other specific fuels sold to occupants or residents for the purpose of operating residential fixtures and appliances which provide light, heat, and power for the residences; and certain occasional sales by nonprofit entities. Home rule municipalities on the other hand, pursuant to Article XX, may determine their own exemptions.<sup>175</sup>

In *Winslow Construction v. City and County of Denver*, the Colorado Supreme Court held that section 29-2-109(2) of the Colorado Revised Statutes cannot be applied to curtail application of a home rule municipality’s use tax.<sup>176</sup> Section 29-2-109(2) exempts from local taxation the use of personal property that occurs more than three years after its most recent sale if the property was used significantly in the state within those three years. Denver’s municipal code required payment of a use tax with no such time limitations. The court found that the code provision dealt with a matter of local concern, and therefore preempted the conflicting state statute.

Although the power to levy and collect sales and use taxes is a matter of purely local and municipal concern under Article XX of the Colorado Constitution,<sup>177</sup> constitutional limits minimize the ability of a home rule municipality to impose certain tax liabilities, such as a use tax on a business that delivers merchandise to residents in a municipality but that does not maintain a store or office in the municipality and does not solicit business from municipal residents.<sup>178</sup> In addition, while home rule municipalities may determine their own administrative procedures relative to sales and use tax collection, certain matters relating to appeals to the courts are of statewide concern and thus are subject to state statutes or court rules.<sup>179</sup>

Home rule municipalities enjoy broad authority to impose so-called “occupation taxes” on business activities. Like statutory municipalities, home rule cities and towns can draw upon the broad authority set forth in statute “to license,

170 Fraternal Order of Police v. City & Cty. of Denver, 926 P.2d 582 (Colo. 1996).

171 Schaefer v. City & Cty. of Denver, 973 P.2d 717 (Colo. App. 1998).

172 COLO. CONST. art. X, § 20.

173 COLO. CONST. art. X, § 20(8)(a).

174 Berman v. City & Cty. of Denver, 400 P.2d 434 (Colo. 1965).

175 COLO. CONST. art. X; C.R.S. § 29-2-105 et seq. (2016).

176 Winslow Constr. Co. v. City & Cty. of Denver, 960 P.2d 685 (Colo. 1998).

177 Sec. Life & Accident Co. v. Temple, 593 P.2d 1375 (Colo. 1979) (reaffirming the decision in Berman v. Denver, 492 P.2d 63 (Colo. 1972)).

178 Associated Dry Goods v. City of Arvada, 593 P.2d 1375 (Colo. 1979).

179 See Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982); Sky Chefs v. City & Cty. of Denver, 653 P.2d 402 (Colo. 1982);

Walgreen Co. v. Charnes, 819 P.2d 1039 (Colo. 1991); Winslow Constr. Co. v. City & Cty. of Denver, 960 P.2d 685 (Colo. 1998).

regulate, and tax any and all lawful occupations and places of business.”<sup>180</sup> However, the authority to impose an occupation tax in a home rule municipality also can be derived from the municipality’s own charter, as illustrated in the cases upholding the authority to impose a “head tax” on employees of businesses operating within the municipality.<sup>181</sup> Home rule status also gives a city or town the flexibility to creatively structure other types of taxes and fees, even in the absence of statutory enabling authority. Examples of home rule revenue measures upheld by the courts include an excise tax on new development charged on a per square foot basis,<sup>182</sup> a transportation impact fee,<sup>183</sup> and storm water utility charges.<sup>184</sup>

In the area of property taxation, home rule municipalities again enjoy greater flexibility compared to their statutory counterparts in that they are not constrained by the statutory limit on annual increases in property tax revenue.<sup>185</sup> However, the charters of some home rule municipalities contain property tax limitations similar to the statute, if not more restrictive. Moreover, although home rule cities and towns are expressly authorized by Article XX to engage in “the assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes,”<sup>186</sup> this authority is apparently subject to overriding constitutional principles requiring uniformity and equalization of property taxation.<sup>187</sup> Thus, home rule municipalities work directly with the property tax assessment and collection system administered by the county assessor and county treasurer as would any other local government. Moreover, all cities and towns, statutory and home rule alike, are subject to the election requirements of TABOR before increasing any tax or tax base or levying any new taxes.

Even prior to the adoption of TABOR, the authority of home rule municipalities to establish taxes was not absolute. In particular, the courts had held that the imposition of income taxes (e.g., a tax upon a business based directly on the gross receipts of the business) was the exclusive prerogative of the state under Article X, section 17 of the Colorado Constitution.<sup>188</sup> TABOR reconfirmed this prohibition against local government income taxes.<sup>189</sup>

## LAND USE

In the 1920s, the very earliest court cases in Colorado ratifying zoning as a legitimate use of the police power arose out of the state’s original home rule municipality, Denver.<sup>190</sup> Significantly, the city had adopted land use regulations before there was any state enabling legislation for zoning and subdivision regulation by local governments. The court was content in finding, however, that the power to engage in this sort of regulation derived from Denver’s own charter and was not dependent on some grant of permission by the General Assembly.

Naturally, in exercising its zoning authority, Denver was bound by higher constitutional principles relating to due process and property rights. Even from these very earliest cases, claims were made based upon theories of “vested rights” and “taking of property without just compensation.” However, while the mandates of the constitution are one thing that no home rule municipality can deny, the mandates of the Colorado General Assembly as expressed through state statutes are quite another. The Colorado courts recognized this fact in the early 1970s and began to hand down numerous decisions indicating that zoning will generally be considered a matter of local concern and that statutory procedures related to zoning will not apply in a home rule municipality to the extent those procedures are contradicted by local law.

Two cases decided in 1971 dealt directly with conflicts between statutory requirements and local procedures. In both, property owners claimed that local zoning actions should be invalidated due to the home rule municipality’s failure to follow the statutory procedure. In one case, the city had failed to use a statutorily mandated supermajority vote to approve a rezoning.<sup>191</sup> In the other, the city had not abided by a statutory requirement that rezonings be done in accordance with a comprehensive plan.<sup>192</sup> In each case, the court held that home rule cities could apply their own locally adopted procedures in lieu of the statutory requirements, and failure to comply with the mandates of state enabling statutes was not fatal to the cities’ respective zoning actions.

180 C.R.S. §31-15-501(1)(c).

181 City & Cty. of Denver v. Duffy Storage & Moving Co., 450 P.2d 339 (Colo. 1969).

182 Cherry Hills Farm, Inc. v. City of Cherry Hills Village, 670 P.2d 779 (Colo. 1983).

183 Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989).

184 Zelinger v. City & Cty. of Denver, 724 P.2d 1356 (Colo. 1986); City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

185 C.R.S. §§ 29-1-301 et seq. (2016).

186 COLO. CONST. art. XX, § 6(g).

187 COLO. CONST. art. X, § 3; See also Rancho Colo., Inc. v. City of Broomfield, 586 P.2d 659 (Colo. 1978); Cherry Hills Farm Inc. v. City of Cherry Hills Village, 670 P.2d 779 (Colo. 1983).

188 City & Cty. of Denver v. Sweet, 329 P.2d 441 (Colo. 1958); Minturn v. Foster Lumber Co., 548 P.2d 1276 (Colo. 1976); Mountain States Tel. & Tel. Co. v. City of Colo. Springs, 572 P.2d 834 (Colo. 1977).

189 COLO. CONST. art. X, § 20(8)(a).

190 Colby v. Bd. of Adjustment, 255 P. 443 (Colo. 1927); Averch v. City & Cty. of Denver, 242 P. 47 (Colo. 1925).

191 Roosevelt v. City of Englewood, 492 P.2d 65 (Colo. 1971).

192 Moore v. City of Boulder, 484 P.2d 134 (Colo. 1971).

In another important case decided about the same time, the Colorado Supreme Court made this powerful statement:

*The General Assembly has power to legislate zoning regulations applicable to statutory cities. Where, however, the Charter of a home rule city exercises the power delegated to it by Article XX, Section 6 as to matters of purely local concern, the legislature has no power.*<sup>193</sup>

On most occasions when the courts have held zoning within a home rule municipality to be a matter of local concern, they have done so not to resolve disputes between local ordinances and state statutes but to simply underscore that the court need look no further than the municipality's own charter as the source of authority for whatever the city or town has done. In this line of cases, the term "zoning" is construed quite broadly to include a wide variety of land use regulations, including restriction or elimination of nonconforming uses,<sup>194</sup> access permitting,<sup>195</sup> development permitting,<sup>196</sup> hillside preservation regulations,<sup>197</sup> sign codes,<sup>198</sup> and basic zone district regulations.<sup>199</sup>

Even in cases in which the courts have held certain specialized areas to be a matter of "mixed statewide and local concern," the courts have not disturbed the well-established principle that zoning generally will be considered within the province of local legislative discretion. For example, the Colorado Supreme Court has partially allowed the General Assembly to occupy the field of sign regulation along state highways within municipalities only because there is proven substantial state interest in this area.<sup>200</sup> Namely, due to certain requirements of the Federal Highway Beautification Act and contracts entered into between the state and the federal governments, the state needed to ensure a certain degree of uniformity in the regulation of billboards upon federal aid highways at the risk of losing federal highway funds.

Similarly, in the narrow area of oil and gas drilling — that is, regulation of a resource that recognizes no jurisdictional boundaries and has been regulated at the state level since 1915 — the court held that the state could preempt a home rule ordinance that totally prohibited such drilling within a particular municipality.<sup>201</sup> The court also struck down a home rule ordinance establishing a five-year moratorium on drilling for natural gas, or fracking.<sup>202</sup> In carving out these narrow exceptions to the rule that zoning and land use generally will be considered a matter of local concern, the court focused extensively on peculiar aspects of the particular activities being regulated in each case.

The Colorado General Assembly regularly debates and sometimes adopts legislation to preempt home rule municipalities in the area of land use regulation, growth management, and private property rights. In one example, the General Assembly in 1975 adopted special zoning protections for group homes for the developmentally disabled and purported to apply the statutory mandate statewide.<sup>203</sup> The Colorado Supreme Court twice flirted with the question of whether this mandate could truly bind home rule municipalities but ultimately decided these cases on other grounds.<sup>204</sup>

On a subject closely related to land use regulation, the Colorado Court of Appeals agreed with the General Assembly that the control of rentals charged on residential property was a matter of statewide concern.<sup>205</sup> The court enforced a statute adopted by the state in 1981 preempting the field of "rent control," and struck down an affordable housing set aside requirement contained in a municipal development code.

In a more recent example of usurpation of home rule authority, the General Assembly adopted the Vested Property Rights Act<sup>206</sup> in 1987 and thereby purported to compel all municipalities to establish a procedure for allowing developers to obtain a three-year vested right upon the approval of a "site specific development plan." Even while adopting local ordinances to implement the act, a number of home rule municipalities expressed doubt about whether or not the mandates of this law could legitimately be applied to them. The act was amended in 1999, carrying forward the declaration of statewide concern contained in the original bill. At the same time, the General Assembly adopted another piece of property rights legislation declaring "the fair, consistent, and expeditious adjudication of disputes over land use in state courts in accordance with constitutional standards is a matter of statewide concern."<sup>207</sup> To date, the applicability of these laws to home rule municipalities has not been tested in court.

193 Service Oil Co. v. Rhodus, 500 P.2d 807, 812 (Colo. 1972) (emphasis in original).

194 City of Greeley v. Eells, 527 P.2d 538 (Colo. 1974); Service Oil Co. v. Rhodus, 500 P.2d 807, 812 (Colo. 1972).

195 City of Colo. Springs v. Smartt, 620 P.2d 1060 (Colo. 1981).

196 Sherman v. City of Colo. Springs, 680 P.2d 1302 (Colo. App. 1983).

197 Sellon v. City of Manitou Springs, 745 P.2d 229 (Colo. 1987).

198 VFW v. City of Steamboat Springs, 575 P.2d 835 (Colo. 1978).

199 Zavala v. City & Cty. of Denver, 759 P.2d 664 (Colo. 1988).

200 City of Fort Collins v. Root Outdoor Adver., 788 P.2d 149 (Colo. 1990); Nat'l Adver. Co. v. Dep't of Highways, 751 P.2d 632 (Colo. 1988).

201 Voss v. Lundvall Bros., Inc., 830 P.2d 1061 (Colo. 1992); see also City of Longmont v. Colo. Oil & Gas Ass'n, 369 P.3d 573 (Colo. 2016).

202 City of Fort Collins v. Colo. Oil & Gas Ass'n, 369 P.3d 586 (Colo. 2016).

203 C.R.S. § 31-23-303(3).

204 Glennon Heights, Inc. v. Central Bank and Trust, 658 P.2d 872 (Colo. 1983); Adams Cty. Ass'n for Retarded Citizens, Inc. v. City of Westminster, 580 P.2d 1246 (Colo. 1978).

205 Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30 (Colo. 2000).

206 C.R.S. §§ 24-68-101-106.

207 C.R.S. §§ 29-20-201 et seq.

It would be noted that what may appear to a municipality as a zoning issue, may be viewed by the courts otherwise. For example, the Colorado Supreme Court has held that an ordinance prohibiting more than two juvenile sex offenders from living together was not a zoning regulation but an attempt to usurp the state's authority to place such offenders in appropriate homes.<sup>208</sup> By contrast, the Court held in another case that a home rule municipality's land use authority included the authority to prohibit registered adult sex offenders from living within its city limits because the state's statute regarding adult sex offenders only required registration, and thus the state statute and the home rule ordinance were not in conflict.<sup>209</sup>

Once again, home rule in the land use area is not absolute. Courts will analyze the question of "local" versus "statewide" concern on a case by case basis applying the *Denver v. State* criteria. Especially when a municipality is acting beyond its own boundaries, its home rule authority (including the power to regulate the use of its own property) can and will be circumscribed by state statutes.<sup>210</sup> Moreover, home rule does not confer upon municipalities any particular standing to challenge the land use regulations of another political subdivision of the state.<sup>211</sup> Similarly, no home rule municipality has ever challenged the principle that state annexation statutes must apply equally to all cities and towns regardless of home rule status.

Nevertheless, when a home rule city or town administers zoning and land use regulation within its own jurisdiction, the great weight of tradition and legal precedent indicates that the courts will view most land use and zoning regulations as being matters of local concern to be addressed as the municipality sees fit.

## EMINENT DOMAIN

For many years, on a variety of occasions, and in a variety of contexts, the Colorado courts have held that the eminent domain powers of home rule municipalities are derived directly from the constitution and are therefore immune from whatever strictures or prohibitions the General Assembly may try to impose through statute.

Section 1 of Article XX of the Colorado Constitution (which is incorporated by reference in section 6 of that article, and thus made applicable to all home rule municipalities) afforded the prototype home rule municipality, Denver, a broad grant of eminent domain authority, including:

*the power, within or without its territorial limits, to ... condemn ... water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways, local in use and extent, in whole or in part, and everything required therefore ... [and] ... may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain.*<sup>212</sup>

By judicial construction, the breadth of this constitutional grant of authority has been expanded even further than its express terms might indicate. In 1940, the court stated, "we have no doubt that the people of Colorado intended to and, in effect did, thereby delegate to Denver full power to exercise the right of eminent domain in the effectuation of any lawful, public, local and municipal purpose."<sup>213</sup> Nineteen years later, the court reinforced this opinion, holding that "the powers enumerated therein are by way of illustration and not of limitation."<sup>214</sup>

A particular exercise of eminent domain by a home rule municipality therefore is not invalid due to the fact that it is for a purpose other than one of those specifically enumerated in Article XX, whether it be an Air Corps Technical School,<sup>215</sup> "flowage easements,"<sup>216</sup> a sewer line,<sup>217</sup> an airport,<sup>218</sup> or water and water rights,<sup>219</sup> to name a few. Home rule municipalities also have full and complete authority to condemn lands for "parks and parkways"<sup>220</sup> and for recreational trails,<sup>221</sup> and to freely exercise eminent domain authority on an extraterritorial basis without regard to any statutory limitation on the distance the city may go in taking property for a municipal purpose.<sup>222</sup>

Unlike statutory cities and towns which derive virtually<sup>223</sup> any eminent domain powers they may have from enabling statutes adopted by the General Assembly, home rule municipalities need only look to Article XX and their own

208 City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003).

209 Ryals v. City of Englewood, 364 P.3d 900 (Colo. 2016).

210 City & Cty. of Denver v. Bd. of Cty. Comm'rs of Grand Cty., 782 P.2d 753 (Colo. 1989).

211 City of Colo. Springs v. Bd. of Cty. Comm'rs of Eagle Cty., 895 P.2d 1105 (Colo. App. 1994).

212 COLO. CONST. art. XX, § 1.

213 Toll v. City & Cty. of Denver, 340 P.2d 862 (Colo. 1959); see also Fishel v. City & Cty. of Denver, 108 P.2d 236 (Colo. 1940).

214 Town of Glendale v. City & Cty. of Denver, 322 P.2d 1053 (Colo. 1958).

215 Fishel v. City & Cty. of Denver, 108 P.2d 236 (Colo. 1940).

216 Toll v. City & Cty. of Denver, 340 P.2d 862 (Colo. 1959).

217 Town of Glendale v. City & Cty. of Denver, 322 P.2d 1053 (Colo. 1958).

218 City & Cty. of Denver v. Bd. of Cty. Comm'rs of Arapahoe Cty., 156 P.2d 101 (Colo. 1945).

219 City of Thornton v. Farmers Reservoir and Irrigation Co., 575 P.2d 382 (Colo. 1978).

220 Londoner v. City & Cty. of Denver, 52 Colo. 15 (1911).

221 Town of Parker v. Norton, 939 P.2d 535 (Colo. App. 1997).

222 City & Cty. of Denver v. Bd. of Cty. Comm'rs of Arapahoe Cty., 156 P.2d 101 (Colo. 1945).

223 See also COLO. CONST. art. XIV, § 7 (Noting that even statutory municipalities enjoy independent constitutional authority to exercise eminent domain for waterworks under); Town of Lyons v. City of Longmont, 129 P. 198 (Colo. 1913) (this power that cannot be impaired by any statute).



charters. The courts have articulated the principal that condemnation “can be had only under powers specifically granted by the legislature,” but have applied this principle exclusively to statutory cities and towns.<sup>224</sup> As a result, any limitation on the scope of eminent domain authority on a home rule municipality must be found in its own charter or in the constitution, and Colorado home rule charters typically contain a broad reservation of any and all eminent domain powers that a municipality may possibly exercise.<sup>225</sup>

The general principle that state statutes are superseded by home rule eminent domain authority has been demonstrated in several different contexts. The Colorado Supreme Court has found a statutory limitation on the purposes for which eminent domain may be utilized,<sup>226</sup> and a statutory limitation on the distance that a city or town could condemn outside its boundaries, to be inapplicable to home rule municipalities.<sup>227</sup> A statute requiring a city to obtain the permission of another jurisdiction when condemning property extraterritorially is of “doubtful validity,”<sup>228</sup> and home rule municipalities are not bound to follow any particular statutory procedure when exercising their eminent domain authority, but instead are free to select any procedure that may be available by law.<sup>229</sup>

One notable limitation on the authority of home rule municipalities to exercise eminent domain was illustrated in a case in which a town tried to condemn state-owned lands to conduct a feasibility study for a municipal water storage project. The court held that the general grant of eminent domain authority in Article XX does not give home rule municipalities the power to condemn state lands.

224 See *Beth Medrosh Hagodol v. City of Aurora*, 248 P.2d 732 (1952); see also *Public Service Co. v. Loveland*, 245 P. 493 (Colo. 1923); *Mack v. Town of Craig*, 191 P. 101 (Colo. 1920); *Healy v. City of Delta*, 147 P. 662 (Colo. 1915).  
225 See *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008); *Fishel v. City & Cty. of Denver*, 108 P.2d 236 (Colo. 1940); see also *City of Thornton v. Farmers Reservoir and Irrigation Co.*, 575 P.2d 382, 389 (Colo. 1978).  
226 *City of Thornton v. Farmers Reservoir and Irrigation Co.*, 575 P.2d 382, 389 (Colo. 1978); see also *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008).  
227 *City & Cty. of Denver v. Bd. of Cty. Comm'rs of Arapahoe Cty.*, 156 P.2d 101 (Colo. 1945).  
228 *Town of Glendale v. City & Cty. of Denver*, 322 P.2d 1053 (Colo. 1958).  
229 *City of Thornton v. Farmers Reservoir and Irrigation Co.*, 575 P.2d 382 (Colo. 1978); *City of Englewood v. Weist*, 520 P.2d 120 (Colo. 1974); *Toll v. City & Cty. of Denver*, 340 P.2d 862 (Colo. 1959).

# APPENDIX A: CONSTITUTION OF THE STATE OF COLORADO

## ARTICLE XX: HOME RULE CITIES AND TOWNS

**Section 1. Incorporated.** The municipal corporation known as the city of Denver and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the state of Colorado, included within the exterior boundaries of the said city of Denver as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the "City and County of Denver". By that name said corporation shall have perpetual succession, and shall own, possess, and hold all property, real and personal, theretofore owned, possessed, or held by the said city of Denver and by such included municipal corporations, and also all property, real and personal, theretofore owned, possessed, or held by the said county of Arapahoe, and shall assume, manage, and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities, and shall acquire all benefits and shall assume and pay all bonds, obligations, and indebtedness of said city of Denver and of said included municipal corporations and of the county of Arapahoe; by that name may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold, and enjoy or sell and dispose of, real and personal property; may receive bequests, gifts, and donations of all kinds of property, in fee simple, or in trust for public, charitable, or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests, and donations, with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefore, for the use of said city and county and the inhabitants thereof, and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided.

The provisions of section 3 of article XIV of this constitution and the general annexation and consolidation statutes of the state relating to counties shall apply to the city and county of Denver. Any contiguous town, city, or territory hereafter annexed to or consolidated with the city and county of Denver, under any such laws of this state, in whatsoever county the same may be at the time, shall be detached per se from such other county and become a municipal and territorial part of the city and county of Denver, together with all property thereunto belonging.

The city and county of Denver shall alone always constitute one judicial district of the state.

(The preceding three paragraphs were amended by the People, November 5, 1974 — Effective upon proclamation of the Governor, December 20, 1974.)

Any other provisions of this constitution to the contrary notwithstanding:

No annexation or consolidation proceeding shall be initiated after the effective date of this amendment pursuant to the general annexation and consolidation statutes of the state of Colorado to annex lands to or consolidate lands with the city and county of Denver until such proposed annexation or consolidation is first approved by a majority vote of a six-member boundary control commission composed of one commissioner from each of the boards of county commissioners of Adams, Arapahoe, and Jefferson counties, respectively, and three elected officials of the city and county of Denver to be chosen by the mayor. The commissioners from each of the said counties shall be appointed by resolution of their respective boards.

No land located in any county other than Adams, Arapahoe, or Jefferson counties shall be annexed to or consolidated with the city and county of Denver unless such annexation or consolidation is approved by the unanimous vote of all the members of the board of county commissioners of the county in which such land is located.

Any territory attached to the city and county of Denver or the city of Lakewood or the city of Aurora during the period extending from April 1, 1974, to the effective date of this amendment, whether or not subject to judicial review, shall be detached therefrom on July 1, 1975, unless any such annexation is ratified by the boundary control commission on or before July 1, 1975.

Nothing in this amendment shall be construed as prohibiting the entry of any final judgment in any annexation judicial review proceeding pending on April 1, 1974, declaring any annexation by the city and county of Denver to be invalid.

The boundary control commission shall have the power at any time by four concurring votes to detach all or any portion of any territory validly annexed to the city and county of Denver during the period extending from March 1, 1973, to the effective date of this amendment.

All actions, including actions regarding procedural rules, shall be adopted by the commission by majority vote. Each commissioner shall have one vote, including the commissioner who acts as the chairman of the commission. All procedural rules adopted by the commission shall be filed with the secretary of state.

This amendment shall be self-executing.

(The preceding seven paragraphs were adopted November 5, 1974 Effective upon proclamation of the Governor, December 20, 1974. (See Laws 1974, p. 457.))

**Section 2. Officers.** The officers of the city and county of Denver shall be such as by appointment or election may be provided for by the charter; and the jurisdiction, term of office, duties and qualifications of all such officers shall be such as in the charter may be provided; but the charter shall designate the officers who shall, respectively, perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable. If any officer of said city and county of Denver shall receive any compensation whatever, he or she shall receive the same as a stated salary, the amount of which shall be fixed by the charter, or, in the case of officers not in the classified civil service, by ordinance within limits fixed by the charter, and paid out of the treasury of the city and county of Denver in equal monthly payments; provided, however, no elected officer shall receive any increase or decrease in compensation under any ordinance passed during the term for which he was elected.

As amended November 7, 1950. (See Laws 1951, p. 232.)

**Section 3. Transfer of government.** Immediately upon the canvass of the vote showing the adoption of this amendment, it shall be the duty of the governor of the state to issue his proclamation accordingly, and thereupon the city of Denver, and all municipal corporations and that part of the county of Arapahoe within the boundaries of said city, shall merge into the city and county of Denver, and the terms of office of all officers of the city of Denver and of all included municipalities and of the county of Arapahoe shall terminate; except, that the then mayor, auditor, engineer, council (which shall perform the duties of a board of county commissioners), police magistrate, chief of police and boards, of the city of Denver shall become, respectively, said officers of the city and county of Denver, and said engineer shall be ex officio surveyor and said chief of police shall be ex officio sheriff of the city and county of Denver; and the then clerk and ex officio recorder, treasurer, assessor and coroner of the county of Arapahoe, and the justices of the peace and constables holding office within the city of Denver, shall become, respectively, said officers of the city and county of Denver, and the district attorney shall also be ex officio attorney of the city and county of Denver. The foregoing officers shall hold the said offices as above specified only until their successors are duly elected and qualified as herein provided for; except that the then district judges, county judge and district attorney shall serve their full terms, respectively, for which elected. The police and firemen of the city of Denver, except the chief of police as such, shall continue severally as the police and firemen of the city and county of Denver until they are severally discharged under such civil service regulations as shall be provided by the charter; and every charter shall provide that the department of fire and police and the department of public utilities and works shall be under such civil service regulations as in said charter shall be provided.

Added November 4, 1902. (See Laws 1901, p. 100.)

**Section 4. First charter.** (1) The charter and ordinances of the city of Denver as the same shall exist when this amendment takes effect, shall, for the time being only, and as far as applicable, be the charter and ordinances of the city and county of Denver; but the people of the city and county of Denver are hereby vested with and they shall always have the exclusive power in the making, altering, revising or amending their charter and, within ten days after the proclamation of the governor announcing the adoption of this amendment the council of the city and county of Denver shall, by ordinance, call a special election, to be conducted as provided by law, of the qualified electors in said city and county of Denver, for the election of twenty-one taxpayers who shall have been qualified electors within the limits thereof for at least five years, who shall constitute a charter convention to frame a charter for said city and county in harmony with this amendment. Immediately upon completion, the charter so framed, with a prefatory synopsis, shall be signed by the officers and members of the convention and delivered to the clerk of said city and county who shall publish the same in full, with his official certification, in the official newspaper of said city and county, three times, and a week apart, the first publication being with the call for a special election, at which the qualified electors of said city and county shall by vote express their approval or rejection of the said charter. If the

said charter shall be approved by a majority of those voting thereon, then two copies thereof (together with the vote for and against) duly certified by the said clerk, shall, within ten days after such vote is taken, be filed with the secretary of state, and shall thereupon become and be the charter of the city and county of Denver. But if the said charter be rejected, then, within thirty days thereafter, twenty-one members of a new charter convention shall be elected at a special election to be called as above in said city and county, and they shall proceed as above to frame a charter, which shall in like manner and to the like end be published and submitted to a vote of said voters for their approval or rejection. If again rejected, the procedure herein designated shall be repeated (each special election for members of a new charter convention being within thirty days after each rejection) until a charter is finally approved by a majority of those voting thereon, and certified (together with the vote for and against) to the secretary of state as aforesaid, whereupon it shall become the charter of the said city and county of Denver and shall become the organic law thereof, and supersede any existing charters and amendments thereof. The members of each of said charter conventions shall be elected at large; and they shall complete their labors within sixty days after their respective election.

