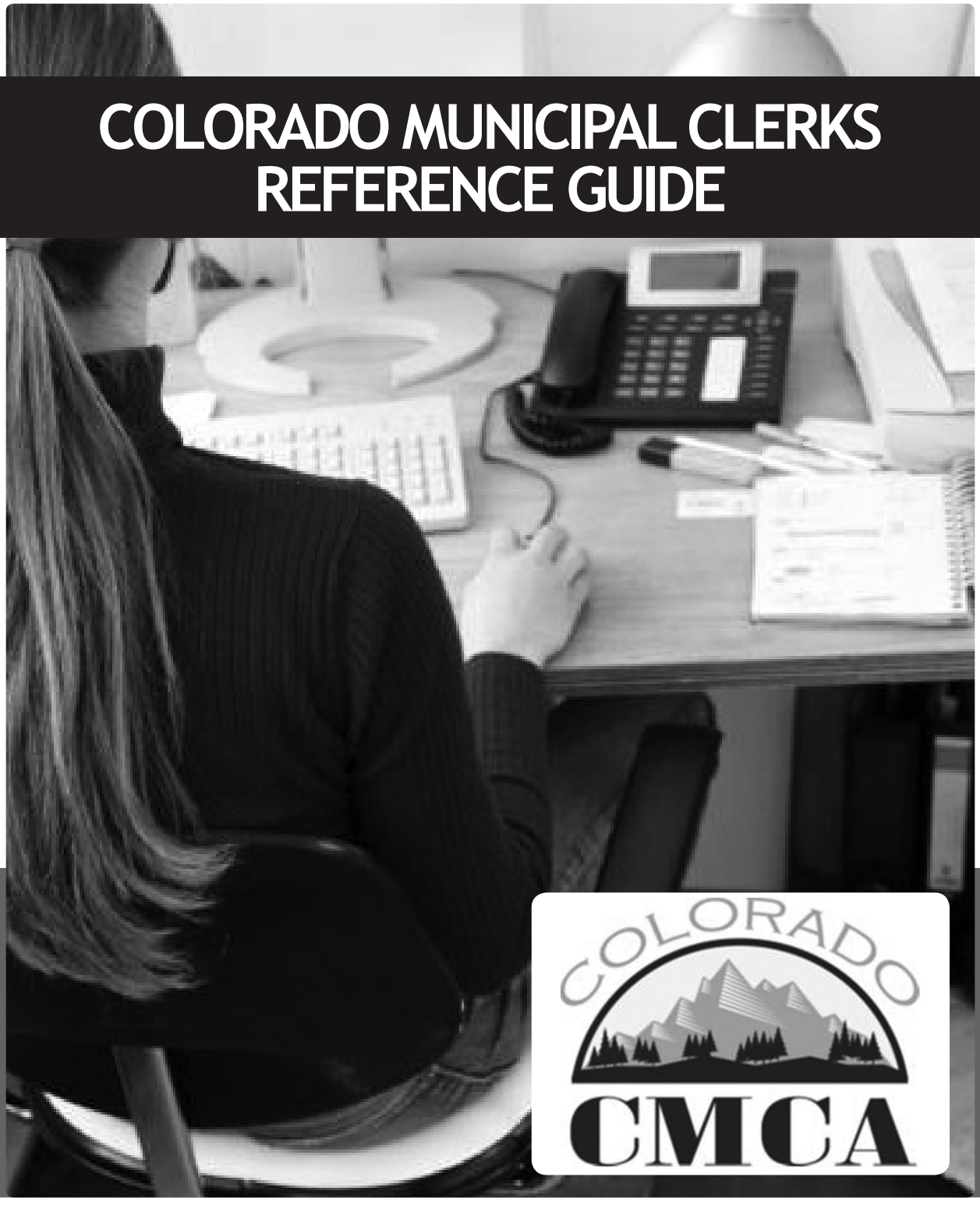
COLORADO MUNICIPAL CLERKS REFERENCE GUIDE



COLORADO CMCA

2012 REVISION

CML
COLORADO MUNICIPAL LEAGUE
The Voice of Colorado's Cities and Towns

TABLE OF CONTENTS

FOREWORD

This publication replaces the fifth edition of the *Municipal Clerks Handbook* and, like the earlier editions, is intended as a general guide to the duties of a municipal clerk. The reference guide cannot cover in detail all of the situations or duties affecting clerks. For convenience and background information, numerous legal authorities have been cited. However, it is important to bear in mind that statutes frequently change and new cases are decided by the courts. Both statutes and cases can be subject to various interpretations and may have different applications depending upon the facts and class of municipality involved. Moreover, comprehensive research into case law was not conducted for this handbook and cases are cited generally as examples only. Consequently, the clerk should consult with the municipal attorney when a legal problem or the need for legal advice arises.

The Colorado Municipal League, the Colorado Municipal Clerks Association, and the International Institute of Municipal Clerks offer a wide variety of training opportunities and materials pertaining to matters of information and concern for clerks. Networking with fellow clerks who have had experience in dealing with and resolving situations similar to your problems is extremely beneficial and provides a source of knowledge and experience not found in any statute or ordinance.

Many thanks go to the clerks who created this publication: Patti Garcia, Windsor Town Clerk; Debra Johnson, City & County of Denver Clerk; Randi Gallivan, Foxfield Town Clerk; and Kerri Bush, Englewood Deputy Clerk. The League's own staff deserves thanks as well for their work in preparing this handbook, in particular, Rachel Allen, CML Staff Attorney; Abby Kirkbride, CML Law Clerk; and Traci Stoffel, CML Communications & Design Specialist.

Sam Mamet
Executive Director
Colorado Municipal League

Nancy Varra
Lousville City Clerk
Colorado Municipal Clerks Association President

October 2012

Additional copies of this publication may be purchased at www.cml.org.

This page intentionally left blank.

CHAPTER 1: INTRODUCTION

SCOPE OF THE PUBLICATION

This reference is intended as a general guide to the wide range of responsibilities and problems that are typically handled by municipal clerks. The location of the Office of the Municipal Clerk, the hours the office is open to the public, and the responsibilities of that office are determined by the size of the municipality and the amount of work required to get the job done. The clerk of a large municipality may have a deputy clerk and, in some instances, one or more assistant clerks, whereas the clerk in a very small municipality may not have a conventional office nor keep the office open eight hours a day, five days a week. Although this publication cannot possibly touch upon every subject affecting a clerk's role in municipal government, it does cover many of the areas that are of particular concern to clerks.

In view of the broad scope of this guide, clerks are cautioned not to rely upon it for definitive answers to specific legal problems. The reference is intended for use as general background information. It does not substitute for the advice of the municipal attorney. While footnotes are provided for reference purposes, legal authorities cited in the footnotes are intended to facilitate — not to replace — communication between the municipal clerk and the municipal attorney.

REFERENCING COLORADO STATUTES

Provisions of the state statutes significantly affect all municipalities; therefore, municipal clerks should become comfortable finding and understanding relevant statutory material.

The current version of the official Colorado statutes is referred to as "Colorado Revised Statutes" (C.R.S.).[1] They consist of all general and permanent laws that have been adopted by the Colorado General Assembly and are compiled in red-covered volumes, which are updated by annual pocket supplements or replacement volumes as necessary. By statute,[2] the C.R.S. and the periodic supplements to it are distributed to municipal officials.

The statutes are organized by subject matter in major parts called "titles." Generally, one volume of the statutes will contain two or three different titles. Titles are further broken down into articles, articles into parts, and parts into individual sections. A statute is referenced to by a three-part hyphenated number. The first number indicates the title and the second the article. The third is a three- or four-digit number that indicates the section; in addition, the hundreds' place of this section number indicates the part. For example, "Definitions" for many terms used in municipal law are found in section 101, entitled "General Provisions," of Article 1 of Title 31. This statute is thus formally cited as C.R.S. § 31-1-101.

FOR EXAMPLE: C.R.S. § 31-1-101.

Title	Article	Section
31	1	101 *(Because the first number of the section is "1," this is referred to as "Part 1.")*

Many sections have internal divisions indicated by parentheses: For example, C.R.S. § 31-1-101(3) is the subsection which defines "clerk."

For the municipal clerk, the most important titles of the statutes are Title 31, which deals specifically with municipal government, and Title 29, which contains provisions applicable to local governments generally. Municipal clerks also frequently will use Title 24. Although this title as a whole concerns state government, it contains several articles that apply to local governments as well (for example, Article 10 on governmental immunity, Article 70 on publications, Article 72 on public records, and Article 75 on public funds). Finally, Title 1, in Volume l, contains the Uniform Election Code, which is applicable to coordinated elections (Articles 1 through 13 of Title 1), and the Colorado Fair Campaign Practices Act (Article 45 of Title 1). Note that Volume 13 of the statutes contains a subject index. Although not infallible, this index can often be used to locate relevant statutes by looking under "common sense" subject matter designations.

In using the statutes, it is critical to locate the current version of any particular provision. The official statutes are published with annual updates. The Colorado Revised Statutes Annotated are partially out of date for a portion of the year since there is a lag between the legislative session and the publication of the annual edition of the official statutes.

To fill this gap, the Colorado Municipal League provides information on pending and recently adopted legislation, both through regular publications (the biweekly *CML Newsletter* and, while the General Assembly is in session, weekly

1 As provided for in C.R.S. § 2-5-118(1)(a), the red-covered statutes are the official statutes of the State of Colorado. The Colorado Revised Statutes also can be obtained at *www.lexisnexis.com/hottopics/colorado*.

2 C.R.S. § 2-5-116.

electronic *Statehouse Report*) and through responses to specific inquiries. The League also publishes a collection of the laws of special interest to municipalities that are adopted each session. The annual *Colorado Laws Enacted* usually is available online at *www.cml.org* in the summer, a few weeks after the legislative session adjourns. The new edition of the C.R.S. (and separately bound "Session Laws") generally are not published until late fall.

INTRODUCTION TO MUNICIPAL LAW: THE MUNICIPALITY'S PLACE IN THE LEGAL UNIVERSE

FEDERAL LAW — The states (and their political subdivisions, such as municipalities) must always operate within the constraints of the federal constitution, which is the supreme "law of the land."[3] Legislation by the U.S. Congress must be pursuant to "enumerated powers" set out in the federal constitution. Where Congress has such legislative power, its legislation governs over state constitutional provisions and state and local legislation.[4]

STATE LAW — The state constitution is the ultimate authority for state law. Thus, actions of all municipalities are always subject to both the state and federal constitutions. In addition, state legislation may or may not control the activities of a municipality, depending on the classification of the municipality, and — in the case of home rule municipalities — on the subject matter of the legislation, as well. The general classifications of municipalities are (1) statutory municipalities; (2) special territorial charter municipalities; and (3) home rule municipalities. Each of these major classifications will be discussed here.

STATUTORY MUNICIPALITIES — Except as specifically limited by state constitutional provisions,[5] the state legislature has complete power over the creation, organization, and power of statutory municipalities. Also, statutory municipalities have only those powers granted by state legislation. While grants of power may be implied in some circumstances, the courts generally construe state legislation strictly against finding implied grants of power for statutory municipalities.[6]

The most basic source of Colorado legislation governing statutory municipalities is Title 31, although many applicable laws appear elsewhere in the statutes. Provisions for the general organization and structure of statutory municipalities are as follows:

- Cities, mayor–council form: C.R.S. §§ 31-4-101 to 31-4-113.
- Cities, council–manager form: C.R.S. §§ 31-4-201 to 31-4-221.

Note that C.R.S. § 31-4-204 provides that all laws applicable to a municipality before it adopts the council–manager form of government, which are not inconsistent with this Part, continue to apply after the council–manager form of government is adopted. This provision presumably incorporates the provisions dealing with mayor–council cities (C.R.S. §§ 31-4-101 to 31-4-113), which address subjects the statutes in Part 2 (C.R.S. §§ 31-4-201 to 31-4-221) do not address. Note also that just because a municipality has a city manager or city administrator does not necessarily mean that it is operating under these statutes, as the mayor–council form of government also allows for the appointment of "such other officers, including a city administrator, as may be necessary or desirable." C.R.S. § 31-4-l07(2)(a).

- Towns: C.R.S. §§ 31-4-301 to 31-4-307.

Traditionally, the legislative classification of statutory municipalities as cities or towns is based on population: a town has a population of 2,000 or fewer; a city has a population of more than 2,000. Towns or cities that have gained or lost population, but have not reorganized as cities or towns, respectively, will be exceptions to this rule, as reorganization is optional. See the definitions of "city" and "town" at C.R.S. §§ 31-1-101(2) and (13). Statutes dealing with the classification of cities and towns (including procedures for reorganizing due to changes in population) appear at C.R.S. §§ 31-1-201 to 31-1-207. The differences between statutory cities and towns are mostly a matter of structure and organization. There are only a few differences in substantive powers and procedures.

SPECIAL TERRITORIAL CHARTER MUNICIPALITIES — There is one "special territorial charter" municipality in Colorado: Georgetown.[7] Georgetown operates under a charter granted by the territorial government of Colorado, which may be amended from time to time by the General Assembly.[8] Historically, a territorial charter has been as strictly

---

3 U.S. Const. art. VI, § 2.

4 *Garcia v. San Antonio Metropolitan Transit Auth.,* 469 U.S. 528 (1985). This 1985 U.S. Supreme Court decision overruled the prior rule of *National League of Cities v. Usery*, 426 U.S. 833 (1976) that held a state possessed "traditional governmental powers" with which not even Congress could interfere.

5 Examples of state constitutional limitations on state legislative power over municipalities include: art. V, § 35 (General Assembly cannot delegate to any special commission or private corporation the power to supervise or interfere with municipal affairs); and art. X, § 7 (General Assembly cannot impose taxes for municipal purposes).

6 Dillon, *Municipal Corporations* § 55 (2d ed. 1873); McQuillin, 2 *Municipal Corporations* § 10.09 (3d ed.). *See also Phillips v. Denver,* 34 P. 902 (Colo. 1893); *Durango v. Reinsberg,* 26 P. 820 (Colo. 1891); *Aurora v. Bogue*, 489 P.2d 1295 (Colo. 1971); *Sheridan v. Englewood*, 609 P.2d 108 (Colo. 1980). See C.R.S. § 31-15-101(2) for a general grant of implied and incidental powers.

7 Prior to adopting home rule charters in December of 1991 and January 2001 respectively, Central City and Black Hawk were special territorial charter municipalities.

8 For example, Black Hawk's territorial charter was amended by the General Assembly in the 1993 legislative session. Note that an

construed against the municipality as the statutes are against statutory cities and towns: i.e., in general no grant of power will be implied, but must be express.[9] The territorial charter is thus quite limiting compared to a home rule charter. Unlike statutory municipalities, however, territorially chartered municipalities are not bound by the body of statutory law found in Title 31, which addresses matters of local concern. These laws are merely "available" to the territorially chartered municipality.[10]

HOME RULE MUNICIPALITIES — This classification of municipalities has a special relationship to state legislation, a relationship governed by Article XX of the state constitution.

Further information on municipal home rule in Colorado can be found in the *Home Rule Handbook* (1999), *Overview of Municipal Home Rule* (2006), *A History of Home Rule* (2009), and *Matrix of Colorado Home Rule Charters* (2008), published by the Colorado Municipal League.

The authority of a home rule municipality to act in a certain area absent statutory authority or in conflict with existing legislation turns on whether the subject matter is characterized as being of local and municipal concern, of statewide concern, or of mixed local and state concern. In *City and County of Denver v. State* (hereinafter *Denver v. State*), the Colorado Supreme Court set forth a number of factors to consider in determining whether a matter is of local, statewide, or mixed concern. The factors include the need for statewide uniformity in regulation, the extraterritorial impact of the regulation, whether the matter is one traditionally governed by state or by local government, and whether the Colorado Constitution specifically commits a particular matter to state or local regulation. Furthermore, a legislative declaration that a matter is of statewide concern may be given some weight in the court's determination, but it is not binding.[11]

In matters of local and municipal concern, the governing body of a home rule municipality is free to act without statutory authority (but within the constraints of its charter and the federal and state constitutions). Such local actions by home rule municipalities will also supersede any conflicting state statutes.[12] But if a home rule municipality does not take affirmative action by charter provision or by ordinance, the home rule municipality will remain under the control of applicable state laws in that area.[13] In addition, unless precluded by its charter, a home rule municipality may generally avail itself of statutory grants of power. Whenever statutes are cited or discussed, clerks for home rule municipalities should bear in mind that the statutes may or may not be controlling, depending on the subject matter of the statute, as discussed below, and whether there has been superseding action by the municipality. The municipal attorney should be consulted whenever there is any doubt. In matters of exclusive statewide concern, a home rule municipality has no authority other than that granted by state legislation — the area is said to be "preempted" by the state.[14] In matters of mixed statewide and local concern, both the state and home rule municipalities have authority; but to the extent that municipal action and state legislation conflict, the state legislation will prevail.[15] If there is no conflict (i.e., the ordinance does not prohibit what the statute authorizes, or vice-versa), the municipal action and the state legislation will both be given effect.[16]

Generally, the home rule charter is regarded as an instrument of limitation, not of grant. That is, while actions of a home rule municipality cannot violate the charter's express limitation, they need not be specifically authorized by it.[17] Often, however, express grants of power do appear in the charter. Statutes concerning the procedures for adopting, amending, and repealing home rule charters appear at C.R.S. §§ 31-2-201 to 31-2-225; see also the Colorado Constitution at Art. XX, § 9.

---

amendment of a territorial charter by the General Assembly is not special legislation prohibited by the Colorado Constitution, COLO. CONST, art. XV, § 2; *Brown v. Denver*, 3 P. 455 (Colo. 1884); *Carpenter v. People*, 5 P. 828 (Colo. 1884); *Denver v. Coulehan*, 39 P. 425 (Colo. 1894).

9 *See, e.g., Central City Opera House Association v. City of Central*, 650 P. 2d 1349 (Colo. App. 1982); *City of Central v. Axton,* 410 P.2d 173 (Colo. 1966).

10 C.R.S. § 31-1-102. It should be pointed out that the definition of "municipality" in C.R.S. § 31-1-101(6) includes territorial charter municipalities, which seems to indicate a legislative intent that the statutes of Title 31 do apply to them. However, C.R.S. § 31-1-102 states that the mere use of the term "municipality" in Title 31 indicates no intent by the legislature to preempt special territorial powers. *See also Georgetown v. Bank of Idaho Springs*, 64 P.2d 132 (Colo. 1936). The statutes governing reorganization of a territorially chartered city or town to a statutory form are found at C.R.S. §§ 31-2-301 to 31-2-309.

11 *Denver v. State*, 788 P.2d 764 (Colo. 1990), followed in *Walgreen Co. v. Charnes*, 819 P.2d 1039 (Colo. 1991); *Voss v. Lundvall Brothers, Inc.*, 830 P.2d 1061 (Colo. 1992); *Commerce City v. State*, 40 P.3d 1273 (Colo. 2002).

12 *Denver v. State*, 788 P.2d 764, 767 (Colo. 1990); *see also, Denver v. Hallett*, 83 P. 1066 (Colo. 1905); *Mauff v. People*, 123 P. 101 (Colo. 1912). Also refer to the discussion of C.R.S. § 31-15-101 with regard to the corporate powers of municipalities. This discussion is important for both home rule and territorially chartered municipalities.