(2) Every ordinance for a special election of charter convention members shall fix the time and place where the convention shall be held, and shall specify the compensation, if any, to be paid the officers and members thereof, allowing no compensation in case of nonattendance or tardy attendance, and shall fix the time when the vote shall be taken on the proposed charter, to be not less than thirty days nor more than sixty days after its delivery to the clerk. The charter shall make proper provision for continuing, amending or repealing the ordinances of the city and county of Denver.

(3) All expenses of charter conventions shall be paid out of the treasury upon the order of the president and secretary thereof. The expenses of elections for charter conventions and of charter votes shall be paid out of the treasury upon the order of the council.

(4) Any franchise relating to any street, alley, or public place of the said city and county shall be subject to the initiative and referendum powers reserved to the people under section 1 of article V of this constitution. Such referendum power shall be guaranteed notwithstanding a recital in an ordinance granting such franchise that such ordinance is necessary for the immediate preservation of the public peace, health, and safety. Not more than five percent of the registered electors of a home rule city shall be required to order such referendum. Nothing in this section shall preclude a home rule charter provision which requires a lesser number of registered electors to order such referendum or which requires a franchise to be voted on by the registered electors. If such a referendum is ordered to be submitted to the registered electors, the grantee of such franchise shall deposit with the treasurer the expense (to be determined by said treasurer) of such submission. The council shall have power to fix the rate of taxation on property each year for city and county purposes.

Added November 4, 1902. (See Laws 1901, p. 101.); as amended November 6, 1984 Effective upon proclamation of the Governor, January 14, 1985. (For the text of this amendment and the votes cast thereon, see L. 84, p. 1145, and L. 85, p. 1791.); as amended November 4, 1986 Effective upon proclamation of the Governor, December 17, 1986. (For the text of this amendment and the votes cast thereon, see L. 86, p. 1239, and L. 87, p. 1859.)

**Section 5. New charters, amendments or measures.** The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided;

It shall be competent for qualified electors in number not less than five percent of the next preceding gubernatorial vote in said city and county to petition the council for any measure, or charter amendment, or for a charter convention. The council shall submit the same to a vote of the qualified electors at the next general election not held within thirty days after such petition is filed; whenever such petition is signed by qualified electors in number not less than ten percent of the next preceding gubernatorial vote in said city and county, with a request for a special election, the council shall submit it at a special election to be held not less than thirty nor more than sixty days from the date of filing the petition; provided, that any question so submitted at a special election shall not again be submitted at a special election within two years thereafter. In submitting any such charter, charter amendment or measure, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by a majority of those voting thereon, a charter convention shall be called through a special election ordinance as provided in section four (4) hereof, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, and all expenses paid, as in said section provided.

The clerk of the city and county shall publish, with his official certification, for three times, a week apart, in the official newspapers, the first publication to be with his call for the election, general or special, the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition,

which is to be submitted to the voters. Within ten days following the vote the said clerk shall publish once in said newspaper the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which shall have been approved by majority of those voting thereon, and he shall file with the secretary of state two copies thereof (with the vote for and against) officially certified by him, and the same shall go into effect from the date of such filing. He shall also certify to the secretary of state, with the vote for and against, two copies of every defeated alternative article or proposition, charter, charter amendment, measure or proposal for a charter convention. Each charter shall also provide for a reference upon proper petition therefor, of measures passed by the council to a vote of the qualified electors, and for the initiative by the qualified electors of such ordinances as they may by petition request.

The signatures to petitions in this amendment mentioned need not all be on one paper. Nothing herein or elsewhere shall prevent the council, if it sees fit, from adopting automatic vote registers for use at elections and references.

No charter, charter amendment or measure adopted or defeated under the provisions of this amendment shall be amended, repealed or revived, except by petition and electoral vote. And no such charter, charter amendment or measure shall diminish the tax rate for state purposes fixed by act of the general assembly, or interfere in any wise with the collection of state taxes.

The city council, or board of trustees, or other body in which the legislative powers of any home rule city or town may then be vested, on its own initiative, may submit any measure, charter amendment, or the question whether or not a charter convention shall be called, at any general or special state or municipal election held not less than 30 days after the effective date of the ordinance or resolution submitting such question to the voters.

As amended November 7, 1950. (See Laws 1951, p. 232.)

**Section 6. Home rule for cities and towns.** The people of each city or town of this state, having a population of two thousand inhabitants as determined by the last preceding census taken under the authority of the United States, the state of Colorado or said city or town, are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.

Proposals for charter conventions shall be submitted by the city council or board of trustees, or other body in which the legislative powers of the city or town shall then be vested, at special elections, or at general, state or municipal elections, upon petition filed by qualified electors, all in reasonable conformity with section 5 of this article, and all proceedings thereon or thereafter shall be in reasonable conformity with sections 4 and 5 of this article.

From and after the certifying to and filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:

- a. The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees;
- b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;
- c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;
- d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes nonpartisan in character;
- e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;
- f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;

g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessments, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

All provisions of the charters of the city and county of Denver and the cities of Pueblo, Colorado Springs and Grand Junction, as heretofore certified to and filed with the secretary of state, and of the charter of any other city heretofore approved by a majority of those voting thereon and certified to and filed with the secretary of state, which provisions are not in conflict with this article, and all elections and electoral votes heretofore had under and pursuant thereto, are hereby ratified, affirmed and validated as of their date.

Any act in violation of the provisions of such charter or of any ordinance thereunder shall be criminal and punishable as such when so provided by any statute now or hereafter in force.

The provisions of this section 6 shall apply to the city and county of Denver.

This article shall be in all respects self-executing.

As amended November 5, 1912. (See Laws 1913, p. 669.)

**Section 7. City and county of Denver single school district consolidations.** The city and county of Denver shall alone always constitute one school district, to be known as District No. 1, but its conduct, affairs and business shall be in the hands of a board of education consisting of such numbers, elected in such manner as the general school laws of the state shall provide, and until the first election under said laws of a full board of education which shall be had at the first election held after the adoption of this amendment, all the directors of school district No. 1, and the respective presidents of the school boards of school districts Nos. 2, 7, 17 and 21, at the time this amendment takes effect, shall act as such board of education, and all districts or special charters now existing are hereby abolished.

The said board of education shall perform all the acts and duties required to be performed for said district by the general laws of the state. Except as inconsistent with this amendment, the general school laws of the state shall, unless the context evinces a contrary intent, be held to extend and apply to the said "District No. 1".

Upon the annexation of any contiguous municipality which shall include a school district or districts or any part of a district, said school district or districts or part shall be merged in said "District No. 1", which shall then own all the property thereof, real and personal, located within the boundaries of such annexed municipality, and shall assume and pay all the bonds, obligations and indebtedness of each of the said included school districts, and a proper proportion of those of partially included districts.

Provided, however, that the indebtedness, both principal and interest, which any school district may be under at the time when it becomes a part, by this amendment or by annexation, of said "District No. 1", shall be paid by said school district so owing the same by a special tax to be fixed and certified by the board of education to the council which shall levy the same upon the property within the boundaries of such district, respectively, as the same existed at the time such district becomes a part of said "District No. 1", and in case of partially included districts such tax shall be equitably apportioned upon the several parts thereof.

Added November 4, 1902. (See Laws 1901, p. 105.)

**Section 8. Conflicting constitutional provisions declared inapplicable.** Anything in the constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for.

Added November 4, 1902. (See Laws 1901, p. 106.)

**Section 9. Procedure and requirements for adoption.** (1) Notwithstanding any provision in sections 4, 5, and 6 of this article to the contrary, the registered electors of each city and county, city, and town of the state are hereby vested with the power to adopt, amend, and repeal a home rule charter.

(2) The general assembly shall provide by statute procedures under which the registered electors of any proposed or existing city and county, city, or town may adopt, amend, and repeal a municipal home rule charter. Action to initiate home rule shall be by petition, signed by not less than five percent of the registered electors of the proposed or existing city and county, city, or town, or by proper ordinance by the city council or board of trustees of a town, submitting the question of the adoption of a municipal home rule charter to the registered electors of the city and county, city, or town. No municipal home rule charter, amendment thereto, or repeal thereof, shall become effective until approved by a majority of the registered electors of such city and county, city, or town voting thereon. A new city or town may acquire home rule status at the time of its incorporation.

(3) The provisions of this article as they existed prior to the effective date of this section, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, shall continue to apply until superseded by statute.

(4) It is the purpose of this section to afford to the people of all cities, cities and counties, and towns the right to home rule regardless of population, period of incorporation, or other limitation, and for this purpose this section shall be self-executing. It is the further purpose of this section to facilitate adoption and amendment of home rule through such procedures as may hereafter be enacted by the general assembly.

Adopted November 3, 1970 Effective January 1, 1972. (See Laws 1969, p. 1250.); (1) and (2) amended November 6, 1984 Effective upon proclamation of the Governor, January 14, 1985. (For the text of this amendment and the votes cast thereon, see L. 84, p. 1146, and L. 85, p. 1791.)

# APPENDIX B: CHRONOLOGY OF AMENDMENTS TO ARTICLE XX

The following chronology tracks the history of Article XX of the Colorado Constitution. Readers should note, however, that through the years there have been other amendments codified elsewhere in the constitution that have an indirect effect on home rule authority. For example, the Taxpayer Bill of Rights (TABOR) Amendment (1992), codified at Article X, Section 20, expressly supersedes any “conflicting state constitutional, state statutory, charter, or other state or local provisions.” The Term Limit Amendment (1994), codified at Article XVIII, Section 11, expressly applies to all home rule municipalities. In more recent years, the Colorado Supreme Court has indicated that an initiated constitutional amendment that incidentally affects municipal home rule authority under Article XX may not pass muster under the “single subject rule” that has been in effect for all initiatives since 1994.<sup>1</sup>

## 1902

### ARTICLE XX: HOME RULE CITIES AND TOWNS

In 1898, the Denver city council called a convention to formulate recommendations to be presented to the state legislature providing a new charter for Denver. There was much discussion regarding a home rule amendment to the Colorado Constitution, but nothing was proposed at that time. Finally, in 1901, a home rule amendment was submitted to the people of Colorado and was ratified by the citizens at the 1902 general election by a margin of nearly 35,000 votes. This constitutional amendment, the original Article XX, consolidated the Denver city and county governments and the school districts, defined the boundaries, created a merit system for some employees, and empowered the voters of Denver and other cities to enact and amend the home rule charter.

## 1912

### SECTION 6: HOME RULE FOR CITIES AND TOWNS

In response to a series of court cases which effectively narrowed the powers of home rule municipalities, section 6 was amended to clarify that home rule municipalities have supreme authority in areas of local and municipal concern. The original wording of section 6 provided merely that the people of a city have the power to propose charter conventions and amend such charter, with full power as to real and personal property and public utilities. The amendment to section 6 expanded those powers, stating that a city’s charter shall extend to all local and municipal matters and shall supersede any conflicting law. As a result of this amendment, a number of specific powers are now enumerated in section 6. However, the amendment was careful to provide that such enumeration not be construed to deny home rule cities and towns any right or power essential to the full exercise of the right of self-government in both local and municipal matters.

## 1950

### SECTION 2: OFFICERS

The original section 2 provided that city officer’s salaries be fixed by the city charter and paid out of the city treasury. The 1950 amendment added that salaries of officers not in the classified Civil Service shall be fixed by ordinance within limits fixed by the charter, and that no elected officer shall receive any increase or decrease in compensation under any ordinance passed during the term for which he was elected.

## 1950

### SECTION 5: NEW CHARTERS, AMENDMENTS, OR MEASURES

Prior to 1950, section 5 of article 20 required that citizens of the city petition the council for a charter amendment for the adoption of a new charter or measure. This amendment added a new paragraph providing that the city council, on its own initiative may submit such a measure or amendment to the voters by ordinance or resolution.

## 1970

### SECTION 9: PROCEDURE AND REQUIREMENTS FOR ADOPTION

Prior to 1970, a newly-incorporated area in the state was prohibited from assuming home rule status until it was incorporated for at least five years. Municipalities with less than 2,000 population were also prevented from becoming home rule. In 1969, article XX was amended by the addition of section 9, to permit any municipality, regardless of population or period of incorporation, to acquire home rule status. The amendment also permitted the legislature to establish less cumbersome procedures facilitating the adoption of home rule.



**1974**

**SECTION 1: INCORPORATED**

Two separate amendments were adopted in 1974, which dramatically limited the authority of Denver to annex territory. The Poundstone amendment, initiated by the people, deleted prior language that allowed Denver to annex like other municipalities. At the same time as the Poundstone amendment was adopted, the voters approved a legislatively referred measure that requires any change in Denver County boundaries to be approved by a six-member "Boundary Control Commission," including representatives of all the metro area counties.

**1984**

**SECTION 4: FIRST CHARTER**

**1984**

**SECTION 9: PROCEDURE AND REQUIREMENTS FOR ADOPTION**

In 1984, a number of sections in the constitution were amended to change the term "qualified elector" to "registered elector." While both qualified and registered electors meet the age and residency requirements for voting, only the latter has actually registered to vote. Revisions brought about by this amendment included several references in sections 4 and 9 of article XX. As a result of these changes, the power to adopt, amend or repeal a municipal home rule charter is vested in the registered, rather than qualified electors; the right of recall is exercised by registered, rather than qualified electors, and; a franchise relating to a street, alley, or public place in a home rule municipality is voted on by registered, rather than qualified electors.

**1986**

**SECTION 4: FIRST CHARTER**

A 1986 amendment brought a number of changes to section 4 of article XX of the Colorado Constitution, concerning the granting of franchises by home rule municipalities. The amendment eliminated the requirement that a franchise granted by a home rule municipality be automatically submitted to a vote of the registered electors; provided that a franchise in a home rule municipality shall be subject to initiative and referendum; guaranteed the referendum right in a home rule municipality despite the inclusion of a provision in the franchise ordinance stating that the ordinance is necessary for the immediate preservation of the public peace, health and safety; provided that not more than 5% of the registered electors in a home rule municipality shall be required to order a referendum on a franchise; provided that a home rule charter may provide for a lesser percentage than five percent of the registered electors to order a referendum on a franchise, and allowed a home rule charter to continue to require that a franchise be automatically submitted to a vote of the registered electors.

**1998**

**SECTION 10: CITY AND COUNTY OF BROOMFIELD – CREATED**

Section 11: Officers - city and county of Broomfield

Section 12: Transfer of government

Section 13: Section self-executing - appropriations

Sections 10 through 13 provide for the creation of the city and county of Broomfield effective November 15, 2001. These additions contain language substantially similar to sections 1, 2 and 3 relating to the consolidation of the City and County of Denver.

*END NOTE*

*1. In re the Title, Ballot Title and Submission Clause and Summary for 1997-1998 #64, 960 P.2d 1192 (Colo. 1998); In re the Title, Ballot Title and Submission Clause and Summary for 1997-1998 #95, 960 P.2d 1204 (Colo. 1998).*

# APPENDIX C: COLORADO REVISED STATUTES TITLE 31 GOVERNMENT – MUNICIPAL

## ARTICLE 2 FORMATION AND REORGANIZATION

### PART 2 MUNICIPAL HOME RULE

**§ 31-2-202. Legislative declaration.** The general assembly declares that the policies and procedures contained in this part 2 are enacted to implement section 9 of article XX of the state constitution, adopted at the 1970 general election, by providing statutory procedures to facilitate adoption and amendment of municipal home rule charters, and to this end this part 2 shall be liberally construed.

**§ 31-2-203. Definition.** As used in this part 2, unless the context otherwise requires:

(1) "Publication" means one publication in one newspaper of general circulation within the municipality. If there is no such newspaper, publication shall be by posting in at least three public places within the municipality.

**§ 31-2-204. Initiation of home rule.** (1) Proceedings to adopt a home rule charter for a municipality may be initiated:

(a) By the submission of a petition, signed by at least five percent of the registered electors of the municipality, to the governing body thereof; or

(b) By the adoption of an ordinance by the governing body of the municipality, without the prior submission of a petition therefor.

(2) Within thirty days after the initiation of the proceedings, in accordance with either paragraph (a) or (b) of subsection (1) of this section, the governing body of the municipality shall call an election for the purpose of forming a charter commission and of electing members thereof to frame a charter for the municipality, which election shall be held within one hundred twenty days after the date of the call of the election. The governing body shall cause notice of the election to be published not less than sixty days prior to the election.

(3) Candidates for the charter commission shall be nominated by filing with the clerk, on forms supplied by the clerk, a nomination petition signed by at least twenty-five registered electors and a statement by the candidate of consent to serve if elected. Said petition and statement shall be filed within thirty days after publication of the election notice. A second notice of the election, as soon as possible after the completion of filings, shall be published by the governing body and shall include the names of candidates for the charter commission.

**§ 31-2-205. Election on formation of charter commission and designation of members.** (1) At the election voters shall cast ballots for or against forming the charter commission. If a majority of the registered electors voting thereon vote for forming the charter commission, a commission to frame a charter shall be deemed formed.

(2) At the election voters shall also cast ballots for electing the requisite number of charter commission members. Those candidates receiving the highest number of votes shall be elected. In the event of tie votes for the last available vacancy, the clerk shall determine by lot the person who shall be elected.

**§ 31-2-206. Charter commission.** (1) The charter commission shall be comprised as follows:

(a) In municipalities having a population of less than two thousand, nine members; and

(b) In municipalities having a population of at least two thousand, nine members unless the initiating ordinance or petition establishes a higher odd-number of members not to exceed twenty-one members.

(c) (Deleted by amendment, L. 94, p. 1191, § 89, effective July 1, 1994.)

(2) If the petition or ordinance initiating home rule proceedings pursuant to section § 31-2-204 (1) or initiating proceedings for forming a new charter commission pursuant to section § 31-2-210 (2) specifies that the members of the charter commission shall be elected by and from single- or multi-member districts or by a combination of such districts and at-large representation, the governing body, prior to publishing the notice provided for in section § 31-2-204 (2) or § 31-2-210 (3), shall divide the municipality into compact districts of approximately equal population. In such event the members of said charter commission shall be elected by and from districts, or partly by and from districts and partly at large, as specified in said petition or ordinance.

(3) Eligibility to serve on the charter commission shall extend to all registered electors of the municipality. Any vacancy on the charter commission shall be filled by appointment of the governing body.

(4) The charter commission shall meet at a time and date set by the governing body, which shall be not more than twenty days subsequent to the election, for the purpose of organizing itself. At such meeting, the commission members shall elect a chairman, a secretary, and such other officers as they deem necessary, all of which officers shall be members of the commission. The commission may adopt rules of procedure for its operations and proceedings. A majority of the commission members shall constitute a quorum for transacting business. Further meetings of the commission shall be held upon call of the chairman or a majority of the members. All meetings shall be open to the public.

(5) The commission may employ a staff; consult and retain experts; and purchase, lease, or otherwise provide for such supplies, materials, and equipment as it deems necessary. Upon completion of its work, the commission shall be dissolved, and all property of the commission shall become the property of the municipality.

(6) The governing body may accept funds, grants, gifts, and services for the commission from the state of Colorado, or the United States government, or any agencies or departments thereof, or from any other public or private source.

(7) Reasonable expenses of the charter commission shall be paid out of the general funds of the municipality, upon written verification made by the commission chairman and secretary, and the governing body shall adopt such supplemental appropriation ordinances as may be necessary to support such expenditures. Members of the commission shall receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(8) The charter commission may conduct interviews and make investigations in the preparation of a charter, and, to the fullest extent practicable, municipal officials and employees shall cooperate with the commission by providing information, advice, and assistance.

(9) The charter commission shall hold at least one public hearing in preparation of a proposed charter.

(10) Within one hundred eighty days after its election, the charter commission shall submit to the governing body a proposed charter.

**§ 31-2-207. Charter election - notice.** (1) Within thirty days after the date that the charter commission submits the proposed charter to it, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved, which election shall be held not less than sixty nor more than one hundred eighty-five days after publication of the notice thereof. Such notice of the election shall contain the full text of the proposed charter.

(2) If a majority of the registered electors voting thereon vote to adopt the proposed charter, the charter shall be deemed approved and it shall become effective at such time as the charter provides.

(3) If a majority of the registered electors voting thereon vote to reject the proposed charter, the charter commission shall proceed to prepare a revised proposed charter, utilizing the procedures set forth in section § 31-2-206, and the governing body shall submit the revised proposed charter to an election in the manner set forth in subsection (1) of this section. If a majority of the registered electors voting on such revised proposed charter vote to adopt the revised proposed charter, it shall be deemed approved and it shall become effective at such time as the revised charter provides. If a majority of the registered voters voting thereon vote to reject the revised proposed charter, the charter commission shall forthwith be dissolved.

**§ 31-2-208. Filings - effect.** (1) Within twenty days after its approval, a certified copy of the charter shall be filed with the secretary of state and with the clerk.

(2) Upon such filings all courts shall take judicial notice of the charter.

(3) This section shall also apply to any amendment or repeal of a charter.

**§ 31-2-209. Special procedure for adopting a charter upon incorporation.** (1) Proceedings to adopt a home rule charter may be initiated at the time of incorporation.

(2) In order to initiate home rule at the time of incorporation, the petition for incorporation shall be in the form and meet the requirements required by the provisions of section § 31-2-101, except that:

(a) The petition shall be signed by at least five percent of the registered electors of the territory to be embraced within the boundaries of the proposed municipality, notwithstanding any provision of section § 31-2-101; and

(b) The petition for incorporation shall request the initiation of proceedings for the adoption of a home rule charter pursuant to the provisions of this part 2.

(3) The election commissioners appointed by the court pursuant to section § 31-2-102 shall exercise, to the extent practicable, the powers, functions, and responsibilities otherwise assigned by this part 2 to the governing

body or clerk, and the procedures for incorporation and adoption of a home rule charter shall be modified as necessary to effectuate concurrent consideration.

(4) At the incorporation election, conducted under the provisions of section § 31-2-102, the registered electors shall vote upon:

- (a) The question of incorporation, as set forth in section § 31-2-102 (5);
- (b) The question of whether a charter commission should be formed, as set forth in section § 31-2-205 (1); and
- (c) The election of charter commission members, as set forth in section § 31-2-205 (2).

(5) If a majority of the registered electors voting thereon vote for incorporation and for formation of a charter commission, the first election of officers shall be stayed pending drafting and approval of the charter pursuant to sections § 31-2-206 and § 31-2-207. Upon ratification of the charter or after rejection of a charter and revised charter pursuant to section § 31-2-207, the election commissioners shall proceed to the first election of officers and to completion of incorporation pursuant to part 1 of this article.

(6) If a majority of the registered electors voting thereon vote for incorporation but against the formation of a charter commission, the procedures set forth in part 1 of this article shall be followed as if the petition for incorporation had not included a request for the adoption of home rule at the time of incorporation.

**§ 31-2-210. Procedure to amend or repeal charter.** (1) Proceedings to amend a home rule charter may be initiated by either of the following methods:

(a) Filing of a petition meeting the following requirements, in the following manner:

(I) The petition process shall be commenced by filing with the clerk a statement of intent to circulate a petition, signed by at least five registered electors of the municipality. The petition shall be circulated for a period not to exceed ninety days from the date of filing of the statement of intent and shall be filed with the clerk before the close of business on the ninetieth day from said date of filing or on the next business day when said ninetieth day is a Saturday, Sunday, or legal holiday.

(II) The petition shall contain the text of the proposed amendment and shall state whether the proposed amendment is sought to be submitted at the next regular election or at a special election. If the amendment is sought to be submitted at a special election, the petition shall state an approximate date for such special election, subject to the provisions of subparagraph (IV) of this paragraph (a) and subsection (4) of this section.

(III) A petition to submit an amendment at the next regular election must be signed by at least five percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the date of said regular election.

(IV) A petition to submit an amendment at a special election must be signed by at least ten percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the approximate date of the special election stated in the petition.

(b) An ordinance adopted by the governing body submitting the proposed amendment to a vote of the registered electors of the municipality.

(2) Proceedings to repeal a home rule charter or to form a new charter commission may be initiated by either of the following methods:

(a) Filing of a petition in the manner prescribed by, and meeting the requirements of, paragraph (a) of subsection (1) of this section; except that:

(I) The petition shall state the proposal to repeal the charter or to form a new charter commission;

(II) The petition must be signed by at least fifteen percent of the registered electors of the municipality, regardless of whether the petition seeks submission of the proposal at a regular or special election; and

(III) If the proposal is for formation of a charter commission, the petition must be filed with the clerk at least ninety days prior to the date of the regular election or the approximate date stated in the petition for a special election, as the case may be.

(b) An ordinance adopted by a two-thirds vote of the governing body submitting the proposed repeal or formation of a charter commission to a vote of the registered electors of the municipality.

(3) The clerk shall, within fifteen working days after the filing of a petition pursuant to paragraph (a) of subsection (1) of this section or paragraph (a) of subsection (2) of this section, certify to the governing body as to the validity and sufficiency of such petition.

(3.5) If the subject matter of the petition is proposed for submission at a regular or special election that will be coordinated by the county clerk pursuant to section 1-7-116, C. R. S., and the municipal clerk has certified to the governing body that the petition is valid and sufficient, the clerk shall certify the proposed ballot question to the county clerk and recorder by the fifty-fifth day prior to the coordinated election as provided in section 1-5-203 (3), C. R. S., unless the petition has by the fifty-fifth day been determined to be insufficient pursuant to section § 31-2-223. Should the petition be found to be insufficient pursuant to section § 31-2-223 following certification to the county clerk and recorder, the election on such question shall be deemed canceled and any votes cast on the question shall not be counted.

(4) The governing body shall, within thirty days of the date of adoption of the ordinance or the date of filing of the petition (if the same is certified by the clerk to be valid and sufficient), publish notice of an election upon the amendment or proposal, which notice shall contain the full text of the amendment or statement of the proposal as contained in the ordinance or petition. The election shall be held not less than sixty nor more than one hundred twenty days after publication of such notice; except that, if the proposal is for formation of a charter commission, the election shall be held not less than sixty days after publication of such notice. If the amendment or proposal is initiated by petition and is sought to be submitted at a special election, the election shall be held as near as possible to the approximate date stated in the petition but in any event shall be held within the time limits stated in this subsection (4).

(5) The procedure for the forming and functioning of a new charter commission shall comply as nearly as practicable with sections § 31-2-204 to § 31-2-207, relating to formation and functioning of an initial charter commission.

(6) If a majority of the registered electors voting thereon vote for a proposed amendment, the amendment shall be deemed approved. If a majority of the registered electors voting thereon vote for repeal of the charter, the charter shall be deemed repealed and the municipality shall proceed to organize and operate pursuant to the statutes applicable to a municipality of its size.

**§ 31-2-211. Elections - general.** (1) Except as otherwise specifically provided, all elections held pursuant to this part 2 shall be conducted as nearly as practicable in conformity with the provisions of the "Colorado Municipal Election Code of 1965".

(2) All necessary expenses for elections conducted pursuant to this part 2 for existing municipalities or for municipalities incorporated pursuant to part 1 of this article shall be paid out of the treasury of the municipality.

(3) A special election shall be called for any election held pursuant to this part 2 when a regular election is not scheduled within the time period provided for such election.

**§ 31-2-212. Initiative, referendum and recall.** Every charter shall contain procedures for the initiative and referendum of measures and for the recall of officers.

**§ 31-2-213. Determination of population.** When a determination of the population or number of registered electors of the municipality is required under this part 2, said determination shall be made upon the best readily available information by the governing body, clerk, election commissioners, or court, as the case may be. Such determination shall be final in the absence of fraud or gross abuse of discretion.

**§ 31-2-214. Time limit on submission of similar proposals.** No proposal for a charter commission, charter amendment, or repeal of a charter shall be initiated within twelve months after rejection of a substantially similar proposal.