13 COLO. CONST. art. XX, § 6; *Vela v. People*, 484 P.2d 1204 (Colo. 1971).

14 *Denver v. State*, 788 P.2d 764,767 (Colo. 1990).

15 *Id*. *See also Woolverton v. Denver,* 361 P.2d 982 (Colo. 1961); *Vela v. People*, P.2d 1204 (Colo. 1971).

16 *Denver v. State*, 788 P.2d 764, 767 (Colo. 1990). *See also DeLong v. Denver*, 576 P.2d 537 (Colo.1978); *C. & M. Sand & Gravel v. Board of County Commr's, Boulder*, 673 P.2d 1013 (Colo. 1983).

17 Contrast this situation with that of the territorial charters, discussed above. *See People v. Pickens*, 12 P.2d 349 (1932); *but see Fellows v. LaTronica*, 377 P.2d 547 (Colo. 1962) (discussing implied charter limitations).

Finally, it should be mentioned that any body of written law requires interpretation. In our legal system, this interpretation is the function of the courts and exists in the form of case law or reported court decisions. The U.S. Supreme Court is the ultimate authority on what the federal constitution and federal legislation mean. The Colorado Supreme Court is the ultimate authority on what the Colorado Constitution and state and local legislation mean. Interpretations by lower federal and state courts are important, but are subject to review (reversal or overruling) by higher courts. In some areas, court decisions have created "common law" that can look to where legislation does not exist or is inapplicable. Lastly, there are "implicit powers of the sovereign," which a court will sometimes look to for authorization of municipal action.[18]

CITATIONS TO COURT DECISIONS

Throughout this handbook are citations to court decisions interpreting the law. A quick guide to using these citations is in order. The decisions of the Colorado Supreme Court and the Colorado Court of Appeals are published in regional reporters. Citations are to the "Pacific Reporter," "Pacific Reporter, Second Series," and "Pacific Reporter Third Series," cited as "P.," "P.2d," and "P.3d." respectively. Cases decided by the Colorado Supreme Court are noted by the inclusion of "Colo." in front of the year of the decisions, while decisions of the Colorado Court of Appeals are "Colo. App."

Decisions of the United States District Courts are reported in the "Federal Supplement," cited as "F. Supp." and decisions of the United States Court of Appeals are reported in the "Federal Reporter," "Federal Reporter, Second Series," or "Federal Reporter, Third Series" that are cited as "F.," "F.2d," and "F.3d" respectively. United States Supreme Court decisions are reported in the "United States Reports," cited as "U.S." and the "Supreme Court Reporter," cited as "S. Ct."

The format of reported court decisions are as follows: [*case name (underlined or in italics, as appropriate)*], [volume number] [reporter] [page] ([court, if necessary to include] [year of decision]). For example, *Denver v. State*, 788 P.2d 764 (Colo. 1990), is the citation to the case "City and County of Denver v. State," which is located in volume 788 of the Pacific Reporter, Second Series, beginning on page 764. The parenthetical information means that the Colorado Supreme Court decided the case in 1990.

18 *See, e.g., Glenn v. Georgetown*, 543 P.2d 726 (Colo. App. 1975), *cert. denied*.

CHAPTER 2: THE OFFICE OF MUNICIPAL CLERK

ELECTED AND APPOINTED CLERKS

Municipal clerks can either be elected or appointed based on the form of their local government. Clerks in mayor–council cities are elected from the city at-large,[1] although with voter approval, the office of the clerk can be made appointive with appointments made by the elected officials.[2] For council-manager cities, the statutes provide that the clerk is appointed by the city manager.[3] Statutes that apply to towns provide that the board of trustees appoints the clerk, or the board may provide by ordinance for the clerk to be elected.[4] In home rule municipalities, the charter often contains a provision as to whether the clerk is elected or appointed.

QUALIFICATIONS

Each municipality establishes its own specific qualifications for the office of clerk, based on the assigned duties and responsibilities. Again, there are some requirements based on the form of government where the clerk serves.

Clerks that are elected in a statutory municipality are required to meet the qualifications of C.R.S. § 31-10-301, which necessitates that candidates for municipal offices be registered electors 18 years or older (unless another age is required by ordinance) and who have resided in the municipality for at least 12 consecutive months immediately preceding the election[5] (with special provisions as to residence in recently annexed territory). C.R.S. § 31-10-201 sets forth the qualifications that must be met before a person is entitled to register to vote and § 31-10-201(3) sets the criteria for what constitutes a person's residence. The qualifications set forth by C.R.S. § 31-10-301 does not apply to elected clerks in home rule municipalities unless the home rule municipality has adopted that code. Home rule municipalities may, by charter or by ordinance, adopt their own qualifications for the office of clerk (whether elected or appointed).

Statutes that apply to council–manager cities provide that appointments of city officers and employees, including the clerk, are to be made on the basis of their executive and administrative ability, training, and experience.[6] Otherwise, the statutes contain no specific qualifications that would be relevant to appointed clerks in cities or towns.

All municipal officers, elected or appointed, must take an oath or affirmation to support the federal and state constitutions; the municipal clerk is among those who can administer oaths.[7] A municipal clerk may not, however, administer his or her own oath. A surety bond may be required for the municipal clerk if the governing body deems it appropriate.[8]

TERM OF OFFICE

Appointed clerks in mayor–council cities have terms that must be renewed or otherwise provided for by each newly elected council upon taking office;[9] additionally, C.R.S. §31-4-110 requires that the clerk continue in office until his or her successor is appointed or elected. In municipalities where the office of the clerk is appointed, the appointment must be made after every election of the board, and no later than 30 days after the new board members have taken their oath of office.[10] Clerks that are appointed in a city–manager municipality are for indefinite terms as noted in C.R.S. § 31-4-211(1).

For *elected* municipal clerks, the basic statutory provision is for two-year terms, but four-year terms may be established by ordinance.[11] In 1994, the Colorado Constitution was amended to extend term limits of local officials; these provisions were codified in Section 11 of Article XVIII of the constitution. For more information on term limits, refer to the League's publication *Term Limits: A Guide for Colorado Municipalities* (2001).

---

1 C.R.S. § 31-4-105.

2 C.R.S. § 31-4-107(4)(a).

3 C.R.S. § 31-4-211.

4 C.R.S. § 31-4-304.

5 This 12-month residence requirement was upheld by the Colorado Supreme Court in *Cowan v. Aspen*, 509 P.2d 1269 (Colo. 1973).

6 C.R.S. § 31-4-211(1).

7 C.R.S. § 31-4-401(1).

8 C.R.S. §§ 31-4-401(2), 31-4-219, and 31-4-304.

9 C.R.S. § 31-4-107(2)(a).

10 C.R.S. § 31-4-304.

11 C.R.S. §§ 31-4-107(3) and 31-4-301(5).

REMOVAL

In municipalities where clerks are appointed, the appointing authority also has the power of removal. Statutes applicable to mayor–council cities provide that any appointed officer may be removed by a majority of the members elected to the council.[12] If the appointment was for a term specified by ordinance, there must be charges of "incompetence, unfitness, neglect of duty, or insubordination, duly made and sustained."[13] If the appointment was "at the pleasure of the city council," no such charges need be sustained. In council–manager cities, the city manager may remove any officer or employee at any time for cause,[14] and the council is specifically prohibited from interfering in such decisions.[15] "For cause" simply means the city manager's decision must not be arbitrary.[16] As to towns, C.R.S. § 31-4-307 provides that any town officer (elected or appointed) may be removed from office by a majority vote of all members of the board of trustees. Written charges and a hearing are required unless the officer has moved out of town, and nonresidence is specifically stated as grounds for removal.

In home rule municipalities, the charter normally will govern removal of officers. However, all elected officers (including elected clerks) of municipalities (including home rule municipalities) are subject to recall and is discussed in Chapter 6.

BASIC DUTIES

There are many duties for which municipal clerks are responsible, and some of these duties are required by statute. Most of those statutes will be discussed or referred to throughout this reference guide. This particular section discusses only those basic, general duties that are intrinsic to the office of municipal clerk.

In mayor–council cities, the statutory duties of the clerk are maintaining custody of city laws and ordinances and the city seal, keeping a record of city council proceedings, and performing such other duties as may be required by statute or ordinance.[17]

Statutes that apply to council–manager cities provide that the clerk may serve as *ex officio* treasurer.[18] Duties include keeping and supervising accounts and having custody of public funds; apportioning and collecting special assessments; issuing licenses and collecting license fees; keeping the journal of city council proceedings; having custody of public records not specifically entrusted to others; and performing such other duties as are assigned by ordinance or by the city manager.[19] The clerk in a statutory council–manager city is subject to the city manager's supervision and control in all matters.[20]

Towns require the clerk to attend all meetings of the board of trustees, to keep a "true and accurate" record of the board's proceedings, as well as any rules or ordinances passed, and to perform such other duties as are prescribed by ordinance.[21]

In home rule municipalities, the basic duties of the clerk normally will be described in charter provisions and ordinances.

DEPUTIES AND ASSISTANTS

There are only two statutory provisions that refer to assistants for municipal clerks. C.R.S. § 31-4-303 states that the board of trustees of a town may "elect" a clerk pro tem to perform the clerk's duties when the clerk is absent or unable to serve. Presumably the word "elect" in this context has the same meaning as "appoint." Additionally, the Municipal Election Code authorizes the municipal clerk's powers and authority be given to a deputy clerk when the clerk is absent or is unable to perform his or her duties.[22]

The governing bodies of all municipalities have fairly broad statutory authority to provide for officers and employees as deemed necessary.[23] These powers are broad enough to encompass deputy clerks, acting clerks, and assistant clerks, as well as general office help.

In home rule municipalities, the charter, or an ordinance, might provide for the clerk's deputies and assistants or might confer general authority with respect to subordinate officers or employees upon the manager or the clerk.

---

12 C.R.S. § 31-4-107(2)(b).

13 *Id.*

14 C.R.S. § 31-4-211(2).

15 C.R.S. § 31-4-212.

16 *DeBono v. Vizas*, 427 F. Supp. 905 (D. Colo. 1977).

17 C.R.S. §§ 31-4-110 and 31-4-107(1).

18 *Ex officio* powers are those necessarily implied from the holding of another office.

19 C.R.S. § 31-4-215(1).

20 *Id.*

21 C.R.S. §§ 31-4-305 and 31-4-304.

22 C.R.S. §§ 31-10-104(2) and § 31-10-102(1).

23 *See* C.R.S. §§ 31-4-101; 31-4-107(2); 31-4-215(1); 31-4-304; and 31-15-201(1)(b).

COMPENSATION

A clerk's compensation in a mayor–council city is to be set by ordinance or by a pay plan adopted by ordinance.[24] Council–manager cities provide that compensation is to be established by ordinance, but the ordinance may permit the city manager to grant increases within a set range on the basis of efficiency and seniority.[25] C.R.S. § 31-4-304 states that towns provide the clerk's compensation to be set by ordinance. Compensation in a home rule municipality will be set as provided by charter or ordinance.

COMPATIBILITY OF CLERK'S OFFICE WITH OTHER PUBLIC OFFICES

The question whether the municipal clerk also may hold another public office arises most often in connection with the office of municipal treasurer. It is very common in Colorado for the same person to serve as both clerk and treasurer.

In mayor–council cities, C.R.S. § 31-4-107(2)(b) specifically authorizes the holding of two or more appointive offices by one person, if the council finds the offices to be compatible with the interest of city government. For council–manager cities, C.R.S. § 31-4-215(1) requires the city clerk to perform the duties of treasurer.

The general rule is that two or more offices may be held by the same person if the offices are compatible — that is, if one is not subordinate to the other, and if their powers, duties, and obligations are not otherwise inconsistent.[26]

CONFLICT OF INTEREST AND OTHER OFFICIAL MISCONDUCT

Ethics and conflicts of interest for local government officers and employees are addressed in three areas of the Colorado Revised Statutes:

- Article 18 of Title 24 is discussed below; Part 1 is Colorado's "Code of Ethics" for public officers and employees; Part 2 addresses proscribed interests in contracts;
- C.R.S. § 31-4-404(2) and (3), concerning restrictions on members of municipal governing bodies voting on matters in which they have a personal or private interest; and
- Several sections of Article 8 in Title 18 of the Colorado Criminal Code impose certain disclosure requirements on public officials.

The Code of Ethics sets forth several rules of conduct for local government officials and employees. Violation of these rules is declared to be a breach of fiduciary duty and the public trust, and the violator is "liable to the people of the state" for the breach thereof.[27] The district attorney in the district in which the trust is violated is authorized to bring suit against a public official or employee for such violations.[28] Furthermore, an official action taken where there is a conflict of interest may be held null and void (if the common law survived the enactment of the Code of Ethics).

The code states that the following acts constitute breach of fiduciary duty and the public trust: use of confidential information for personal benefit,[29] accepting gifts or economic rewards,[30] transactions with those one supervises or inspects,[31] and acts benefiting one's business or clients.[32]

Part 2 of Article 18 of Title 24, subject to certain excluded transactions, prohibits interests in contracts. Local government officials and employees "shall not be interested in any contract made by them in their official capacity or by any body, agency or board of which they are members or employees."[33] Furthermore, former employees may not, within six months of the end of their employment, contract or be employed by any employer that contracts with a local government involving matters with which the former employee was directly involved during his employment.[34] A violation of these prohibitions renders the contract voidable at the direction of any party to the contact except the officer interested therein.[35]

---

24 C.R.S. § 31-4-109.

25 C.R.S. § 31-4-218.

26 *See Board of County Comm'rs of Montrose County v. Wharton*, 261 P. 4 (Colo. 1927); *see also* 3 McQuillin, *Municipal Corporations* §§ 12.67-12.67.10 (3d ed. 2001 rev'd vol.).

27 C.R.S. § 24-18-103(2).

28 *Id.*

29 C.R.S. § 24-18-104(1)(a).

30 C.R.S. § 24-18-104(1)(b).

31 C.R.S. § 24-18-109(2)(a).

32 C.R.S. § 24-18-109(2)(b).

33 C.R.S. § 24-18-201(1).

34 *Id.*

35 C.R.S. § 24-18-203.

In addition to ethics and conflicts of interest, state statutes address other forms of official misconduct and criminal liability that may be imposed. C.R.S. § 18-8-304 prohibits public servants from requesting compensation for performing official acts that they know they are required to perform without compensation (or at a lower level of compensation than requested). C.R.S. § 18-8-302(b) prohibits acceptance, solicitation, or agreement to accept, compensation for giving a decision or exercising discretion in favor of another. C.R.S. § 18-8-405 prohibits public servants from "knowingly, arbitrarily and capriciously" refusing to perform duties imposed on them by law or violating statutes or regulations relating to their offices. C.R.S. § 18-8-404 provides heavier penalties for these same forms of misconduct, and for any unauthorized exercise of official functions, if performed with intent to gain personal benefit or maliciously to inflict harm on another. C.R.S. § 18-8-308 creates the offense of failing to disclose a conflict of interest. This section applies whenever a public servant exercises any "substantial discretionary function" in connection with any government contract, purchase, payment, or other transaction.

Colorado voters approved Amendment 41 in 2006, which added "Ethics in Government" to the state constitution.[36] Amendment 41 places restrictions on gifts received by Colorado public officials, government employees, and their immediate family members. Such persons are prohibited from receiving gifts with value exceeding $53 in any calendar year.[37] Exception is made for certain circumstances, such as gifts given between personal friends and relatives on certain occasions.

PERSONAL LIABILITY

Under some circumstances, clerks and other municipal officials may be exposed to personal liability in connection with their official duties; these circumstances have been narrowly restricted by the Colorado Governmental Immunity Act.[38] This act establishes governmental immunity from suit against public entities and their employees in tort cases, but then waives immunity under certain circumstances and also provides exceptions to certain waivers.[39]

From a clerk's standpoint, one of the most important limitations the Governmental Immunity Act imposes is C.R.S. § 24-10-118(2)(a). This statute provides that an employee acting within the scope of his or her duties (and not willfully or wantonly) is *immune* from liability for any claim for injury except under specific circumstances, which are noted in statute.[40] These circumstances are concerned with the operation of public facilities such as jails, hospitals, gas plants, as well as with the maintenance of roads and public buildings, which are activities that generally do not involve municipal clerks.

The Governmental Immunity Act contains direction for an injured person to give notice of claim, the requirements a public employee must meet for the various protections of the governmental entity to be available, and the timeline requirements for notification.

For additional information regarding the Colorado Governmental Immunity Act, it is recommended that questions be addressed by your municipal attorney.

PROFESSIONAL ORGANIZATIONS

The Colorado Municipal Clerks' Association (CMCA) provides a forum for clerks to discuss common problems and issues. CMCA publishes a newsletter, circulates archive publications, and serves as an informal information clearinghouse for clerks. CMCA sponsors various educational opportunities including workshops on subjects pertinent to the clerk's profession such as election training, liquor licensing, and records management. CMCA maintains no permanent office but can be contacted through its officers, who are elected every year. The Colorado Municipal League (CML) maintains close ties with CMCA through its Municipal Clerks' Section. Further information on CMCA, becoming a member of CMCA, and names of current officers can be obtained from the CML office or on the CMCA website at *www.cmca.gen.co.us*. Further information on CML and access to online resources is available at *www.cml.org*.

The International Institute of Municipal Clerks (IIMC) is organized for the purpose of improving the clerk's functions in various levels of government. IIMC publishes a monthly newsletter, various technical reports and other reference works. Additional information is available from IIMC, at 8331 Utica Avenue, Suite 200, Rancho Cucamonga, CA 91730; by phone at 909-944-4162; or online at *www.iimc.com*.

IIMC conducts the Municipal Clerk Certification Program to educate and promote greater professionalism of clerks. In Colorado, this certification program is implemented through the annual Colorado Institute for Municipal Clerks, which is sponsored jointly by IIMC, CMCA, and the University of Colorado. The Colorado Institute for Municipal Clerks is held each

36 Colo. Const. Art. XXIX.

37 Amendment 41 originally prohibited gifts of more than $50. Position Statement 11-01 from the Independent Ethics Commission adjusted the gift limit to $53 until the first quarter of 2015 pursuant to Colo. Const. art. XXIX, § 3(6).

38 C.R.S. §§ 24-10-101 to 24-10-120; *see* C. Berry & T. Tanoue, *Amendments to the Colorado Government Immunity Act,* 15 COLORADO LAWYER 1193 (July 1986).

39 C.R.S. § 24-10-106.

40 C.R.S. § 24-10-106(1).

summer at the University of Colorado in Boulder; completion of a three-year program provides partial credit toward IIMC certification as a Certified Municipal Clerk (CMC). CMCA sponsors a scholarship program for qualified clerks to help attend the Institute, as well as to continued education in the Master Municipal Clerks Academy program. Upon completion of the Master Clerks Academy's requirements, which involve high-level continuing education for municipal clerks beyond the attainment of CMC status, a clerk becomes a Master Municipal Clerk. For more information on the Master Municipal Clerk Program, contact an accreditation specialist at the IIMC by calling 1-800-251-1639 or by visiting the IIMC website, *www.iimc.com*.