**§ 31-2-215. Conflicting or alternative charter proposals.** (1) In submitting any charter or charter amendment, any alternative provision may be submitted for the choice of the voters and may be voted on separately without prejudice to others. The alternative provision receiving the highest number of voters, if approved by a majority of the registered electors voting thereon, shall be deemed approved.

(2) In case of adoption of conflicting provisions which are not submitted as alternatives, the one which receives the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

**§ 31-2-216. Change in classification of municipalities.** Notwithstanding the provisions of part 2 of article 1 of this title, a town having a population exceeding two thousand may reclassify itself as a city, and a city having a population of two thousand or less may reclassify itself as a town, upon adoption of a home rule charter without otherwise complying with the procedures in said part 2.

**§ 31-2-217. Vested rights saved.** The adoption of any charter, charter amendment, or repeal thereof shall not be construed to destroy any property right, contract right, or right of action of any nature or kind, civil or criminal, vested in or against the municipality under and by virtue of any provision of law theretofore existing or otherwise accruing to the municipality; but all such rights shall vest in and inure to the municipality or to any persons asserting

any such claims against the municipality as fully and as completely as though the charter, amendment, or repeal thereof had not been adopted. Such adoption shall never be construed to affect any such right between the municipality and any person.

**§ 31-2-218. Finality.** No proceeding contesting the adoption of a charter, charter amendment, or repeal thereof shall be brought unless commenced within forty-five days after the election adopting the measure.

**§ 31-2-219. Additional petition requirements.** Any petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, shall be subject to the provisions of sections § 31-2-220 to § 31-2-225, in addition to any other requirements imposed by this part 2. Any such petition which fails to conform to the requirements of this part 2 or is circulated in a manner other than that permitted in this part 2 is invalid.

**§ 31-2-220. Warning on petition - signatures - affidavits - circulators.** (1) At the top of each page of a petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, shall be printed, in plain red letters no smaller than the impression of ten-point, bold-faced type, the following:

**“WARNING:**

**IT IS AGAINST THE LAW:**

For anyone to sign any petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to sign such petition when not a registered elector.

**DO NOT SIGN THIS PETITION UNLESS YOU ARE A**

**REGISTERED ELECTOR:**

**TO BE A REGISTERED ELECTOR, YOU MUST BE:**

1. At least eighteen years of age.
2. A citizen of the United States.
3. A resident of the state of Colorado and have resided in the state at least thirty days.
4. A resident of the municipal election precinct in which you live for at least thirty days.
5. Registered to vote pursuant to part 2 of article 2 of title 1, Colorado Revised Statutes.

Do not sign this petition unless you have read or had read to you the text of the proposal in its entirety and understand its meaning.”

(2) Any such petition shall be signed only by registered electors by their own signatures to which shall be attached the residence addresses of such persons, including street and number, if any, city or town, and the date of signing the same. To each such petition shall be attached an affidavit of some registered elector stating the elector’s address, that the elector is a registered elector of the municipality or of the territory proposed to be incorporated, that the elector circulated the said petition, that each signature thereon was affixed in the elector’s presence, that each signature thereon is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each of the persons signing said petition was at the time of signing a registered elector, and that the elector has not paid or will not in the future pay and that the elector believes that no other person has so paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer’s signature to such petition. No petition shall be accepted for filing that does not have attached thereto the affidavit required by this section.

(3) No such petition shall be circulated by any person who is not a registered elector of the municipality or of the territory proposed to be incorporated.

**§ 31-2-221. Form of petition - representatives of signers.** (1) Petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, shall be printed on pages eight and one-half inches wide by eleven inches long, with a margin of two inches at the top for binding; the sheets for signature shall have their ruled lines numbered consecutively and shall be attached to a complete copy of what is proposed, printed in plain block letters no smaller than the impression of eight-point type. Petitions may consist of any number of sections composed of sheets arranged as provided in this section. Each petition shall designate by name and address not less than three nor more than five registered electors who shall represent the signers thereof in all matters affecting the same. No such petition shall be printed, published, or otherwise circulated in a municipality until the clerk has approved it as to form only, and the clerk shall assure that the petition contains only the matters required by this part 2 and contains no extraneous material. The clerk shall approve or disapprove such

form within five working days of submission. All such petitions shall be pre-numbered serially, and the circulation of any petition described by this part 2 by any medium other than personally by a circulator is prohibited.

(2) Any disassembly of the petition which has the effect of separating the affidavits from the signatures shall render the petition invalid and of no force and effect. Prior to the time of filing, the persons designated in the petition to represent the signers shall attach the sheets containing the signatures and affidavits together, which shall be bound in convenient volumes together with the sheets containing the signatures accompanying the same.

**§ 31-2-222. Ballot.** Proposals to adopt, amend, or repeal home rule charters, including the formation of a new charter commission, shall appear upon the official ballot by ballot title only and, if more than one, shall be numbered consecutively in such order as the governing body may provide and shall be printed on the official ballot in that order, together with their respective numbers prefixed in boldface type. Each ballot title shall appear once on the official ballot and shall be separated from the other ballot titles next to it by heavy black lines and shall be followed by the words "yes" and "no" as follows:

(HERE SHALL APPEAR THE  
BALLOT TITLE IN FULL)

YES  
NO

**§ 31-2-223. Affidavit - evidence - protest procedure.** (1) All petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, which have attached thereto an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the affiant each of the persons signing such petition was at the time of signing a registered elector shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors, unless a protest in writing, under oath, is filed in the office in which such petition has been filed by some registered elector of the municipality or territory proposed to be incorporated, within thirty days after such petition is filed, setting forth with particularity the grounds of such protest and the names protested. In such event the officer with whom such petition is filed shall mail a copy of the protest to the persons named in such petition as representing the signers thereof at the addresses therein given, together with a notice fixing a time for hearing the protest not less than five nor more than twenty days after such notice is mailed. If, at such hearing, such protest is denied in whole or in part, the person filing the same, within ten days after such denial, may file an amended protest, a copy of which shall be mailed to the persons named in the petition and on which a hearing shall be held as in the case of the original protest; but no person shall be entitled to amend an amended protest.

(2) All records and hearings shall be public, and all testimony shall be under oath. The officer with whom such petition is filed shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents. Upon failure of any witness to obey the subpoena, the officer may petition the district court, and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court. Hearings shall be had as soon as is conveniently possible and must be concluded within thirty days after the commencement thereof, and the result of such hearings shall be certified to the persons representing the signers of such petition. In case the petition is declared insufficient in form or number of signatures of registered electors, it may be withdrawn by a majority in number of the persons representing the signers of such petition and, within fifteen days after the insufficiency is declared, may be amended or additional names signed thereto as in the first instance and refiled as an original petition. The finding as to the sufficiency of any petition may be reviewed by the district court of the county in which such petition is filed, but any such review shall be timely made, and, upon application, the decision of such court thereon shall be reviewed by the supreme court.

# APPENDIX D: HOME RULE MUNICIPALITIES IN COLORADO

Through 2016, 101 of Colorado's 272 municipalities had adopted a home rule charter. These 101 municipalities represent approximately 93 percent of the municipal population of the state. Just over two-thirds of the state's entire population live within a home rule municipality.

Alamosa (City)	Council–Manager
Arvada (City)	Council–Manager
Aspen (City)	Council–Manager
Aurora (City)	Council–Manager
Avon (Town)	Council–Manager
Basalt (Town)	Council–Manager
Black Hawk(City)	Council–Manager
Boulder (City)	Council–Manager
Breckenridge (Town)	Council–Manager
Broomfield (City)	Council–Manager
Brighton (City)	Council–Manager
Burlington (City)	Mayor–Council
Canon City (City)	Council–Manager
Carbondale (Town)	Trustees–Manager
Castle Rock (Town)	Council–Manager
Cedaredge (Town)	Council–Manager
Centennial (City)	Council–Manager
Central City (City)	Mayor–Alderman–Manager
Cherry Hills Village (City)	Council–Manager
Colorado Springs (City)	Mayor–Council
Commerce City (City)	Council–Manager
Cortez (City)	Council–Manager
Craig (City)	Council–Manager
Crested Butte (City)	Council–Manager
Dacono (City)	Mayor–Council
Delta (City)	Council–Manager
Denver (City)	Mayor–Council
Dillon (Town)	Council–Manager
Durango (City)	Council–Manager
Edgewater (City)	Mayor–Council–Manager
Englewood (City)	Council–Manager
Evans (City)	Council–Manager
Federal Heights (City)	Council–Manager
Fort Collins (City)	Council–Manager
Fort Morgan (City)	Mayor–Council
Fountain (City)	Council–Manager
Frisco (Town)	Council–Manager
Fruita (City)	Council–Manager
Glendale (City)	Council–Manager



Glenwood Springs (City)	Council–Manager
Golden (City)	Council–Manager
Grand Junction (City)	Council–Manager
Greeley (City)	Council–Manager
Greenwood Village (City)	Council–Manager
Gunnison (City)	Council–Manager
Gypsum (Town)	Mayor–Council
Hayden (Town)	Council–Manager
Holyoke (City)	Mayor–Council
Hudson (Town)	Council–Mayor–Manager
Johnstown (Town)	Council–Manager
Kiowa (Town)	Trustees–Manager
Lafayette (City)	Mayor–Council
La Junta (City)	Council–Manager
Lakewood (City)	Council–Manager
Lamar (City)	Mayor–Council
Larkspur (Town)	Mayor–Council
Littleton (City)	Council–Manager
Lone Tree (City)	Council–Manager
Longmont (City)	Council–Manager
Louisville (City)	Council–Manager
Loveland (City)	Council–Manager
Manitou Springs (City)	Mayor–Council
Minturn (Town)	Mayor–Council
Monte Vista (City)	Council–Manager
Montrose (City)	Council–Manager
Morrison (Town)	Trustees–Mayor
Mountain View (Town)	Mayor–Council
Mountain Village (Town)	Mayor–Council
Mt. Crested Butte (Town)	Council–Manager
New Castle (Town)	Mayor–Council
Northglenn (City)	Council–Manager
Ophir (Town)	General Assembly
Ouray (City)	Council–Manager
Pagosa Springs (Town)	Council–Manager
Parachute (Town)	Council–Manager
Parker (Town)	Council–Manager
Pueblo (City)	Council–Manager
Rico (Town)	Trustees–Mayor
Ridgway (Town)	Council–Manager
Rifle (City)	Council–Manager
Sanford (Town)	Trustees–Mayor
Sheridan (City)	Council–Manager
Silt (Town)	Trustees–Mayor

Silverthorne (Town)	Council–Manager
Silver Plume (Town)	Trustees–Mayor
Snowmass Village (Town)	Council–Mayor–Manager
Steamboat Springs (City)	Council–Manager
Sterling (City)	Council–Manager
Telluride (Town)	Council–Manager
Thornton (City)	Council–Manager
Timnath (Town)	Council–Manager
Trinidad (City)	Council–Manager
Vail (Town)	Council–Manager
Ward (Town)	General Assembly
Westminster (City)	Council–Manager
Wheat Ridge (City)	Council–Manager
Windsor (Town)	Council–Manager
Winter Park (City)	Council–Manager
Woodland Park (City)	Council–Manager
Wray (City)	Council–Manager
Yuma (City)	Council–Manager

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# APPENDIX E: TIME SCHEDULES

## ADOPTING A HOME RULE CHARTER

Within **30 days** after initiation

Call an election on forming the charter commission and on commission members. C.R.S. § 31-2-204(2).

**Before** publishing notice of the election

Divide the municipality into compact districts of approximately equal population if so required by the initiating petition or ordinance. C.R.S. § 31-2-206(2).

At least **60 days** prior to the election

Publish first notice of the election. C.R.S. § 31-2-204(2).

Within **30 days** after publication of the first election notice

Nomination petitions and consent to serve statements must be filed with the municipal clerk. C.R.S. § 31-2-204(3).

**As soon as possible** after the filing of nomination petitions is completed

Publish a second notice of election with names of nominated candidates. C.R.S. § 31-2-204(3).

Within **120 days** after publication of the call for an election

Election on charter commission and commission members to be held. C.R.S. § 31-2-204(2).

Within **20 days** after the election

Governing body must call the first meeting of the charter commission to be held within said twenty days. C.R.S. § 31-2-206(4).

**While** preparing the charter

Charter commission must hold one or more public hearings. C.R.S. § 31-2-206(9).

Within **180 days** after the election

Charter commission must submit proposed charter to the governing body. C.R.S. § 31-2-206(10).

Within **30 days** after submission of the proposed charter

Call an election on the charter and publish notice of the election including the text of the proposed charter. C.R.S. § 31-2-207(1).

Not less than **60** nor more than **185 days** after publication of the notice of election

Election on the charter must be held. C.R.S. § 31-2-207(1).

[If the charter is defeated, the time limits for submitting and voting on a revised proposed charter are the same as for submitting and voting on the original proposed charter. C.R.S. § 31-2-207(3)]

Within **20 days** after election approving proposed charter or revised proposed charter

File a certified copy of the adopted charter with the secretary of state and the municipal clerk. C.R.S. § 31-2-208(1).

Within **45 days** after the election approving the proposed charter or revised proposed charter

Proceedings to contest adopted charter must be commenced. C.R.S. § 31-2-218.

Within **12 months** after rejection of the revised proposed charter

No substantially similar proposal shall be initiated. C.R.S. § 31-2-214.

## AMENDING A HOME RULE CHARTER

Within **30 days** after initiation

Publish notice of and call an election on the amendment (notice must include the text of the amendment).

C.R.S. § 31-2-210(4).

Not less than **60** nor more than **120 days** after publication of the notice of election

Hold an election on the amendment. C.R.S. § 31-2-210(4).

Within **20 days** after the election approving the amendment

File a certified copy of the approved amendment with the secretary of state and the municipal clerk. C.R.S. § 31-2-208(1) and (3).

Within **45 days** after the election approving the amendment

Any proceedings to contest an adopted amendment must be commenced. C.R.S. § 31-2-218.

Within **12 months** after the election rejecting the amendment

No substantially similar amendment may be initiated. C.R.S. § 31-2-214.

## REPEALING A HOME RULE CHARTER

Within **30 days** after initiation

Publish notice of and call an election on the repeal measure. C.R.S. § 31-2-210(4).

Not less than **60** nor more than **120 days** after publication of the notice of election

Election on repeal measure to be held. C.R.S. § 31-2-210(4).

**After** approval of repeal measure

Municipality shall proceed to organize and operate as a statutory municipality of its size. C.R.S. § 31-2-210(6).

Within **20 days** after the election approving the repeal

File certified copies of the approved repeal measure with the secretary of state and the municipal clerk. C.R.S. § 31-2-208(1) and (3).

Within **45 days** after the election approving the repeal

Any proceedings to contest the approved repeal measure must be commenced. C.R.S. § 31-2-218.

Within **12 months** after rejection of the repeal measure

No substantially similar repeal measure may be proposed. C.R.S. § 31-2-214.

## FORMING A NEW CHARTER COMMISSION

**Before** publishing notice of election

Governing body must divide the municipality into districts of approximately equal population if required to do so by the initiating petition or ordinance. C.R.S. § 31-2-206(2).

Within **30 days** after initiation

Publish notice of and call an election on forming a new charter commission and on commission members.

C.R.S. § 31-2-210(3)(4).

Not less than **60** nor more than **120 days** after publication of the notice of election

Election to be held on new charter commission and commission members. C.R.S. § 31-2-210(4).

Time schedules for the formation and functioning of a new charter commission and for the election on a new charter are the same as those time schedules used when adopting the original charter. C.R.S. § 31-2-210(5).

## ADOPTING A HOME RULE CHARTER AT THE TIME OF INCORPORATION

Time requirements for incorporating and time requirements for adopting a home rule charter should be followed as closely as possible. Note the special provisions of C.R.S. § 31-2-209, summarized on page 30 of this publication.

# APPENDIX F: SAMPLE ORDINANCE INITIATING THE ADOPTION OF A HOME RULE CHARTER

(Material enclosed in brackets or parentheses is optional.)

AN ORDINANCE INITIATING THE ADOPTION OF A HOME RULE CHARTER FOR CITY (TOWN) OF \_\_\_\_\_ AND PROVIDING FOR THE ELECTION OF CHARTER COMMISSION MEMBERS.

WHEREAS, the Municipal Home Rule Act of 1971, C. R. S. 1973, § 31-2-201 et seq., as amended, authorizes the City Council (Board of Trustees) to initiate, by ordinance, the adoption of a home rule charter; and

WHEREAS, the City Council (Board of Trustees) desires to initiate the adoption of a home rule charter for the City (Town) of \_\_\_\_\_.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL (BOARD OF TRUSTEES) OF THE CITY (TOWN) OF \_\_\_\_\_;

SECTION 1: INITIATION OF HOME RULE. That the following question be submitted to a vote of the registered electors of the City (Town) of \_\_\_\_\_, in accordance with the provisions of Article XX of the Colorado Constitution and the Municipal Home Rule Act of 1971, at the general (a special) election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_;

Shall the City (Town) of \_\_\_\_\_ form a home rule charter commission?

SECTION 2. COMMISSION MEMBERS. That at such election, the registered electors shall also elect a total of \_\_\_\_ members to the charter commission [, \_\_\_\_\_ members to be elected by and from each district to be created in accordance with the Municipal Home Rule Act prior to such election, (and \_\_\_\_\_ members to be elected at-large),] to take office if the formation of the charter commission is approved by the qualified electors.

(Add any other usual sections including effective date and standard signature and authentication provisions.)

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# APPENDIX G: SAMPLE PETITION INITIATING THE ADOPTING OF A HOME RULE CHARTER

The general form of a petition initiating the adoption of a home rule charter will be the same as a regular initiative petition. The following is a sample of the *substantive content* of a petition initiating the adoption of a home rule charter. (Material enclosed in brackets or parentheses is optional.)

## PETITION

To: The City Council (Board of Trustees) of \_\_\_\_\_, \_\_\_\_\_ County, State of Colorado.

We, the undersigned, in accordance with the provisions of Article XX of the Colorado Constitution, and the Municipal Home Rule Act of 1971, do respectfully submit to and demand the City Council (Board of Trustees) call an election of the registered electors of the City (Town) of \_\_\_\_\_ on the question of whether the City (Town) shall form a home rule charter commission and for the purpose of electing members of the charter commission if formed.

[We additionally submit to and demand the City Council (Board of Trustees), prior to the election on the charter commission and commission members, to divide the City (Town) into \_\_\_\_ districts of approximately equal populations, \_\_\_\_ members of the charter commission to be elected by and from each district (and \_\_\_\_ members to be elected at large).]

The ballot title and submission clause for the proposal petitioned for herein is as follows:

Shall the City (Town) of \_\_\_\_\_ form a home rule charter commission?

[The regular initiative petition then contains various clauses and pages for signatures of the electors, their addresses, and the date of signing the petition.]



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# APPENDIX H: SAMPLE ORGANIZATIONAL AND PROCEDURAL RULES FOR THE CHARTER COMMISSION

## RULES ADOPTED BY THE CASTLE ROCK CHARTER COMMISSION

### 1. Officers

#### A. Officers and Tenure

The Officers of the Charter Commission shall be the Chairman, Vice-Chairman, Secretary and Treasurer. These officers, elected at the first meeting, will hold office for the entire time of the Commission until its adjournment sine die.

#### B. Duties of Officers

Chairman shall:

1. Preside at all meetings;
2. Appoint all committees not otherwise provided for;
3. Carry out assignments and instruction given to him by vote of the Commission;
4. Perform such other duties as customarily pertain to the office of Chairman.

Vice Chairman shall:

1. Be an aide to the Chairman;
2. In case of the absence or disability of the Chairman, pro tempore assume and perform the duties of the Chairman;
3. Perform as Chairman of the Calendar Committee.

Secretary shall:

1. Be responsible for the record of the proceedings of all meetings;
2. Be responsible for issuing notices of meetings and agenda.

Treasurer shall:

1. Perform as Chairman of the Finance & Personnel Committee.
2. Submit the Commission budget to City officials and secure from the City Council needed City funds to meet reasonable expenses of the Commission.

### 2. Meetings

#### A. Time and Place:

At least one regular meeting will be held each week, promptly at 7:00 p.m. on alternate Mondays and Wednesdays. The place of such meetings to be the Council Chambers of the City Hall, unless members are otherwise notified by the Secretary or someone designated by him.

#### B. Nature of Meetings:

##### 1. Agenda as follows:

- a. Call to Order
- b. Roll Call
- c. Approval of published Minutes of all meetings of the week previous to, and including Saturday last, and the first meeting of the week
- d. Program as designated by Calendar Committee
- e. Report of Committees
- f. Unfinished business
- g. New business
- h. Adjournment

##### 2. Programs of Meetings:

The Calendar Committee shall, upon request of the officers, or the members, make all arrangements for speakers, material, and/or equipment necessary for programs of the meetings. This Committee will, unless otherwise directed, provide in the Agenda the theme of each meeting, and will provide for such public hearings as may be found necessary.

### **3. Committees**

Committees are appointed by the Chairman; committees to name their Chairmen. All Committees should be encouraged to submit all reports in writing and, where possible, delivered to the members individually prior to the meeting of its report.

- A. Government & Elections
- B. Administrative & Council Procedures
- C. Legal & Judiciary
- D. Budget & Finance

The Committees will be charged with the responsibility of drawing proposed Charter provisions as submitted and approved by a majority of the members. Every practical attempt should be made to accomplish such drafting on time for submission to the members under the same conditions as those for publication and approval of the Minutes of the preceding meetings.

#### **E. Calendar Committee:**

The Calendar Committee will consist of the Chairman, Vice-Chairman and the four committee Chairman. This Committee shall submit a tentative schedule of program subjects to be followed by the Commission. This schedule may be altered at any time by a majority vote of the members. Speakers, equipment and material necessary for the programs will be arranged for by the Committee. The Committee shall authorize all consultant services, subject to the approval of the Commission.

The Committee may, as part of the program, propose a subject for consideration by the Commission, but will not submit it to the Drafting Committee for refinement prior to bringing it before the members.

#### **F. Finance and Personnel Committee:**

The Finance and Personnel Committee will consist of the Chairman, Vice Chairman, Secretary and Treasurer.

This Committee shall submit the commission budget to proper City officials, securing from the City Council needed City funds to meet the reasonable expenses of the Commission, hiring or securing consultants, as authorized by the Calendar Committee, on either a full time or part-time basis and making arrangements either with the City or independently for necessary clerical and stenographic help.

#### **G. Special Committees:**

From time to time, special study and functioning committees may be appointed at the discretion of the Chairman or by majority vote of the members.

### **4. Quorum**

For any meeting of the Commission, a quorum shall consist of eleven members. (Under the Municipal Home Rule Act, a quorum consists of a majority of the Commission members. § 31-2-206(4).)

### **5. Amendments**

These rules may be suspended at any meeting for a specific purpose by majority vote of the members. The results of such suspension will extend beyond the time of that meeting. The rules may be amended by majority vote, provided they are proposed at one meeting and adopted by a majority vote at the next.

### **6. Parliamentary Authority and Rules of Voting**

All questions not covered by these rules shall be decided by Roberts Rules of Order.

### **7. Submission of Committees' Drafts**

The Chairmen of the respective committees shall submit the work of the four drafting committees to the Commission, section by section, one section at a time.

- A. If no objection is voiced by any member of the Commission, such section of the Charter as was presented shall be deemed tentatively approved.

- B. If an objection or objections to said section is announced, the same shall be discussed and voted upon in accordance with Robert's Rules of Order.
- C. Once a section of the Charter has been tentatively approved, it shall not be brought up for further discussion until the entire Charter has been tentatively approved.
- D. Once the entire Charter has been tentatively approved, section by section, it shall be reviewed, section by section, for additional amendments or final approval. Once a section has been approved on review, it shall not be considered again unless a majority vote of the members present so desire.
- E. The Charter shall then be submitted, in toto, for approval by the entire Charter Commission.

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# APPENDIX I: SUMMARY OF GENERAL ARGUMENTS FOR AND AGAINST HOME RULE

## GENERAL ARGUMENTS FOR

- Article XX of the Colorado Constitution grants both general and specific powers to home rule municipalities, providing them greater flexibility when seeking solutions to local problems.
- These powers allow home rule municipalities to shape such solutions to fit local needs, without involving the state legislature or being subjected to undesirable limitations imposed statewide. Home rule allows municipalities to respond more quickly to changed circumstances or emergency situations by allowing legislative solutions at the local level through ordinances or charter amendments, rather than waiting for action by the state legislature.
- Home rule municipalities are not required to follow state statutes in matters of local and municipal concern and therefore enjoy freedom from state interference regarding local and municipal matters.
- The express and implied enabling authority granted to municipalities in state statutes is sometimes ambiguous; home rule allows the municipality to act with greater assurance that its actions are properly authorized, especially if the charter reserves to the municipality authority to legislate on any and all matters of local concern.
- By empowering local citizens more directly, home rule enhances citizen control, interest, involvement, and pride in their municipal government.
- Home rule is the embodiment of the principle that the best government is the one that is the closest to the people.

## GENERAL ARGUMENTS AGAINST

- If a restrictive charter is adopted, the potential flexibility offered by home rule may be lost.
- Once adopted, the charter may serve as a vehicle for dissatisfied citizens to further limit the authority of the municipality in general and elected officials in particular through the adoption of binding charter amendment, i.e., amendments which cannot be changed or repealed by the governing body without a subsequent vote of the people.
- The lack of definite limits on home rule powers may constitute a disadvantage to a municipality by creating legal uncertainty when the municipality legislates in a relatively new area; the ultimate determination of whether a matter is truly of “local concern” requires an ad hoc determination in court.
- The process of adopting a home rule charter involves some costs to the municipality — attorney’s or other consultant’s fees, expenses incurred from publication requirements, election costs, etc. can be a burden on the municipality.
- The prospect of an existing municipality adopting a home rule charter requires some change from the status quo along with the need to debate potentially volatile issues related to the structure and powers of the municipality, and therefore may be perceived as creating unnecessary risks in a community that is satisfied operating under existing statutes.
- Unless restricted by the charter, a home rule municipality has the potential to exercise more governmental powers than are available to statutory municipalities, which some local citizens may see as a disadvantage.

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# APPENDIX J: EXAMPLES OF ADDITIONAL AUTHORITY AND FLEXIBILITY AFFORDED TO HOME RULE MUNICIPALITIES

## ORGANIZATION & STRUCTURE

- Set forth legislative and administrative structure and authority.
- Set forth disqualifying circumstances for elected officials (some typical disqualifications include convictions for embezzlement of public funds, bribery, perjury, solicitation of bribery, subordination of perjury), as well as grounds and procedures for discipline or removal from office.
- Expand or contract the number and types of elected offices.
- Modify or clarify procedures for filling vacancies in elective offices that occur mid-term.
- Change the date when newly elected officials take office.
- Provide procedures for the appointment, tenure, and removal of municipal judges and clarify the causes for removal.
- Provide flexibility regarding the governing body being elected at-large, by districts, or by combination of at-large and by districts, the frequency of and procedures for redistricting, and number of councilmembers or trustees.
- Specify minimum age for elected officials.
- Provide additional flexibility and clarification regarding powers of mayor, council, manager, other officers and boards and commissions.
- Provide clear authority for towns to adopt the council/manager form of government.
- Modify composition and powers of planning commission, board of adjustment and other land use related offices. (Statutory municipalities already enjoy some flexibility per C. R. S. § 31-23-206(4) and § 31-23-307(1).)

## ELECTIONS

- Establish regular election dates at times other than the dates required by statute (i.e., April of even-numbered years for towns, November of odd-numbered years for cities). (Not only does this provide local flexibility, but if the regular election date is other than November, it allows TABOR election issues to be voted on at times when other state and local issues are not on the ballot.)
- Provide additional flexibility for dates of special elections which are not TABOR related.
- Modify election requirements, including procedures for initiative, referendum and recall. (Statutory municipalities also have some flexibility to alter procedures for initiative and referendum.)
- Expand the right to vote in municipal elections; for example, allow nonresidents to vote.
- Expand certain citizen powers, like initiative, referendum, and recall.

## PROCEDURES

- Simplify or modify various publication requirements, including more streamlined procedures for adoption of codes by reference.
- Modify requirements for enactment of local ordinances to expedite consideration and effective dates, such as one-reading procedure for emergency ordinances in cities (a single reading is all that is currently required for statutory towns).
- Resolve legal doubt or strengthen the argument that the municipality by charter or ordinance may delegate decisions to administrative staff.
- Clarify circumstances when ordinance/resolution/motion is required or permitted and allow additional actions by motion or resolution rather than by ordinance.
- Provide flexibility or clarification in terms of quorum and voting requirements for city councils and boards of trustees.
- Repeal or modify statutory provisions governing bidding and awarding of public projects and disposal of public property.



- Establish local zoning, subdivision, and other land use procedures which are different from those applicable to statutory municipalities.
- Clarify or narrow purposes for which executive sessions may be held.
- Provide a binding instrument through charter enactment or amendment to proscribe various powers and mandate procedures which will apply and bind elected officials.

## **FINANCES**

- Allow local collection and enforcement of sales taxes.
- Allow broader or narrower sales tax base (subject to voter approval if tax base is broadened).
- Allow broader use tax base (subject to voter approval) since the use tax for statutory cities and towns is limited to motor vehicles and construction materials.
- Establish differential sales tax rates applicable to certain transactions, such as for food or lodging.
- Authorize the combined state/county/municipal sales tax rate to exceed the 7% statutory limit (subject to voter approval of any increase).
- Allow additional types of excise taxes, such as admissions, tourism and lodgers taxes, measured on percentage of sales (subject to voter approval).
- Increase, eliminate or modify statutory property tax limits (subject to TABOR limits).
- Prohibit one or more types of taxes that the community dislikes.
- Clarify, simplify, or otherwise revise procedures for budget and appropriation adoption, amendment, and transfer of funds.
- Authorize property and other tax refunds and exemptions not specifically authorized by state law.
- Clarify or broaden authority to create municipal enterprises.
- Broaden authority to impose and enforce municipal liens to facilitate collection of delinquent fees, taxes and charges.
- Strengthen legal authority to impose development impact fees.
- Specify salaries of elected officials.
- Increase general obligation bond authority of municipalities (subject to voter approval).
- Facilitate formation of special improvement districts and expand purposes for which districts may be formed.
- Streamline requirements for issuance of bonds and other financial obligations.

## **MISCELLANEOUS POWERS**

- Broaden eminent domain powers, including power to condemn property outside municipal boundaries.
- Establish alternative procedures for management and operation of municipal utilities, both within and without the municipality.
- Impose terms and conditions of municipal employment, including residency requirements.
- Establish voter approval requirements for utility franchises.
- Set forth mandatory maximum terms for franchises (such as ten years) to avoid arguments concerning or negotiations over longer term franchises.
- Broaden jurisdiction of municipal courts (to permit, for example, increased nuisance abatement authority).
- Provide additional tools for economic development activities.
- Clarify authority for or expand the types of services which the municipality can provide, such as economic development and human services.
- Provide broader authority and flexibility with respect to civil service or other personnel systems, including collective bargaining, and regarding retirement and fringe benefit programs.
- Set forth additional or more specific ethics and conflict of interest provisions.
- Broaden land use regulatory authority.







## STAFF SUMMARY

### Board of Trustees Work Session

February 9, 2022

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**DATE:** February 2, 2022

**AGENDA ITEM NUMBER:** 3

**TOPIC:** Discussion in Regional Opioids Council

**STAFF MEMBER RESPONSIBLE:** Tom Acre, Town Manager

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#### **BACKGROUND:**

The Colorado Opioids Settlement (MOU) was discussed at the October 13, 2021 Work Session. A resolution was approved at the October 27, 2021 Board Meeting authorizing the Town Manager to act on behalf of the Town in regard to the Colorado Opioids Settlement MOU.

Colorado Attorney General Phillip Weiser signed the Colorado Opioids Settlement Memorandum of Understanding (MOU) on August 26, 2021. Funds from the settlement will be distributed over a period of years. Colorado's share of the settlement is \$400 million of the \$22.8 billion nationwide settlement. Details on the Colorado Opioids Settlement and the approved purposes the settlement funds may be used for are contained in the attached Colorado Opioids Settlement.

The Colorado Opioids Settlement MOU among other things outlines the distribution of the Opioids Funds as follows:

- 10% directly to the State (State Share).
- 20% directly to Participating Local Governments (LG Share).
- 60% directly to Regions (Regional Share).
- 10% to specific abatement infrastructure projects (Statewide Infrastructure Share).

Section F. of the Colorado Opioids Settlement MOU identifies the composition and organization of the Regions, participation in the Regions and allocation of the Regional Share funds. Local Governments are to organize into Regions. Each Region is required to form a Regional Council. Wiggins is identified as able to participate in Region 4. Region 4 is composed of the following Counties: Cheyenne, Elbert, Kit Carson, Lincoln, Logan, Morgan, Phillips, Sedgewick, Washington and Yuma, and the municipalities located in those counties. The Colorado Municipal League (CML) and Colorado Counties Incorporated (CCI) have been coordinating on the implementation of the Opioids Settlement MOU.

**SUMMARY:**

Staff recently was invited to and participated in a meeting recently of the Opioid Response Region 4 Council meeting held remotely. The Region 4 Council has been meeting since mid-October 2021 and largely had participation from the Counties and Sheriff Offices. The meeting I participated in recently was the first meeting I am aware of which they invited municipal staff representation.

At the meeting on January 24, 2022 the desire to have municipal participation was discussed and the request that the attached Intergovernmental Agreement (IGA) be signed by the end of the February. The IGA references the Colorado Opioids Settlement MOU including as it pertains to the membership, governance and duties of the Regional Council. I agreed to talk to my counterparts in Brush and Fort Morgan regarding this topic.

The Draft IGA and the previously provided Colorado Opioids MOU are attached to this summary.

**FISCAL IMPACT:**

Participation in the Opioid Region 4 Council does not impact the Town's budget immediately. In the future the budget may be impacted positively by providing funding for opioid related programs.

**APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:**

This action supports the Town's desire to provide the appropriate education and drug prevention programs for citizens that may need them. It also supports the desire to maintain a safe community in which to live.

**QUESTIONS/INFORMATION REQUESTED FROM THE BOARD OF TRUSTEES:**

- Do the Trustees have any questions for staff?
- Does the Board support bringing this IGA forward for consideration at the February 23, 2022 meeting?

**COLORADO REGIONAL OPIOID  
INTERGOVERNMENTAL AGREEMENT**

**THIS COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT** (the “IGA”) is made between the Counties of Cheyenne, Elbert, Kit Carson, Lincoln, Logan, Morgan, Phillips, Sedgewick, Washington and Yuma; the Cities of Sterling, \_\_\_\_\_; and the Towns of Otis, \_\_\_\_\_, Colorado \_\_\_\_\_, each a Participating Local Government, as defined in the Colorado MOU, in Region 4, individually reference herein as a “Party” and collectively the “Parties.”

**RECITALS**

**WHEREAS**, the State of Colorado and Participating Local Governments executed the Colorado Opioids Summary Memorandum of Understanding on August 26, 2021 (the “Colorado MOU”), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado;

**WHEREAS**, this IGA assumes and incorporates the definitions and provisions contained in the Colorado MOU, and shall be construed in conformity with the Colorado MOU;

**WHEREAS**, all Opioid Funds, regardless of allocation, shall be used for Approved Purposes;

**WHEREAS**, pursuant to the Colorado MOU and as further depicted in **Exhibit E** thereto, Participating Local Governments shall organize themselves into Regions;

**WHEREAS**, Regions may consist of Single-County Regions, Multi-County Regions, or Single County-Single City Regions (Denver and Broomfield);

**WHEREAS**, the Parties to this IGA, pursuant to **Exhibit C** of the Colorado MOU, are all located in Region 4;

**WHEREAS**, there shall be a 60% direct allocation of Opioid Funds to Regions through a Regional Share;

**WHEREAS**, each Region shall be eligible to receive a Regional Share according to **Exhibit C** to the Colorado MOU;

**WHEREAS**, the Colorado MOU establishes the procedures by which each Region shall be entitled to Opioid Funds from the Abatement Council and administer its Regional Share allocation;

**WHEREAS**, the procedures established by the Colorado MOU include a requirement that each Region shall create its own Regional Council;

**WHEREAS**, all aspects of the creation, administration, and operation of the Regional Council shall proceed in accordance with the provisions of the Colorado MOU;

**WHEREAS**, each such Regional Council shall designate a fiscal agent from a county or municipal government within that Region;

**WHEREAS**, each such Regional Council shall submit a two-year plan to the Abatement Council that identifies the Approved Purposes for which the requested funds will be used, and the Regional Council's fiscal agent shall provide data and a certification to the Abatement Council regarding compliance with its two-year plan on an annual basis;

**WHEREAS**, this IGA pertains to the procedures for the Parties to establish a Regional Council, designate a fiscal agent, and request and administer Opioid Funds in a manner consistent with the Colorado MOU;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and agree as follows:

1. **DEFINITIONS.** The defined terms used in this IGA shall have the same meanings as in the Colorado MOU. Capitalized terms used herein and not otherwise defined within the IGA or in the Colorado MOU shall have the meanings ascribed to them in the body of the IGA.
2. **OBLIGATIONS OF THE PARTIES.** The Parties shall perform their respective obligations as set forth in this IGA, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated herein by reference. Unless the context clearly requires a distinction between this IGA and the Colorado MOU, all references to "IGA" shall include the Colorado MOU.
3. **REGIONAL COUNCIL.**
  - 3.1. **Purpose and Name:** In accordance with the Colorado MOU, a Regional Council, consisting of representatives appointed by the Participating Local Governments as described below in this IGA, shall be created to oversee the procedures by which Region 4 may request Opioid Funds from the Abatement Council and the procedures by which the allocation of the Region's Share of Opioid Funds are administered. The Council shall be called the Region 4 Regional Council.
  - 3.2. **Membership:** The Region 4 Regional Council shall consist of the following:

a. **Voting Members.** There shall be eleven (11) Voting Members, appointed by the various Parties as set forth below. No single county or city should dominate the make-up of the Regional Council. It is the intent of the Parties, and the Parties agree to collaborate to the extent feasible to provide that there be balanced representation throughout the Region. To that end, the county, municipal and law enforcement Parties shall communicate about their Voting Member choices and endeavor to have municipal and law enforcement Voting Members from counties that do not have a county appointed Voting Member. Notwithstanding this provision however, other criteria for appointments may be utilized that the Parties agree is in the interests of the Region, and a potential Voting Member shall not be disqualified solely because there is another Voting Member from that individual's home county. Voting Members shall be selected as follows:

- (i) The county Parties in Region 4 shall collaborate to appoint five (5) county commissioner Voting Members, two (2) from the northern part of Region 4, two (2) from the southern part of Region 4, and one (1) at large.
- (ii) The municipal parties in Region 4, shall collaborate within the Districts of the Colorado Municipal League ("CML") that overlap with Region 4 to appoint (4) municipal Voting Members, two (2) from the northern part of Region 4, and two (2) from the southern part of Region 4.
- (iii) The Region 4 law enforcement organizations (comprising of Sheriffs and Chiefs of Police from organizations that are Parties to this IGA) shall collaborate to appoint two (2) law enforcement Voting Members, one (1) from the northern part of Region 4, and one (1) from the southern part of Region 4.
- (iv) For the purposes of this IGA, the northern part of Region 4 shall be considered to comprise Sedgwick, Phillips, Yuma, Washington, Logan, and Morgan Counties. The southern part of Region 4 shall be considered to comprise Cheyenne, Lincoln, Kit Carson, and Elbert Counties.

b. **Non-Voting Advisory Members.** Non-voting members shall serve in an advisory capacity. Any Non-Voting Members shall be appointed by the Parties and comprised of the following, not to include providers who may be recipients of funds:

- (i) Two (2) representatives from behavioral/mental health providers within Region 4.
- (ii) Two (2) representatives from local public health care organizations within Region 4.



(iii) Two (2) representatives from social services organizations within Region 4.

- c. **Chair:** The Voting Members shall appoint one member to serve as Chair of the Regional Council. The Chair's primary responsibilities shall be to schedule periodic meetings and votes of the Regional Council as needed and to serve as the point of contact for disputes within the Region. The Chair must be either a Member from a county within Region 4, or a Member from a municipality within Region 4.
- d. **Non-Participation:** A Local Government that chooses not to become a Participating Local Government in the Colorado MOU shall not receive any Opioid Funds from the Regional Share or participate in the Regional Council.
- e. **Terms:** The Regional Council shall be established no later than ninety (90) days after the first Settlement being entered by a court of competent jurisdiction. After execution of this IGA by all Parties, the Parties shall appoint the eleven (11) Voting Members, in accordance with the provisions of Section 3.2(a). Voting Members shall serve two-year terms. Following the expiration of each two-year term, the Parties, working in concert, shall reappoint that Voting Member, or appoint a new Voting Member in accordance with Section 3.2(a).
  - (i) If a Voting Member resigns or is otherwise removed from the Regional Council prior to the expiration of their term, a replacement Voting Member shall be appointed within sixty (60) days in accordance with Section 3.2(a) to serve the remainder of the term. At the end of his or her term, the individual serving as that replacement Voting Member may be reappointed by the Parties to serve a full term consistent with this Section.
  - (ii) The purpose of the two-year term is to allow the Parties an increased opportunity to serve on the Regional Council. However, Regional Council members who have already served on the Regional Council may be appointed more than once and may serve consecutive terms if appointed to do so by the Voting Members.

**3.3. Duties:** The Regional Council is primarily responsible for engaging with the Abatement Council on behalf of Region 4, and following the procedures outlined in the Colorado MOU for requesting Opioid Funds from the Regional Share, which shall include developing 2-year plans, amending those plans as appropriate, and providing the Abatement Council with data through its fiscal agent regarding Opioid Fund expenditures. Upon request from the Abatement Council, the Regional Council may also be subject to an accounting from the Abatement Council.

**3.4. Governance:** The Regional Council shall establish its own procedures through adoption of bylaws. Any governing documents must be consistent with the other provisions in this section and the Colorado MOU.

**3.5. Authority:** The terms of the Colorado MOU control the authority of the Regional Council and the Regional Council shall not stray outside the bounds of the authority and power vested by the Colorado MOU. The Regional Council may seek guidance from the legal counsel of the county or municipal government of the Regional Council's fiscal agent at the time the issue arises, or may, in its discretion seek such guidance from a county or municipal attorney from one of its Member jurisdictions; provided however that only one person shall serve as general legal counsel to the Regional Council at a time.

**3.6. Collaboration:** The Regional Council shall facilitate collaboration between the Colorado Attorney's General's Office, Participating Local Governments within Region 4, the Abatement Council, and other stakeholders within Region 4 for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado.

**3.7. Transparency:** The Regional Council shall operate with all reasonable transparency and abide by all Colorado laws relating to open records and meetings. To the extent the Abatement Council requests outcome-related data from the Regional Council, the Regional Council shall provide such data in an effort to determine best methods for abating the opioid crisis in Colorado.

**3.8. Conflicts of Interest:** Voting Members shall abide by their jurisdiction's local conflict-of-interest rules, or, if no such conflict-of-interest rules exist, by those rules applicable to local government officials under state law.

**3.9. Ethics Laws:** Voting Members shall abide by their local ethics laws or, if no such ethics laws exist, by applicable state ethics laws.

**3.10. Decision Making:** The Regional Council shall seek to make all decisions by consensus. In the event consensus cannot be achieved, the Regional Council shall make decisions by a majority vote of its Members.

#### **4. REGIONAL FISCAL AGENT**

**4.1. Purpose:** According to the Colorado MOU, all Regional Councils must designate a fiscal agent for the Region prior to a Region receiving any Opioid funds from the Regional Share. All funds from the Regional Share shall be distributed to each Regional Council's fiscal agent for the benefit of the entire Region.

**4.2. Designation:** Region 4 shall nominate and designate a fiscal agent for the Region by majority vote. The regional fiscal agent must be a board of county commissioners or a city or town council or executive department, such as a department of finance.

**4.3. Term:** The Regional fiscal agent shall be appointed by Region 4 on an annual basis. The Region 4 fiscal agent may serve as long as the Regional Council determines is appropriate, including the length of any Settlement that contemplates the distribution of Opioid Funds within Colorado.

**4.4. Duties:** The Region 4 fiscal agent shall receive, deposit, and make available Opioid Funds distributed from the Abatement Council and provide expenditure reporting data to the Abatement Council on an annual basis. In addition, the Region 4 fiscal agent shall perform certain recordkeeping duties outlined below.

- a. **Opioid Funds:** The Region 4 fiscal agent shall receive all Opioid Funds as distributed by the Abatement Council. Upon receipt, the Region 4 fiscal agent shall deposit the Opioid Funds in a Colorado-specific QSF Account that is dedicated to Region 4. Upon direction by the Regional Council, the Region 4 fiscal agent shall make any such Opioid Funds available to the Regional Council.
- b. **Reporting:** On an annual basis, as determined by the Abatement Council, the Region 4 fiscal agent shall provide to the Abatement Council the Regional Council's expenditure data from its allocation of the Regional Share and certify to the Abatement Council that the Region 4 Council's expenditures were for Approved Purposes and complied with its 2-year plan.
- c. **Recordkeeping:** The Region 4 fiscal agent shall maintain necessary records with regard the Regional Council's meetings, decisions, plans, and expenditure data.

**4.5. Authority:** The Region 4 fiscal agent shall serve at the direction of the Region 4 Council and in service to the entire Region. The terms of the Colorado MOU control the authority of the Regional Council, and by extension, the Region 4 fiscal agent. The Region 4 fiscal agent shall not stray outside the bounds of the authority and power vested by the Colorado MOU.

## **5. REGIONAL TWO-YEAR PLAN**

**5.1. Purpose:** According to the Colorado MOU, as part of a Regional Council's request to the Abatement Council for Opioid Funds from its Regional Share, the Regional Council must submit a 2-year plan identifying the Approved Purposes for which the requested funds will be used.

**5.2 Development of 2-Year Plan:** In developing a 2-year plan, Region 4 shall solicit recommendations and information from all Parties and other stakeholders within Region 4 for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado. At its discretion, Region 4 may seek assistance from the Abatement Council for purposes of developing a 2-year plan.

**5.3 Amendment:** At any point, Region 4's 2-year plan may be amended so long as such amendments comply with the terms of the Colorado MOU and any Settlement.

- 6. DISPUTES WITHIN REGION.** In the event that any Party disagrees with a decision of the Regional Council, or there is a dispute regarding the appointment of Voting or Non-Voting Members to the Regional Council, that Party shall inform the Chair of its dispute at the earliest possible opportunity. In Response, the Regional Council shall gather any information necessary to resolve the dispute. Within fourteen (14) days of the Party informing the Chair of its dispute, the Regional Council shall issue a decision with respect to the dispute. In reaching its decision, the Regional Council may hold a vote of Voting Members, with the Chair serving as the tiebreaker. Alternatively, the Regional Council may devise its own dispute resolution process. However, in any disputes regarding the appointment of a Voting Member, that Voting Member shall be recused from voting on the dispute. The decision of the Regional Council is a final decision.
- 7. DISPUTES WITH ABATEMENT COUNCIL.** If the Regional Council disputes the amount of Opioid Funds it receives from its allocation of the Regional Share, the Regional Council shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. However, the failure to alert the Abatement Council within this time frame shall not constitute a waiver of the Regional Council's right to seek recoupment of any deficiency in its Regional Share.
- 8. RECORDKEEPING.** The Region 4 fiscal agent shall be responsible for maintaining records consistent with the Agreement.
- 9. AUTHORIZED REPRESENTATIVES.** Each Party's representative designated below shall be the point of contact to coordinate the obligations as provided herein. The Parties designate their authorized representatives under this Agreement as follows:
  - 9.1.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.2.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.3.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.4.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.5.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.6.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.7.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.8.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.9.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.10.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
  - 9.11.** \_\_\_\_\_ designates \_\_\_\_\_ or his/her designee(s).
- 10. OBLIGATIONS OF THE PARTIES.** The Parties shall perform their respective obligations as set forth in the Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated herein by reference.

- 11. TERM.** The Agreement will commence on \_\_\_\_\_, 2022, and shall expire on the date the last action is taken by Region 4, consistent with the terms of the Colorado MOU and any Settlement. (the “Term”).
- 12. INFORMATIONAL OBLIGATIONS.** Each Party hereto will meet its obligations as set forth in § 29-1-205, C.R.S., as amended, to include information about this Agreement in a filing with the Colorado Division of Local Government; however, failure to do so shall in no way affect the validity of this Agreement or any remedies available to the Parties hereunder.
- 13. CONFIDENTIALITY.** The Parties, for themselves, their agents, employees and representatives, agree that they will not divulge any confidential or proprietary information they receive from another Party or otherwise have access to, except as may be required by law. Nothing in this Agreement shall in any way limit the ability of the Parties to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement, including confidential information or proprietary information, may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., (the “Act”). In the event of a request to a Party for disclosure of confidential materials, the Party shall advise the Parties of such request as soon as possible, but in no event longer than two (2) business days, in order to give the Parties the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If a Party objects to disclosure of any of its material, the Party shall identify the legal basis under the Act for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Party agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the Parties may tender all material to the court for judicial determination of the issue of disclosure.
- 14. GOVERNING LAW; VENUE.** This Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action relating to the Agreement will be in the applicable District Court of the State of Colorado for the county of Region 4’s fiscal agent.
- 15. TERMINATION.** The Parties enter into this Agreement to serve the public interest. If this Agreement ceases to further the public interest, a Party, in its discretion, may terminate their participation in the Agreement, in whole or in part, upon written notice to the Parties. Each Party also has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Parties.
- 16. NOTICES.** “Key Notices” under this Agreement are notices regarding default, disputes, or termination of the Agreement. Key Notices shall be given in writing and shall be deemed received if given by confirmed electronic transmission that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts; certified mail, return receipt requested, postage prepaid, three business days after being deposited in the United States mail; or overnight carrier service or personal delivery, when received. For Key Notices, the Parties will follow up any electronic transmission with a hard copy of the communication by the means described above. All other

communications or notices between the Parties that are not Key Notices may be done via electronic transmission. The Parties agree that any notice or communication transmitted by electronic transmission shall be treated in all manner and respects as an original written document; any such notice or communication shall be considered to have the same binding and legal effect as an original document. All Key Notices shall include a reference to the Agreement, and Key Notices shall be given to the Parties at the following addresses:

\_\_\_\_\_  
\_\_\_\_\_

## **17. GENERAL TERMS AND CONDITIONS**

**17.1. Independent Entities.** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

**17.2. Assignment.** This Agreement shall not be assigned by any Party without the prior written consent of all Parties. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement.

**17.3. Integration and Amendment.** This Agreement represents the entire agreement between the Parties and terminates any oral or collateral agreement or understandings. This Agreement may be amended only by a writing signed by the Parties. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and the remaining provision of this Agreement shall continue in full force and effect.

**17.4. No Construction Against Drafting Party.** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any Party merely because any provisions of the Agreement were prepared by a particular Party.

**17.5. Captions and References.** The captions and headings in this Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

**17.6. Statutes, Regulations, and Other Authority.** Any reference in this Agreement to a statute, regulation, policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the execution of this Agreement.

**17.7. Conflict of Interest.** No Party shall knowingly perform any act that would conflict in any manner with said Party's obligations hereunder. Each Party certifies that it is not engaged in any current project or business transaction, directly or indirectly, nor has it any interest, direct or indirect, with any person or business that might result in a conflict of interest in the performance of its obligations hereunder. No elected or employed member



of any Party shall be paid or receive, directly or indirectly, any share or part of this Agreement or any benefit that may arise therefrom.

**17.8. Inurement.** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

**17.9. Survival.** Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and any exhibits that require continued performance or compliance beyond the termination or expiration of this Agreement shall survive such termination or expiration and shall be enforceable against a Party if such Party fails to perform or comply with such term or condition.

**17.10. Waiver of Rights and Remedies.** This Agreement or any of its provisions may not be waived except in writing by a Party's authorized representative. The failure of a Party to enforce any right arising under this Agreement on one or more occasions will not operate as a waiver of that or any other right on that or any other occasion.

**17.11. No Third-Party Beneficiaries.** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Parties receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**17.12. Records Retention.** The Parties shall maintain all records, including working papers, notes, and financial records in accordance with their applicable record retention schedules and policies. Copies of such records shall be furnished to the Parties request.

**17.13. Execution by Counterparts; Electronic Signatures and Records.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, *et seq.* The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**17.14. Authority to Execute.** Each Party represents that all procedures necessary to authorize such Party's execution of this Agreement have been performed and that the person signing for such Party has been authorized to execute the Agreement.

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Signature blocks to be added for each entity

DRAFT



**COLORADO OPIOIDS SETTLEMENT MEMORANDUM OF UNDERSTANDING  
("MOU")**

Thursday, August 26, 2021

August 25, 2021 Attorney General version

**A. Definitions**

As used in this MOU:

1. "Approved Purpose(s)" shall mean forward-looking strategies, programming, and services to abate the opioid epidemic as identified by the terms of any Settlement. If a Settlement is silent on Approved Purpose(s), then Approved Purpose(s) shall mean those forward-looking strategies to abate the opioid epidemic identified in **Exhibit A** or any supplemental forward-looking abatement strategies added to **Exhibit A** by the Abatement Council. Consistent with the terms of any Settlement, "Approved Purposes" shall also include the reasonable administrative costs associated with overseeing and administering Opioid Funds from each of the four (4) Shares described in Section (B)(2). Reimbursement by the State or Local Governments for past expenses are not Approved Purpose(s). "Approved Purposes" shall include attorneys' fees and expenses incurred in the course of the opioid litigation that are paid through the process discussed below.
2. "County Area" shall mean a county in the State of Colorado plus the Local Governments, or portion of any Local Government, within that county.
3. "Effective Date" shall mean the date on which a court of competent jurisdiction, including any bankruptcy court, enters the first Settlement by order or consent decree. The Parties anticipate that more than one Settlement will be administered according to the terms of this MOU, but that the first entered Settlement will trigger the formation of the Abatement Council in Section (C) and the Regional Councils in Section (F)(5).<sup>1</sup>
4. "General Abatement Fund Council," or "Abatement Council," shall have the meaning described in Section (C), below.

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<sup>1</sup> For the avoidance of doubt, the McKinsey Settlement and any other Settlement that precedes the finalization of drafting this MOU are not considered a trigger for purposes of the calculation of "Effective Date."

5. “Local Government(s)” shall mean all counties in the State of Colorado and the municipalities, towns, and county and city municipal corporations that are listed in **Exhibit B**.
6. “National Opioid Settlement Administrative Fund” shall mean any fund identified by a Settlement for the national distribution of Opioid Funds.
7. “Opioid Funds” shall mean damage awards obtained through a Settlement.
8. “Opioid Settling Defendant” shall mean any person or entity, or its affiliates, that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of licit opioids.
9. “Participating Local Government(s)” shall mean all Local Governments that sign this MOU, and if required under terms of a particular Settlement, who have executed a release of claims with the Opioid Settlement Defendant(s). For the avoidance of doubt, a Local Government must sign this MOU to become a “Participating Local Government.” Local Governments may designate the appropriate individual from their entity to sign the MOU.
10. “Party” or “Parties” shall mean the State and/or Participating Local Government(s).
11. “Qualified Settlement Fund Account,” or “QSF Account,” shall mean an account set up as a qualified settlement fund, 468b fund, as authorized by Treasury Regulations 1.468B-1(c) (26 CFR §1.468B-1).
12. “Regional Council” shall have the meaning described in Section (F)(5), below.
13. “Settlement” shall mean the negotiated resolution of legal or equitable claims against an Opioid Settling Defendant when that resolution has been jointly entered into by the State and the Participating Local Governments, or by any individual Party or collection of Parties that opt to subject their Settlement to this MOU. Unless otherwise directed by an order from a United States Bankruptcy Court, “Settlement” shall also include distributions from any liquidation under Chapter 7 of the United States Bankruptcy Code or confirmed plan under Chapter 11 of the United States Bankruptcy Code that treats the claims of the State and Local Governments against an Opioid Settling Defendant.
14. “The State” shall mean the State of Colorado acting through its Attorney General and the Colorado Department of Law.