Finally, in 1986, CMCA established the Jean L. Rogers Honorary Scholarship Fund to assist third-year students in the certification program. Jean Rogers is a former Lakewood city clerk who retired in 1986, and was instrumental in establishing the Colorado Institute for Municipal Clerks.

CHAPTER 3: MEETINGS OF THE GOVERNING BODY

This chapter concentrates on basic legal requirements relating to meetings of city councils and town boards of trustees, and the clerk's role in preparing the minutes of these meetings. For additional information, refer to CML's 2008 publication *Open Meetings, Open Records*, which contains information regarding Colorado's open meetings law, types of meetings, and preparation for the same.

WHEN MEETINGS ARE REQUIRED

Statutes govern when meetings must be held by a municipal governing body. C.R.S. § 31-4-101(2) states that the members of the city council of a mayor–council city have the power to determine the times and places for holding their meetings. C.R.S. §§ 31-4-105 and 31-4-107(1) provide that the two-year council member term begins "at the first meeting of the governing body following the survey of election returns, unless the governing body provides by ordinance or resolution that terms shall commence on the first Monday after the first Tuesday in January following their election." Finally, C.R.S. § 31-4-109 requires the council of a mayor–council city to fix the compensation of the mayor and council members by the "last monthly meeting" before the regular election. Accordingly, the requirement for monthly meetings is implied in statute.

These provisions also apply to council–manager cities.[1] If the mayor of a council–manager city is to be elected from among the members of the city council, then at the meeting on the first Monday after the first Tuesday of January following the regular election, the city council must choose a mayor (chair) and a mayor pro tem (vice-chair).[2] For towns, C.R.S. § 31-4-303 requires the selection of a mayor pro tem at the first meeting of the board of trustees.

It is customary for governing bodies of Colorado municipalities to hold regular meetings. All but the smallest municipalities hold meetings monthly, biweekly, or even weekly. In home rule municipalities, charter or ordinance provisions normally govern the required scheduling of meetings.

GENERAL NECESSITY FOR MEETINGS; OPEN MEETINGS REQUIREMENTS; NOTICE OF MEETINGS

Official action cannot be taken by a municipal governing body except at a valid meeting held in compliance with the Colorado Open Meetings Law, codified at C.R.S. §§ 24-6-401 to 402.[3] Specifically, no resolution, rule, regulation, ordinance, or formal action of a "local public body" is valid unless taken or made at a meeting that meets the requirements of the Open Meetings Law.[4]

A "local public body" includes any "board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state, and any public or private entity to which a political subdivision of the state, or any official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body."[5] Home rule municipalities are included in the definition of "political subdivisions."[6] The word "meetings" is defined broadly in the statute as "any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication."[7]

There are four different types of meetings contemplated by the statute: open meetings; meetings requiring notice; meetings requiring minutes; and executive (closed) sessions.

Open meetings. Open meetings are gatherings "of a quorum of three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken."[8] By this statutory provision, these meetings are declared to be public meetings open to the public at all times.

Meetings requiring notice. "Full and timely notice" is required prior to "any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance or is expected to be in attendance."[9]

---

1 *See* C.R.S. § 31-4-204(1).

2 C.R.S. § 31-4-207(1).

3 *See also* McQuillin, 4 *Municipal Corporations* § 13.10 (3d ed.).

4 C.R.S. § 24-6-402(8).

5 C.R.S. § 24-6-402(1)(a).

6 C.R.S. § 24-6-402(1)(c).

7 C.R.S. § 24-6-402(1)(b).

8 C.R.S. § 24-6-402(2)(b).

9 C.R.S. § 24-6-402(2)(c); *see also, Board of County Commr's, Costilla County v. Costilla County Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004).

Pursuant to C.R.S. § 24-6-402(2)(c), a local public body is deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than 24 hours prior to the holding of the meeting. The public place or places for posting such notice must be designated annually at the local public body's first regular meeting of each calendar year. The posting must include specific agenda information where possible.[10] The statute contemplates that there are other means of satisfying the "full and timely" notice requirement.

In addition, all members of the governing body should be notified of all meetings, whether or not such notice is required by statute. C.R.S. § 31-4-101(2) expressly requires that notice of special meetings, called by the mayor and three councilmembers in mayor–council cities, be delivered personally to all councilmembers or left at their residences.[11]

Typically, both statutory and home rule municipalities have local provisions imposing specified notice procedures for special meetings. Frequently, regular meetings are on a schedule established by ordinance or rule of the governing body. Although not specified by statute, it is considered advisable to make the purpose of a special meeting fairly specific and to confine the meeting to the matters described in the notice.

Meetings requiring minutes. Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection.[12]

Executive sessions. The members of a local public body, upon the affirmative vote of two-thirds of the quorum present, may hold a closed executive session at a regular or special meeting, for the purpose of considering a limited number of matters.[13] No adoption of any proposed policy, position, resolution, rule, regulation, or formal action can occur at an executive session that is not open to the public.[14] Prior to convening an executive session, the local public body shall announce to the public the specific statutory provision authorizing the executive session, as well as the topic to be discussed.[15] This provision requires the public body to identify the matter to be discussed "in as much detail as possible without compromising the purpose for which the executive session is authorized."[16]

Generally, an executive session can be held to consider the following topics: transactions involving real or personal property interests (unless held for the purpose of concealing a member's interest in the transaction); specific legal advice in a conference with an attorney; matters required to be kept confidential by federal or state law, rules, and regulations; specialized details of security arrangements or investigations; matters involving negotiations and negotiators; personnel matters (unless requested to be open by the employee or employees to be discussed); and documents protected by the mandatory nondisclosure provisions of the Open Records Act.[17] Additionally, many home rule charters contain open meeting requirements.

For a more detailed discussion of the procedures in preparation for and recording of executive sessions please refer to CML's *Open Meetings, Open Records: Colorado's Sunshine Laws and Municipal Government* (2008) or contact your municipal attorney.

QUORUM

The term "quorum" refers to the minimum number of members of the governing body (or other board or authority) that must be present in order to take official action. C.R.S. § 31-1-101(4) defines "governing body" and further states that a quorum of the required number of votes for any matter includes the total number of seats on the governing body, but does not include the seat held by a nonvoting city manager.

As to statutory cities, C.R.S. § 31-4-107(1) provides that a majority of the total number of members of the city council is a quorum. The mayor is counted as a member of the council in both mayor–council cities[18] and council–manager cities.[19]

For statutory towns having a six-member board of trustees, C.R.S. § 31-4-301(3) provides that four members of the board of trustees constitute a quorum. If the number of trustees is reduced from six to four pursuant to

10 C.R.S. § 24-6-402(2)(c).

11 *See Greeley v. Hammon*, 28 P. 460 (1891). When there was no record that such notice was properly served, notice was inferred from the fact of attendance of all councilmembers at the special meeting, and the fact that the clerk's record of the purpose of the special meeting showed that it was called to transact the very business which was transacted.

12 C.R.S § 24-6-402(2)(d)(I).

13 C.R.S § 24-6-402(4).

14 *Id.*

15 *Id.*

16 *Id.*

17 C.R.S. §§ 24-6-402(4)(a) to (g).

18 C.R.S. § 31-4-102(3).

19 C.R.S. § 31-4-207.5.

C.R.S. § 31-4-301.5, three members of the board of trustees shall constitute a quorum.[20] The mayor may also be counted as a member of the board.[21]

In both mayor–council cities and towns, if the city or town adopts an ordinance limiting the mayor's power to vote (see section below, "Basic requirements as to conduct meetings; Voting"), then it may also provide in the ordinance that the mayor shall not be counted for purposes of determining a quorum.[22] Home rule municipalities normally establish their own quorum provisions.

Sometimes, municipalities are unable to get enough governing body members to attend meetings to meet quorum requirements. C.R.S. §§ 31-4-107(1) and 31-4-209 give city councils general power to compel attendance of their members, although the methods of doing so are not specified. Chronic absenteeism may constitute cause for removal of a governing body member (cities permit removal on a two-thirds vote, for cause;[23] towns permit removal by a majority vote of trustees, with written charges and a hearing[24]). Home rule municipalities also may have relevant charter or ordinance provisions.

BASIC REQUIREMENTS AS TO CONDUCT OF MEETINGS; VOTING

By statute, the mayor (or, in the mayor's absence, the mayor pro tem) is the presiding officer in both cities and towns.[25] For home rule municipalities, the charter or ordinances normally will designate the presiding officer.

For both mayor–council cities and towns, statutory provisions set forth the alternative procedures available regarding a mayor's right to vote. By statute, the mayor has the same voting powers as any member of the council or board.[26] However, the city or town may provide by ordinance that the mayor shall not be entitled to vote on any matter before the council or board except in case of a tie vote. If such an ordinance is adopted, it must also provide that any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract are subject to disapproval by the mayor under the procedure outlined in C.R.S. § 31-16-104. Such ordinances limiting the mayor's voting power may be adopted or repealed only within the 60 days preceding any election of a mayor, to take effect upon such election.[27]

In council–manager cities, C.R.S. § 31-4-207.5 provides that the mayor (council chair) votes as a council member. By statute, the city manager has the right to attend council meetings and to engage in discussion, but does not have a vote.[28] In home rule municipalities, the charter or ordinance normally will cover these matters. See Chapter 4 for the number of votes required for particular types of measures.

The question often is asked whether a member of the governing body who is not present at a meeting can vote by proxy or by telephone. The statutes do not mention "absentee voting" by members of municipal governing bodies. Clearly, such "absentee voting" is impermissible when a quorum is not present at the meeting itself, as a quorum is necessary to vote on a measure. The requirement of a quorum to do business also implies that the member's presence is a prerequisite to his or her participation in such business. Thus, absentee voting should not be permitted even when a quorum is present at the meeting itself. See the above section for a discussion of the quorum requirement. In home rule municipalities, voting by absent members might be possible legally if permitted by specific charter or ordinance provisions. Such a procedure should not be permitted without consulting your municipal attorney.

There are no statutory requirements as to the rules of order for municipal governing body meetings. C.R.S. §§ 31-4-107(1) and 31-4-209 specifically authorize city councils to adopt their own rules of procedure; presumably such power can be implied for statutory towns.[29] The rules of procedure adopted by the governing body to govern its proceedings also may be suspended by it.[30] Home rule cities may provide for rules of order subject to constraints imposed by charter and other applicable law.

---

20 C.R.S. § 31-4-301.5(3).

21 C.R.S. § 31-4-302.

22 C.R.S. §§ 31-4-102(3) and 31-4-302.

23 C.R.S. § 31-4-108.

24 C.R.S. § 31-4-307.

25 C.R.S. §§ 31-4-102(3), 31-4-207.5, and 31-4-302.

26 C.R.S. §§ 31-4-102(3) and 31-4-302.

27 C.R.S. § 31-4-302.

28 C.R.S. § 31-4-214.

29 C.R.S. § 31-4-305.

30 *Greeley v. Hamman*, 28 P. 460 (Colo. 1891) (holding that suspension by unanimous consent was proper).

DUTIES OF CLERK IN CONNECTION WITH MEETINGS

In mayor–council cities, statutes require the city clerk to "keep a regular record of the proceedings of the city council, in such form as determined by the council."[31] Statutes applicable to manager–council cities require the city clerk to "make and keep a journal of proceedings of the city council."[32] As to towns, the statutes provide that the clerk must "attend all meetings of the board of trustees and make a true and accurate record of all the proceedings."[33] All of these specific statutory meeting duties could, of course, be expanded by ordinance or by administrative direction (see the section "Basic duties" in Chapter 2). In home rule municipalities, the clerk's meeting duties usually are set forth by charter or ordinance.

THE MINUTES

The "record" or "journal" of governing body proceedings mentioned above in "Duties of clerk in connection with meetings" commonly is referred to as the "minutes" of the meeting. The accuracy and clarity of meeting minutes are important to efficient municipal government.

The minutes usually contain certain standard items:

- the date, hour, and place of the meeting;
- whether it was a special or a regular meeting;
- the names of the governing body members and other municipal officials in attendance (with arrival and departure times of those not present for the entire meeting);
- indication that proper notice was given for the meeting;
- approval of the last meeting's minutes;
- the introduction of petitions, ordinances, and resolutions;
- record of hearings;
- the votes of the governing body members; and,
- the time of adjournment.

The first four items are especially important since they document compliance with the legal requirements for a valid meeting.

In recording these recurring minute items, the clerk should use standard phrases where possible. The clerk may wish to develop a series of standard paragraphs leaving blanks for the variable factors; such standardization would make minute entries uniform and reduce the time spent in composing the minutes.

While the minutes should be as accurate as possible, the clerk is not required to record every remark made at the meeting. The clerk should not make the minutes a verbatim transcript. Debates, arguments, and discussions among the governing body members and others may be omitted, because the minutes are primarily a record of the governing body's *actions* rather than its deliberations. Otherwise, the minutes would become too long. Where it is requested that an oral statement be entered in the minutes verbatim, it is advisable to have the speaker approve the clerk's version of the statement before it is incorporated in the minutes.

The amount of detail recorded in the minutes varies considerably according to the customs and needs of the municipality. At a minimum, the minutes should reflect each subject or item considered; the language of each motion (and other measures not prepared in writing in advance); and the disposition of each motion, resolution or ordinance voted upon. Motions that are withdrawn before being seconded may, but are not required to, be noted. Special matters such as annexation, zoning, and liquor licensing hearings may require considerably more detail. Additionally an electronic record of executive session discussions must be made.[34] This record must reflect the "actual contents" of the executive session discussion, but need not be a verbatim transcript.[35] The clerk should check periodically with the municipal attorney to ensure that all legal requirements regarding minutes are met. Meeting minutes shall be open to public inspection.[36] For a general discussion on open record requirements, see the section "Statutory duties of preservation and protection of public records" in Chapter 5.

---

31 C.R.S. § 31-4-110(1).

32 C.R.S. § 31-4-215.

33 C.R.S. § 31-4-305.

34 C.R.S. § 24-6-402(2)(d.5)(I)(A).

35 *Id.*

36 C.R.S. § 24-6-402(2)(d)(II).

The following are suggestions for recording some common items:

Petitions and other documentary communications. Generally, the minutes concerning petitions and other communications need to state

- the date of the document;
- the subject to which it relates or the request it contains;
- the name of the author or authors (if only a few);
- the number of signers (if they are numerous); and
- the officer or committee to which it was referred for investigation and report, or any action (motion or resolution) taken with respect to it.

Reports of officers. When a written report itself is available, the report may be referred in the minutes by

- the name and title of the person presenting the report;
- the date of the report;
- the subject or title of the report; and
- the disposition of the report, if any, by the governing body.

When an officer at a meeting of the governing body makes oral reports, the same basic information should be recorded; the subject or title should reflect the substance of the report in general terms, but a detailed recitation of the report in the minutes is generally not necessary.

Ordinances and resolutions. The extent of information included in the minutes regarding an ordinance or resolution depends on the applicable legal requirements (which may be created by statute, charter, or ordinance), and on the municipality's own rules of order. For example, if an applicable charter provision or rule requires an ordinance or resolution to be introduced by one member of the governing body and seconded by another, both actions should be recorded in the minutes.

Typically, minutes will include the following items concerning an ordinance or resolution:

- the title and number of the ordinance or resolution;
- the name of the governing body member introducing the measure, and, if a second is required by charter provision or ordinance, the name of person making the second;
- indications that legal prerequisites for action on the measure have been met (for example, that copies were available to the governing body and the public, that introduction was at a prior meeting, that prior publication was made); and,
- the votes cast on the measure.

The minutes should reflect which governing body members were present at the time the vote was taken, and the "yes" and "no" votes cast by each member as well as abstentions. In some circumstances these minute items will be spread out among the minutes of two or more meetings.

More detailed information on procedural formalities in adopting resolutions and ordinances appears in Chapter 4 in the section "Statutory procedural and formal requirements for governing board action."

Hearings. As described above under ordinances and resolutions, the minutes of hearings should reflect compliance with legal prerequisites including required notices. The minutes should include references identifying any documentary evidence (statements, affidavits, maps, photographs, or other objects) presented at the hearing. It is not necessary to copy the contents of such evidence into the minutes, as long as the document itself remains available.

The clerk should confer with the municipal attorney regarding the need to summarize oral testimony given at the hearing. In some instances, the minutes need only state that a given person presented oral testimony. In other instances, a summary of the oral testimony may be appropriate. On some matters, the testimony may need to be recorded by a qualified shorthand reporter or by recording devices.

Sometimes, the findings of the governing body resulting from a hearing are incorporated into an ordinance or resolution adopted by the governing body. When the findings are incorporated, the minutes need not record such findings but may merely refer to the governing body's action on the particular ordinance or resolution. However, it is frequently important that some record of findings be made. If they do not appear in an ordinance or resolution, then they should be made part of the minutes.

Adjournment. Recording the adjournment of a meeting in the minutes is advisable as it indicates whether the meeting was finally adjourned, or adjourned to another time prior to the next regular meeting. If the minutes show adjournment, the record will rebut any claim that the minutes were never completed or that some matter had been acted upon but not recorded in the minutes. For these reasons, the minutes should show that the meeting was adjourned at a specified hour and minute. If the meeting is adjourned to a later date and hour, this should be reflected in the minutes.

Minutes are sometimes prepared in rough draft from the agenda in advance of the meeting, so that, during and after the meeting, it is only necessary to record insertions, deletions, and alterations. The clerk will then prepare the minutes from these sources. It is advisable to have some method of cross-checking the minutes against agenda items so that no item is inadvertently omitted. The clerk's office is responsible for duplication and distribution of the completed minutes.

Use of electronic audio or video recordings in preparing of minutes is done primarily to verify accuracy and used by clerks to review proceedings. Video and audio recordings should not be considered to take the place of written minutes as the official record of the governing body's actions although jurisdictions must use recordings to preserve their executive session records.[37]

While the statutes do not expressly require approval of minutes by the governing body, there may be relevant charter provisions, ordinances, or bylaws imposing such a requirement. Approval of the minutes is traditional and is advisable to confirm the accuracy and completeness of the minutes. Often the governing body will take action at each meeting to approve the minutes of the preceding meeting. The minutes of all adjourned and special meetings held between regular meetings are often approved at the next regular meeting. It is preferred practice for members of the governing body to receive a copy of the minutes before the meeting at which they are to be approved.

After the governing body approves the minutes, the clerk will enter the final minutes with any necessary changes into the official minute book. Although not required by statute, the permanent minutes are usually signed by the presiding officer of the governing body and by the clerk. As a final step, the clerk often prepares and maintains an index of the proceedings of the governing body.

37 C.R.S. § 24-6-402(2)(d.5)(II)(A).

CHAPTER 4: ACTIONS OF THE GOVERNING BODY

CLASSIFICATION OF GOVERNING BODY ACTIONS

There are three basic types of governing body actions:

Motions are the least formal, most basic type of governing body action. A motion is the means for a member of the governing body to bring almost any matter (including a resolution or ordinance) before the governing body for consideration. Motions generally are made orally. Requirements for a second, "ranking" of motions, and other procedural details of how motions are acted upon depend on the municipality's own rules of order. If there are no written rules, presumably rulings of the presiding officer, custom, and practice will govern.