**B. Allocation of Settlement Proceeds**

1. All Opioid Funds shall be held in accordance with the terms of any Settlement. If a Settlement allows Opioid Funds to be held in a National Opioid Settlement Administrative Fund, then Opioid Funds shall be held in such National Opioid Settlement Administrative Fund. If a Settlement does not allow for Opioid Funds

to be held in a National Opioid Settlement Administrative Fund, Opioid Funds shall be held in a Colorado-specific QSF Account or, under the following limited circumstances, in the State’s Custodial Account: 1) if at the time of a Settlement, a Colorado-specific QSF Account is not yet established, although in such case, the Opioid Funds shall be transferred to the Colorado-specific QSF Account once it is established or 2) where the Abatement Fund Council determines Opioids Funds cannot be legally held in a Colorado-specific QSF Account. Regardless of whether Opioid Funds are held in a National Administrative Fund, a Colorado-specific QSF Account, or in the State’s Custodial Account, the Abatement Council shall appoint one of its members to serve as the point of contact in accordance Section (C)(4)(b)(i), below.

2. All Opioid Funds, at the time of a Settlement or at the time designated in the Settlement documents, shall be divided and distributed as follows:<sup>2</sup>
  - a. 10% directly to the State (“State Share”) for Approved Purposes in accordance with Section (D), below;
  - b. 20% directly to Participating Local Governments (“LG Share”) for Approved Purposes in accordance with Section (E), below;
  - c. 60% directly to Regions (“Regional Share”) for Approved Purposes in accordance with Section (F), below; and
  - d. 10% to specific abatement infrastructure projects (“Statewide Infrastructure Share”) for Approved Purposes in accordance with Section (G), below.
3. Distribution of the Shares in Section B(2)(a) – (d) shall be direct, meaning that funds held in accordance with Section B(1) shall be disbursed directly to the State, Participating Local Governments, Regions, and the Statewide Infrastructure Share according to the terms of this MOU.
4. All Opioid Funds, regardless of allocation, shall be used for Approved Purposes.
5. Participating Local Governments may elect to share, pool, or collaborate with their respective allocation of the LG or Regional Shares in any manner they choose, so long as such sharing, pooling, or collaboration is used for Approved Purposes and complies with the terms of this MOU and any Settlement.

**C. General Abatement Fund Council**

1. A General Abatement Fund Council (the “Abatement Council”), consisting of representatives appointed by the State and Participating Local Governments, shall

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<sup>2</sup> This MOU treats multi-county health departments as county health departments for purposes of allocation and distribution of abatement proceeds and therefore multi-county health departments shall not receive any Opioid Funds directly. Third-Party Payors (“TPPs”) are not Parties to this MOU.

be created to ensure the distribution of Opioid Funds complies with the terms of any Settlement and to provide oversight of the Opioid Funds in accordance with the terms of this MOU.

2. **Membership:** The Abatement Council shall consist of the following thirteen (13) members, who shall serve in their official capacity only.

a. **State Members:** Seven (7) members shall be appointed by the State, as authorized volunteers of the State, as follows:

- (i) A Chair to serve as a non-voting member, except in the event of a tie;
- (ii) Two (2) members who are licensed professionals with significant experience in substance use disorders;
- (iii) Three (3) members who are professionals with significant experience in prevention, education, recovery, treatment, criminal justice, rural public health issues, or government administration related to substance use disorders; and
- (iv) One (1) member or family member affected directly by the opioid crisis.

b. **Local Government Members:** Six (6) members shall be appointed by the Participating Local Governments. Local Government Members shall be a County Commissioner, Mayor, City or Town Council Member, or a professional with significant experience in prevention, education, recovery, treatment, criminal justice, rural public health issues, or governmental administration related to substance use disorders. A Participating Local Government may determine which Local Government Members are eligible (or ineligible) to serve on the General Abatement Fund Council. County Commissioners, City or Town Council Members, and/or Mayors from the Regions identified in **Exhibit C** shall collaborate to appoint Local Government Members as follows:

- (i) Two (2) Members from Regions 1, 5, 13, 14, 15, 17, 18;
- (ii) Two (2) Members from Regions 2, 6, 7, 8, 9, 10, 11, 12, 16; and
- (iii) Two (2) Members from Regions 3, 4, 19.

c. **Terms:** The Abatement Council shall be established within ninety (90) days of the Effective Date. In order to do so, within sixty (60) days of the Effective Date, the State shall appoint the State Members in accordance with Section (C)(2)(a), and after conferral with the Local Governments, CCI and CML shall jointly appoint six (6) Local Government Members for an initial term not to exceed one year. Thereafter, Members shall be

appointed in accordance with this Section and Sections (C)(2)(a) and (b) and may serve no more than two (2) consecutive two-year terms, for a total of four (4) consecutive years. Except that, beginning in the second year only, two (2) State Members and two (2) Local Government members shall be appointed for a three-year term and may serve one consecutive two-year term thereafter. The Chair shall have no term but may be replaced at the State's discretion.

- (i) If a State or Local Government Member resigns or is otherwise removed from the Abatement Council prior to the expiration of their term, a replacement Member shall be appointed within sixty (60) days in accordance with Sections (C)(2)(a) and (b).
- (ii) If a Local Government Member vacancy exists for more than sixty (60) days, the State shall appoint a replacement Local Government Member to serve until the vacancy is filled in accordance with Section (C)(2)(b).

3. **Duties:** The Abatement Council is primarily responsible for ensuring that the distribution of Opioid Funds complies with the terms of this MOU. The Abatement Council is also responsible for oversight of Opioid Funds from the Regional Share in accordance with Section (F), below, and for developing processes and procedures for the distribution and oversight of Opioid Funds from the Statewide Infrastructure Share in accordance with Section (G) below.

4. **Governance:** The Abatement Council shall draft its own bylaws or other governing documents, which must include appropriate conflict of interest and dispute resolution provisions, in accordance with the terms of this MOU and the following principles:

- a. **Authority:** The Abatement Council does not have rulemaking authority. The terms of this MOU and any Settlement, as entered by any court of competent jurisdiction, including any bankruptcy court, control the authority of the Abatement Council and the Abatement Council shall not stray outside the bounds of the authority and power vested by this MOU and any Settlement.
- b. **Administration:** The Abatement Council shall be responsible for an accounting of all Opioid Funds. The Abatement Council shall be responsible for releasing Opioid Funds in accordance with Section (B)(1) for the Regional and Statewide Infrastructure Shares in Sections (B)(2)(c) and (d) and shall develop policies and procedures for the release and oversight of such funds in accordance with Sections (F) and (G). Should the Abatement Council require assistance with providing an accounting of Opioid Funds, it may seek assistance from the State.

- (i) The Abatement Council shall appoint one of its members to serve as a point of contact for the purpose of communicating with the entity holding Opioid Funds in accordance with Section (B)(1) and in that role shall only act as directed by the Abatement Council.
- c. **Transparency:** The Abatement Council shall operate with all reasonable transparency and operate in a manner consistent with all Colorado laws relating to open records and meetings regardless of whether the Abatement Council is otherwise obligated to comply with them.
  - (i) The Abatement Council shall develop a centralized public dashboard or other repository for the publication of expenditure data from any Party or Regional Council that receives Opioid Funds in accordance with Sections (D)-(G).
  - (ii) The Abatement Council may also require outcome related data from any Party or Regional Council that receives Opioid Funds in accordance with Sections (D)-(G) and may publish such outcome related data in the centralized public dashboard or other repository described above. In determining which outcome related data may be required, the Abatement Council shall work with all Parties and Regional Councils to identify appropriate data sets and develop reasonable procedures for collecting such data sets so that the administrative burden does not outweigh the benefit of producing such outcome related data.
  - (iii) For purposes of funding the centralized public dashboard or other repository described above, the Abatement Council shall make good faith efforts to seek funding from outside sources first, otherwise the State shall provide such funding.
- d. **Collaboration:** The Abatement Council shall facilitate collaboration between the State, Participating Local Governments, Regional Councils, and other stakeholders for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado.
- e. **Decision Making:** The Abatement Council shall seek to make all decisions by consensus. In the event consensus cannot be achieved, unless otherwise required in this MOU, the Abatement Council shall make decisions by a majority vote of its Members. The Chair shall only vote in the event of a tie.
- f. **Due Process:** The Abatement Council shall develop the due process procedures required by Section (G)(3)(d) for Parties to dispute or challenge remedial actions taken by the Abatement Council for Opioid Funds from the Statewide Infrastructure Share. The Abatement Council

shall also abide by the due process principles required by Section (F)(12)-(13) for Regions to dispute or challenge remedial actions taken by the Abatement Council for Opioid Funds from the Regional Share.

- g. **Legal Status:** The Abatement Council shall not constitute a separate legal entity.
- h. **Legal Representation:** To the extent permitted by law, the State shall provide legal counsel to State Members for all legal issues arising from those State Members' work on the Abatement Council. At all times, Local Government Members of the Abatement Council are entitled to receive legal representation from their respective governmental entities. In the event of a conflict, the Abatement Council and its members may retain the services of other legal counsel.
- i. **Compensation:** No member of the Abatement Council shall be compensated for their work related to the Abatement Council.

**D. State Share**

- 1. In accordance with Sections (B)(1) and (B)(2)(a), and the terms of any Settlement, the State Share shall be paid directly to the State in accordance with the terms of this Section (D).
- 2. The State maintains full discretion over distribution of the State Share anywhere within the State of Colorado, however, the State Share shall be used for Approved Purposes only. The State will work to reduce administrative costs as much as practicable.
- 3. On an annual basis, as determined by the Abatement Council, the State shall provide all expenditure data, including administrative costs, from the State Share to the Abatement Council for purposes of maintaining transparency in accordance with Section (C)(4)(c)(i). The Abatement Council may require the State to provide additional outcome-related data in accordance with Section (C)(4)(c)(ii) and the State shall comply with such requirements.
- 4. If the State disputes the amount of Opioid Funds it receives from the State Share, the State shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. Failure to alert the Abatement Council within this time frame shall not constitute a waiver of the State's right to seek recoupment of any deficiency in its State Share.

**E. LG Share**

- 1. In accordance with Sections (B)(1) and (B)(2)(b), and the terms of any Settlement, the LG Share shall be paid directly to Participating Local Governments in accordance with the terms of this Section (E).

2. Allocations to Participating Local Governments from the LG Share shall first be determined using the percentages shown in **Exhibit D**.
3. The LG Share for each County Area shall then be allocated among the county and the other Participating Local Governments within it. **Exhibit E** reflects the default allocation that will apply unless the Participating Local Governments within a County Area enter into a written agreement providing for a different allocation. The Participating Local Governments may elect to modify the allocation for a County Area in **Exhibit E**, but such modification to the allocation in **Exhibit E** shall not change a County Area's total allocation under Section (E)(2).
4. A Local Government that chooses not to become a Participating Local Government will not receive a direct allocation from the LG Share. The portion of the LG Share that would have been allocated to a Local Government that is not a Participating Local Government will instead be re-allocated to the Regional Share for the Region where the Local Government is located, in accordance with Section (F), below.
5. In the event a Participating Local Government dissolves or ceases to exist during the term of any Settlement, the allocation for that Participating Local Government from the LG Share shall be re-allocated as directed by any Settlement, and if not specified, be re-allocated to the Regional Share for the Region in which the Participating Local Government was located, in accordance with Section (F). If a Participating Local Government merges with another Participating Local Government, the allocation for that Participating Local Government from the LG Share shall be re-allocated as directed by any Settlement, and if not specified, shall be re-allocated to the successor Participating Local Government's allocation of the LG Share. If a Participating Local Government merges with a Local Government that is not a Participating Local Government, the allocation for that Participating Local Government from the LG Share shall be re-allocated as directed by any Settlement, and if not specified, be re-allocated to the Region in which the merging Participating Local Government was located, in accordance with Section (F), below.
6. A Participating Local Government may forego its allocation of the LG Share and direct its allocation to the Regional Share for the Region where the Participating Local Government is located, in accordance with Section (F) below, by affirmatively notifying the Abatement Council on an annual basis of its decision to forego its allocation of the LG Share. A Participating Local Government's election to forego its allocation of the LG Share shall carry over to the following year unless the Participating Local Government notifies the Abatement Council otherwise. If a Participating Local Government elects to forego its allocation of the LG Share, the Participating Local Government shall be excused from the reporting requirements required by Section (E)(8).
7. Participating Local Governments maintain full discretion over the distribution of their allocation of the LG Share anywhere within the State of Colorado, however,



all Participating Local Governments shall use their allocation from the LG Share for Approved Purposes only. Reasonable administrative costs for a Participating Local Government to administer its allocation of the LG Share shall not exceed actual costs or 10% of the Participating Local Government's allocation of the LG Share, whichever is less.

8. On an annual basis, as determined by the Abatement Council, all Participating Local Governments shall provide all expenditure data, including administrative costs, from their allocation of the LG Share to the Abatement Council for purposes of maintaining transparency in accordance with Section (C)(4)(c)(i). The Abatement Council may require Participating Local Governments to provide additional outcome related data in accordance with Section (C)(4)(c)(ii) and all Participating Local Governments shall comply with such requirements.
9. If any Participating Local Government disputes the amount of Opioid Funds it receives from its allocation of the LG Share, the Participating Local Government shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. Failure to alert the Abatement Council within this time frame shall not constitute a waiver of the Participating Local Government's right to seek recoupment of any deficiency in its LG Share.

#### **F. Regional Share**

1. In accordance with Sections (B)(1) and (B)(2)(c), and the terms of any Settlement, the Regional Share shall be paid to the Regions in accordance with the terms of this Section (F).
2. Participating Local Governments shall organize themselves into the Regions depicted in **Exhibit C**. Municipalities located in multiple Regions may join all or some of the Regions in which they are located according to **Exhibit C**.
3. Allocations to Regions will be distributed according to **Exhibit F**. For multi-county Regions, each Region's share listed in **Exhibit F** is calculated by summing the individual percentage shares listed in **Exhibit D** for the counties within that Region. The percentages in **Exhibit F** are based on the assumption that every Local Government in each Region becomes a Participating Local Government.
4. In the event a city, town, or other municipality that is a Participating Local Government merges, dissolves, or ceases to exist during the term of any Settlement, the allocation of the Regional Share owed to the Region in which that Participating Local Government existed shall be re-allocated as directed by any Settlement, and if not specified, shall not be modified from **Exhibit F**. If a county that is a Participating Local Government merges with another county within its Region, the allocation of the Regional Share owed to the Region in which that county existed shall be re-allocated as directed by any Settlement, and if not specified, shall not be modified from **Exhibit F**. If a county that is a Participating Local Government merges with a county in a different Region during the term of

any Settlement, the allocation of the Regional Share owed to the Region in which that county existed shall be re-allocated as directed by any Settlement, and if not specified, shall be re-allocated to the Region in which that Participating Local Government merged in accordance with **Exhibit F**.

5. Each Region must create its own Regional Council while giving consideration to the regional governance models illustrated in **Exhibit G**. The Regional Council must be formed by the Participating Local Governments within the Region and each Regional Council shall designate a fiscal agent for the Region. Regional fiscal agents shall be county or municipal governments only. All funds from the Regional Share shall be distributed to the Regional Council's identified fiscal agent for the benefit of the entire Region.
  - a. Subject to this Section F(5), each Region may draft its own intra-regional agreements, bylaws, or other governing documents to determine how the Regional Council will operate. However, each voting member of a Regional Council shall be an employee or elected official of a Participating Local Government within the applicable Region. In the case of Denver, the voting members of its Regional Council shall be appointed by the Mayor. In the case of Broomfield, the voting members of its Regional Council shall be appointed by the Broomfield City and County Manager.
  - b. The Region shall not receive any Opioid Funds from the Regional Share until the Region certifies to the Abatement Council that its Regional Council has been formed and a fiscal agent has been designated. Such certification shall be in a simple form adopted by the Region and may be made via email, so long as it includes the names and affiliations of the Regional Council's members and the designated fiscal agent.
  - c. If a Region does not form and certify its Regional Council and designate its fiscal agent within one-hundred and eighty (180) days of the Effective Date, the Abatement Council shall appoint members to the Region's Regional Council. Regional Council members appointed by the Abatement Council shall serve until the Region certifies the formation of its Regional Council to the Abatement Council.
  - d. A Region shall submit a renewed certification required by Section (F)(5)(b), above, when its membership changes.
  - e. If a membership vacancy exists on a Regional Council for more than ninety (90) days and the Regional Council is unable to fill the vacancy by its regular procedures during that time, the Abatement Council shall appoint a replacement member to serve until the Region fills the vacancy.

6. A Local Government that chooses not to become a Participating Local Government shall not receive any Opioid Funds from the Regional Share or participate in the Regional Councils described in Section (F)(5) above.
7. Each Regional Council shall make requests to the Abatement Council for Opioid Funds from their allocation of the Regional Share. Each Regional Council's request for Opioid Funds from the Regional Share shall be accompanied by a 2-year plan identifying the Approved Purposes for which the requested funds will be used by the Region anywhere within the State of Colorado. A Regional Council's 2-year plan may be amended so long as such amendments comply with the terms of this MOU and any Settlement. Any Regional Council may seek assistance from the Abatement Council for purposes of developing its 2-year plan.
8. Reasonable administrative costs for a Regional Council to administer its Region's allocation of the Regional Share shall not exceed actual costs or 10% of the Region's allocation of the Regional Share, whichever is less.
9. The Abatement Council shall release funds requested by a Regional Council in accordance with Section (B)(1) if the Regional Council's 2-year plan complies with the Approved Purposes, the terms of this MOU, and the terms of any Settlement. The Abatement Council shall not deny any funding request from a Regional Council on the basis that the Abatement Council does not approve or agree with the Approved Purposes for which a Regional Council requests Opioid Funds from the Regional Share. Nor may the Abatement Council hold up, delay, or make unreasonable requests for additional or supporting information of the Regional Council prior to releasing the requested Opioid Funds. The purpose of this MOU is to facilitate Opioid Funds to their intended recipients quickly and efficiently with minimal administrative procedure.
10. On an annual basis, as determined by the Abatement Council, each Regional Council's fiscal agent shall provide to the Abatement Council the Regional Council's expenditure data, including administrative costs, from their allocation of the Regional Share and certify to the Abatement Council that the Regional Council's expenditures were for Approved Purposes and complied with its 2-year plan. The Regional Council shall subject itself to an accounting at the Abatement Council's discretion.
  - a. The Abatement Council shall review a Regional Council's expenditure data and certification to ensure compliance with the Regional Council's 2-year plan, the Approved Purposes, and the terms of this MOU and any Settlement.
  - b. The Abatement Council shall publish the Regional Council's expenditure data, including administrative costs, from the Regional Share in accordance with Section (C)(4)(c)(i). The Abatement Council may require Regional Councils to provide additional outcome related data in

accordance with Section (C)(4)(c)(ii) and all Regional Councils shall comply with such requirements.

11. If any Regional Council disputes the amount of Opioid Funds it receives from its allocation of the Regional Share, the Regional Council shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. Failure to alert the Abatement Council within this time frame shall not constitute a waiver of the Regional Council's right to seek recoupment of any deficiency in its Regional Share.
12. If the Abatement Council has reason to believe a Region's expenditure of its allocation of the Regional Share did not comply with the Region's 2-year Plan, the Approved Purposes, the terms of this MOU or any Settlement, as described in this Section (F), or that the Region otherwise misused its allocation of the Regional Share, the Abatement Council may take remedial action against the alleged offending Region. Such remedial action is left to the discretion of the Abatement Council and may include but not be limited to, withholding future Opioids Funds owed to the offending Region or requiring the offending Region to reimburse improperly expended Opioid Funds to the Regional Share.
13. Within one hundred and twenty (120) days of the Abatement Council being formed, in accordance with Section (C)(2)(c) above, the Abatement Council shall develop and publish due process procedures for allowing a Region to challenge or dispute any remedial action taken by the Abatement Council, including timelines during which the Region may engage in such a challenge or dispute. Such due process procedures shall reflect, at a minimum, the following principles:
  - a. Upon learning of any conduct that may warrant remedial action against a Region, the Abatement Council shall first provide notice to the Region of the conduct at issue, provide the Region an opportunity to respond, and, if appropriate, cure the alleged offending conduct. If after providing the Region such notice and opportunities to respond and cure, the Abatement Council continues to believe remedial action is warranted, the Abatement Council may take such remedial action.
  - b. If the Abatement Council decides to take remedial action against an alleged offending Region, such action may only occur by a two-thirds supermajority vote of the Abatement Council. Thus, an Abatement Council made up of twelve (12) voting members requires a vote of eight (8) Members prior to taking remedial action against an alleged offending Region.
  - c. Prior to taking any remedial action against an alleged offending Region, the Abatement Council shall first provide notice to the alleged offending Region of the remedial action to be taken and the facts underlying such remedial action. The Abatement Council shall then provide the alleged

offending Region an opportunity to challenge or dispute the remedial action in accordance with, at a minimum, the principles below:

- i. The alleged offending Region may request revisions or modifications to the proposed remedial action;
  - ii. The alleged offending Region may submit a written response to and/or request a hearing before the Abatement Council, or a third-party hearing officer,<sup>3</sup> regarding the alleged offending conduct and proposed remedial action; and
  - iii. After such written responses are submitted and reviewed and/or a hearing is conducted, the alleged offending Region may submit an appeal to the Abatement Council of the decision to take remedial action.
- d. Remedial actions taken by the Abatement Council, in accordance with the due process principles detailed above, shall be considered final non-appealable orders and offending Regions may not seek judicial relief from remedial action taken by the Abatement Council, except as provided in Section (H), below.
- e. Subject to Section (H)(2), below, if any Party(ies) believes the Abatement Council violated the terms of this MOU, such Party(ies) may seek to enforce the terms of this MOU.

14. If the Abatement Council has reason to believe a Region's conduct, or the conduct of any Participating Local Government or individual in that Region, amounts to a violation of any criminal law, the Abatement Council shall refer such matters to the appropriate authorities and may consider such conduct in its determination of any remedial action to be taken.

15. If the Abatement Council has reason to believe that an individual involved in the receipt or administration of Opioid Funds from the Regional Share has violated any applicable ethics rules or codes, the Abatement Council shall not attempt to adjudicate such a violation. In such instances, the Abatement Council shall lodge a complaint with the appropriate forum for handling such ethical matters, such as a local home rule municipality's ethics board.

16. Costs associated with the Abatement Council's distribution and oversight of the Regional Share, as described above in this Section (F), including costs associated with any remedial action by the Abatement Council, shall be paid from the Statewide

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<sup>3</sup> Only an alleged offending Region may request the appointment of a third-party hearing officer to review any written responses and conduct any requested hearings. If an alleged offending Region makes such a request, the Abatement Council has sole discretion to appoint the third-party hearing officer and the alleged offending Region shall bear the cost of such review and/or hearing by the third-party hearing officer.

Infrastructure Share. The Abatement Council shall make all good faith efforts to limit such costs to the greatest extent possible.

**G. Statewide Infrastructure Share**

1. In accordance with Sections B(1) and (B)(2)(d), and the terms of any Settlement, the Statewide Infrastructure Share shall be paid to any Party or Regional Council in accordance with this Section (G).
2. The purpose of the Statewide Infrastructure Share is to promote capital improvements and provide operational assistance for developing or improving the infrastructure necessary to abate the opioid crisis anywhere within the State of Colorado. The Statewide Infrastructure Share is intended to supplement Opioid Funds received by any Party or Region.
3. Prior to distributing any Opioid Funds from the Statewide Infrastructure Share, the Abatement Council shall establish and publish policies and procedures for the distribution and oversight of the Statewide Infrastructure Share, including processes for Parties or Regions to apply for Opioid Funds from the Statewide Infrastructure Share. The Abatement Council's policies and procedures shall, at a minimum, reflect the following principles:
  - a. Opioid Funds from the Statewide Infrastructure Share shall be used for Approved Purposes only;
  - b. Opioid Funds from the Statewide Infrastructure Share shall be paid directly to the appropriate state agencies (including but not limited to the Colorado Department of Law), Regional fiscal agents, or Participating Local Governments only;
  - c. Distribution and oversight of the Statewide Infrastructure Share shall comply with the terms of this MOU and any Settlement;
  - d. Appropriate processes for remedial action will be taken against Parties or Regions that misuse Opioid Funds from the Statewide Infrastructure Share. Such processes shall include procedures for alleged offending Parties or Regions to challenge or dispute such remedial action; and
  - e. Limitations on administrative costs to be expended by recipients for administering Opioid Funds received from the Statewide Infrastructure Fund, not to exceed actual costs expended by the recipient or 10% of the amount received, whichever is less.
4. The distribution and oversight policies and procedures developed by the Abatement Council, in accordance with Section (G)(3), shall be non-appealable orders and no Party or Region may seek judicial relief related to the distribution and oversight of the Statewide Infrastructure Share.

5. On an annual basis, as determined by the Abatement Council, any Party or Regional Council that receives funds from the Statewide Infrastructure Share shall provide all expenditure data, including administrative costs, related to any Opioid Funds it received from the Statewide Infrastructure Share and subject itself to an accounting as required by the Abatement Council. The Abatement Council shall publish all expenditure data from the Statewide Infrastructure Share in accordance with Section (C)(4)(c)(i). The Abatement Council may require the Parties or Regional Councils that receive funds from the Statewide Infrastructure Share to provide additional outcome related data in accordance with Section (C)(4)(c)(ii) and the Parties or Regional Councils shall comply with such requirements.
6. Costs associated with the Abatement Council's distribution and oversight of the Statewide Infrastructure Share, as described in this Section (G), shall be paid for from the Statewide Infrastructure Share. The Abatement Council shall make all good faith efforts to limit such costs to the greatest extent possible.

## **H. General Terms**

1. All Parties and Regional Councils shall maintain all records related to the receipt and expenditure of Opioid Funds for no less than five (5) years and shall make such records available for review by the Abatement Council, any other Party or Regional Council, or the public. Records requested by the public shall be produced in accordance with Colorado's open records laws. Records requested by the Abatement Council or another Party or a Regional Council shall be produced within twenty-one (21) days of the date the record request was received. This requirement does not supplant any Party or Regional Council's obligations under Colorado's open records laws.
2. If any Party(ies) believes the Abatement Council has violated the terms of this MOU, the alleging Party(ies) may seek to enforce the terms of this MOU, provided the alleging Party(ies) first provides notice to the Abatement Council of the alleged violation and a reasonable opportunity to cure the alleged violation. In such an enforcement action, the alleging Party(ies) may only seek to enforce the terms of the MOU against the State and the Participating Local Governments from which the Local Government Members of the Abatement Council were appointed and may only seek declaratory and/or injunctive relief. In defense of such an enforcement action, the State's Members of the Abatement Council shall be represented by the State and the Local Government Members shall be represented by the Participating Local Governments from which the Local Government Members were appointed. In the event of a conflict, the Abatement Council and its Members may seek outside representation to defend itself against such an enforcement action.
3. If any Party(ies) believes another Party(ies), not including the Abatement Council, violated the terms of this MOU, the alleging Party(ies) may seek to enforce the terms of this MOU in the court in which any applicable Settlement(s) was entered, provided the alleging Party(ies) first provide the alleged offending Party(ies)

notice of the alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). In such an enforcement action, any alleging Party or alleged offending Party(ies) may be represented by their respective public entity in accordance with Colorado law.