Resolutions are between motions and ordinances in formality and dignity. Most commonly, a resolution is written. There are no formal requirements (some exceptions are discussed in section "Statutory procedural and formal requirements" below). Resolutions generally deal with special, administrative, or temporary matters, as opposed to general rules of conduct. Examples of actions involving a resolution include expressions of the governing body's intent or its opinion on matters not actually within its control; adoption of a budget; and approvals of specific transactions such as purchases and agreements. Similar to resolutions are "proclamations," which municipal governing bodies sometimes adopt for ceremonial purposes (for example, to honor an individual or to declare a symbolic occasion).

Ordinances are the highest and most authoritative form of action by a municipal governing body. Any permanent law of the municipality or any measure that prescribes a general rule of conduct that citizens are expected to follow should be enacted by ordinance. For some transactions, ordinances are required by statute. For example, C.R.S. §§ 31-15-713(1)(c) and 31-15-801 require ordinances for leases, and C.R.S. § 31-15-713(1)(b) requires ordinances for the sales of real estate.

STATUTORY PROCEDURAL AND FORMAL REQUIREMENTS FOR GOVERNING BODY ACTION

Home rule municipalities sometimes supersede the statutory provisions discussed in this section by charter provision or by ordinance.

Special majority requirements. Unless otherwise provided by statute or ordinance, all governing body actions on which a vote is taken require a majority vote of those present if a quorum exists (see the section "Quorum" in Chapter 3).[1] However, ordinances, resolutions, and orders involving appropriations and contracts require a majority vote of the entire governing body of any city or town.[2] C.R.S. § 31-32-104 imposes a similar majority requirement for franchise ordinances. A vote of three-fourths of the members of' the governing body is required for emergency ordinances (discussed below).[3]

Special voting formalities. Ordinances, resolutions, and orders that authorize appropriations or contracts require a recorded roll call vote.[4] Without it, the action is invalid.[5] This requirement generally is deemed satisfied if attendance is taken at the beginning of the meeting, and only the "nay" votes and abstentions are recorded each time (it being then presumed that all other members present voted in favor of the item).

Readings. Any reading of ordinances (or codes adopted by reference) required by statute may be by title only if the entire text is submitted in writing to the governing body before adoption.[6] A town is required to conduct only one reading, except in the case of franchise ordinances.[7]

Two-reading procedure for adoption of ordinances in statutory cities. In *cities*, ordinances must be introduced and read at a regular or special meeting, then published (see section "Statutory publication requirements" below) 10 days before adoption at a second meeting.[8] For franchise ordinances, see C.R.S. §§ 31-32-101 to -105.

Mayoral approval. In a cities and towns that have by ordinance declared their mayors nonvoting members of the governing bodies, all ordinances and all resolutions authorizing expenditures or contracts must be approved and signed by the mayor.[9] Such measures are to be presented to the mayor within 48 hours of the governing body's action. If the mayor

1 C.R.S. § 31-16-103.

2 C.R.S. § 31-16-108.

3 C.R.S. § 31-16-105.

4 C.R.S. § 31-16-108.

5 *Tracey v. People*, 6 Colo. 151 (1882); *Brophy v. Hyatt*, 15 P. 399 (Colo. 1887).

6 C.R.S. § 31-16-107.

7 *See Kaylor v. People*, 105 P. 1079 (Colo. 1909); C.R.S. § 31-32-103.

8 C.R.S. § 31-16-106.

9 C.R.S. § 31-16-104.

does not approve the ordinance or resolution, he or she returns it at the next regular meeting with written objections, which are entered in the record. Two-thirds of the members elected to the governing body may override the mayor's veto. If the mayor fails to return the ordinance or resolution at the next regular meeting, it becomes effective as if approved.

Effective date; exception for emergency and special ordinances. Generally, ordinances are not to become effective until at least 30 days after the post-adoption publication (see section "Statutory publication requirements" below).[10] Ordinances calling special elections are excepted, as are emergency ordinances, which are ordinances "necessary to the immediate preservation of the public health or safety and containing the reasons making the same necessary in a separate section."[11] Emergency ordinances may take effect upon adoption, and require a three-fourths vote of the members of the governing body and signature by the mayor.[12] See the section "Initiative, referendum, and recall in Chapter 6 for a discussion of the peoples' right of referendum on ordinances and how the effective date and emergency declarations affect that right.

Miscellaneous ordinance formalities. The enacting clause for ordinances is prescribed by C.R.S. § 31-16-102 (or, for home rule municipalities, by charter or ordinance). This precise clause should appear in every ordinance.[13] Ordinances are to be recorded in an ordinance book and authenticated by signature of the presiding officer and the clerk.[14] For cities (not towns), a clerk must attest to the first reading and first publication of an ordinance in a certificate.[15]

STATUTORY PUBLICATION REQUIREMENTS

Note: Home rule municipalities may supersede the statutes discussed in this section by charter provision or ordinance.

Basic publication requirements for ordinances are contained in C.R.S. § 31-16-105. The requirements apply to all ordinances of a general or permanent nature, or those imposing any fine, penalty, or forfeiture. Publication is required to be in a newspaper published in the municipality or, if there is none, in a newspaper of general circulation in the municipality. If there is no newspaper meeting either of these requirements, the governing body may adopt a resolution so stating, and copies of the ordinance may then be posted in three public places within the municipality designated by the governing body.

In towns, publication generally is required only once, after adoption. Again, note an exception for franchise ordinances.[16] For cities, the two-reading procedure described in the proceeding section also involves two publications. The first is publication in full at least 10 days before second reading.[17] The second publication is after final adoption, and may be in the same newspaper by title only, with a reference to the date of the first publication, and with any subsequently amended sentence, subsection or paragraph reprinted in full. The second publication may be in full, at the discretion of the city council.

Any municipality may determine at a regular or special election to meet these requirements by publishing ordinances by title only, rather than publishing in full.[18] However, a special election cannot be called solely for the purpose of determining whether to publish by title or in full.

In addition to requirements for ordinances, statutes authorizing particular municipal activities often require publications of hearing notices or other material. In Chapter 8, the section "Financial administration" describes publication requirements for certain financial information in more detail.

Part 1 of Article 70 of Title 24 contains requirements for newspapers in which any legal notice or advertisement required by statute or by ordinance is to be published.[19] C.R.S. §§ 24-70-102, 24-70-103, and 24-70-106 set out requirements as to frequency and duration of publication, and as to place of publication or area of general circulation. C.R.S. § 24-70-105 states how legal publications can be proved by affidavit. C.R.S. § 24-70-107 sets the maximum rates that can be charged for legal publications.

---

10 C.R.S. § 31-16-105.

11 *Id.*

12 *Id.*

13 "Be it ordained by the city council or board of trustees of ... "

14 C.R.S. § 31-16-105.

15 C.R.S. § 31-16-106.

16 C.R.S. § 31-32-103.

17 C.R.S. §§ 31-16-105 and 31-16-106.

18 C.R.S. § 31-16-105.

19 C.R.S. § 24-70-101.

ADOPTION BY REFERENCE

Statutes providing for adoption by reference appear at C.R.S. §§ 31-16-201 to 31-16-208. Again, these statutes may be superseded by charter provision or ordinance of a home rule municipality.

Adoption by reference is used to adopt a large amount of text as a municipal ordinance, without reading it all or publishing it in full. "Codes" that may be adopted by reference to include "any published compilation of statutes, ordinances, rules, regulations, or standards adopted by the federal government, the state of Colorado, or any agency of either of them, or by any municipality or other political subdivision in this state."[20] "Code" also includes existing ordinances of the adopting municipality and published compilations by private entities on specified subjects (e.g., building codes, fire codes, etc.). It is possible to adopt by reference a "primary code" that in turn incorporates by reference one or more "secondary codes".[21] C.R.S. § 31-16-201(5) defines "published" to mean "issued in printed, lithographed, multigraphed, mimeographed, or similar form."

The basic procedure is to introduce the adoption-by-reference ordinance, and then to give two published notices of the time and place of a public hearing. The notices are to be published at least 15 days prior to the hearing.[22] They must state that copies of the code being adopted, as well as any secondary codes referred to therein, are on file and available for inspection in the clerk's office.[23] The notices also are required to describe the purpose, subject, and source of the code. If it is a municipal code, the notice must include the name of the municipality, the date the code was published, and "specific reference" to the code "as it existed and was effective at a given date."[24]

The usual reading and publication requirements for adoption of an ordinance apply, but only to the adoption-by-reference ordinance itself, not to the entire code.[25] The same description of the code used for the hearing notice must be included in the ordinance publication(s).[26] Primary codes also must be "specified" (named) in the title of the adoption-by-reference ordinance.[27] Also, any penalty clauses for violations must be set out in full in the adoption-by-reference ordinance; penalties may not be adopted by reference.[28]

An exception to the procedures and requirements in Part 2 of the relevant statute is available for ordinances that adopt by reference "any statute, rule, regulation, or standard adopted by the federal government or State of Colorado, or by any agency of either of them."[29] Such ordinances need only refer to such statute, rule, regulation, or standard in the text of such ordinance.[30]

The municipal governing body in the course of adoption may change the code, but changes must be set out in full in the adoption-by-reference ordinance and published in full. However, any changes or additions that are not substantive in nature made in connection with any codification or compilation of existing ordinances of the adopting municipality may simply be posted at the municipal offices.[31] After the code is adopted, amendments promulgated by the entity that is the source of the code may be adopted by reference, or may be adopted in the same manner as any other amendatory ordinance.[32]

After a code is adopted, the clerk may transmit the required copy to the officer charged with enforcement of the code provision. The clerk is required to maintain a reasonable supply of copies of the code for purchase by the public at a moderate price.[33]

---

20 C.R.S. § 31-16-201(2).

21 C.R.S. §§ 31-16-201(4) and (6).

22 C.R.S. § 31-16-206.

23 *Id.*

24 C.R.S. § 31-16-203.

25 *See* C.R.S. §§ 31-16-203 and 31-16-205.

26 C.R.S. § 31-16-205.

27 C.R.S. § 31-16-202.

28 C.R.S. § 31-16-204.

29 C.R.S. § 31-16-202.

30 *Id.*

31 C.R.S. § 31-16-204.

32 C.R.S. § 31-16-207.

33 C.R.S. § 31-16-206.

CHAPTER 5: RECORDS

VALIDITY OF RECORDS

Records provide the information needed to manage municipal programs, make effective decisions, and ensure administrative continuity. Municipal records document the delivery of services, provide legal accountability, give evidence of the responsible management and expenditure of public funds, and document the historical development of the government and the community.

Local government records are:

- held in public trust for the common good;
- an essential informational resource for local government and its citizens;
- an important historical asset; and
- vital to continuity of municipal operations.

Timely access to the right information by municipal staff and the public enables the municipality to function effectively and protects the rights and interests of the municipal government and the citizens. To ensure the retrieval of information on a timely basis and in accordance with legal requirements, the municipality must have sufficient resources to manage its records holdings properly.

THE MUNICIPAL CLERK'S ROLE AS THE CUSTODIAN OF PUBLIC RECORDS

Regarding mayor–council cities, C.R.S. § 31-4-110 provides that the clerk has custody of all the laws and ordinances of the city council and is to keep a regular record of city council proceedings.

Relating to towns, C.R.S. § 31-4-305 is similar to § 31-4-110 and directs the clerk to keep a true and accurate record of all of the proceedings, rules, and ordinances made and passed by the board of trustees.

The requirements for council–manager cities are somewhat broader. Besides making and keeping a journal of council proceedings, the clerk is to have custody of all public records not specifically entrusted to any other public officer.[34] In home rule municipalities, a charter provision or ordinance often defines the clerk's record-keeping responsibilities.

In practice, municipal clerks often find themselves entrusted with virtually all record keeping for the municipality. One of the exceptions to this is the criminal justice records, which are usually maintained by the Police Department or the Court system. This should be noted in the municipality's Records Plan Manual.

Refer to the 2010 CMCA RIM-ERM Toolkit for additional information.

STATUTORY DUTIES OF PRESERVATION AND PROTECTION OF PUBLIC RECORDS

Part 1 of Title 24, Article 80 of the Colorado Revised Statutes creates a cooperative state-local system aimed at preserving and protecting public records. It is not clear whether a home rule municipality could supercede these statutes.

For more information regarding records retention, clerks may wish to refer to the Model Municipal Records Retention Schedule, readily available on the State Archives and Public Records website, *www.colorado.gov/dpa/doit/archives*. Information on the state's role in public records preservation can be obtained from the Division of State Archives and Public Records, 1313 Sherman, Room 1B-20, Denver, CO 80203, 303-866-2055. The 2010 CMCA RIM-ERM Toolkit will also provide additional information.

- C.R.S. § 24-80-103 provides for the consultation between the Department of Personnel, the attorney general, and the local custodian of records to determine whether the records in question are of legal, administrative, or historical value and, if unanimously determined to be of no legal, administrative, or historical value, the disposition of such records. A list must be kept of all public records that are destroyed.
- C.R.S. § 24-80-104 provides that records deemed by the local custodian to be unnecessary for the transaction of business, but deemed by the attorney general or the Department of Personnel to be of legal, administrative, or historical value, may be transferred. A list of all records transferred must be kept.
- C.R.S. § 24-80-105 gives direction for the disposal or transfer of records.
- C.R.S. § 24-80-106 imposes general duties of preservation and protection upon all custodians of public records.
- C.R.S. § 24-80-107 permits (but does not require) the use of photographic film reproductions (microfilm) for preservation of public records. These film copies must meet minimum standards and are deemed to be original records for all purposes. Guidelines for microfilming are available from the Division of State Archives and Public Records.

34 C.R.S. § 31-4-215.

Clerks also should be aware of C.R.S. § 18-8-114, which provides criminal penalties for various actions in connection with public records. This includes knowing falsification; knowing and unauthorized destruction, mutilation, concealment, or unauthorized retention of public records.

There is a lifecycle involved with records. There is the opportunity of: creation, maintenance, management, disposition, and retention of the actual document that leads to a record trail: birth, education, medical, marriage/divorce, legal, and death. These all must be managed and usually it is looked to the clerk to complete this.

STATUTORY REQUIREMENTS THAT PUBLIC RECORDS BE OPEN FOR INSPECTION

Title 31 of the Colorado Revised Statutes contains several general statements about the availability of municipal records for inspection. In cities, the records of city council proceedings are open to inspection and examination by any citizen.[35] As to council–manager cities and towns, the records of the city or town are to be open to inspection at reasonable times and under reasonable regulations established by the city or town.[36]

More detailed and comprehensive guidance on the availability of public records for inspection appears in Part 2 of Article 72 of Title 24, known as the Colorado Open Records Act. Additional information concerning the Open Records Act, its requirements and interpretation by Colorado Courts may be found in CML's publication *Open Meetings, Open Records: Colorado's Sunshine Laws and Municipal Government* (2008).

C.R.S. § 24-72-201 declares it to be the public policy of the state that all public records shall be open for inspection by any person at reasonable times (except as otherwise provided in other specific statutes). The coverage of this comprehensive public records inspection statute is very broad. "Public records" is defined to include all writings made, maintained, or kept by the state or any of its agencies, institutions, nonprofit corporations, or political subdivisions.[37] "Political subdivision" is in turn defined to include every county, city, and town (as well as other types of local governments).[38] This language seems at least to indicate an intention to include home rule municipalities, and it is unclear whether a home rule municipality could supersede the public records requirements. There are also criminal penalties for willful and knowing violations of these provisions.[39]

One important exception from this statutory public records provision includes criminal justice records, which are dealt with separately in Part 3 of Article 72 of Title 24. While it is not typical for municipal clerks to have responsibility for criminal justice records, it is sometimes difficult to define what matters are criminal in nature. If any doubt exists as to whether any of the records under the clerk's control fall into this category, the municipal attorney should be consulted.

While the general policy of this comprehensive public records inspection law is in favor of the public's right to know, C.R.S. § 24-72-203(1) permits the custodian of records to make such rules and regulations as to inspection as are reasonably necessary for the protection of the records and the prevention of unnecessary interference with the custodian's regular duties.

Where a request for inspection of records is made to the wrong person (that is, to a person who does not have custody of the records), C.R.S. § 24-72-203(2) imposes certain duties of providing, insofar as possible, relevant information to the applicant. C.R.S. § 24-72-203(3) provides that where the records requested are not immediately available because they are in active use or in storage, the custodian is to set a date and hour — presumed to be three working days or less — when the records will be made available. If extenuating circumstances exist, a period of extension is allowed, but it shall not exceed seven working days.[40]

Detailed exceptions to the general right of inspection are contained in C.R.S. § 24-72-204. Subsection (1) provides an exception for any inspection of public records that would violate any state statute, federal statute, or regulation; Supreme Court rule; court order; or any joint rule of the senate and house pertaining to lobbying. Subsection (2) sets forth circumstances in which the custodian may deny inspection on grounds that it would be contrary to the public interest. Examples include records of law enforcement investigations; test questions, scoring keys, and other data pertaining to licensing and employment examinations; contents of certain real estate appraisals; any market analysis data generated by the Department of Transportation's bid analysis; and records and information filed with, maintained by, or prepared by the Department of Revenue relating to the identification of persons. Subsection (2)(b) provides that if any representative of the news media is allowed inspection of public records of this category, all news media must be given the same right of inspection.

35 C.R.S. § 31-4-107(1).

36 C.R.S. §§ 31-4-217 and § 31-4-305.

37 C.R.S. § 24-72-202(6).

38 C.R.S. § 24-72-202(5).

39 C.R.S. § 24-72-206.

40 C.R.S. § 24-72-203(3)(b).

Subsection (3) sets forth circumstances in which the right of inspection shall be denied. Examples include when the records at issue are medical and other kinds of data on individual persons, personnel files, letters of reference, library user records, and "trade secrets, privileged information, and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person." Subsection (3.5) allows an individual meeting the requirements of the subsection to request that the address of such individual included in any public records concerning that individual be kept confidential. However, for most of the types of records described in subsection (3), as well as certain types of records described in subsection (2), the "person in interest" (that is, the person who is the subject of the record or that person's representative) has certain rights of inspection even though the general public does not.[41] Similarly, an individual that makes a request of confidentiality (or a person authorized in writing by such individual) may inspect the confidential records.[42] An applicant who is denied the right to inspect public records may request a written statement from the custodian citing the law or regulation under which access is being denied.[43]

The law also creates a procedure whereby an applicant who is denied the right to inspect records may obtain review in the district court. If the court finds that the denial of access was improper, it shall order the custodian to permit such inspection and may award court costs and attorneys fees to the applicant.[44] Conversely, there is also a district court procedure available to the custodian to restrict access to public records when disclosure would result in "substantial injury to the public interest."[45]

C.R.S. § 24-72-205 provides that copies may be requested of any public records that are subject to inspection. The custodian may set a reasonable fee for copying, not to exceed 25 cents per page, unless the actual cost is higher.[46] Other statutes setting specific fees for copies continue to apply. If the custodian does not have copying facilities, there is a right of access for copying purposes, but the custodian is to retain control of the records and supervise the copying. If practical, the copying is to be done without transporting the records, but the custodian may make whatever arrangements are necessary, all at the expense of the applicant. The custodian may establish a reasonable time schedule for the copying and may charge fees for supervision of the copying within the same limits provided for copying fees. Provisions also are made in the statute for charging fees for nonstandard reports generated from a manipulation of data and for certain costs associated with public records that are the result of computer output other than word processing.[47]

CERTIFICATION; CITY SEAL

The only statutory provision concerning the clerk's function of certifying copies of municipal records is C.R.S. § 31-4-110(2). Applicable to city clerks, this statute provides that the clerk is to use the city seal to authenticate ordinances and other documents when attested documents are ordered by persons other than the city council, to charge the same fees allowed to county officers for similar services.[48] Home rule municipalities may have charter provisions or ordinances on this subject. Even where there is no express provision, certification is a traditional function of the municipal clerk. As an example, a sample certificate of authenticity is provided in the appendix.

C.R.S. § 31-15-101(1)(e) states that municipalities may have a common seal that they may alter at their pleasure, but this provision provides not further guidance on its use. Again, use of a seal is traditional even in the absence of any express provision.

THE MECHANICS OF RECORD KEEPING

Records come in various formats and the records custodian will need to determine if the document that they have is a record or a document. Whether in hard copy format or electronic, records must be preserved in a process for rapid and accurate retrieval. More and more of the municipalities are moving toward "paperless" operation, so hard copy filing may be dissolving. Many offices, however, always will keep some hard paper copies, and these offices will need to design a filing system that is cohesive with hard copy systems and electronic systems. Records custodians will be required to determine how they will keep records, and then decide about naming conventions, retention, and storage.

Regardless of the format, it is the content that records custodians are concerned about. Paper, microfilm, electronic, photographs, maps, audio, etc. — it does not matter. It will be difficult to design a system that encompasses all of these

41 *See* C.R.S. §§ 24-72-204(3)(a); 24-72-204(2)(a)(II) and (IV).

42 C.R.S. § 24-72-204(3.5)(c).

43 C.R.S. § 24-72-204(4).

44 C.R.S. § 24-72-204(5).

45 C.R.S. § 24-72-204(6)(a).

46 C.R.S. § 24-72-205(5)(a).

47 C.R.S. §§ 24-72-205(3) and (4).

48 *See* C.R.S. § 30-1-103.

types of media. A muncipality should determine the system that works best it and stick to it. Having multiple systems causes confusion, timeliness, additional cost factors, and often loss of the document.

C.R.S. § 31-15-201(1)(h) states that the governing body of the municipality can authorize the use of electronic records or signatures and adopt rules, standards, policies, and procedures for use of electronic records or signatures.

The primary purpose of creating and maintaining records is for their reference, administrative, and historical value. For this reason, it is essential that records management be as simple and comprehensive as possible. Having an electronic system can be expensive and many municipalities simply cannot afford one. Managing hard copy documents and records is a requirement for most organizations. An integrated program of records management involves the following procedures:

- Determination of what material is to be filed and for how long. The records retention schedule for filed material requires the division of the files into active, semi-active (temporary), and inactive files. For assistance in establishing a record retention schedule refer to the adoption of the Colorado Municipal Retention Schedule. Refer to the 2010 CMCA RIM-ERM Toolkit for additional information.
- A system for placing material in the files, for protecting the vital/essential records, and for retrieving them when needed. This will require planned supervision, a migration policy, and the development of a filing manual, which addresses various media formats of the records.
- Disposal or destruction of records no longer needed as authorized. (See the section “The municipal clerk’s role as custodian of public records” above for more information.). Note the adoption of the Colorado Municipal Retention Schedule, as well as the process for the certificates of destruction for the destruction of records. It is recommended that the municipality’s resolution regarding the adoption of the retention schedule be put in the records manual for easy retrieval.
- Placing the design and use of new forms under the direction of the person(s) or department in charge of records management.

There are numerous types of or variations in manual hard copy filing systems used by clerks. Once a good hard copy filing system is in place, it will make a smoother transition into the electronic systems. Keeping the same naming conventions also will provide consistency whether the records are hard copy or electronic formats.

The important thing to remember is that filing is the placing of records in acceptable containers according to some predetermined arrangement so that any record, when required, can be located quickly and conveniently. The emphasis is upon the “finding,” not the “storing” aspect. By applying the same principles to all records, regardless of their format, will allow consistency, ease, and understanding by all involved in the record process.
Be sure there is a clear understanding as to what determines a record versus a document. By having this clearly understood and defined, it can affect the outcome of procedures, storage, retention, duplication, versioning, filing, naming conventions, and overall general records keeping practices.

Those purchasing or using electronic systems may have some concerns that paper format copies do not have. Some of these include: loss of electricity so no retrieval in a timely manner; loss of document due to migration errors; viruses in the computer system corrupting the files; hosted on-site or off-sites issues,;and inconsistency in indexing nomenclature. An electronic system should fit the municipality’s practices, polices, and procedures. Also, it should include a detailed contract to ensure all that is promised is received. Before purchase, electronic systems should be well researched and references checked.

The International Institute of Municipal Clerks (IIMC) publishes many helpful documents such as technical bulletins (with the help of the National Association of Government Archives & Records Administrators (NAGARA) and the Records Management Committee) and case studies covering records management and related topics in more detail than can be presented in this handbook. Other publications of the IIMC describe ways of integrating word processing and computer capabilities into the clerk’s office. A catalogue may be obtained by writing the International Institute of Municipal Clerks, 8331 Utica Ave., Suite 2000, Rancho Cucamonga, CA 91730. It can also be viewed online at *www.iimc.com*.

Other resources include:

- National Association of Government Archives & Records Administrators (NAGARA), *www.nagara.org*
- Natational Archives & Records Administration (NARA), *www.archives.gov*
- the CMCA Toolkit, available from the CMCA records chair
- Colorado Municipal League, *www.cml.org*
- Federal Emergency Management Agency (FEMA), *www.fema.gov*
- ARMA International, *www.arma.org*
- AIIM, *www.aiim.org*
- IPER, *rc.statearchivists.org/Content/IPER-Project.aspx*

- Council of State Archivists (CoSA), *www.statearchivists.org*
- Colorado State Archives, *www.colorado.gov/dpa/doit/archives*

SOCIAL MEDIA

Social media is having more and more of an impact on records managers, as well as on municipalities generally, especially as technology changes and advances. Lack of control on what is being saved, sent, or received affects the ability to follow a retention schedule. The Colorado State Archives is currently working on a policy to address the various social media and their retention. Each municipality should have policies or procedures in place that addresses these types of records.

DISASTER PLANNING

Every municipality should have a disaster plan as well as a records recovery plan in cooperation with the municipal emergency operations officer. These plans should include a records inventory map, office-in-a box kits, COOP copies, lists of records recovery vendors and their contact information, backup plans and copies, telephone trees, and additional necessary resources. Planning in advance and being proactive will make a difference in saving records. Essential records should be saved first; knowing their location will help in their recovery after the immediate danger is gone.

There are various classes, workshops, or online help available through IIMC, CMCA, FEMA, IPER, and CoSA that can help with the preparation of records recovery plan.

CHAPTER 6: ELECTIONS

MUNICIPAL CLERK'S DUTIES UNDER THE MUNICIPAL ELECTION CODE

Statutory municipalities, as well as numerous home rule municipalities, conduct their elections pursuant to the Colorado Municipal Election Code of 1965 (Municipal Election Code).[1] The clerk is the chief election officer and makes all interpretations and initial decisions as to controversies arising under the Municipal Election Code.[2] However, in municipalities with election commissions, the commission performs the duties of the clerk.[3] For a variety of election information, including a checklist of actions required before, during, and after elections, municipal clerks may wish to refer to CML's biennial publication, *The Election Book* (as of publication of this reference guide, the most recent edition is 2011).

AUTHORITY OF HOME RULE MUNICIPALITIES WITH RESPECT TO ELECTIONS; DISTINCTION BETWEEN THE COLORADO MUNICIPAL ELECTION CODE OF 1965 AND UNIFORM ELECTION CODE OF 1992

Section 6 of Article XX, the home rule article of the Colorado Constitution, specifically gives home rule municipalities full authority over:

> *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 ...*

Therefore, home rule municipalities have broad power to regulate municipal elections and to supersede state laws pertaining to municipal elections.

Pursuant to C.R.S. § 31-10-102.7, any municipality may, by ordinance or resolution, elect to use the Uniform Election Code of 1992 (Uniform Election Code) in lieu of the Municipal Election Code.[4] While the Municipal Election Code does not apply to home rule municipalities, home rule municipalities may adopt all or any part of the code by reference.[5] Commonly, home rule charters adopt all or parts of the Municipal Election Code by reference, frequently permitting it to be superseded by ordinance or other charter provision.

REGULAR AND SPECIAL ELECTION SCHEDULING

Regular elections are defined in C.R.S. § 31-1-101(10). For towns, the regular election is held the first Tuesday in April of even-numbered years. For cities, the regular election is held the first Tuesday of November of odd-numbered years. For "any other municipality," presumably referring to home rule or special territorial charter municipalities, the regular election of officers, and any other regularly scheduled election at which all qualified electors may participate, is included in the statutory definition of a regular election.

By statute, the date on which new municipal officers take office as the result of the regular elections is calculated somewhat differently for cities than for towns. For statutory cities, C.R.S. § 31-4-105 provides that the terms of new officers commence "at the first meeting of the government body following the survey of election returns, unless the governing body provides by ordinance or resolution that terms shall commence on the first Monday after the first Tuesday in January following their election." This provision establishes a definite date on which the new council-members are sworn in and formally take office.

Swearing in process

The statutes for towns do not specifically provide any definite swearing-in date, nor is there a "lame-duck" period. C.R.S. § 31-4-301(3) simply provides that all municipal officers hold office until their successors are "elected and have complied with section 31-4-401." The provisions of C.R.S. §§ 31-4-303 and 31-4-304 make reference to appointments to be made by the new board, apparently without further preliminaries. The general practice in statutory towns is to hold an organizational meeting shortly after the April election, at which the new board members are sworn in.

---

1 C.R.S. §§ 31-10-101 to 1540.

2 C.R.S. § 31-10-104(1).

3 C.R.S. § 31-10-105.

4 C.R.S. Articles 1 to 13 of Title 1.

5 C.R.S. § 31-10-1539(2).

C.R.S. § 31-4-401(1) governs the swearing-in process. The municipal clerk is one of several officials authorized to administer the oath of office.[6] The statute does not give exact words for the oath. It merely provides that the officer-elect must take an oath to support the constitutions of the United States and the State of Colorado. Reference may be made to C.R.S. §§ 24-12-101 and 24-12-102 for phrasing for oaths. A sample oath of office is available in the appendix.

Special elections

C.R.S. § 31-1-101(11) defines "special election" as any election called by the governing body or initiated by petition, to be held at any time other than the regular election, to submit questions or proposals to the electors. C.R.S. § 31-10-108 sets some specific constraints on the timing of special elections. Special elections must be held on Tuesday, must be called at least 30 days in advance, and may not be held within certain time periods in relation to other elections. There are additional limitations regarding the timing of special elections concerning fiscal matters pursuant to the Taxpayer's Bill of Rights (TABOR). Special elections shall be conducted as nearly as practicable in the same manner as regular elections.[7]

Special elections also may be required in some instances to fill a vacancy in an elective office. For towns and mayor–council cities, C.R.S. §§ 31-4-303 and 31-4-108(2)(b), respectively, allow the vacancy to be filled either by appointment or by ordering a special election within 60 days after the vacancy occurs. If neither action is taken within that time, an election must be ordered and held as soon as practicable. For council–manager cities, no "grace period" is allowed; the vacancy must be filled within 60 days after it occurs, either by appointment or by ordering an election.[8]

For information relating specifically to recall elections, in which vacancies may be created and filled simultaneously, see the section "Applicability of the Uniform Election Code and coordinated elections" below.

TABOR ELECTIONS: TIMING, NOTICE, AND BALLOT TITLES

Amendment 1, known as the Taxpayer's Bill of Rights or TABOR, was approved by the citizens of Colorado on Nov. 3, 1992. This amendment enacted Article X, § 20 of the Colorado Constitution. To comply with TABOR, the municipal clerk should consult with the municipal attorney. Municipal clerks also may wish to refer to CML's *TABOR: A Guide to the Taxpayer's Bill of Rights* (2011). The provisions relating to the timing of elections, notice requirements, and ballot titles are noteworthy. With regard to timing of elections, Article X, § 20 provides that "ballot issues" are to be decided only on state general election dates, in November of even-numbered years, at biennial local elections and on the first Tuesday in November of odd-numbered years. The provisions of Article X, § 20(3) apply only to issues of government spending, financing or taxation.[9]

Article X, § 20 also imposes substantial notice requirements for TABOR ballot issue elections. Sample notices of elections along with sample ballot issues are contained in the appendices to CML's *TABOR: A Guide to the Taxpayer's Bill of Rights*.

Finally, Article X, § 20(3)(c) requires ballot titles for tax or bonded debt increases to begin "SHALL (DISTRICT) TAXES BE INCREASED (FIRST, OR IF PHASED IN, FINAL, FULL FISCAL YEAR DOLLAR INCREASE) ANNUALLY…?" or "SHALL (DISTRICT) DEBT BE INCREASED (PRINCIPAL AMOUNT), WITH A REPAYMENT COST OF (MAXIMUM TOTAL DISTRICT COST)…?"

APPLICABILITY OF THE UNIFORM ELECTION CODE AND COORDINATED ELECTIONS

A more in depth discussion of coordinated elections and the timeline required is located in CML's *The Election Book*.

The Colorado Election Code of 1980 was repealed and reenacted as the Uniform Election Code of 1992. C.R.S. Articles 1 to 13 of Title 1 apply to all general, primary, congressional vacancy, school district, and special district elections, as well as to any municipal election conducted as part of a coordinated election.[10] Any municipality may, by ordinance or resolution, use the requirements and procedures of the Uniform Election Code in lieu of the Municipal Election Code for regular and special municipal elections.[11]

The Uniform Election Code provides for "coordinated elections." Participation in coordinated elections is designed to facilitate implementation of Article X, § 20 of the Colorado Constitution and reduce the problems associated with voters

6 *See* C.R.S. § 31-4-401 (providing that the oath is administered by the municipal judge, clerk, or other person designated by the governing body or who is otherwise authorized by law to administer oaths, to support the constitution of the United States and the state constitution).

7 C.R.S. § 31-10-108.

8 C.R.S. § 31-4-205(2).

9 C.R.S. §§ 1-41-101 to 1-41-103; *Zaner v. Brighton*, 917 P.2d 280 (Colo. 1996).

10 C.R.S. § 1-1-102.

11 C.R.S. §§ 1-1-102 and 31-10-102.7.

having to go to multiple polling places to cast their votes in municipal, county, school district, and special district elections, which are all held on TABOR-mandated election dates.

Elections are coordinated under the Uniform Election Code if more than one political subdivision holds an election on the same day in November and the eligible electors for each election are the same or the boundaries overlap.[12] On behalf of participating political subdivisions, the county clerk and recorder typically is designated in an intergovernmental agreement as the coordinated election officer and conducts the election.[13] The county clerk and recorder may, upon request, conduct a coordinated election on election dates other than in November.

Statutory municipalities holding regular or special elections on the November election dates specified in TABOR will participate in coordinated elections, unless they choose to conduct their election by mail ballot. Participation in coordinated elections by home rule municipalities is optional. Nonetheless, the state encourages home rule participation by declaring that conflicting charter provisions trump the Uniform Election Code.[14]

The intergovernmental agreement between the municipality participating in a coordinated election and the county clerk and recorder as to the conduct of the elections must be signed no less than 70 days prior to the scheduled election.[15] At a minimum, the agreement must include an allocation of responsibilities between the county clerk and recorder and the municipality for the preparation and conduct of the coordinated election, and provision for the reasonable sharing of the actual cost of the coordinated election.[16]

Political subdivisions participating in coordinated elections must certify their ballot content to the county clerk and recorder no later than 60 days prior to the election.[17] In addition, the designated election official of each municipality (or designee thereof) conducting an election in November, including those conducting a mail ballot election, must transmit to the county clerk and recorder for the county or counties in which the political subdivision is located, at least 42 days before the election, any notice that the political subdivision is required to distribute pursuant to TABOR.[18] It is the responsibility of the county clerk and recorder to publish and mail the required notices or notice package. The designated election official must also send a copy of the published notice of the election to the county clerk and recorder at the time the notice of election is made.[19]

FEDERAL VOTING RIGHTS ACT

The Voting Rights Act affects the conduct of some municipal elections in Colorado.[20] The Voting Rights Act of 1975 contains bilingual election requirements that must be followed by municipalities within those counties in which the voting age population consists of more than 5 percent, or 10,000, non-English-speaking citizens; and the illiteracy rate of this language-minority group is higher than the national illiteracy rate. The act requires, in part, that all materials pertaining to voter information, registration, and balloting be printed in the group's language, as well as English, within those counties and within any political subdivisions (including municipalities) in those counties. Specific information regarding a county's status and its method of compliance with the provision, as well as information on other requirements of the Voting Rights Act of 1975, may be obtained from the county clerk.

THE FAIR CAMPAIGN PRACTICES ACT

Colorado voters approved a citizen initiative that repealed the Colorado Campaign Reform Act and replaced it with the Fair Campaign Practices Act (FCPA), Article 45 of Title 1. The FCPA applies to all elections of municipal officers, as well as to all municipal initiative, referendum, recall, and other "issue" elections.[21] The FCPA is intended to apply to home rule municipalities and expressly authorizes home rule municipalities to adopt more stringent provisions.[22] It is not clear what the outcome would be if a home rule municipality attempted to supersede this act. Colorado home rule municipalities that adopt their own campaign practices in a charter provision or ordinance as authorized by the Colorado Constitution are precluded from the Secretary of State's enforcement jurisdiction.[23]

---

12 C.R.S. § 1-1-104(6.5).

13 *See* C.R.S. § 1-1-104(8).

14 C.R.S. § 1-1-102(1).

15 C.R.S. § 1-7-116(2).

16 C.R.S. § 1-7-116(2)(b).

17 C.R.S. § 1-5-203(3)(a).

18 *See* C.R.S. §§ 1-7-901 to 1-7-908.

19 C.R.S. § 1-5-205(2).

20 42 U.S.C.S. §§ 1971 to 1973 (2001).

21 C.R.S. § 1-45-103(8).

22 C.R.S. § 1-45-116.

23 *In re: Colorado Springs*, 277 P.3d 937 (Colo. App. 2012)

The centerpiece of the FCPA is its specific contribution and expenditure limits, which do not apply to municipal candidates. However, the requirements for disclosure of campaign contributions and expenditures do apply to municipal candidates. The campaign contribution and expenditure threshold has been the subject of recent activity. An issue committee that accepts contributions or makes expenditures in excess of $200 is subject to the disclosure and reporting requirements, but at the time of publication, the Secretary of State has an appeal pending to modify that $200[24] FCPA requirement to $5,000.[25] Municipal officials should act in close cooperation with legal counsel before taking actions that may be affected by the FCPA.