4. Nothing in this MOU shall be interpreted to waive the right of any Party to seek judicial relief for conduct occurring outside the scope of this MOU that violates any Colorado law. In such an action, the alleged offending Party(ies), including the Abatement Council, may be represented by their respective public entities in accordance with Colorado law. In the event of a conflict, any Party, including the Abatement Council and its Members, may seek outside representation to defend itself against such an action.
5. If any Party(ies) believes another Party(ies), Region(s), or individual(s) involved in the receipt, distribution, or administration of Opioids Funds has violated any applicable ethics codes or rules, a complaint shall be lodged with the appropriate forum for handling such matters, such as a local home rule municipality's ethics board.
6. If any Party(ies) believes another Party(ies), Region(s), or individual(s) involved in the receipt, distribution, or administration of Opioid Funds violated any Colorado criminal law, such conduct shall be reported to the appropriate criminal authorities.
7. Venue for any legal action related to this MOU shall be in a court of competent jurisdiction where any applicable Settlement(s) is entered.
8. Because recovery under the terms of different Settlement(s) may vary depending on the number of Parties required to effectuate a Settlement, the Parties may conditionally agree to sign on to the MOU through a letter of intent, resolution or similar written statement, declaration or pronouncement declaring their intent to sign on to the MOU if the threshold for Party participation in a specific Settlement is achieved.<sup>4</sup>
9. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this MOU. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, *et seq.* The Parties agree not to deny the legal effect or enforceability of the MOU solely because it is in electronic form or

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<sup>4</sup> For instance, the July 21, 2021 "Distributor Settlement Agreement" includes a "Subdivision Settlement Agreement Form" that, once filled out and executed, is meant to indicate that Local Government's (or Subdivision's) election to participate in that Distributor Settlement and also, to require that Local Government to take steps to formally release any claim it may have against the Settling Distributors. With regard to the Distributor Settlement Agreement or any other Settlements that include a form similar to the Subdivision Settlement Agreement Form, the Parties may still conditionally agree to sign on to the MOU if, for instance, the threshold for Party participation in a specific Settlement is achieved.



because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the MOU in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

10. Each party represents that all procedures necessary to authorize such Party's execution of this MOU have been performed and that the person signing for such Party has been authorized to execute the MOU.

**I. Payment of Counsel and Litigation Expenses Through a Back-Stop Fund**

1. Some Settlements, including the McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (“Distributor”) and Johnson & Johnson/Janssen (“J&J”) settlements, may provide for the payment of all or a portion of the fees and litigation expenses owed by Participating Local Governments to counsel specifically retained to file suit in the opioid litigation. If any Settlement is insufficient to cover the fee obligations of the Participating Local Governments (as discussed and modified by Judge Polster’s Order of August 6 regarding fees for the Distributor and J&J settlements), the deficiencies will be covered as set forth in further detail below.
2. The Parties also recognize that, as in the Distributor and J&J settlements, certain Opioid Settling Defendants may offer premiums benefiting the entire state of Colorado when Participating Local Governments agree to the Settlement(s), thereby settling their claims in their on-going lawsuits. For example, below is the chart illustrating how Incentive Payment B (a 25% premium to the entire state) works in the Distributor Settlement at Section IV.F.2.b (p. 20):

Percentage of Litigating Subdivision Population that is Incentive B Eligible Subdivision Population <sup>5</sup>	Incentive Payment B Eligibility Percentage
Up to 85%	0%
85%+	30%
86+	40%
91+	50%
95+	60%
99%+	95%
100%	100%

3. If the court in *In Re: National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio), or if a Settlement establishes a common benefit fund or similar device to compensate attorneys for services rendered and expenses incurred that have benefited plaintiffs generally in the litigation (the “Common Benefit Fund”),

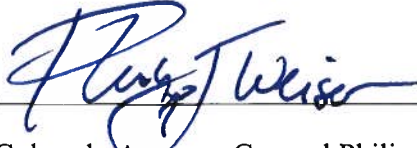
and/or requires certain governmental plaintiffs to pay a share of their recoveries from defendants into the Common Benefit Fund (“Court-Ordered Common Benefit Fund Assessment”), then the Participating Local Governments shall be required to first seek to have their attorneys’ fees and expenses paid through the Common Benefit Fund.

4. For the Distributor and J&J settlements only, counsel for Participating Local Governments shall have their expenses otherwise recoverable from Colorado Participating Local Governments compensated only through the Common Benefit Fund(s) established in those settlement(s). For the avoidance of doubt, counsel for Participating Local Governments may recover their attorneys’ fees through the Distributor and J&J settlements and through the other applicable provisions of this Section (I).
5. In addition, as a means of covering any deficiencies in paying counsel for Participating Local Governments, a supplemental Colorado Attorney Fee Back-Stop Fund shall be established. The Colorado Attorney Fee Back-Stop Fund is to be used to compensate counsel for Participating Local Governments that filed an initial complaint in the opioid litigation by September 1, 2020 (“Litigating Participating Local Governments”).
6. Payments out of the Colorado Attorney Fee Back-Stop Fund shall be determined by a committee (the “Opioid Fee and Expense Committee”). The Opioid Fee and Expense Committee shall consist of the following five (5) members:
  - a. One (1) member appointed by CCI from a litigating county or from a litigating county and city municipal corporation;
  - b. One (1) member appointed by CML from a litigating city;
  - c. One (1) member appointed jointly by CCI and CML from a non-litigating county or city;
  - d. One (1) member appointed by the Attorney General’s Office; and
  - e. One (1) neutral member jointly appointed by all of the other members listed above.
7. The Colorado Attorney Fee Back-Stop Fund shall be funded as follows from any Settlement, excluding settlements involving McKinsey and payments resulting from the Purdue or Mallinckrodt bankruptcy. For purposes only of calculating the funding of the Colorado Attorney Fee Back-Stop Fund, the Parties deem 58% of the total LG Share and Regional Share to be attributable to the Litigating Local Governments. The Colorado Attorney Fee Back-Stop Fund shall be funded by 8.7% of the total LG Share and 4.35% of the total Regional Share at the time such funds are actually received. No funds deposited into the Colorado Attorney Fee Back-Stop Fund will be taken from the Statewide Infrastructure Share or State Share.

8. Counsel for Litigating Participating Local Governments may apply to the Colorado Attorney Fee Back-Stop Fund only after applying to the Common Benefit Fund.
9. Counsel for Litigating Participating Local Governments may apply to the Colorado Attorney Fee Back-Stop Fund for only a shortfall – that is, the difference between what their fee agreements would entitle them to (as limited by this Section (I)) minus what they have already collected from the Common Benefit Fund (including both the “common benefit” and “contingency fee” calculations, if any). If they receive fees/costs for common benefit work in the national fee fund, these fees/costs will be allocated proportionately across all their local government opioid clients based on the allocation model used in the Negotiation Class website to allocate the appropriate portion to Colorado clients.
10. Counsel for Litigating Participating Local Governments are limited to being paid, at most, and assuming adequate funds are available in any Common Benefit Fund and Colorado Attorney Fee Back-Stop Fund, fees in an amount equal to 15% of the LG Share and 7.5% of the Regional Share attributable to their Colorado clients.
11. Any funds remaining in the Colorado Attorney Fee Back-Stop Fund in excess of the amounts needed to cover the fees and litigation expenses owed by Litigating Participating Local Governments to their respective counsel shall revert to the Participating Local Governments according to the allocations described in Sections (E) and (F). Every two years, the Opioid Fee and Expense Committee shall assess the amount remaining in the Colorado Attorney Fee Back-Stop Fund to determine if it is overfunded.
12. Despite the fact that a litigating entity bonus benefits the entire state, no portion of the State Share shall be used to fund the Colorado Attorney Fee Back-Stop Fund or in any other way to fund any Participating Local Government’s attorneys’ fees and expenses. Because the state did not hire outside counsel, any funds for attorneys fees that the state receives from the J&J and Distributor settlement will be deposited into the State Share.
13. To participate in the Colorado Attorney Fee Back-Stop Fund, counsel must follow the requirements of C.R.S. § 13-17-304.

This **Colorado Opioids Settlement Memorandum of Understanding** is signed

this 26 day of August, 2021 by:

  
\_\_\_\_\_  
Colorado Attorney General Philip J. Weiser

This **Colorado Opioids Settlement Memorandum of Understanding** is signed  
this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by:

\_\_\_\_\_

Name & Title \_\_\_\_\_

On behalf of \_\_\_\_\_

# Exhibit A

# **POTENTIAL OPIOID ABATEMENT APPROVED PURPOSES**

## **I. TREATMENT**

### **A. TREATMENT OF OPIOID USE DISORDER AND ITS EFFECTS**

1. Expand availability of treatment, including Medication-Assisted Treatment (MAT), for Opioid Use Disorder (OUD) and any co-occurring substance use or mental health issues.
2. Supportive housing, all forms of FDA-approved MAT, counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it.
3. Treatment of mental health trauma issues that resulted from the traumatic experiences of the opioid user (e.g., violence, sexual assault, human trafficking) and for family members (e.g., surviving family members after an overdose or overdose fatality).
4. Expand telehealth to increase access to OUD treatment, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
5. Fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
6. Scholarships for certified addiction counselors.
7. Clinicians to obtain training and a waiver under the federal Drug Addiction Treatment Act to prescribe MAT for OUD.
8. Training for health care providers, students, and other supporting professionals, such as peer recovery coaches/recovery outreach specialists, including but not limited to training relating to MAT and harm reduction.
9. Dissemination of accredited web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.
10. Development and dissemination of new accredited curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service Medication-Assisted Treatment.
11. Development of a multistate/nationally accessible database whereby health care providers can list currently available in-patient and out-patient OUD treatment services that are accessible on a real-time basis.

12. Support and reimburse services that include the full American Society of Addiction Medicine (ASAM) continuum of care for OUD.
13. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-informed practices such as adequate methadone dosing.

## **B. INTERVENTION**

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer, if necessary) a patient for OUD treatment.
2. Fund Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorder.
3. Training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on the late adolescence and young adulthood when transition from misuse to opioid disorder is most common.
4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management and/or support services.
6. Support work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
7. Create school-based contacts whom parents can engage to seek immediate treatment services for their child.
8. Develop best practices on addressing OUD in the workplace.
9. Support assistance programs for health care providers with OUD.
10. Engage non-profits and faith community as a system to support outreach for treatment.

## **C. CRIMINAL-JUSTICE-INVOLVED PERSONS**

1. Address the needs of persons involved in the criminal justice system who have OUD and any co-occurring substance use disorders or mental health (SUD/MH) issues.



2. Support pre-arrest diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH issues, including established strategies such as:
  - a. Self-referral strategies such as Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);
  - b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;
  - c. “Naloxone Plus” strategies, which work to ensure that individuals who have received Naloxone to reverse the effects of an overdose are then linked to treatment programs;
  - d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model; or
  - e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network.
3. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH issues to evidence-informed treatment, including MAT, and related services.
4. Support treatment and recovery courts for persons with OUD and any co-occurring SUD/MH issues, but only if they provide referrals to evidence-informed treatment, including MAT.
5. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH issues who are incarcerated, on probation, or on parole.
6. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate re-entry services to individuals with OUD and any co-occurring SUD/MH issues who are leaving jail or prison or who have recently left jail or prison.
7. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.

**D. WOMEN WHO ARE OR MAY BECOME PREGNANT**

1. Evidence-informed treatment, including MAT, recovery, and prevention services for pregnant women or women who could become pregnant and have OUD.
2. Training for obstetricians and other healthcare personnel that work with pregnant women and their families regarding OUD treatment.

3. Other measures to address Neonatal Abstinence Syndrome, including prevention, care for addiction and education programs.
4. Child and family supports for parenting women with OUD.
5. Enhanced family supports and child care services for parents receiving treatment for OUD.

#### **E. PEOPLE IN TREATMENT AND RECOVERY**

1. The full continuum of care of recovery services for OUD and any co-occurring substance use or mental health issues, including supportive housing, residential treatment, medical detox services, peer support services and counseling, community navigators, case management, and connections to community-based services.
2. Identifying successful recovery programs such as physician, pilot, and college recovery programs, and providing support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
3. Training and development of procedures for government staff to appropriately interact and provide social and other services to current and recovering opioid users, including reducing stigma.
4. Community-wide stigma reduction regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.
5. Engaging non-profits and faith community as a system to support family members in their efforts to help the opioid user in the family.

## **II. PREVENTION**

#### **F. PRESCRIBING PRACTICES**

1. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
2. Academic counter-detailing.
3. Continuing Medical Education (CME) on prescribing of opioids.
4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Fund development of a multistate/national prescription drug monitoring program (PDMP) that permits information sharing while providing appropriate safeguards on sharing of private information, including but not limited to:

- a. Integration of PDMP data with electronic health records, overdose episodes, and decision support tools for health care providers relating to OUD.
  - b. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database.
6. Educating dispensers on appropriate opioid dispensing.

#### **G. MISUSE OF OPIOIDS**

1. Corrective advertising/affirmative public education campaigns.
2. Public education relating to drug disposal.
3. Drug take-back disposal or destruction programs.
4. Fund community anti-drug coalitions that engage in drug-abuse prevention efforts.
5. School-based programs that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
6. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction – including staffing, educational campaigns, or training of coalitions in evidence-informed implementation.
7. School and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
8. Engaging non-profits and faith community as a system to support prevention.

#### **H. OVERDOSE DEATHS AND OTHER HARMS**

1. Increasing availability and distribution of naloxone and other drugs that treat overdoses to first responders, overdose patients, opioid users, families and friends of opioid users, schools, community navigators and outreach workers, drug offenders upon release from jail/prison, and other members of the general public.
2. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, and other members of the general public.

3. Developing data tracking software and applications for overdoses/naloxone revivals.
4. Public education relating to emergency responses to overdoses.
5. Free naloxone for anyone in the community.
6. Public education relating to immunity and Good Samaritan laws.
7. Educating first responders regarding the existence and operation of immunity and Good Samaritan laws.
8. Syringe service programs, including supplies, staffing, space, peer support services, and the full range of harm reduction and treatment services provided by these programs.
9. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.

### **III. ADDITIONAL AREAS**

#### **I. SERVICES FOR CHILDREN**

1. Support for children's services: Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

#### **J. FIRST RESPONDERS**

1. Law enforcement expenditures relating to the opioid epidemic.
2. Educating first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.
3. Increase electronic prescribing to prevent diversion and forgery.

#### **K. COMMUNITY LEADERSHIP**

1. Regional planning to identify goals for opioid reduction and support efforts or to identify areas and populations with the greatest needs for treatment intervention services.
2. Government dashboard to track key opioid-related indicators and supports as identified through collaborative community processes.

**L. STAFFING AND TRAINING**

1. Funding for programs and services regarding staff training and networking to improve staff capability to abate the opioid crisis.
2. Support infrastructure and staffing for collaborative cross-systems coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD (e.g., health care, primary care, pharmacies, PDMPs, etc.).

**M. RESEARCH**

1. Funding opioid abatement research.
2. Research improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to OUD.
3. Support research for novel harm reduction and prevention efforts such as the provision of fentanyl test strips.
4. Support for innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
5. Expanded research for swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).
6. Research expanded modalities such as prescription methadone that can expand access to MAT.

**N. OTHER**

1. Administrative costs for any of the approved purposes on this list.

# Exhibit B

## Colorado Local Governments\*

Government Name	County	Gov't Type	Multi-County
<b>Adams County</b>	<b>Adams</b>	<b>County</b>	
Arvada	Adams	City	2 counties
Aurora	Adams	City	3 counties
Bennett	Adams	City	2 counties
Brighton	Adams	City	2 counties
Commerce City	Adams	City	
Federal Heights	Adams	City	
Lochbuie	Adams	City	2 counties
Northglenn	Adams	City	2 counties
Thornton	Adams	City	2 counties
Westminster	Adams	City	2 counties
<b>Alamosa County</b>	<b>Alamosa</b>	<b>County</b>	
Alamosa	Alamosa	City	
Hooper	Alamosa	City	
<b>Arapahoe County</b>	<b>Arapahoe</b>	<b>County</b>	
Aurora	Arapahoe	City	3 counties
Bennett	Arapahoe	City	2 counties
Bow Mar	Arapahoe	City	2 counties
Centennial	Arapahoe	City	
Cherry Hills Village	Arapahoe	City	
Columbine Valley	Arapahoe	City	
Deer Trail	Arapahoe	City	
Englewood	Arapahoe	City	
Foxfield	Arapahoe	City	
Glendale	Arapahoe	City	
Greenwood Village	Arapahoe	City	
Littleton	Arapahoe	City	3 counties
Sheridan	Arapahoe	City	
<b>Archuleta County</b>	<b>Archuleta</b>	<b>County</b>	
Pagosa Springs	Archuleta	City	
<b>Baca County</b>	<b>Baca</b>	<b>County</b>	
Campo	Baca	City	
Pritchett	Baca	City	
Springfield	Baca	City	
Two Buttes	Baca	City	
Vilas	Baca	City	
Walsh	Baca	City	
<b>Bent County</b>	<b>Bent</b>	<b>County</b>	
Las Animas	Bent	City	
<b>Boulder County</b>	<b>Boulder</b>	<b>County</b>	
Boulder	Boulder	City	
Erie	Boulder	City	2 counties
Jamestown	Boulder	City	
Lafayette	Boulder	City	

## Colorado Local Governments\*

Government Name	County	Gov't Type	Multi-County
Longmont	Boulder	City	2 counties
Louisville	Boulder	City	
Lyons	Boulder	City	
Nederland	Boulder	City	
Superior	Boulder	City	2 counties
Ward	Boulder	City	
<b>Broomfield</b>	<b>Broomfield</b>	<b>City/County</b>	
<b>Chaffee County</b>	<b>Chaffee</b>	<b>County</b>	
Buena Vista	Chaffee	City	
Poncha Springs	Chaffee	City	
Salida	Chaffee	City	
<b>Cheyenne County</b>	<b>Cheyenne</b>	<b>County</b>	
Cheyenne Wells	Cheyenne	City	
Kit Carson	Cheyenne	City	
<b>Clear Creek County</b>	<b>Clear Creek</b>	<b>County</b>	
Central City	Clear Creek	City	2 counties
Empire	Clear Creek	City	
Georgetown	Clear Creek	City	
Idaho Springs	Clear Creek	City	
Silver Plume	Clear Creek	City	
<b>Conejos County</b>	<b>Conejos</b>	<b>County</b>	
Antonito	Conejos	City	
La Jara	Conejos	City	
Manassa	Conejos	City	
Romeo	Conejos	City	
Sanford	Conejos	City	
<b>Costilla County</b>	<b>Costilla</b>	<b>County</b>	
Blanca	Costilla	City	
San Luis	Costilla	City	
<b>Crowley County</b>	<b>Crowley</b>	<b>County</b>	
Crowley	Crowley	City	
Olney Springs	Crowley	City	
Ordway	Crowley	City	
Sugar City	Crowley	City	
<b>Custer County</b>	<b>Custer</b>	<b>County</b>	
Silver Cliff	Custer	City	
Westcliffe	Custer	City	
<b>Delta County</b>	<b>Delta</b>	<b>County</b>	
Cedaredge	Delta	City	
Crawford	Delta	City	
Delta	Delta	City	
Hotchkiss	Delta	City	
Orchard City	Delta	City	
Paonia	Delta	City	



## Colorado Local Governments\*

Government Name	County	Gov't Type	Multi-County
<b>Denver</b>	<b>Denver</b>	<b>City/County</b>	
<b>Dolores County</b>	<b>Dolores</b>	<b>County</b>	
Dove Creek	Dolores	City	
Rico	Dolores	City	
<b>Douglas County</b>	<b>Douglas</b>	<b>County</b>	
Aurora	Douglas	City	3 counties
Castle Pines	Douglas	City	
Castle Rock	Douglas	City	
Larkspur	Douglas	City	
Littleton	Douglas	City	3 counties
Lone Tree	Douglas	City	
Parker	Douglas	City	
<b>Eagle County</b>	<b>Eagle</b>	<b>County</b>	
Avon	Eagle	City	
Basalt	Eagle	City	2 counties
Eagle	Eagle	City	
Gypsum	Eagle	City	
Minturn	Eagle	City	
Red Cliff	Eagle	City	
Vail	Eagle	City	
<b>El Paso County</b>	<b>El Paso</b>	<b>County</b>	
Calhan	El Paso	City	
Colorado Springs	El Paso	City	
Fountain	El Paso	City	
Green Mountain Falls	El Paso	City	2 counties
Manitou Springs	El Paso	City	
Monument	El Paso	City	
Palmer Lake	El Paso	City	
Ramah	El Paso	City	
<b>Elbert County</b>	<b>Elbert</b>	<b>County</b>	
Elizabeth	Elbert	City	
Kiowa	Elbert	City	
Simla	Elbert	City	
<b>Fremont County</b>	<b>Fremont</b>	<b>County</b>	
Brookside	Fremont	City	
Cañon City	Fremont	City	
Coal Creek	Fremont	City	
Florence	Fremont	City	
Rockvale	Fremont	City	
Williamsburg	Fremont	City	
<b>Garfield County</b>	<b>Garfield</b>	<b>County</b>	
Carbondale	Garfield	City	
Glenwood Springs	Garfield	City	
New Castle	Garfield	City	

## Colorado Local Governments\*

Government Name	County	Gov't Type	Multi-County
Parachute	Garfield	City	
Rifle	Garfield	City	
Silt	Garfield	City	
<b>Gilpin County</b>	<b>Gilpin</b>	<b>County</b>	
Black Hawk	Gilpin	City	
Central City	Gilpin	City	2 counties
<b>Grand County</b>	<b>Grand</b>	<b>County</b>	
Fraser	Grand	City	
Granby	Grand	City	
Grand Lake	Grand	City	
Hot Sulphur Springs	Grand	City	
Kremmling	Grand	City	
Winter Park	Grand	City	
<b>Gunnison County</b>	<b>Gunnison</b>	<b>County</b>	
Crested Butte	Gunnison	City	
Gunnison	Gunnison	City	
Marble	Gunnison	City	
Mount Crested Butte	Gunnison	City	
Pitkin	Gunnison	City	
<b>Hinsdale County</b>	<b>Hinsdale</b>	<b>County</b>	
Lake City	Hinsdale	City	
<b>Huerfano County</b>	<b>Huerfano</b>	<b>County</b>	
La Veta	Huerfano	City	
Walsenburg	Huerfano	City	
<b>Jackson County</b>	<b>Jackson</b>	<b>County</b>	
Walden	Jackson	City	
<b>Jefferson County</b>	<b>Jefferson</b>	<b>County</b>	
Arvada	Jefferson	City	2 counties
Bow Mar	Jefferson	City	2 counties
Edgewater	Jefferson	City	
Golden	Jefferson	City	
Lakeside	Jefferson	City	
Lakewood	Jefferson	City	
Littleton	Jefferson	City	3 counties
Morrison	Jefferson	City	
Mountain View	Jefferson	City	
Superior	Jefferson	City	2 counties
Westminster	Jefferson	City	2 counties
Wheat Ridge	Jefferson	City	
<b>Kiowa County</b>	<b>Kiowa</b>	<b>County</b>	
Eads	Kiowa	City	
Haswell	Kiowa	City	
Sheridan Lake	Kiowa	City	
<b>Kit Carson County</b>	<b>Kit Carson</b>	<b>County</b>	

## Colorado Local Governments\*

Government Name	County	Gov't Type	Multi-County
Bethune	Kit Carson	City	
Burlington	Kit Carson	City	
Flagler	Kit Carson	City	
Seibert	Kit Carson	City	
Stratton	Kit Carson	City	
Vona	Kit Carson	City	
<b>La Plata County</b>	<b>La Plata</b>	<b>County</b>	
Bayfield	La Plata	City	
Durango	La Plata	City	
Ignacio	La Plata	City	
<b>Lake County</b>	<b>Lake</b>	<b>County</b>	
Leadville	Lake	City	
<b>Larimer County</b>	<b>Larimer</b>	<b>County</b>	
Berthoud	Larimer	City	2 counties
Estes Park	Larimer	City	
Fort Collins	Larimer	City	
Johnstown	Larimer	City	2 counties
Loveland	Larimer	City	
Timnath	Larimer	City	2 counties
Wellington	Larimer	City	
Windsor	Larimer	City	2 counties
<b>Las Animas County</b>	<b>Las Animas</b>	<b>County</b>	
Aguilar	Las Animas	City	
Branson	Las Animas	City	
Cokedale	Las Animas	City	
Kim	Las Animas	City	
Starkville	Las Animas	City	
Trinidad	Las Animas	City	
<b>Lincoln County</b>	<b>Lincoln</b>	<b>County</b>	
Arriba	Lincoln	City	
Genoa	Lincoln	City	
Hugo	Lincoln	City	
Limon	Lincoln	City	
<b>Logan County</b>	<b>Logan</b>	<b>County</b>	
Crook	Logan	City	
Fleming	Logan	City	
Iliff	Logan	City	
Merino	Logan	City	
Peetz	Logan	City	
Sterling	Logan	City	
<b>Mesa County</b>	<b>Mesa</b>	<b>County</b>	
Collbran	Mesa	City	
De Beque	Mesa	City	
Fruita	Mesa	City	

## Colorado Local Governments\*

Government Name	County	Gov't Type	Multi-County
Grand Junction	Mesa	City	
Palisade	Mesa	City	
<b>Mineral County</b>	<b>Mineral</b>	<b>County</b>	
City of Creede	Mineral	City	
<b>Moffat County</b>	<b>Moffat</b>	<b>County</b>	
Craig	Moffat	City	
Dinosaur	Moffat	City	
<b>Montezuma County</b>	<b>Montezuma</b>	<b>County</b>	
Cortez	Montezuma	City	
Dolores	Montezuma	City	
Mancos	Montezuma	City	
<b>Montrose County</b>	<b>Montrose</b>	<b>County</b>	
Montrose	Montrose	City	
Naturita	Montrose	City	
Nucla	Montrose	City	
Olathe	Montrose	City	
<b>Morgan County</b>	<b>Morgan</b>	<b>County</b>	
Brush	Morgan	City	
Fort Morgan	Morgan	City	
Hillrose	Morgan	City	
Log Lane Village	Morgan	City	
Wiggins	Morgan	City	
<b>Otero County</b>	<b>Otero</b>	<b>County</b>	
Cheraw	Otero	City	
Fowler	Otero	City	
La Junta	Otero	City	
Manzanola	Otero	City	
Rocky Ford	Otero	City	
Swink	Otero	City	
<b>Ouray County</b>	<b>Ouray</b>	<b>County</b>	
Ouray	Ouray	City	
Ridgway	Ouray	City	
<b>Park County</b>	<b>Park</b>	<b>County</b>	
Alma	Park	City	
Fairplay	Park	City	
<b>Phillips County</b>	<b>Phillips</b>	<b>County</b>	
Haxtun	Phillips	City	
Holyoke	Phillips	City	
Paoli	Phillips	City	
<b>Pitkin County</b>	<b>Pitkin</b>	<b>County</b>	
Aspen	Pitkin	City	
Basalt	Pitkin	City	2 counties
Snowmass Village	Pitkin	City	
<b>Prowers County</b>	<b>Prowers</b>	<b>County</b>	

## Colorado Local Governments\*

Government Name	County	Gov't Type	Multi-County
Granada	Prowers	City	
Hartman	Prowers	City	
Holly	Prowers	City	
Lamar	Prowers	City	
Wiley	Prowers	City	
<b>Pueblo County</b>	<b>Pueblo</b>	<b>County</b>	
Boone	Pueblo	City	
Pueblo	Pueblo	City	
Rye	Pueblo	City	
<b>Rio Blanco County</b>	<b>Rio Blanco</b>	<b>County</b>	
Meeker	Rio Blanco	City	
Rangely	Rio Blanco	City	
<b>Rio Grande County</b>	<b>Rio Grande</b>	<b>County</b>	
Center	Rio Grande	City	2 counties
Del Norte	Rio Grande	City	
Monte Vista	Rio Grande	City	
South Fork	Rio Grande	City	
<b>Routt County</b>	<b>Routt</b>	<b>County</b>	
Hayden	Routt	City	
Oak Creek	Routt	City	
Steamboat Springs	Routt	City	
Yampa	Routt	City	
<b>Saguache County</b>	<b>Saguache</b>	<b>County</b>	
Bonanza	Saguache	City	
Center	Saguache	City	2 counties
Crestone	Saguache	City	
Moffat	Saguache	City	
Saguache	Saguache	City	
<b>San Juan County</b>	<b>San Juan</b>	<b>County</b>	
Silverton	San Juan	City	
<b>San Miguel County</b>	<b>San Miguel</b>	<b>County</b>	
Mountain Village	San Miguel	City	
Norwood	San Miguel	City	
Ophir	San Miguel	City	
Sawpit	San Miguel	City	
Telluride	San Miguel	City	
<b>Sedgwick County</b>	<b>Sedgwick</b>	<b>County</b>	
Julesburg	Sedgwick	City	
Ovid	Sedgwick	City	
Sedgwick	Sedgwick	City	
<b>Summit County</b>	<b>Summit</b>	<b>County</b>	
Blue River	Summit	City	
Breckenridge	Summit	City	
Dillon	Summit	City	

## Colorado Local Governments\*

Government Name	County	Gov't Type	Multi-County
Frisco	Summit	City	
Montezuma	Summit	City	
Silverthorne	Summit	City	
<b>Teller County</b>	<b>Teller</b>	<b>County</b>	
Cripple Creek	Teller	City	
Green Mountain Falls	Teller	City	2 counties
Victor	Teller	City	
Woodland Park	Teller	City	
<b>Washington County</b>	<b>Washington</b>	<b>County</b>	
Akron	Washington	City	
Otis	Washington	City	
<b>Weld County</b>	<b>Weld</b>	<b>County</b>	
Ault	Weld	City	
Berthoud	Weld	City	2 counties
Brighton	Weld	City	2 counties
Dacono	Weld	City	
Eaton	Weld	City	
Erie	Weld	City	2 counties
Evans	Weld	City	
Firestone	Weld	City	
Fort Lupton	Weld	City	
Frederick	Weld	City	
Garden City	Weld	City	
Gilcrest	Weld	City	
Greeley	Weld	City	
Grover	Weld	City	
Hudson	Weld	City	
Johnstown	Weld	City	2 counties
Keenesburg	Weld	City	
Kersey	Weld	City	
La Salle	Weld	City	
Lochbuie	Weld	City	2 counties
Longmont	Weld	City	2 counties
Mead	Weld	City	
Milliken	Weld	City	
Northglenn	Weld	City	2 counties
Nunn	Weld	City	
Pierce	Weld	City	
Platteville	Weld	City	
Raymer (New Raymer)	Weld	City	
Severance	Weld	City	
Thornton	Weld	City	2 counties
Timnath	Weld	City	2 counties
Windsor	Weld	City	2 counties

## Colorado Local Governments\*

Government Name	County	Gov't Type	Multi-County
<b>Yuma County</b>	<b>Yuma</b>	<b>County</b>	
Eckley	Yuma	City	
Wray	Yuma	City	
Yuma	Yuma	City	

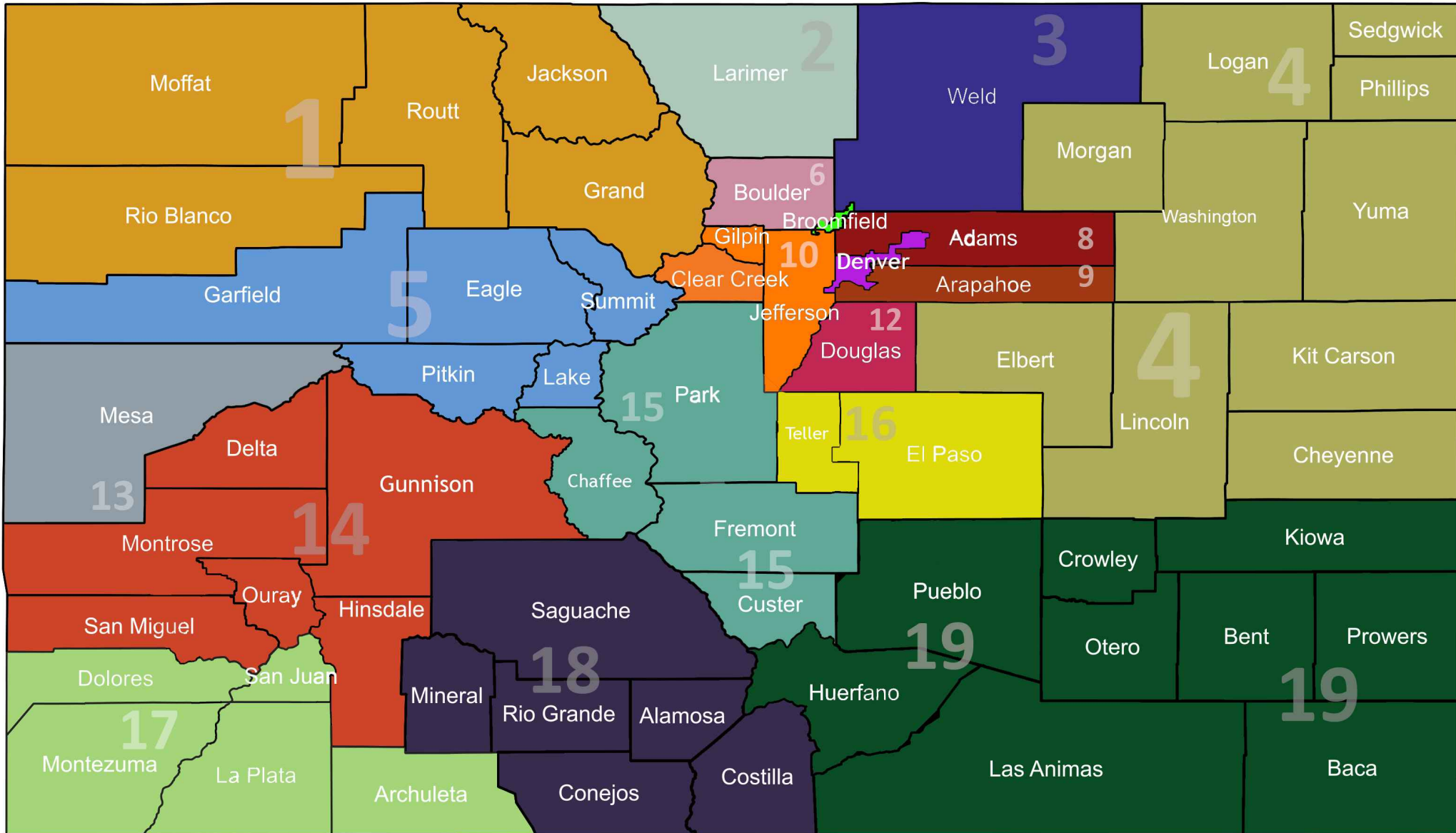
\*This list includes all 64 Colorado counties and all 271 municipalities listed in the 2019 Census. Cities located in multiple counties are listed under each corresponding county subheading. City and County of Denver and City and County of Broomfield are counted in both the city and county totals. The City of Carbonate is not included in this list, as there was no population in the 2019 Census data.

**This list will be reconciled as necessary to be consistent with the terms of Settlement(s) with Opioid Settling Defendant(s)**

# Exhibit C



# Regions for the distribution of opioid settlement funds



Region 1	Region 5	Region 9	Region 13	Region 17
Region 2	Region 6	Region 10	Region 14	Region 18
Region 3	Region 7 (Broomfield)	Region 11 (Denver)	Region 15	Region 19
Region 4	Region 8	Region 12	Region 16	

# Exhibit D

**Exhibit D - Allocations to Colorado County Areas**

County	Percentage of LG Share
Adams	9.4247%
Alamosa	0.5081%
Arapahoe	10.8071%
Archuleta	0.1370%
Baca	0.0592%
Bent	0.1133%
Boulder	5.7936%
Broomfield	1.0014%
Chaffee	0.3604%
Cheyenne	0.0159%
Clear Creek	0.1380%
Conejos	0.2108%
Costilla	0.0552%
Crowley	0.0934%
Custer	0.0412%
Delta	0.5440%
Denver	15.0042%
Dolores	0.0352%
Douglas	3.6696%
Eagle	0.6187%
El Paso	11.9897%
Elbert	0.2804%
Fremont	0.9937%
Garfield	0.8376%
Gilpin	0.0561%
Grand	0.2037%
Gunnison	0.1913%
Hinsdale	0.0112%
Huerfano	0.2505%
Jackson	0.0310%
Jefferson	10.5173%
Kiowa	0.0142%
Kit Carson	0.0940%
La Plata	0.8127%
Lake	0.0990%
Larimer	6.5211%
Las Animas	0.6304%
Lincoln	0.0819%
Logan	0.3815%
Mesa	2.8911%
Mineral	0.0039%
Moffat	0.2326%
Montezuma	0.4429%

Montrose	0.5695%
Morgan	0.4677%
Otero	0.4486%
Ouray	0.0535%
Park	0.1674%
Phillips	0.0714%
Pitkin	0.1747%
Prowers	0.1727%
Pueblo	5.6757%
Rio Blanco	0.1013%
Rio Grande	0.2526%
Routt	0.3837%
Saguache	0.0666%
San Juan	0.0097%
San Miguel	0.1005%
Sedgwick	0.0618%
Summit	0.3761%
Teller	0.6219%
Washington	0.0357%
Weld	3.8908%
Yuma	0.0992%
<b>TOTAL</b>	<b>100.0000%</b>

# Exhibit E

### Exhibit E - Intracounty Allocations<sup>1,2</sup>

The below chart depicts the default percentage that each Local Government will receive from the LG Share amount attributed to its County Area, as described in Section (E)(3) of the MOU. The chart assumes full participation by all Local Governments

Government Name	Intracounty Share
Adams County	68.3372%
Arvada (2 Counties)	0.2632%
Aurora (3 Counties)	4.6336%
Bennett (2 Counties)	0.1670%
Brighton (2 Counties)	1.4527%
Commerce City	4.7314%
Federal Heights	1.1457%
Lochbuie (2 Counties)	0.0001%
Northglenn (2 Counties)	2.0913%
Thornton (2 Counties)	10.6435%
Westminster (2 Counties)	6.5342%

Alamosa County	85.3075%
Alamosa	14.6818%
Hooper	0.0108%

Arapahoe County	42.7003%
Aurora (3 Counties)	35.5997%
Bennett (2 Counties)	0.0324%
Bow Mar (2 Counties)	0.0159%
Centennial	0.4411%
Cherry Hills Village	0.6685%
Columbine Valley	0.1601%
Deer Trail	0.0003%
Englewood	5.5850%
Foxfield	0.0372%
Glendale	1.2289%
Greenwood Village	2.8305%
Littleton (3 Counties)	8.5654%
Sheridan	2.1347%

Archuleta County	90.0864%
Pagosa Springs	9.9136%

Baca County	85.9800%
Campo	2.4443%
Pritchett	1.5680%
Springfield	7.0100%

Government Name	Intracounty Share
Two Buttes	0.4766%
Vilas	0.9070%
Walsh	1.6141%

Bent County	80.9608%
Las Animas	19.0392%

Boulder County	47.6311%
Boulder	31.7629%
Erie (2 Counties)	0.3634%
Jamestown	0.0086%
Lafayette	3.3203%
Longmont (2 Counties)	14.6833%
Louisville	1.4455%
Lyons	0.5916%
Nederland	0.1646%
Superior (2 Counties)	0.0258%
Ward	0.0030%

Broomfield County/City	100.0000%
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Chaffee County	74.8440%
Buena Vista	5.8841%
Poncha Springs	4.2369%
Salida	15.0350%

Cheyenne County	66.8002%
Cheyenne Wells	0.8586%
Kit Carson	32.3412%

Clear Creek County	92.2164%
Central City (2 Counties)	0.0000%
Empire	0.3364%
Georgetown	1.9063%
Idaho Springs	4.7625%
Silver Plume	0.7784%

Conejos County	77.1204%
Antonito	4.6338%
La Jara	2.4313%
Manassa	1.0062%
Romeo	2.4270%
Sanford	12.3812%

Government Name	Intracounty Share
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Costilla County	97.3454%
Blanca	1.2036%
San Luis	1.4509%

Crowley County	80.7081%
Crowley	4.3597%
Olney Springs	8.3683%
Ordway	0.1853%
Sugar City	6.3786%

Custer County	96.6858%
Silver Cliff	0.7954%
Westcliffe	2.5188%

Delta County	76.3512%
Cedaredge	3.6221%
Crawford	0.4938%
Delta	16.2658%
Hotchkiss	1.0963%
Orchard City	0.1473%
Paonia	2.0236%

Denver County/City	100.0000%
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Dolores County	76.3307%
Dove Creek	17.3127%
Rico	6.3566%

Douglas County	71.8404%
Aurora (3 Counties)	0.2099%
Castle Pines	0.2007%
Castle Rock	13.5204%
Larkspur	0.0856%
Littleton (3 Counties)	0.0156%
Lone Tree	5.2786%
Parker	8.8487%

Eagle County	60.8236%
Avon	7.6631%
Basalt (2 Counties)	2.2311%
Eagle	3.1376%
Gypsum	1.7469%
Minturn	0.7771%



Government Name	Intracounty Share
Red Cliff	0.0957%
Vail	23.5250%

El Paso County	18.4181%
Calhan	0.0228%
Colorado Springs	80.1161%
Fountain	0.9892%
Green Mountain Falls (2 Counties)	0.0149%
Manitou Springs	0.2411%
Monument	0.1492%
Palmer Lake	0.0455%
Ramah	0.0033%

Elbert County	86.5840%
Elizabeth	10.2633%
Kiowa	1.5455%
Simla	1.6072%

Fremont County	60.7882%
Brookside	0.0348%
Cañon City	30.9017%
Coal Creek	0.0476%
Florence	8.0681%
Rockvale	0.0687%
Williamsburg	0.0907%

Garfield County	76.3371%
Carbondale	2.4698%
Glenwood Springs	11.8141%
New Castle	1.4295%
Parachute	1.0653%
Rifle	5.2733%
Silt	1.6110%

Gilpin County	46.8613%
Black Hawk	46.3909%
Central City (2 Counties)	6.7478%

Grand County	80.1046%
Fraser	2.4903%
Granby	5.4008%
Grand Lake	0.3174%
Hot Sulphur Springs	0.1431%
Kremmling	2.9284%

Government Name	Intracounty Share
Winter Park	8.6154%

Gunnison County	88.9185%
Crested Butte	2.3562%
Gunnison	5.9501%
Marble	0.1714%
Mount Crested Butte	2.5657%
Pitkin	0.0381%

Hinsdale County	76.0940%
Lake City	23.9060%

Huerfano County	68.2709%
La Veta	11.0719%
Walsenburg	20.6572%

Jackson County	61.5339%
Walden	38.4661%

Jefferson County	58.2140%
Arvada (2 Counties)	11.9733%
Bow Mar (2 Counties)	0.0087%
Edgewater	0.6604%
Golden	3.4815%
Lakeside	0.0030%
Lakewood	15.9399%
Littleton (3 Counties)	0.6176%
Morrison	0.2205%
Mountain View	0.1344%
Superior (2 Counties)	0.0000%
Westminster (2 Counties)	5.4779%
Wheat Ridge	3.2689%

Kiowa County	93.2138%
Eads	5.3777%
Haswell	0.6402%
Sheridan Lake	0.7682%

Kit Carson County	86.3178%
Bethune	0.1841%
Burlington	12.0640%
Flagler	0.4264%
Seibert	0.0291%
Stratton	0.9012%

Government Name	Intracounty Share
Vona	0.0775%

La Plata County	66.8874%
Bayfield	1.6292%
Durango	29.2985%
Ignacio	2.1849%

Lake County	73.4523%
Leadville	26.5477%

Larimer County	56.0589%
Berthoud (2 Counties)	0.4139%
Estes Park	0.3502%
Fort Collins	18.5702%
Johnstown (2 Counties)	0.0711%
Loveland	23.4493%
Timnath (2 Counties)	0.2964%
Wellington	0.3653%
Windsor (2 Counties)	0.4248%

Las Animas County	77.8076%
Aguilar	0.0751%
Branson	0.0101%
Cokedale	0.0188%
Kim	0.0101%
Starkville	0.0087%
Trinidad	22.0696%

Lincoln County	91.3222%
Arriba	0.3444%
Genoa	0.2222%
Hugo	1.4778%
Limon	6.6333%

Logan County	72.7982%
Crook	0.0931%
Fleming	0.3413%
Iliff	0.0095%
Merino	0.4702%
Peetz	0.2029%
Sterling	26.0848%

Mesa County	60.8549%
Collbran	0.0920%

Government Name	Intracounty Share
De Beque	0.0123%
Fruita	1.6696%
Grand Junction	37.1505%
Palisade	0.2208%

Mineral County	87.6744%
City of Creede	12.3256%

Moffat County	91.7981%
Craig	8.1862%
Dinosaur	0.0157%

Montezuma County	79.6682%
Cortez	18.6459%
Dolores	0.6106%
Mancos	1.0753%

Montrose County	92.8648%
Montrose	6.5980%
Naturita	0.1551%
Nucla	0.0703%
Olathe	0.3118%

Morgan County	61.6991%
Brush	8.5522%
Fort Morgan	27.8214%
Hillrose	0.1986%
Log Lane Village	0.6424%
Wiggins	1.0863%

Otero County	60.8168%
Cheraw	0.1888%
Fowler	1.0413%
La Junta	25.9225%
Manzanola	0.6983%
Rocky Ford	8.8215%
Swink	2.5109%

Ouray County	76.0810%
Ouray	17.6541%
Ridgway	6.2649%

Park County	96.3983%
Alma	0.7780%

Government Name	Intracounty Share
Fairplay	2.8237%

Phillips County	52.3463%
Haxtun	13.9505%
Holyoke	33.1803%
Paoli	0.5228%

Pitkin County	47.1379%
Aspen	42.0707%
Basalt (2 Counties)	1.1156%
Snowmass Village	9.6757%

Prowers County	70.4524%
Granada	0.9965%
Hartman	0.3164%
Holly	4.9826%
Lamar	21.5860%
Wiley	1.6661%

Pueblo County	54.6622%
Boone	0.0019%
Pueblo	45.3350%
Rye	0.0008%

Rio Blanco County	78.2831%
Meeker	9.1326%
Rangely	12.5843%

Rio Grande County	68.0724%
Center (2 Counties)	0.7713%
Del Norte	6.7762%
Monte Vista	20.4513%
South Fork	3.9288%

Routt County	58.5353%
Hayden	1.0679%
Oak Creek	0.6360%
Steamboat Springs	39.4499%
Yampa	0.3109%

Saguache County	92.8796%
Bonanza	0.1367%
Center (2 Counties)	6.3687%
Crestone	0.0137%

Government Name	Intracounty Share
Moffat	0.3553%
Saguache	0.2460%

San Juan County	87.0423%
Silverton	12.9577%

San Miguel County	48.7493%
Mountain Village	25.7930%
Norwood	0.4078%
Ophir	0.0816%
Sawpit	0.0272%
Telluride	24.9411%

Sedgwick County	98.7331%
Julesburg	0.3830%
Ovid	0.0295%
Sedgwick	0.8544%

Summit County	57.0567%
Blue River	0.5011%
Breckenridge	26.1112%
Dillon	4.1421%
Frisco	6.5096%
Montezuma	0.0169%
Silverthorne	5.6623%

Teller County	66.1557%
Cripple Creek	17.2992%
Green Mountain Falls (2 Counties)	0.0322%
Victor	3.1685%
Woodland Park	13.3445%

Washington County	99.1320%
Akron	0.7659%
Otis	0.1021%

Weld County	51.9387%
Ault	0.3202%
Berthoud (2 Counties)	0.0061%
Brighton (2 Counties)	0.0927%
Dacono	0.6104%
Eaton	0.4573%
Erie (2 Counties)	0.8591%
Evans	4.5121%

Government Name	Intracounty Share
Firestone	1.4648%
Fort Lupton	0.8502%
Frederick	1.2228%
Garden City	0.1514%
Gilcrest	0.1580%
Greeley	30.6922%
Grover	0.0852%
Hudson	0.0066%
Johnstown (2 Counties)	1.5416%
Keenesburg	0.0215%
Kersey	0.1378%
La Salle	0.4128%
Lochbuie (2 Counties)	0.4004%
Longmont (2 Counties)	0.0154%
Mead	0.0941%
Milliken	1.5373%
Northglenn (2 Counties)	0.0030%
Nunn	0.2558%
Pierce	0.0948%
Platteville	0.3712%
Raymer (New Raymer)	0.0597%
Severance	0.0403%
Thornton (2 Counties)	0.0000%
Timnath (2 Counties)	0.0000%
Windsor (2 Counties)	1.5865%

Yuma County	75.5598%
Eckley	2.5422%
Wray	10.2148%
Yuma	11.6832%

<sup>1</sup>These allocations are based on the allocation model used in the Negotiation Class website. The allocation model is the product of prolonged and intensive research, analysis, and discussion by and among members of the court-appointed Plaintiffs' Executive Committee and Settlement Committee and their retained public health and health economics experts, as well as a series of meetings with scores of cities, counties and subdivisions. Additional information about the allocation model is available on the Negotiation Class website.

The allocations in the Negotiation Class website use two different methodologies:

**County-Level Allocation**

The allocation model uses three factors, based on reliable, detailed, and objective data collected and reported by the federal government, to determine the share of a settlement fund that each county will receive. The three factors are: (1) the amount of opioids shipped to the county, (2) the number of opioid deaths in that county, and (3) the number of people who suffer opioid use disorder in that county.

**County/Municipal-Level Allocation**

The county/municipal-level allocation is a default allocation to be used if another agreement is not reached between the county and its constituent cities. The formula uses U.S. Census Bureau data on local government spending. This data covers cities and counties for 98% of the U.S. population. If a jurisdiction lacked this data, it was extrapolated based on available data.

<sup>2</sup>The municipalities of Bow Mar, Johnstown, and Timnath were not reflected as being in multiple counties in the Negotiation Class website. The estimated allocations to those cities are based on the same methodology used in the website, in consultation with the expert. For cities in multiple counties, please see each county in which that city lies.

# Exhibit F



Regional Allocations		
Region Number	Region Description	Total State Share
1	Northwest	0.9522%
2	Larimer	6.5211%
3	Weld	3.8908%
4	Logan	1.5896%
5	North Central	2.1061%
6	Boulder	5.7936%
7	Broomfield	1.0014%
8	Adams	9.4247%
9	Arapahoe	10.8071%
10	Jefferson	10.7114%
11	Denver	15.0042%
12	Douglas	3.6696%
13	Mesa	2.8911%
14	Southwest	1.4700%
15	Central	1.5627%
16	El Paso/Teller	12.6116%
17	Southwest Corner	1.4375%
18	South Central	1.0973%
19	Southeast	7.4580%
Total		100.0000%

# Exhibit G

# Regional Governance Models

## A. Membership Structure

### Single-County Regions

1. Voting Members (Recommended List: Participating Local Governments to Decide)
  - 1 or 2 representatives appointed by the county (can be commissioners)
  - 1 representative appointed from the public health department
  - 1 representative from the county human services department
  - 1 representative appointed from law enforcement within region (sheriff, police, local city or town district attorney, etc.)
  - 1 representative appointed from a municipal or county court system within region
  - 1-3 representatives (total) appointed by the cities within the county (or other city or cities agreed upon) (can be councilmembers and mayors)
  - Such other representatives as participating counties/cities agree on (not to include providers who may be recipients of funds)
  
2. Non-Voting Members (Optional but strongly encouraged)
  - Representatives from behavioral health providers
  - Representatives from health care providers
  - Recovery/treatment experts
  - Other county or city representatives
  - A representative from the Attorney General's Office
  - Community representative(s), preferably those with lived experience with the opioid crisis
  - Harm reduction experts

### Multi-County Regions

1. Voting Members (Recommended List: Participating Local Governments to Decide)
  - 1 representative appointed by each county (can be commissioners)
  - 1 representative appointed by a rotating city within each county (or other city agreed upon) (can be councilmembers and mayors)
  - 1 representative from each public health department within the region
  - 1 representative from a county human services department
  - At least 1 representative appointed from law enforcement within region (sheriff, police, local city or town district attorney, etc.)
  - 1 representative from a municipal or county court system within region
  - Such other representatives as participating counties/cities agree on (not to include providers who may be recipients of funds)
  
2. Non-Voting Members (Optional)
  - Representatives from behavioral health providers

- Representatives from health care providers
- Recovery/treatment experts
- Other county or city representatives
- A representative from the Attorney General’s Office
- Community representative(s), preferably those with lived experience with the opioid crisis.
- Harm reduction experts

Single-County Single-City Regions (Denver & Broomfield)

1. Voting Members (Recommended List: Participating Local Government to Decide)<sup>1</sup>

- 1 representative appointed by the city and county
- 1 representative appointed from the public health department
- 1 representative from the county human services department
- 1 representative appointed from law enforcement within region (sheriff, police, district attorney, etc.)
- 1 representative appointed from a municipal or county court system within region
- Such other representatives as participating counties/cities agree on (not to include providers who may be recipients of funds)

2. Non-Voting Members (Optional)

- Representatives from behavioral health providers
- Representatives from health care providers
- Recovery/treatment experts
- Other county or city representatives
- A representative from the Attorney General’s Office
- Community representative(s), preferably those with lived experience with the opioid crisis.
- Harm reduction experts

**B. Member Terms**

- Regions may establish terms of appointment for members. Appointment terms may be staggered.

**C. Procedures**

- Regions will be governed by an intergovernmental agreement (“IGA”) or memorandum of understanding (“MOU”).
- Regions may adopt the Model Colorado Regional Opioid Intergovernmental Agreement, attached here as Exhibit G-1, in its entirety or alter or amend it as they deem appropriate.

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<sup>1</sup> In Denver, the Mayor shall make voting member appointments to the Regional Council. In Broomfield, the City and County Manager shall make voting member appointments to the Regional Council.

- Regions may establish their own procedures through adoption of bylaws (model bylaws to be made available).
- Meetings of regional board/committee shall be open to the public and comply with the Colorado Open Meetings Law (including requirement to keep minutes).

**D. Financial Responsibility/Controls**

- A local government entity shall nominate and designate a fiscal agent for the Region.
- A Regional fiscal agent must be appointed by the Regional Council on an annual basis. A Regional fiscal agent may serve as long as the Regional Council determines is appropriate, including the length of any Settlement that contemplates the distribution of Opioid Funds within Colorado. However, the Regional fiscal agent also can change over time.
- Regional fiscal agents must be a board of county commissioners or a city or town council or executive department, such as a department of finance.
- Yearly reporting by fiscal agent (using standard form) to the Abatement Council.
- All documents subject to CORA.

**E. Conflicts of Interest**

- Voting members shall abide by the conflict-of-interest rules applicable to local government officials under state law.

**F. Ethics Laws**

- Voting members shall abide by applicable state or local ethics laws, as appropriate.

**G. Authority**

- The Regional Council for each region shall have authority to decide how funds allocated to the region shall be distributed in accordance with the Colorado MOU and shall direct the fiscal agent accordingly.
- Any necessary contracts will be entered into by the fiscal agent, subject to approval by the Regional Council.

**H. Legal Status**

- The region shall not be considered a separate legal entity, unless the Participating Local Governments decide, through an IGA, to create a separate governmental entity.