A more comprehensive treatment of FCPA requirements can be found on the Colorado Secretary of State's website, *www.sos.state.co.us.*

INITIATIVE, REFERENDUM, AND RECALL

A referendum is a procedure whereby the citizens, through a petition process, can — by vote at an election — protest against legislation enacted by their representatives. An initiative permits the people to bypass the legislative body completely and to initiate their own legislation, through a similar petition and vote by election process. Recall is the method citizens may use to vote to remove elected officials during their term of office through a petition and election process.

Initiative and referendum

Article V, § 1(9) of the Colorado Constitution reserves to the people the powers of initiative and referendum as to municipal legislation. The word "legislation" in this context has been interpreted by the Colorado Supreme Court to exclude governing body actions that are "administrative" in character. For example, acts necessary to carry out existing legislative policies and purposes are deemed to be administrative, while acts declaring public policy are legislative.[26] Also, if an original ordinance was legislative, an amendment to that ordinance also may be characterized as legislative, as in the case of an original zoning ordinance and an amendment to rezone.[27]

"Cities, towns, and municipalities" are authorized to provide for the "manner of exercising" the initiative and referendum powers as to municipal legislation, except that not more than 10 percent of the registered electors may be required on a referendum petition, nor more than 15 percent for the initiative.[28] It is not clear to what extent this language permits municipalities in general to deviate from statutory initiative and referendum procedures. Article XX, § 5 of the Colorado Constitution provides that home rule charters must make provision for the initiative and referendum process. It appears that home rule municipalities may supersede initiative and referendum statutes if the local provision is more favorable to citizens' rights.[29] Presumably, the 10 and 15 percent limits of Article V, § 1(9) apply to all municipalities, although no appellate court has yet so held.

Article 11 of Title 31 provides for municipal referendum procedures.[30] A petition protesting the ordinance must be filed with the city or town clerk or "other election officer," no later than 30 days after final publication of an ordinance.[31] A referendum petition must have valid signatures of registered electors equal in number to 5 percent of the total number of electors of the city or town registered on the date of final publication of the ordinance. At such time the ordinance is suspended, and it must be reconsidered by the governing body.[32] If the governing body does not repeal the ordinance, it is to be submitted to a vote of the registered electors at a regular or special election held between 60 and 150 days after the date the petition is filed. The ordinance is not to take effect until approved by a majority of the voters.[33]

---

24 COLO. CONST. art. XXVIII, § 2(10)(a).

25 *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010) set the threshold to a "substantial" financial burden of complying with the registration and reporting requirements for issue committees for a minimal public interest in such information. In response to *Sampson*, Secretary of State Scott Gessler adopted Rule 4.27 to implement the decision's definition of substantial to mean $5,000 in contributions or expenditures by an issue committee during an election cycle would trigger the FCPA requirements. The Colorado Court of Appeals overturned Rule 4.27 and restored the $200 threshold in *Colorado Common Cause v. Gessler*, 2012 WL 3755615 (Colo. App. 2012). At the time of publication, Secretary Gessler had filed an appeal to the Court of Appeals decision.

26 *Aurora v. Zwerdlinger*, 571 P.2d 1074 (Colo. 1977).

27 *Margolis, v. Dist. Court*, 638 P.2d 297 (Colo. 1981); *Witcher, v. Canon City*, 716 P.2d 445 (Colo. 1986).

28 COLO. CONST. art. V, § 1(9).

29 *Clark v. Aurora*, 782 P.2d 771 (Colo. 1989); *Burks v. Lafayette*, 349 P.2d 692 (Colo. 1960): *Fleming v. Lakewood*, 723 P.2d 166 (Colo. App. 1986).

30 C.R.S. § 31-11-105(1).

31 C.R.S. § 31-11-105(2).

32 C.R.S. § 31-11-105(3); If the day for filing the petition falls on a holiday, and the petition is thus permitted to be filed on the next working day, the time for collecting signatures will also he extended to the next working day, unless a home rule charter or ordinance specifically provides otherwise. *See also Fleming v. Lakewood*, 723 P.2d 166 (Colo. App. 1986).

33 C.R.S. § 31-11-105(4).

C.R.S. § 31-11-105 states the 30-day delay of the effective date of an ordinance does not extend to an ordinance calling a special election, or to an ordinance passed with a "safety or emergency clause". A safety or emergency clause sets forth that the ordinance is necessary for the immediate preservation of the public peace, health, or safety, it has a separate section stating the reasons why it is necessary, and it must receive the affirmative vote of three-fourths of all members elected to the governing body. Such an ordinance, however, may be subject to repeal by initiative.[34]

An initiative is commenced when a proposed ordinance is submitted to the legislative body by filing notice of the proposed ordinance with the clerk or other election official, and within 180 days after such notice, the filing of a petition.[35] The petition must be signed by at least 5 percent of the registered electors of the city or town on the date of the written notice. The legislative body must adopt the ordinance, without change, within 20 days following the clerk's determination that the petition signatures are sufficient, or it must submit the initiated ordinance to a vote of the registered electors.[36] This vote must be taken at a regular or special election held between 60 and 150 days after the date the clerk determines the petition signatures sufficient.[37]

Recall

The right of recall may be exercised for all elective municipal offices.[38] Municipal legislative bodies are authorized to provide for the manner of exercising the recall power "until otherwise provided by law," except that required number of signatures on the petitions may not exceed 25 percent of the vote for the office at the preceding election.[39] These constitutional provisions are applicable to home rule as well as statutory municipalities.[40]

While municipal recall statutes do exist at C.R.S. §§ 31-4-501 to 507, they apparently are not intended to preempt the local authorization as permitted by constitutional provision. C.R.S. § 31-4-501 states that Part 5 of this statutory provision applies, except to the extent that a municipality has adopted its own inconsistent recall provisions pursuant to Article XXI or Article XX of the state constitution (home rule).

Under the statutory procedure, recall petitions are filed with the municipal clerk.[41] Unless otherwise designated by the governing body, the municipal clerk also serves as the hearing officer in the event that there is a protest on the petition.[42]

Recall petitions must meet the form requirements found in C.R.S. § 31-4-502. Each petition must designate by name and address at least three, but no more than five persons, referred to as the "committee," who shall represent the signers in all matters affecting the petition. The name of the municipality and the name of the officer to be recalled must be indicated clearly on each petition; only one officer to be recalled can be named. Petitions must also include a general statement, in not more than 200 words, of the grounds on which the recall is sought.[43] The clerk has until the close of the second business day following submission of a proposed petition to approve or disapprove the petition as to form. A recall petition cannot be circulated until approved. The clerk must mail a written notice of the clerk's action to the officer being recalled on the day that a petition is approved.[44]

The recall petition containing the requisite number of signatures must be filed with the municipal clerk within 60 days from the date of approval.[45] An affidavit of circulator must be attached to each petition section as provided by C.R.S. § 31-4-503(2)(c). Separation of the signature pages or separation of the circulator affidavit from the signature pages renders the petition invalid.[46] The petition shall be signed by registered electors entitled to vote for the successor equal in number to 25 percent of the entire vote cast for all the candidates for that particular office at the last regular election.[47] If more than one person is required by law to fill the office of which the person sought to be recalled is an incumbent, then the same requirement for 25 percent of the entire vote for all the candidates must be met, but the entire vote is divided by the number of all officers elected to such office at the last election. For example, if the petition seeks to recall a trustee elected when

34 *McKee v. Louisville*, 200 Colo. 525, 616 P.2d 969 (1980); *Cavanaugh v. State*, 644 P.2d 1,4 (Colo. 1982), *cert. denied*, 459 U.S. 1011, 103 S. Ct. 367 (1982); *Slack v. Colorado Springs*, 655 P.2d 376, 379 (Colo. 1982).

35 C.R.S. § 31-11-104.

36 C.R.S. § 31-11-104(1).

37 *Id.*

38 COLO. CONST. art. XXI, § 4; C.R.S. § 31-4-501.

39 COLO. CONST. art XXI, § 4.

40 *Bernzen v. Boulder*, 525 P.2d 416 (Colo. 1974).

41 C.R.S. § 3l-4-502(1)(a)(I).

42 C.R.S. § 31-4-503(3)(b).

43 C.R.S. § 31-4-502(l)(a)(I).

44 C.R.S. § 31-4-502(l)(c).

45 C.R.S. § 31-4-503(2)(a).

46 C.R.S. § 31 -4-503(2)(d).

47 C.R.S. § 31-4-502(1)(d).

four trustees were elected to office in the same election, and 400 votes were cast for all the candidates running for trustee, then the required number of signatures on the recall petition is 25:

400 (entire vote) /4 (number of officers elected) = 100 ; 100 x 25 percent = 25

The clerk must issue a written sufficiency determination by the close of business on the fifth business day after the petition is filed, or if that day is not a regular business day, then the first regular business day thereafter.[48] This five-day period for a determination is not required when a protest has been filed prior to that date. A petition is deemed sufficient if the municipal clerk determines that it was filed in a timely manner, has attached the required affidavits, and was signed by the requisite number of registered electors of the municipality within 60 days following the date upon which the clerk approved the form of the petition.[49] The clerk must mail the written determination to the officer to be recalled and the committee. If the clerk finds the petition to be insufficient, he or she must specify the portions of the petition that are not sufficient and the reason(s) for the insufficiency.[50]

A protest may be filed within 15 days after the petition is filed.[51] After receipt of a protest, the clerk is to mail a copy of the protest to the committee named in the petition and to the county clerk and recorder, together with a notice fixing the time for a hearing on the protest (set between five and 10 days after the notice is mailed). Upon receipt of the notice, the county clerk and recorder prepares a registration list for use in determining the sufficiency of the petition. The hearing officer is required to issue a written sufficiency determination no later than five days after the conclusion of the hearing. If the petition is determined to be insufficient, then the portions of the petition not sufficient, and the reason(s) therefore, must be specified.[52]

After a determination of insufficiency, the petition may be withdrawn by a majority of the committee, amended, and then refiled within 15 days after the determination.[53] The clerk has four business days to determine the sufficiency of the refiled petition. A protest to the refiled petition must be made within five days.

The sufficiency determination of any recall petition may be reviewed by the district court for the county having jurisdiction in the municipality by application of the officer being recalled (or the officer's representative) or by a majority of the committee.[54] The court will not review the sufficiency of the grounds for the recall as stated in the petition.

If the recall petition is found to be sufficient, the municipal clerk so certifies the same to the municipal governing body at the first meeting of such body after the expiration of the protest period, or at the first meeting after the hearing officer determines the recall petition to be sufficient, whichever is later.[55] The municipal governing body then calls a recall election to be held not less than 30, but not more than 90 days, after submission of the petition.[56] The recall election may be held with a regular election if a regular election is to be held within the 90 days, except that if the officer sought to be recalled is running for reelection at that regular election, then only the question of reelection shall appear on the ballot.

C.R.S. § 31-4-504.5 provides that if an incumbent prevails in a recall election, or in the event of a protest, if a hearing officer determines that the petitions are not sufficient based upon the conduct on the part of the petition circulators, then the municipality may reimburse the incumbent for certain expenses. Requests are filed with the municipal governing body, which reviews them for appropriateness, and if the municipal governing body has determined by ordinance to repay such expenses, then reimbursement is to be made within 45 days after receipt of the request.[57]

Both Article XXI, § 4 of the Colorado Constitution and C.R.S. § 31-4-505 provide that an officer cannot be recalled during his or her first six months in office (the statute, but not the constitutional provision, excepts appointees); and, that a 50 percent petition requirement must be met to file a second recall petition against an officer during a single term.

48 C.R.S. § 3l-4-503(3)(a).

49 *Id.*

50 *Id.*

51 C.R.S. § 3l-4-503(3)(b).

52 *Id.*

53 C.R.S. § 31-4-503(3)(c).

54 C.R.S. § 31-4-503(3)(d).

55 C.R.S. § 31-4-503(4).

56 *Id.*

57 C.R.S. § 31-4-504.5(4).

CHAPTER 7: PERSONNEL

ROLE OF THE MUNICIPAL CLERK; SOURCES OF GENERAL BACKGROUND INFORMATION

The role of the municipal clerk in personnel management and administration will vary depending on the size of the municipality. Large municipalities typically will have a human resources department, but the clerk in a large municipality also is likely to have several subordinates under his or her direct supervision. In small municipalities, where the clerk is often the only full-time staff person, the clerk often is responsible for personnel record-keeping, payroll, and even some personnel policy decisions.

CML compiles annual survey information on salaries and benefits paid by Colorado municipalities. This information is available free online after member login to those who perform the human resources function for their municipalities. Visit *www.cml.org* and look under Publications..

PERSONNEL AND PAYROLL RECORDS[58]

The following is a list of items that should be kept in an employee's personnel files. Since federal and state laws affecting this area change frequently, it is recommended that clerks involved in personnel work consult their municipal attorneys regularly with any questions, and/or subscribe to a personnel guide service that continually updates information. For information regarding personnel files and open records requests, see section "Statutory requirements that public records be open for inspection" in Chapter 5.

Individual personnel files for municipal employees should contain the following types of information:

- application for employment;
- cumulative employment history, which should include listing of department, job title, pay rate, and disciplinary actions;
- emergency contact data that includes the name of a person to be contacted in the event of an emergency, the name of the employee's personal physician, and any other relevant emergency medical information;
- personnel actions (forms or notes authorizing hiring, pay increases, transfers, disciplinary actions, termination, or similar matters);
- references from previous employers (not available to the employee);
- performance ratings;
- applications for benefits (these may be classified with payroll records);
- medical examination reports (highly confidential);
- documentation of Fair Labor Standards Act (FLSA) Compliance, which should include the status of the employee (exempt, nonexempt, or partially exempt) and the rationale and support for the employee's status;
- Form I-9 - Employment Eligibility Verification; and
- other items of importance such as complimentary letters, training certificates, awards, etc.

Payroll may be combined with or separate from personnel files. The payroll records should contain the following:

- documentation of personnel actions that result in adding or taking someone off the payroll, or in establishing or changing someone's pay rate (this documentation could be a letter, a form, or an excerpt of governing body minutes);
- time or attendance records used to compute payroll (when applicable);
- tax withholding forms for both federal and state taxes;
- documentation of payroll deductions, which will always include federal and state income taxes, and also may include social security and other retirement plan deductions (see section "Retirement and insurance systems" below), life and health insurance premiums, savings and loan or credit union deductions, and charitable contributions (for any voluntary deduction, the employee's authorization of the deduction should appear in the payroll records);
- documentation of benefit payments by the employer, which could include such items as workers' compensation and unemployment compensation premiums, all or part of life and health insurance premiums, and payment toward retirement programs; and
- collective bargaining agreements.

58 Various materials in this section are derived from the following publication: NEW MEXICO MUNICIPAL LEAGUE, *Handbook for Municipal Clerks* (April 2007).

Other general areas of personnel-related record-keeping may include special records pertaining to compliance with anti-discrimination laws, claims files such as unemployment compensation, workers' compensation, and other such claims, as well as files containing applications that do not result in employment.

TERMS AND CONDITIONS OF EMPLOYMENT

In Colorado, the statutes generally bestow broad power upon the municipal governing body to create and fill offices, to hire employees, and to provide for such compensation, as it deems appropriate. Compensation of the governing body itself, and of the mayor, is also within the governing body's discretion subject to restrictions on increasing compensation for an office during one's own term. C.R.S. § 13-10-107 requires fixed annual compensation for the municipal judge. Home rule municipalities typically will have relevant local charter or ordinance provisions.

The general state labor laws appear in Title 8; they contain little of substantial impact on the terms and conditions of municipal employment, although municipalities are subject to the general investigatory and information-gathering jurisdiction of the State Division of Labor.[1] Article 1 of Title 8 (the Industrial Relations Act) has been interpreted by the Colorado Supreme Court to give public sector employees a qualified right to strike.[2]

Municipalities are expressly included in Article 5, which requires wage equality regardless of sex.[3] Although there are no express statements of inclusion or exclusion, municipalities also may be subject to the following Articles of Title 8: Article 2, which specifically prohibits certain employment practices such as blacklisting, coercion, misrepresentation, and residency requirements for public employees;[4] and Article 14, which requires an employer to provide safe scaffolding, ladders, hoists, etc., to building employees. The state eight-hour day law for public employees was repealed in 1986.[5] However, a maximum hour limitation for firefighters remains and is applicable to home rule and special territorial charter municipalities, as well as to statutory cities and towns.[6] Finally, Article 17 of Title 8 creates a preference for Colorado labor on public works projects and provides criminal penalties for violations.

Federal law

The National Labor Relations Act, conferring rights of collective bargaining (union representation) and generally regulating labor relations, does not apply in the public sector.[7]

Federal minimum wage and hour legislation, codified as *the Fair Labor Standards Act (FLSA)*,[8] has been held to apply to state and local government employees.[9] Elected officials and their personal staff are exempted from the FLSA's coverage. Other personnel may also be exempt to varying degrees because exemptions are provided for qualifying "executive," "administrative," and "professional" jobs. In addition, the FLSA imposes record-keeping requirements on municipalities.

The Immigration Reform Act of 1986 prohibits the hiring of non-citizens who do not have official authorization to work from the U.S. Citizenship and Immigration Services in the Department of Homeland Security. Municipalities are subject to this act. Documents proving that a person is either a U.S. citizen or has work authorization are required to be checked at the time of hiring, and an I-9 form must be completed.[10]

This discussion of federal laws relating to municipalities as employers should not be considered exhaustive. There may well be other federal laws and regulations that affect municipalities as employers (for example, the Davis-Bacon Act, which may apply where a municipality receives federal assistance for a project, and also the Equal Pay Act of 1963).

Contract

Beyond the above-discussed requirements (as well as items discussed in sections below, "Retirement and insurance systems" and "Employment discrimination), the terms and conditions of municipal employment are essentially a matter of contract between the municipality and the employee. By entering into such contracts, agreements, or understandings, the municipality creates its own obligations as to the terms and conditions of employment. Written personnel policies are

---

1 *See* C.R.S. § 8-l-l0l(7)(a).

2 *Martin v. Montezuma-Cortez School Dist. RE-1*, 841 P. 2d 237 (Colo. 1992). The background of this case is discussed in Hogler, *Public Employee Strikes in Colorado: The Supreme Court Adopts a New Rule*, 22 COLO. LAW 1 (January 1993).

3 C.R.S. § 8-5-101(5).

4 The Colorado Supreme Court in *Denver v. State*, 788 P.2d 764 (Colo. 1990) held residency requirements to be a matter of local concern. Therefore, a home rule municipality may supersede C.R.S. § 8-2-120, the statute that generally prohibits residency requirements for public employees.

5 C.R.S. §§ 8-13-104 to 8-13-106.

6 C.R.S. § 8-13-107.

7 29 U.S.C. § 152(2).

8 29 U.S.C. § 201 *et seq*.

9 *Garcia v. San Antonio Metropolitan Transit Auth.*, 469 U.S. 529 (1985).