# Exhibit G-1

**MODEL COLORADO REGIONAL OPIOID**  
**INTERGOVERNMENTAL AGREEMENT<sup>2</sup>**

**THIS MODEL COLORADO REGIONAL OPIOID INTERGOVERNMENTAL AGREEMENT** (the “Regional Agreement”) is made between \_\_\_\_\_, a Participating Local Government, as defined in the Colorado MOU, in the \_\_\_\_\_ Region (“\_\_\_\_\_”) and \_\_\_\_\_, a Participating Local Government in the \_\_\_\_\_ Region, (“\_\_\_\_\_”), individually herein a “Regional PLG” and collectively the “Regional PLGs.””

**RECITALS**

**WHEREAS**, the State of Colorado and Participating Local Governments executed the Colorado Opioids Summary Memorandum of Understanding on \_\_\_\_\_ 2021 (the “Colorado MOU”), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado;

**WHEREAS**, the Regional Agreement assumes and incorporates the definitions and provisions contained in the Colorado MOU, and the Regional Agreement shall be construed in conformity with the Colorado MOU<sup>3</sup>;

**WHEREAS**, all Opioid Funds, regardless of allocation, shall be used for Approved Purposes;

**WHEREAS**, Participating Local Governments shall organize themselves into Regions, as further depicted in **Exhibit E** to the Colorado MOU;

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<sup>2</sup> This Model Regional Agreement is meant to serve as an example for the various Regions and to facilitate the flow of Opioid Funds to their intended purposes. Regions are free to adopt this Regional Agreement in its entirety or alter or amend it as they deem appropriate.

<sup>3</sup> When drafting agreements like this Regional Agreement, Regional PLGs should be conscious of the definitions used therein so as not to confuse such definitions with those used in the Colorado MOU. The Definitions in the Colorado MOU shall supersede any definitions used by Regional PLGs in a Regional Agreement.

**WHEREAS**, Regions may consist of Single-County Regions, Multi-County Regions, or Single County-Single City Regions (Denver and Broomfield).

**WHEREAS**, there shall be a 60% direct allocation of Opioid Funds to Regions through a Regional Share;

**WHEREAS**, each Region shall be eligible to receive a Regional Share according to **Exhibit C** to the Colorado MOU;

**WHEREAS**, the Colorado MOU establishes the procedures by which each Region shall be entitled to Opioid Funds from the Abatement Council and administer its Regional Share allocation;

**WHEREAS**, the procedures established by the Colorado MOU include a requirement that each Region shall create its own Regional Council;

**WHEREAS**, all aspects of the creation, administration, and operation of the Regional Council shall proceed in accordance with the provisions of the Colorado MOU;

**WHEREAS**, each such Regional Council shall designate a fiscal agent from a county or municipal government within that Region;

**WHEREAS**, each such Regional Council shall submit a two-year plan to the Abatement Council that identifies the Approved Purposes for which the requested funds will be used, and the Regional Council's fiscal agent shall provide data and a certification to the Abatement Council regarding compliance with its two-year plan on an annual basis;

**WHEREAS**, the Regional Agreement pertains to the procedures for the Regional PLGs to establish a Regional Council, designate a fiscal agent, and request and administer Opioid Funds in a manner consistent with the Colorado MOU;



**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Regional PLGs incorporate the recitals set forth above and agree as follows:

1. **DEFINITIONS**. The defined terms used in this Regional Agreement shall have the same meanings as in the Colorado MOU<sup>4</sup>. Capitalized terms used herein and not otherwise defined within the Regional Agreement or in the Colorado MOU shall have the meanings ascribed to them in the body of the Regional Agreement.
2. **OBLIGATIONS OF THE REGIONAL PLGS**. The Regional PLGs shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated herein by reference.
3. **REGIONAL COUNCIL**.
  - 3.1. **Purpose:** In accordance with the Colorado MOU, a Regional Council, consisting of representatives appointed by the Regional PLGs, shall be created to oversee the procedures by which a Region may request Opioid Funds from the Abatement Council and the procedures by which the allocation of its Region's Share of Opioid Funds are administered.
  - 3.2. **Membership:** The Regional Council of a Multi-County or Single County Region shall consist of the following:
    - a. **Multi-County Region:**
      - (i) **Voting Members.** Voting Members shall be appointed by the Regional PLGs. The Regional PLGs shall collaborate to appoint Regional Council members and to the extent practicable, Voting Members shall be selected from different counties and cities. No single county or city should dominate the make-up of the Regional Council. Voting Members shall be selected as follows:
        - (1) 1 representative appointed by each county (can be commissioners).
        - (2) 1 representative appointed from a rotating city within each county (or other city agreed upon) (can be councilmembers and mayors). A rotating city member shall be selected by majority vote of the cities within each county who do not have a Voting Member currently sitting on the Regional

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<sup>4</sup> See FN 2, *supra*.

Council.

- (3) 1 representative from each public health department within the region.
- (4) 1 representative from a county human services department.
- (5) At least 1 representative appointed from law enforcement within the region (sheriff, police, local city or town district attorney, etc.).
- (6) 1 representative from a municipal or county court system within the region.

**b. Single-County Region:**

- (i) **Voting Members.** Voting Members shall be appointed by the Regional PLGs. The Regional PLGs shall collaborate to appoint Regional Council members and to the extent practicable, Voting Members shall be selected from different cities within the region. No single city should dominate the make-up of the Regional Council. Voting Members shall be selected as follows:
  - (1) 1 or 2 representatives appointed by the county (can be commissioners)
  - (2) 1 representative appointed from the public health department
  - (3) 1 representative from the county human services department
  - (4) 1 representative appointed from law enforcement within region (sheriff, police, local city or town district attorney, etc.)
  - (5) 1 representative appointed from a municipal or county court system within region
  - (6) 1-3 representatives (total) appointed by rotating cities within the county (or other city or cities agreed upon) (can be councilmembers and mayors). Rotating city members shall be selected by majority vote of the cities who do not have a Voting Member currently sitting on the Regional Council.
  - (7) Such other representatives as participating counties/cities agree on (not to include providers who may be recipients of

funds)

- c. **Non-Voting Members.** For both Multi-County and Single County Regions, Non-Voting Members are optional but are strongly encouraged. Non-voting members shall serve in an advisory capacity. Any Non-Voting Members shall be appointed by the Regional PLGs and may be comprised of all or some of the following, not to include potential recipients of funds:
  - (i) Representatives from behavioral health providers.
  - (ii) Representatives from health care providers.
  - (iii) Recovery/treatment experts.
  - (iv) Other county or city representatives.
  - (v) A representative from the Attorney General's Office.
  - (vi) Community representative(s), preferably those with lived experience with the opioid crisis.
  - (vii) Harm reduction experts.
- d. **Acting Chair:** The Voting Members for both Multi-County and Single-County Regions shall appoint one member to serve as Acting Chair of the Regional Council. The Acting Chair's primary responsibilities shall be to schedule periodic meetings and votes of the Regional Council as needed and to serve as the point of contact for disputes within the Region. The Acting Chair must be either a Member from a county within a Region, such as a county commissioner or their designee, or a Member from a city or town within a Region, such as a mayor or city or town council member or their designee.
- e. **Non-Participation:** A Local Government that chooses not to become a Participating Local Government in the Colorado MOU shall not receive any Opioid Funds from the Regional Share or participate in the Regional Council.
- f. **Terms:** The Regional Council shall be established within ninety (90) days of the first Settlement being entered by a court of competent jurisdiction, including any bankruptcy court. In order to do so, within sixty (60) days of the first Settlement being entered, CCI and CML shall jointly recommend six (6) Voting Members, and so long as such recommendations comply with the terms of Section 3.2 (a) or (b), the Regional Council shall consist of CCI/CML's recommended Members for

an initial term not to exceed one year.<sup>5</sup> Thereafter, Voting Members shall be appointed in accordance with Section 3.2 (a) or (b) and shall serve two-year terms. Following the expiration of that two-year term, the Regional PLGs, working in concert, shall reappoint that Voting Member, or appoint a new Voting Member according to Section 3.2 (a) or (b).

- (i) If a Voting Member resigns or is otherwise removed from the Regional Council prior to the expiration of their term, a replacement Voting Member shall be appointed within sixty (60) days in accordance with Section 3.2 (a) or (b) to serve the remainder of the term. If the Regional PLGs are unable to fill a Voting Member vacancy within sixty (60) days, the existing Voting Members of the Regional Council at the time of the vacancy shall work collectively to appoint a replacement Voting Member in accordance with Section 3.2 (a) or (b). At the end of his or her term, the individual serving as that replacement Voting Member may be reappointed by the Regional PLGs to serve a full term consistent with this Section.
- (ii) The purpose of the two-year term is to allow Regional PLGs an increased opportunity to serve on the Regional Council. However, Regional Council members who have already served on the Regional Council may be appointed more than once and may serve consecutive terms if appointed to do so by the Regional Council.

**3.3. Duties:** The Regional Council is primarily responsible for engaging with the Abatement Council on behalf of its Region and following the procedures outlined in the Colorado MOU for requesting Opioid Funds from the Regional Share, which shall include developing 2-year plans, amending those plans as appropriate, and providing the Abatement Council with data through its fiscal agent regarding Opioid Fund expenditures. Upon request from the Abatement Council, the Regional Council may also be subject to an accounting from the Abatement Council.

**3.4. Governance:** A Regional Council may establish its own procedures through adoption of bylaws if needed. Any governing documents must be consistent with the other provisions in this section and the Colorado MOU.

**3.5. Authority:** The terms of the Colorado MOU control the authority of a Regional Council and a Regional Council shall not stray outside the bounds of the authority and power vested by the Colorado MOU. Should a Regional Council require legal assistance in determining its authority,

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<sup>5</sup> Local Governments within Multi-County or Single County Regions may decide to select initial Voting Members of the Regional Council between themselves and without CCI and CML involvement. However, the Regional Council must be established within ninety (90) days of the first Settlement being entered by a court of competent jurisdiction, including any bankruptcy court.

it may seek guidance from the legal counsel of the county or municipal government of the Regional Council's fiscal agent at the time the issue arises.

**3.6. Collaboration:** The Regional Council shall facilitate collaboration between the State, Participating Local Governments within its Region, the Abatement Council, and other stakeholders within its Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado.

**3.7. Transparency:** The Regional Council shall operate with all reasonable transparency and abide by all Colorado laws relating to open records and meetings. To the extent the Abatement Council requests outcome-related data from the Regional Council, the Regional Council shall provide such data in an effort to determine best methods for abating the opioid crisis in Colorado.

**3.8. Conflicts of Interest:** Voting Members shall abide by the conflict-of-interest rules applicable to local government officials under state law.

**3.9. Ethics Laws:** Voting Members shall abide by their local ethics laws or, if no such ethics laws exist, by applicable state ethics laws.

**3.10. Decision Making:** The Regional Council shall seek to make all decisions by consensus. In the event consensus cannot be achieved, the Regional Council shall make decisions by a majority vote of its Members.

#### **4. REGIONAL FISCAL AGENT**

**4.1. Purpose:** According to the Colorado MOU, the Regional Council must designate a fiscal agent for the Region prior to the Region receiving any Opioid funds from the Regional Share. All funds from the Regional Share shall be distributed to the Regional Council's fiscal agent for the benefit of the entire Region.

**4.2. Designation:** The Regional Council shall nominate and designate a fiscal agent for the Region by majority vote. Regional fiscal agents must be a board of county commissioners or a city or town council or executive department, such as a department of finance.

**4.3. Term:** A Regional fiscal agent must be appointed by the Regional Council on an annual basis. A Regional fiscal agent may serve as long as the Regional Council determines is appropriate, including the length of any Settlement that contemplates the distribution of Opioid Funds within Colorado.

**4.4. Duties:** The Regional fiscal agent shall receive, deposit, and make available Opioid Funds distributed from the Abatement Council and provide expenditure reporting data to the

Abatement Council on an annual basis. In addition, the Regional fiscal agent shall perform certain recordkeeping duties outlined below.

- a. **Opioid Funds:** The Regional fiscal agent shall receive all Opioid Funds as distributed by the Abatement Council. Upon direction by the Regional Council, the Regional fiscal agent shall make any such Opioid Funds available to the Regional Council.
- b. **Reporting:** On an annual basis, as determined by the Abatement Council, the Regional fiscal agent shall provide to the Abatement Council the Regional Council's expenditure data from their allocation of the Regional Share and certify to the Abatement Council that the Regional Council's expenditures were for Approved Purposes and complied with its 2-year plan.
- c. **Recordkeeping:** The Regional fiscal agent shall maintain necessary records with regard the Regional Council's meetings, decisions, plans, and expenditure data.

**4.5. Authority:** The fiscal agent serves at the direction of the Regional Council and in service to the entire Region. The terms of the Colorado MOU control the authority of a Regional Council, and by extension, the Regional fiscal agent. A Regional fiscal agent shall not stray outside the bounds of the authority and power vested by the Colorado MOU.

## **5. REGIONAL TWO-YEAR PLAN**

**5.1. Purpose:** According to the Colorado MOU, as part of a Regional Council's request to the Abatement Council for Opioid Funds from its Regional Share, the Regional Council must submit a 2-year plan identifying the Approved Purposes for which the requested funds will be used.

**5.2 Development of 2-Year Plan:** In developing a 2-year plan, the Regional Council shall solicit recommendations and information from all Regional PLGs and other stakeholders within its Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado. At its discretion, a Regional Council may seek assistance from the Abatement Council for purposes of developing a 2-year plan.

**5.3 Amendment:** At any point, a Regional Council's 2-year plan may be amended so long as such amendments comply with the terms of the Colorado MOU and any Settlement.

**6. DISPUTES WITHIN REGION.** In the event that any Regional PLG disagrees with a decision of the Regional Council, or there is a dispute regarding the appointment of Voting or Non-Voting Members to the Regional Council, that Regional PLG shall inform the Acting Chair of its dispute at the earliest

possible opportunity. In Response, the Regional Council shall gather any information necessary to resolve the dispute. Within fourteen (14) days of the Regional PLG informing the Acting Chair of its dispute, the Regional Council shall issue a decision with respect to the dispute. In reaching its decision, the Regional Council may hold a vote of Voting Members, with the Acting Chair serving as the tie-breaker, or the Regional Council may devise its own dispute resolution process. However, in any disputes regarding the appointment of a Voting Member, that Voting Member will be recused from voting on the dispute. The decision of the Regional Council is a final decision.

7. **DISPUTES WITH ABATEMENT COUNCIL.** If the Regional Council disputes the amount of Opioid Funds it receives from its allocation of the Regional Share, the Regional Council shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. However, the failure to alert the Abatement Council within this time frame shall not constitute a waiver of the Regional Council's right to seek recoupment of any deficiency in its Regional Share.
8. **RECORDKEEPING.** The acting Regional fiscal agent shall be responsible for maintaining records consistent with the Regional Agreement.
9. **AUTHORIZED REPRESENTATIVES.** Each Regional PLGs' representative designated below shall be the point of contact to coordinate the obligations as provided herein. The Regional PLGs designate their authorized representatives under this Regional Agreement as follows:
  - 9.1. \_\_\_\_\_ designates the \_\_\_\_ of the \_\_\_\_\_ or their designee(s).
  - 9.2. \_\_\_\_\_ designates the \_\_\_\_ of the \_\_\_\_\_ or their designee(s).
10. **OBLIGATIONS OF THE REGIONAL PLGS.** The Regional PLGs shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated herein by reference.
11. **TERM.** The Regional Agreement will commence on \_\_\_\_\_, and shall expire on the date the last action is taken by the Region, consistent with the terms of the Colorado MOU and any Settlement. (the "Term").
12. **INFORMATIONAL OBLIGATIONS.** Each Regional PLG hereto will meet its obligations as set forth in § 29-1-205, C.R.S., as amended, to include information about this Regional Agreement in a filing with the Colorado Division of Local Government; however, failure to do so shall in no way affect the validity of this Regional Agreement or any remedies available to the Regional PLGs hereunder.
13. **CONFIDENTIALITY.** The Regional PLGs, for themselves, their agents, employees and representatives, agree that they will not divulge any confidential or proprietary information they receive from another Regional PLG or otherwise have access to, except as may be required by law. Nothing in this Regional

Agreement shall in any way limit the ability of the Regional PLGs to comply with any laws or legal process concerning disclosures by public entities. The Regional PLGs understand that all materials exchanged under this Regional Agreement, including confidential information or proprietary information, may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., (the “Act”). In the event of a request to a Regional PLG for disclosure of confidential materials, the Regional PLG shall advise the Regional PLGs of such request in order to give the Regional PLGs the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If a Regional PLG objects to disclosure of any of its material, the Regional PLG shall identify the legal basis under the Act for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Regional PLG agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the Regional PLGs may tender all material to the court for judicial determination of the issue of disclosure.

**14. GOVERNING LAW; VENUE.** This Regional Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action relating solely to this Regional Agreement will be in the applicable District Court of the State of Colorado for the county of the Region’s fiscal agent. Venue for any legal action relating to the Colorado MOU shall be in a court of competent jurisdiction where a Settlement or consent decree was entered, as those terms are described or defined in the Colorado MOU. If a legal action relates to both a Regional Agreement and the Colorado MOU, venue shall also be in a court of competent jurisdiction where a Settlement or consent decree was entered.

**15. TERMINATION.** The Regional PLGs enter into this Regional Agreement to serve the public interest. If this Regional Agreement ceases to further the public interest, a Regional PLG, in its discretion, may terminate their participation in the Regional Agreement, in whole or in part, upon written notice to the other Regional PLGs. Each Regional PLG also has the right to terminate the Regional Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the other Regional PLGs. A Regional PLG’s decision to terminate this Regional Agreement, with or without cause, shall have no impact on the other Regional PLGs present or future administration of its Opioid Funds and the other procedures outlined in this Regional Agreement. Rather, a Regional PLG’s decision to terminate this Regional Agreement shall have the same effect as non-participation, as outlined in Section 3.2 (e).

**16. NOTICES.** “Key Notices” under this Regional Agreement are notices regarding default, disputes, or termination of the Regional Agreement. Key Notices shall be given in writing and shall be deemed



received if given by confirmed electronic transmission that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission; certified mail, return receipt requested, postage prepaid, three business days after being deposited in the United States mail; or overnight carrier service or personal delivery, when received. For Key Notices, the Regional PLGs will follow up any electronic transmission with a hard copy of the communication by the means described above. All other communications or notices between the Regional PLGs that are not Key Notices may be done via electronic transmission. The Regional PLGs agree that any notice or communication transmitted by electronic transmission shall be treated in all manner and respects as an original written document; any such notice or communication shall be considered to have the same binding and legal effect as an original document. All Key Notices shall include a reference to the Regional Agreement, and Key Notices shall be given to the Regional PLGs at the following addresses:

\_\_\_\_\_

\_\_\_\_\_

**17. GENERAL TERMS AND CONDITIONS**

- 17.1. Independent Entities.** The Regional PLGs enter into this Regional Agreement as separate, independent governmental entities and shall maintain such status throughout.
- 17.2. Assignment.** This Regional Agreement shall not be assigned by any Regional PLG without the prior written consent of all Regional PLGs. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Regional Agreement.
- 17.3. Integration and Amendment.** This Regional Agreement represents the entire agreement between the Regional PLGs and terminates any oral or collateral agreement or understandings. This Regional Agreement may be amended only by a writing signed by the Regional PLGs. If any provision of this Regional Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and the remaining provision of this Regional Agreement shall continue in full force and effect.

- 17.4. No Construction Against Drafting Party.** The Regional PLGs and their respective counsel have had the opportunity to review the Regional Agreement, and the Regional Agreement will not be construed against any Regional PLG merely because any provisions of the Regional Agreement were prepared by a particular Regional PLG.
- 17.5. Captions and References.** The captions and headings in this Regional Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Regional Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.
- 17.6. Statutes, Regulations, and Other Authority.** Any reference in this Regional Agreement to a statute, regulation, policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the execution of this Regional Agreement.
- 17.7. Conflict of Interest.** No Regional PLG shall knowingly perform any act that would conflict in any manner with said Regional PLG's obligations hereunder. Each Regional PLG certifies that it is not engaged in any current project or business transaction, directly or indirectly, nor has it any interest, direct or indirect, with any person or business that might result in a conflict of interest in the performance of its obligations hereunder. No elected or employed member of any Regional PLG shall be paid or receive, directly or indirectly, any share or part of this Regional Agreement or any benefit that may arise therefrom.
- 17.8. Inurement.** The rights and obligations of the Regional PLGs to the Regional Agreement inure to the benefit of and shall be binding upon the Regional PLGs and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Regional Agreement.
- 17.9. Survival.** Notwithstanding anything to the contrary, the Regional PLGs understand and agree that all terms and conditions of this Regional Agreement and any exhibits that require continued performance or compliance beyond the termination or expiration of this Regional Agreement shall survive such termination or expiration and shall be enforceable against a Regional PLG if such Regional PLG fails to perform or comply with such term or condition.
- 17.10. Waiver of Rights and Remedies.** This Regional Agreement or any of its provisions may not be waived except in writing by a Regional PLG's authorized representative. The failure of a

Regional PLG to enforce any right arising under this Regional Agreement on one or more occasions will not operate as a waiver of that or any other right on that or any other occasion.

**17.11. No Third-Party Beneficiaries.** Enforcement of the terms of the Regional Agreement and all rights of action relating to enforcement are strictly reserved to the Regional PLGs. Nothing contained in the Regional Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Regional PLGs receiving services or benefits pursuant to the Regional Agreement is an incidental beneficiary only.

**17.12. Records Retention.** The Regional PLGs shall maintain all records, including working papers, notes, and financial records in accordance with their applicable record retention schedules and policies. Copies of such records shall be furnished to the Parties request.

**17.13. Execution by Counterparts; Electronic Signatures and Records.** This Regional Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Regional PLGs approve the use of electronic signatures for execution of this Regional Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, *et seq.* The Regional PLGs agree not to deny the legal effect or enforceability of the Regional Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Regional PLGs agree not to object to the admissibility of the Regional Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**17.14. Authority to Execute.** Each Regional PLG represents that all procedures necessary to authorize such Regional PLG's execution of this Regional Agreement have been performed and that the person signing for such Regional PLG has been authorized to execute the Regional Agreement.

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## STAFF SUMMARY

### Board of Trustees Work Session February 9, 2022

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**DATE:** February 4, 2022

**AGENDA ITEM NUMBER:** 4

**TOPIC:** Discussion Regarding Ordinance 02-2022 to Include Certain Property into the Roberts 81 Business Improvement District

**STAFF MEMBER RESPONSIBLE:** Deborah Lee, Town Clerk

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**BACKGROUND:**

The Roberts 81 Business Improvement District (BID) was originally approved by the Board of Trustees in 2018 with Resolution No. 09-2018. The Colorado Revised State Statutes require that changes to certain aspects of the BID must be reviewed and approved by the governing body. The Roberts 81 BID governing body is the Wiggins Board of Trustees.

The benefit of the Roberts 81 BID is that it creates a reliable funding source for supplemental services and programs, such as public safety, or marketing of a neighborhood brand. Because they are self-managed and funded by the owners themselves, BIDs typically offer the ability to respond more quickly than the public sector to the changing needs of the businesses in Roberts 81.

**SUMMARY:**

The Roberts 81 Development has requested inclusion of Tract 6 of the Roberts 81 Subdivision into the Roberts 81 BID. Colorado Revised State Statute 31-25-1220 states that “The owners of property proposed to be included or excluded may file with the governing body a petition, in writing, requesting that such property be included in or excluded from the district.”

The Roberts 81 Plat is a recorded document that displays each property section, easements, and other important property characteristics to the subdivision. A business improvement district is an additional tool for a development that provides a financial structure for the development for the future maintenance, care, and operational expenses. This benefits the district and property owner by allowing for the construction and financing of the public improvements that serve the property. There will be additional inclusions as the Roberts 81 is developed. The entire “inclusion area” includes other tracts of the Roberts 81 development that have not yet been included in the BID.

Although Tract 6 is identified on the Roberts 81 recorded plat, it was not included in the Roberts 81 BID. The Roberts 81 owners would like to include Tract 6 to the BID to allow the property to receive the same benefits that the other Roberts 81 lots will receive once they are developed. At the time the BID was formed, the developer wanted and still does want the flexibility to incentivize commercial users through inclusion in the Bid. This was contemplated from the start and is why these areas were included as an inclusion area in the Operating Plan.

**FISCAL IMPACT:** Adopting this Ordinance has no negative impact on the Town's 2022 adopted budget.

**APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:**

Approving the ordinance allowing the property inclusion into the BID supports the Town's goal of supporting new commercial development in the Town of Wiggins

**QUESTIONS/INFORMATION REQUESTED FROM THE BOARD OF TRUSTEES:**

- Does the Board of Trustees have any questions of Staff?
- Does the Board of Trustless concur with staff's recommendation to bring this forward at the next regular meeting for approval?

**TOWN OF WIGGINS  
ORDINANCE NO. 02-2022**

**AN ORDINANCE INCLUDING CERTAIN PROPERTY  
INTO THE BOUNDARIES OF THE ROBERTS 81 BUSINESS  
IMPROVEMENT DISTRICT**

**WHEREAS**, the Board of Trustees for the Town of Wiggins (“Board of Trustees”) received a Petition for Inclusion of Property (“Petition”) filed pursuant to Section 31-25-1220, C.R.S. for the inclusion of certain property described in the Petition attached and made a part of this Ordinance as Exhibit “A” (the “Property”) into the Roberts 81 Business Improvement District (“District”); and

**WHEREAS**, in accord with the law, a public notice of the Petition has been given and published in *The Fort Morgan Times*, calling for a public hearing on the inclusion request set forth in the Petition, proof of publication for which is attached and made a part of this Ordinance as Exhibit “B”; and

**WHEREAS**, the Board of Trustees has conducted a Public Hearing and heard all persons having objections to the inclusion of the Property into the District; and

**WHEREAS**, the area sought to be included into the District is located entirely within the Town of Wiggins, Morgan County, Colorado, and does not include property within any other county or within any other incorporated city, town, or city and county.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS:**

**Section 1.** The Board of Trustees finds and determines that it has jurisdiction in this matter pursuant to the Business Improvement District Act, Part 12 of Article 25 of Title 31, C.R.S.

**Section 2.** The Board of Trustees finds and determines that the change in boundaries of the Roberts 81 Business Improvement District as proposed in the Petition does not adversely affect the District.

**Section 3.** Pursuant to Section 31-25-1220, C.R.S., the Board of Trustees hereby grants the Petition and orders the inclusion of the Property into the boundaries of the District.

**Section 4.** The Town Clerk is directed to file a certified copy of this Ordinance with the County Clerk and Recorder of Morgan County, Colorado.

**Section 5.** This Ordinance shall be in full force and effect into and after its final adoption and publication as required by law.

**Section 6.** The Board of Trustees deems it appropriate that this Ordinance be published by title and summary prepared by the Town Clerk and that this Ordinance shall be available for inspection and acquisition in the office of the Town Clerk.

Introduced, read, passed on first reading and ordered published this 24th day of February, 2022.

Finally passed: \_\_\_\_\_, 2022

\_\_\_\_\_  
Jeffrey Palmer, Mayor

ATTEST:

\_\_\_\_\_  
Deborah Lee, Town Clerk

I HEREBY CERTIFY, that the foregoing ordinance entitled "AN ORDINANCE INCLUDING CERTAIN PROPERTY INTO THE BOUNDARIES OF THE ROBERTS 81 BUSINESS IMPROVEMENT DISTRICT" was introduced and read at a regular meeting of the Board of Trustees of the Town of Wiggins, held on February 24, 2022, that said ordinance was passed at a regular meeting of the Board of Trustees of said Town, held on the \_\_\_\_ day of \_\_\_\_\_, 2022, and that the same was published in full in *The Fort Morgan Times*, a newspaper published and in general circulation in said Town, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Deborah Lee, Town Clerk

Exhibit A  
[copy of Petition for Inclusion of Property]



Exhibit B  
[Proof of publication]