10 8 U.S.C. § 1324a; 8 C.F.R. § 274a.

becoming increasingly important in defining the terms and conditions of municipal employment. Failure to follow disciplinary procedures set forth in a written personnel policy may constitute breach of contract by the employer.[11]

For example, where a statute, charter provision, ordinance, contract, personnel policy, or any understanding between a municipality and its officer or employee creates an "expectation" of continued employment by stipulating that an employee will be discharged only "for cause," due process of law prohibits termination without notice and hearing.[12] Some statutes concerning municipal officers contain their own procedural requirements for removal.[13]

RETIREMENT AND INSURANCE SYSTEMS

Social Security

Federal social security law provides for coverage of state and local government employees (including officers) by agreement between the federal government and the state.[14] Colorado has such an agreement, and relevant provisions of state law appear at C.R.S. §§ 24-53-101 to 24-53-111. Social security coverage is optional with each political subdivision but, once exercised, the option cannot be reversed. There are numerous state and federal provisions concerning exactly which groups of employees can be covered.

Public Employees' Retirement Association (PERA) and other retirement plans

C.R.S. §§ 24-54-101 to 24-54-117 authorize, but do not require, municipalities to set up their own retirement systems if they do not participate in the Social Security System or PERA. C.R.S. § 24-51-309 provides further authorization for affiliation with PERA.

Deferred compensation

C.R.S. § 31-l5-902 authorizes, but does not require, municipalities to provide deferred compensation plans for their employees. Article 51 of Title 24 provides additional authorization for municipalities to participate in a particular state-administered deferred compensation plan.

Police and fire pensions

The police and fire pension statutes appear in Article 30 of Title 31, with police and fire pension laws being mandatory. Any municipality — statutory or home rule — that has paid, full-time police officers or firefighters must make some provision for police and fire pensions. Exactly what is required depends on the particular circumstances of the municipality and the employee. It appears, however, that a home rule charter provision asserting to grant benefits greater than those provided by the state act may be pre-empted.[15] Where the municipality provides social security coverage for its police officers, applying the police and fire pension statutes becomes particularly complex, so questions should be directed to the municipal attorney.

Unemployment insurance

Municipalities generally are subject to the state unemployment compensation system.[16] Certain municipal employees, such as elected officials, are excluded.[17] The Division of Employment and Training requires quarterly payroll records. The regulations governing records to be kept and reports to be filed may be found in the Code of Colorado Regulations at 7 C.C.R. 1101-2, 72.4.

Workers compensation

Municipal employers are included within the Workmen's Compensation Act, Articles 40 to 47 of Title 8.[18] C.R.S. § 8-44-101(1) states the available options for workers' compensation insurance. This provision also contains requirements for keeping records of employment-related injuries and for reporting them to the Division of Workers' Compensation in the

---

11 *See Adams County School Dist. No. 5 v. Dickey*, 791 P.2d 688 (Colo. 1990); *compare Seeley v. Board of County Comm'rs, La Plata County*, 791 P.2d 696 (Colo. 1990).

12 *E.g., Cleveland Bd. of Education v. Loudermill,* 470 U.S. 532 (1985); *Mitchell v. Eaton*, 491 P.2d 587 (Colo. 1971). *See also Gomez v. Sheridan*, 611 F. Supp. 230 (D. Colo. 1985); *Gleason v Board of County Comm'rs, Weld County*, 620 F. Supp. 632 (D. Colo. 1985).

13 *See, e.g.,* C.R.S. § 31-4-307 and 31-4-210.

14 42 U.S.C. § 418.

15 *Peterson v. Fire and Police Pension Association*, 725 P.2d 81 (Colo. App. 1986), *aff'd in part, rev'd in part,* 759 P. 2d 720 (Colo. 1988).

16 C.R.S. § 8-70-119 *et seq.*; *see also* C.R.S. § 8-76-108.

17 C.R.S. § 8-70-140.

18 C.R.S. § 8-40-203.

Department of Labor. By making certain required filings and notifications, a municipality may exclude certain uncompensated officers from workers' compensation coverage.[19]

EMPLOYMENT DISCRIMINATION

State law

The basic state statutes that prohibit employment discrimination are found at Part 4 of Article 34 of Title 24. These statutes are administered by the state Civil Rights Commission, and they expressly apply to municipalities.[20] C.R.S. § 24-34-402 defines prohibited unfair employment practices. Employers are not permitted to discriminate in hiring, promoting, demoting, discharging, or compensating employees, on any of the following bases: race, creed, color, sex, age, national origin, or ancestry. Handicap is also a prohibited basis of discrimination, but not if the handicap disqualifies the person from the job, has a significant impact on the job, and cannot be reasonably accommodated by the employer. Employers also are prohibited from printing or circulating statements, advertisements, or publications, using applications, or making inquiries that directly or indirectly express any prohibited limitation, specification, or discrimination in employment (unless based on a "bona fide occupational qualification"). Finally, an employer with more than 25 employees is prohibited from discharging an employee or refusing to hire a person solely on the basis that such employee or person is married to or plans to marry another employee (subject to certain exceptions where the spousal relationship would be in-compatible with the spouses' employment).[21]

C.R.S. § 24-34-402.5, the "smoker's rights statute," generally makes it a discriminatory or unfair employment practice for an employer to terminate an employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours. Exceptions are available where the restriction relates to a "bona fide occupational requirement," or is related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer. An exception also exists where the restrictions are necessary to avoid a conflict of interest or the appearance of such a conflict of interest.

Federal law

"Title VII" of the Civil Rights Act of 1964 is similar to the state discrimination laws: The prohibited bases of discrimination in employment are race, color, religion, sex, and national origin.[22] This law expressly applies to political subdivisions of states[23] except that elected officials and their personal staffs, as well as appointees on the policy-making level, are excluded from the definition of employee.[24] It is expressly stated that Title VII does not require preferential treatment to deal with imbalances ("affirmative action plans"); however, courts may require such preferential treatment as a remedy for past violations.[25] Employers who voluntarily establish "affirmative action plans" are subject to regulatory guidelines established by the federal Equal Employment Opportunity Commission (EEOC).[26]

The Pregnancy Discrimination Act[27] provides that sex discrimination, within the meaning of Title VII, includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. Women affected by such conditions must be treated the same as other persons similar in their ability or inability to work.

The Age Discrimination in Employment Act[28] makes prohibitions similar to those of Title VII, but on the basis of age. The protection of this law is limited to persons 40 or older. Municipal employers are expressly made subject to the law,[29] with the same exclusion for elected officials as granted in Title VII.[30] As with Title VII, the Age Discrimination Employment Act provides "bonafide occupational qualification" exceptions.

The Americans with Disabilities Act of 1990[31] (ADA) prohibits employment practices and policies that discriminate on the basis of disability against "qualified individuals with disabilities" in virtually every aspect of employment. "Reasonable

19 *See* C.R.S. § 8-40-202(I)(a)(I)(B).

20 C.R.S. § 24-34-401(3).

21 *See* C.R.S. § 24-34-402(h)(II).

22 42 U.S.C. § 2000e-2.

23 42 U.S.C. §§ 2000e(a) and (b).

24 42 U.S.C. § 2000e(f).

25 42 U.S.C. § § 2000e-2(j).

26 29 C.F.R. § 1608 (2002).

27 42 U.S.C. § 2000e(k).

28 29 U.S.C. § 631.

29 29 U.S.C. § 630(b).

30 29 U.S.C. § 630(f).

31 42 U.S.C. §§ 12101 to 12213.

accommodations" must be made to the known physical or mental limitations of otherwise qualified applicants or employees with disabilities, unless such accommodations would result in an "undue hardship" on the employer.

Title 1 of the ADA, enforced primarily by the EEOC, contains the substantive provisions relating to job discrimination. Although Title 1 of the ADA does not apply to local governments, the U.S. Department of Justice (generally responsible for enforcing Title II) has issued regulations under Title II of the Act requiring all local governments, regardless of the number of employees, to comply with the employment provisions.

Information and assistance on ADA compliance is available from the Rocky Mountain ADA Center (*www.adainformation.org*). Information and assistance also may be obtained by contacting the U.S. Department of Justice, Civil Rights Division, Office on the Americans with Disabilities Act (*www.justice.gov/crt/about/drs*).

The Family and Medical Leave Act of 1993[32] (FMLA) requires covered employers to provide employees with "12 workweeks of leave" without wages or salary during each 12-month period of employment if the leave is for one of the following purposes (certain conditions apply): the birth of the employee's child and care for the child; the adoption or foster care placement of the employee's child; the employee's care for a spouse, parent, or child when they have a "serious health condition;" or the employee's recovery from or treatment for a "serious health condition" making the employee unable to perform his or her job functions.[33]

The FMLA regulations make it clear that public employers are covered regardless of size of workplace. However, regardless of whether a workplace is public or private, a place of employment still must meet the employee eligibility requirements set forth in the regulations before employees are eligible for FMLA leave. The eligibility requirement for employees is each employee who has worked for the employer for 1,250 hours in the previous 12 months and works at a site where the employer employs 50 or more people within a 75-mile radius by road miles.

What this means is that the bulk of the FMLA regulations don't apply to public employees in organizations with fewer than 50 employees. From CML's analysis of the regulations, what does apply in municipalities of fewer than 50 employees are the notice requirements.

CML's interpretation is that the following notice requirements apply to public employers with less than fifty employees:

- The Department of Labor has issued an 8 ½" x 11" poster describing the FMLA that must be posted in a conspicuous place in the workplace.
- Additional notice must be provided in an employer's personnel handbook or manual. The Department of Labor has issued a copy of a fact sheet that can be used for this purpose. If an employer does not have a personnel handbook, an employer must provide written guidance to an employee of their rights and obligations at the time the employee requests FMLA leave.

32 5 U.S.C. § 6381 *et seq.*

33 5 U.S.C. § 6382.

CHAPTER 8: FINANCE

THE TABOR AMENDMENT

The TABOR Amendment, Colorado Constitution Article X, § 20, has a significant impact on municipal finances. Generally, TABOR places limitations on debt, revenue, and spending. Voter approval is required in most circumstances for debt and revenue increases, and for exceeding revenue and spending limits. The amendment limits the timing of elections, imposes substantial notice requirements, and requires certain ballot titles for the elections that fall within its provisions.

Interpretation of the amendment is beyond the scope of this handbook. Municipal clerks may wish to refer to CML's *TABOR: A Guide to the Taxpayer's Bill of Rights* (2011) for more information. The municipal clerk should consult with the municipal attorney concerning the extent to which TABOR has been interpreted and discussed below.

FINANCIAL ADMINISTRATION

Duties of the municipal treasurer and other matters concerning general financial administration are addressed in Parts 2,3, and 4 of Article 20 of Title 31. Clerks may be interested particularly in finance-related publication requirements. C.R.S. § 31-20-202 requires that governing bodies of municipalities (except municipalities with a population of more than 10,000 residents and home rule municipalities) publish "such of their proceedings as relate to the payment of bills" and statements of "all contracts awarded and rebates allowed." Officials responsible for violations may be fined up to $300 plus costs.[34] However, a municipality may determine at a regular or special election not to publish such proceedings, and if the citizens elect not to publish, then the officials are not subject to penalties for failing to publish.[35]

C.R.S. § 31-20-304 requires the municipal treasurer to file with the clerk a "full and detailed account" of all receipts, expenditures, and transactions during the preceding fiscal year, which the clerk is to publish "immediately" in a newspaper printed in the municipality. If there is none, the clerk is to post the account in his or her office.[36] Presumably, home rule municipalities could supersede these filing and publication requirements. For more detail on publication requirements, see "Statutory publication requirements" in Chapter 4.

Surety bonds, conditioned on faithful performance of official duties, are required by statute for municipal treasurers, and may be required for other officers as the governing body deems appropriate.[37] Typically, bonds will be obtained for all officers and employees who are entrusted with municipal funds. The municipal clerk is often responsible for safekeeping of the bonds and for keeping track of when bonds expire and when premiums are due.

Depositing and investment requirements for municipal funds in general appear at C.R.S. § 31-20-303, but this provision is expressly made subject to the requirements of C.R.S. §§ 24-75-601 to 24-75-605 concerning legal investments of public funds, or other laws of this state. However C.R.S. §§ 24-75-601.1(3) and (4) provides that nothing in section six is intended to limit the power of home rule entities to establish their own legal investments by charter or ordinance, or to apply to public funds held or invested as part of any pension plan, retirement plan, or deferred compensation plan. Requirements for banks and savings and loans to be legal depositories for public funds appear at C.R.S. §§ 11-10.5-101 to 11-10.5-112 (banks) and 11-47-101 to 11-47-120 (savings and loan associations). The Public Deposit Protection Act imposes specific requirements for an official custodian to follow before depositing public funds in a bank and establishes penalties for violating the provisions.[38] Local governments are authorized to pool surplus funds in order to take advantage of short-term investments and maximize net interest earnings, subject to the relevant requirements.[39] Article XI, § 2, of the state Constitution prohibits local governments from owning shares of corporations without meeting certain requirements.

The Local Government Budget Law appears at C.R.S. §§ 29-1-101 to 29-1-115. It does not apply to home rule municipalities or territorial charter cities, except that such municipalities must file a certified copy of their budgets with the Department of Local Affairs.[40] Any local government failing to file may have its county-collected tax moneys withheld until it

34 C.R.S. § 31-20-202(3).

35 C.R.S. § 31-20-202(1.5).

36 C.R.S. § 31-20-306 requires a similar accounting and publication by the municipal "collector." Some municipalities may have created this special, optional office.

37 C.R.S. §§ 31-20-301(1), 31-4-401(2), 31-4-219, and 31-4-304.

38 C.R.S. § 11-10.5-111.

39 C.R.S. §§ 24-75-701 to 24-75-709; C.R.S. § 31-20-303(4).

40 C.R.S. § 29-1-113(2).

complies.[1] The budget law imposes a calendar fiscal year,[2] and requires the preparation of a budget, defined as the "complete estimated financial plan of the local government."[3] The information required in the budget is set forth in C.R.S. § 29-1-103. The governing body is to designate a person to prepare the budget,[4] and on a date to be determined by the governing body, all "spending agencies" (officers, departments, etc.) are to submit to that person their expenditure requirements and estimated revenues for the budget year, the corresponding figures for the previous year, and the estimated figures projected for the end of the current year, along with an explanatory schedule or statement classifying the expenditures by object and revenues by source.[5] The person appointed to prepare the budget must submit it to the governing body by October 15 of each year. Information concerning lease purchase agreements must also be submitted.[6]

A notice must be published that includes the date and time of the hearing at which adoption of the budget will be considered, a statement that the budget is open to public inspection, and a statement that objections may be filed by any interested elector before final adoption of the budget.[7] If the proposed budget is greater than $50,000, the notice must be published one time in a newspaper having general circulation in the municipality.[8] If the proposed budget is $50,000 or less, posting copies of the notice in three public places within the municipality is sufficient.[9]

After the hearing, the governing body may change the proposed budget as it deems necessary. To be effective, adoption of the proposed budget requires a vote of the majority of the members of the governing body.[10] Before the mill levy is certified, the governing body must enact an ordinance or resolution adopting the budget and making appropriations for the budget year; note that the amounts appropriated cannot exceed the expenditures specified in the budget.[11] C.R.S. § 29-1-113(1) requires that a certified copy of the budget, including the budget message, be filed with the Division of Local Government within 30 days of commencement of the affected fiscal year.

It is unlawful to make or contract for expenditures in excess of appropriations.[12] However, C.R.S. §§ 29-1-111 and 29-1-112 provide procedures for making unappropriated expenditures in the event of an unforeseeable emergency. An ordinance or resolution setting forth the facts of the emergency, detailed in the minutes of the public meeting, is required to be adopted by a majority vote. The money for the additional expenditure either may be transferred from a previous appropriation or may be raised by short-term borrowing (limited to the amount that can be raised by a levy of two mills). C.R.S. § 29-1-109 authorizes transfers of monies between funds or between spending agencies, authorizes supplementary budgets in the event that unanticipated revenues are received from non-property tax sources, and authorizes the governing body to adopt a revised appropriations ordinance or resolution in the event that revenues are lower than anticipated in the adopted budget. Both for budget transfers and supplementary budgets, a certified copy of the ordinance or resolution must be filed with the Division of Local Government. A revised appropriations ordinance or resolution must comply with the procedures in C.R.S. § 29-1-108.

Local government budget calendar

The calendar on the following page, prepared by the Department of Local Affairs (DOLA), is a listing of the deadlines for the budget, for a local government audit and for the property tax certification process. Some deadlines are not statutory, but reflect good budgeting practices. For details on the applicable statutes listed below, refer to the most current Colorado Revised Statutes.

---

1 C.R.S. § 29-1-113(3).

2 C.R.S. § 29-1-102(9).

3 C.R.S. § 29-1-102(3).

4 C.R.S. § 29-1-104.

5 C.R.S. § 29-1-105.

6 C.R.S. §§ 29-1-105 and 29-1-103(3)(d).

7 C.R.S. § 29-1-106(1).

8 C.R.S. § 29-1-106(3)(a).

9 C.R.S. § 29-1-106(3)(b).

10 C.R.S. § 29-1-108(1).

11 C.R.S. § 29-1-108(2).

12 C.R.S. § 29-1-110; see also C.R.S. § 24-91-103.6 and *Guide v. Lakewood*, 636 P.2d 691, 695 (Colo. 1981); *F.J. Kent Corp. v. Dillon*, 648 P.2d 669 (Colo. App. 1982), *cert. denied. But see also R.L. Atkins, Inc. v. Ariz*., 675 P.2d 336 (Colo. App. 1983).

January 1	Start of Fiscal Year; begin planning for the budget of the next year.
January 10	Deadline for assessor to deliver tax warrant to county treasurer (C.R.S 39-5-129.)
January 31	A certified copy of the adopted budget must be filed with the Division. (C.R.S. 29-1-113(1)). **If a budget is not filed, the county treasurer may be authorized to withhold the local government's tax revenues.**
February 10	The Division sends notification to local governments whose budgets have not been filed with the Division.
March 1	The U.S. Bureau of Labor Statistics releases the Consumer Price Index (the "CPI") for the Denver/ Boulder area. This annual percent change is used with "local growth" to calculate "fiscal year spending" and property tax revenue limitations of TABOR. (Article X, Sec. 20, Colo. Const.)
March 15	The Division will authorize the county treasurer to withhold tax revenues until a certified copy of the budget is filed with the Division.
March 31	Deadline to request exemption from audit. (C.R.S 29-1-604(3)) Contact the Local Government Audit Division, Office of the State Auditor, 303-869-2800. The Division notifies local governments of its determination that the entity has exceeded the statutory property tax revenue limit (the "5.5%" limit).
June 30	Deadline for auditor to submit audit report to local government governing body. (C.R.S 29-1-606(a)(1))
July 31	Deadline for submitting annual audit report to the Office of the State Auditor. (C.R.S 29-1-606(3)) Deadline for request for extension of audit. (C.R.S 29-1-606(4)) **If an audit is required but has not been filed, the county treasurer may be authorized to withhold the local government's tax revenue.**
August 25	Assessors certify to all taxing entities and to the Division of Local Government the total new assessed and actual values (for real and personal property) used to compute the statutory and TABOR property tax revenue limits. (C.R.S. 39-5-121 (2)(b) and 39-5-128.) **If applicable, upon receipt of the Certification of Valuation, submit to the Division certifications of service impact from increased mining production and/or from increased valuation due to previously exempt federal property which has become taxable. Certifications of impact are required if the value is to be excluded from the tax revenue limit.** **If applicable, apply to the Division for authorization to exclude from the limit the assessed valuation attributed to new primary oil or gas production from any producing land or leaseholds.**
October 15	Budget officer must submit proposed budget to the governing body. (C.R.S. 29-1-105) Governing body must publish "Notice of Budget" upon receiving proposed budget. (C.R.S. 29-1-106(1))
November 1	Deadline for submitting applications to the Division for an increased levy pursuant to 29-1-302, C.R.S. and applications for exclusion of assessed valuation attributable to new primary oil or gas production from the 5.5% limit pursuant to (C.R.S. 29-1-301 (1)(b))
December 10	Assessors' changes in assessed valuation will be made only once by a single notification (re-certification) to the county commissioners or other body authorized by law to levy property tax, and to the DLG. (C.R.S. 39-1-111(5))
December 15	Deadline for certification of mill levy to county commissioners (C.R.S 39-5-128(1)). Local governments levying property tax must adopt their budgets before certifying the levy to the county. If the budget is not adopted by certification deadline, then 90 percent of the amounts appropriated in the current year for operations and maintenance expenses shall be deemed re- appropriated for the purposes specified in such last appropriation. (C.R.S. 29-1-108(2) and (3))
December 22	Deadline for county commissioners to levy taxes and to certify the levies to the assessor. (C.R.S. 39-1-111(1))
December 31	Local governments not levying a property tax must adopt the budget on or before this date; governing body must enact a resolution or ordinance to appropriate funds for the ensuing fiscal year. If the budget is not adopted by certification deadline, then 90 percent of the amounts appropriated in the current year for operations and maintenance expenses shall be deemed re- appropriated for the budget year. (C.R.S 29-1-108(4))

Budget transfers, supplementary budgets, and revised appropriations must be made by ordinance or resolution complying with the notice and publication requirements of C.R.S. § 29-1-106.

C.R.S. § 29-1-114 requires the officer responsible for payment to keep certain records as to expenditures, showing unexpended balances in all budgeted funds. Finally, C.R.S. § 29-1-115 provides that knowing or willful violations of the budget law constitute malfeasance in office, punishable by removal.

The Local Government Uniform Accounting Law, C.R.S. §§ 29-1-501 to 29-1-506 provides that the state auditor is to formulate, publish, and distribute a uniform classification of accounts for local governments. Upon request, the auditor is to assist local governments in implementing the uniform accounting system. Applicability to home rule municipalities is unclear; home rule municipalities should, in any event, maintain consistency with any accounting requirements established by charter.

The Local Government Audit Law, C.R.S. §§ 29-1-601 to 29-1-608, requires an audit at the end of each fiscal year, at the expense of the local government. The audit report is to be completed by the auditor and submitted to the local government within six months after the end of the fiscal year. Within 30 days after receipt, a copy of the audit report must be forwarded to the state auditor (although extensions may be granted). Where neither revenues nor expenditures exceed $500,000, the local government may, with the approval of the state auditor, be exempt from the provisions of C.R.S. § 29-1-603. Where exemptions apply, an application for exemption is required to be filed with the state auditor.[13] The audit law apparently is intended to apply to home rule as well as statutory municipalities, but the charters of many home rule municipalities contain separate audit requirements. Penalties for violations are similar to those under the budget law and include removal from office or employment.[14]

Another caveat is in order here; readers are reminded that changes to these statutes are frequent, and reliance solely on this reference guide is not advised. The best reference available in the area of finance is the state auditor's *Financial Management Manual*, which is frequently updated to track statutory changes. Local governments receive one copy free of charge. The manual is available from the State Auditor's Office, 200 E. 14th Ave., Denver, CO 80203-2211, or 303-869-2870. The *Financial Management Manual* also can be accessed online at *www.state.co.us/auditor/locgovt/FMM/FMM_TOC.htm*.

REVENUE SOURCES

The following is an overview of the most common sources of municipal revenue in Colorado. It is not exhaustive, particularly as to home rule municipalities, which may create their own revenue sources within constitutional and charter limitations. For a more in depth discussion of and information concerning all forms of Colorado municipal taxes see CML's publication *Municipal Taxes* (2010).

Ad valorem property tax

The general authorization and procedures for municipal property taxes appear at C.R.S. §§ 31-20-101 to 31-20-107.[15] Municipal property taxes are collected by the county treasurer.[16] C.R.S. § 31-20-107 requires the municipality to make payments to the county for certain administrative costs, but C.R.S. § 30-1-102 appears to be more widely refined to fit this purpose. Fees under C.R.S. § 30-1-102 vary according to the population class of the county. C.R.S. § 39-5-128(1) requires the county assessor to certify the total valuation for assessment to the municipal clerk no later than August 25 of each year. The municipal clerk must then certify the levy to the board of county commissioners no later than December 15. Article XX, § 6, of the Colorado Constitution specifically grants to home rule municipalities the power to provide in their charters for assessment, levy, and collection of taxes. In practice, municipal property taxes for home rule municipalities are generally levied and collected in the manner provided by these statutes.

C.R.S. § 29-1-301 prohibits statutory property tax levies resulting in revenues that would exceed by more than 5.5 percent those of the preceding year, subject to certain adjustments and exclusions. There are two statutory mechanisms by which a municipality may exceed this limitation on property tax increases. First, pursuant to C.R.S. § 29-1-301(1.2), notice, hearing, and a two-thirds vote are required when the municipality needs to impose property tax levies above the stated limit for the purpose of raising revenue for capital expenditures only. Under TABOR, a public vote is also presumably required.

A second option available to municipalities having a population of 2,000 or less is to request the increase from the Division of Local Government. If the request is not granted, the question may be submitted to the electorate.[17] However, TABOR has effectively removed this option; a public vote is now required on any such increase. Under the statute, increases in assessed valuation attributable to annexation, inclusion of additional land, or new construction during the preceding year;

13 C.R.S. § 29-1-604(3).

14 *See* C.R.S. § 29-1-608

15 *See also* C.R.S. § 31-15-302(1)(c).

16 C.R.S. § 31-20-106.

17 C.R.S. § 29-1-302(2)(c).

bonds and interest; and contractual obligations approved by the voters remain excluded for all municipalities from the 5.5 percent increase limitation. Additional exclusions are also enumerated in C.R.S. § 29-1-301.

Sales and use taxes

For a more complete overview of sales and uses taxes, CML's *Municipal Taxes* (2010) contains a variety of detailed information concerning both statutory and home rule municipal sales and use taxes, as well as for other characteristics of self-collected and state-collected sales and use taxes.

Statutory authorization and procedures for county and municipal sales or use taxes are contained in Article 2 of Title 29. These provisions require statutory municipalities to hold an election to impose or increase a sales tax or to impose or increase most use taxes. Collection and administration of a statutory municipality's sales taxes are done by the state. Statutory municipalities may impose use taxes only on motor vehicles and construction materials, and collection is through the motor vehicle registration and building permit processes, respectively. A home rule municipality that elects to have its sales taxes collected by the state must generally conform its procedures to the statutes. Every municipality, regardless of classification, is required to file a copy of the sales or use tax ordinance or resolution it adopts with the executive director of the Department of Revenue within 10 days of its effective date.[18]

For municipalities operating under the sales tax statutes, the application of the tax and exemptions from it are generally the same as provided for the state sales tax at C.R.S. § 39-26-104, but certain state sales tax exemptions such as food, machinery, and residential fuels, do not apply to local sales tax unless expressly adopted by the municipality.

Business and occupation taxes, license and franchise fees

General authority for business and occupation taxes and licenses in statutory municipalities is given by C.R.S. § 31-15-501(l)(c). Additional, specific authorizations appear elsewhere in C.R.S. § 31-15-501. Legal issues that may arise in connection with these revenue sources include:

- Due process, under both the federal and state constitutions, which require some "minimum connection" between a taxing entity and the entity required to collect or pay taxes. For example, a retailer's mere delivery of goods into a taxing jurisdiction was held to be an insufficient connection for the taxing jurisdiction to require the retailer to collect a tax on the goods.[19]
- Taxes or fees that are computed as a percentage of a business' gross receipts may encounter problems under Colorado cases holding that gross receipts taxes are income taxes (which, under the Colorado Constitution, can only be imposed by the state).[20]
- For statutory municipalities, "amusement" taxes that are imposed upon customers of a business rather than upon the business itself have been held invalid.[21]
- In some instances, preemptive state legislation will affect how municipal business and occupation taxes, as well as license fees, are structured or labeled. For example, the Colorado Supreme Court held that such legislation may preclude municipalities from imposing franchise requirements on a telephone company.[22] Nevertheless, municipalities can impose a business or occupation tax on the telephone company, as long as the tax is a revenue-raising rather than a regulatory measure. Similarly, municipalities may impose business or occupation taxes on retail sales of beer and liquor for revenue, but not regulatory, purposes.[23]

Distributions of revenue from other levels of government

This miscellaneous class of revenues might include federal grants; state cigarette tax distributions;[24] state highway users tax fund distributions;[25] county road and bridge fund distributions;[26] state severance tax revenues;[27] and perhaps revenues

18 C.R.S. § 29-2-106(7).

19 *Quill v. North Dakota*, 504 U.S. 298, (1992): *see also Associated Dry Goods Corp. v. Arvada,* 593 P.2d 1375 (Colo. 1979).

20 *See Minturn v. Foster Lumber Co.*, 548 P.2d 1276 (Colo. 1976); *Mountain States Telephone and Telegraph Co. v. Colorado Springs*, 572 P.2d 834 (Colo. 1977). *But see Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991); *Eagle v. Scheibe*, 10 P.3d 648 (Colo. 2000).

21 *Sheridan v. Englewood*, 609 P.2d 108 (Colo. 1980); *see also Eagle v. Scheibe,* 10 P.3d 648 (Colo. 2000).

22 *Englewood v. Mountain States Telephone and Telegraph Co.*, 431 P.2d 40 (Colo. 1967), *followed by Denver v. Qwest Corp.*, 18 P. 3d 748 (Colo. 2001).

23 *Post v. Grand Junction*, P.2d 958 (Colo. 1948); *Tom's Tavern v. Boulder*, 186 Colo. 321, 526 P.2d 1328 (Colo. 1974); *Eagle v. Scheibe*, 10 P.3d 648 (Colo. 2000).

24 C.R.S. § 39-22-623.

25 C.R.S. § 43-4-208.

26 C.R.S. § 43-2-202.

27 C.R.S. § 39-29-110(l)(c).

from federal mineral leasing activity.[28] Many distributions from other levels of government involve restrictions on how the municipality can use the money it receives and require the municipality to follow specific accounting procedures. For example, conservation trust fund proceeds (largely derived from Colorado Lottery revenues) must be used for the acquisition, development, and maintenance of new conservation sites or for construction or maintenance of recreational facilities on public sites.[29]

BORROWING

Generally, a municipality does its long-term borrowing in the form of a "bond issue." This simply means that the borrowing municipality issues, to the lender or lenders, a document called a "bond" evidencing the municipality's obligation to repay. The following discussion of municipal borrowing should not be viewed as exhaustive; only the most basic concepts of municipal borrowing are covered. For a more detailed overview of municipal financing techniques, see *Financing Public Improvements*, published by CML in 2009.

Municipalities are authorized by statute to incur "general obligation" indebtedness for a variety of purposes.[30] General obligation indebtedness is secured by the "full faith and credit" of the municipality; the municipality commits itself to levy whatever ad valorem property taxes are necessary to repay the debt. Article XI, § 6 of the Colorado Constitution requires an election to incur general obligation indebtedness, except for purposes of supplying water. The statute contains a similar requirement.[31] Additionally, TABOR requires a public vote before any type of bonds may be issued, unless such bonds are issued by a qualified "enterprise" under TABOR. The statute also limits the total of a municipality's general obligation indebtedness to 3 percent of the actual value of taxable property in the municipality; again, there is an exception for debts incurred in supplying water.[32] Home rule municipalities typically supersede these percentage limits and operate under debt limits imposed by charter.

"Revenue bonds" differ from general obligation bonds in that the municipality is obligated to repay the debt only from a particular, non-property tax revenue source, or "special fund." See, for example, C.R.S. § 29-2-112, which authorizes a municipality that has pledged sales tax revenues for capital improvement purposes and created a fund for that purpose, to issue revenue bonds payable solely from the fund to finance the improvements. The Colorado courts have held that revenue bonds meeting certain criteria are not considered to be "debt" or "indebtedness" within the meaning of constitutional restrictions (and similar charter restrictions). Prior to TABOR, revenue bonds could be issued without an election and would not count against percentage debt limits. Perhaps the most commonly used statutory authority for revenue bonds is Part 4 of Article 35 of Title 31, concerning water and sewer revenue bonds.

A third major type of municipal borrowing is the issuance of bonds or warrants secured by special assessments levied against property owners in an area called a special improvement district to pay for improvements in the area (for example, street, sidewalk, water, or sewer improvements). Authorizing statutes appear at Part 5 of Article 25 of Title 31.[33]

Short-term borrowing

While the law is less than clear, it is at least arguable that municipalities can borrow for a short term (i.e., the obligation is to be repaid within the same fiscal year in which it was incurred) without creating an "indebtedness" for constitutional and charter purposes.[34] For statutory municipalities, however, it would still be necessary to find statutory authority for such short-term borrowing. C.R.S. § 31-15-302(1)(d) authorizes borrowing "for the purpose of supplying a temporary deficiency in the revenue for defraying the current expenses of the municipality," but this statute carries its own election requirement and percentage limitation. C.R.S. § 29-1-112 authorizes local governments to obtain temporary loans for unbudgeted contingencies by issuing warrants, within a two-mill ceiling. (Warrants, like bonds or notes, are simply a written obligation to pay; it is customary to refer to longer-term obligations as bonds and shorter-term obligations as notes or warrants.)

Finally, lease-purchase agreements have become a popular method for municipalities to finance the acquisition, construction, and improvement of buildings and other facilities without creating a "debt" or "other financial obligation" because future commissioners are not obligated to appropriate funds in future years to that purpose. A lease-purchase agreement must be structured in a specific manner so as to avoid characterization as a debt under state law, and for that reason consultation with your municipal attorney is advised.

---

28 C.R.S. § 34-63-102(3)(c).

29 C.R.S. § 29-21-101.

30 C.R.S. § 31-15-302(l)(d).

31 C.R.S. § 31-15-302(1)(d)(II).

32 *Id.*

33 *See* C.R.S. §§ 31-25-534, 31-25-534.5, 31-25-535, and 31-25-541.

34 *See Georgetown v. Bank of Idaho Springs*, 64 P.2d 132 (Colo. 1936): *People v. May*, 12 P. 838 (Colo. 1856).

CHAPTER 9: QUICK CONCEPTS

AGENDA

A written list of topics for discussion and/or action at a meeting of the governing body (or other board or authority). A sample meeting agenda is provied in the appendix.

ANNEXATION

Annexation is the legal method of expanding the municipal boundaries, making the incorporated municipal land area larger.

Title 31, Article 12, which applies to home rule and statutory municipalities, governs annexation. Additionally, the Colorado Constitution at Article II, § 30 (and, for Denver only, Colorado Constitution, Article XX, §1) governs annexation. These statutes establish the basic requirements and procedures to be followed to annex property to a municipality. Because of the complexity and lack of clarity in the annexation statutes, the clerk should work closely with the municipal attorney during any annexation proceeding. Special notice, hearing, and filing requirements apply to annexation proceedings.[1]

For further information concerning annexation, see CML's *Annexation in Colorado* (2003).

AUDIT

The examination of the financial affairs of the municipality by an independent firm or outside agency.

BALANCE SHEET

A statement of the assets, liabilities, and capital of the municipality at a particular point in time, detailing the balance of income and expenditure over the preceding period

BEER AND LIQUOR LICENSING

Beer and liquor licensing is governed generally by the Colorado Liquor Code,[2] the Colorado Beer Code,[3] and by regulations under both codes. The beer code applies to 3.2 beer only.[4] Beer with a higher percentage of alcohol, as well as vinous and spirituous liquors, are regulated under the liquor code.[5] Both the Colorado Liquor Code and the Colorado Beer Code have been held to be of statewide concern, and neither statutory nor home rule municipalities may enact local ordinances or regulations which conflict with these statutes.

The codes provide for both state and local licensing, but local licensing is for retail sale only. State licensing is through the Colorado Department of Revenue Liquor Enforcement Division. In municipalities, the licensing authority may be the governing body or it may be a separate body designated by charter or ordinance.[6] Local licensing authorities must apply statutory criteria in granting or denying licenses, but the criteria give the local authority considerable discretion in practice. Municipalities may impose business or occupation taxes/fees on retail beer or liquor outlets (see "Revenue sources" in Chapter 8).

The liquor code permits a local option election to prohibit or further restrict retail sales.[7] There is no similar provision in the beer code.

The licensing procedure requires that an application (on forms prescribed by the state) be filed with the local authority.[8] The application must be accompanied by two distinctly different kinds of fees: "license fees" and "application fees." The local authority may set its own application fee pursuant to C.R.S. § 12-47-135(2), imposing up to a $500 fee for a new license, transfer of ownership, or location or for a delinquent renewal. There are statutory restrictions as to the circumstances under which license applications may be received and acted upon.[9] For example, an application may not be received or acted upon where the proposed location is in an area where the sale of liquor is not permitted by the particular zoning ordinance.

---

1 C.R.S. §§ 31-12-108 to 31-12-110, 31-12-113.

2 Article 47 of Title 12.

3 Article 46 of Title 12.

4 C.R.S. § 12-46-103(1).

5 C.R.S. § 12-47-103(2).

6 C.R.S. §§ 12-46-103(4) and 12-47-103(17).

7 C.R.S. § 12-47-105.

8 C.R.S. § 12-47-309(2).

9 C.R.S. §§ 12-47-304(3) to 12-47-313.

The term of beer and liquor licenses is one year.[10] Renewal procedures are set forth at C.R.S. § 12-47-302.

Procedures for granting temporary permits to transferees of existing licenses, pending approval of the transfer of ownership, are specified in C.R.S. § 12-47-303. Fees are specified in C.R.S. § 12-47-501 and the following sections, with local fees specifically discussed at C.R.S. § 12-47-505. Procedures for suspending or revoking licenses are set forth at C.R.S. § 12-47-601, and the grounds for revoking temporary permits are stated in C.R.S. § 12-47-901 to 12-47-907.

Finally, the Special Event Permit Code, at Article 48 of Title 12, governs the issuance of permits for the sale, by the drink only, of alcoholic beverages for functions held by nonprofit organizations and political candidates. C.R.S. § 12-48-107 details the process for special event permits. A local licensing authority may elect not to notify the state licensing authority to obtain the state licensing authority's approval or disapproval of an application for a special event permit. The local licensing authority is required only to report to the Liquor Enforcement Division, within 10 days after it issues a permit, the name of the organization to which a permit was issued, the address of the permitted location, and the permitted dates of alcohol beverage service. A local licensing authority electing not to notify the state licensing authority shall promptly act upon each application and either approve or disapprove each application for a special event permit.

For more information on beer and liquor licensing, clerks should refer to CML's *Liquor and Beer Licensing Law and Practice* (2006).

BUDGET

An annual blueprint for the municipality's revenue and expenditures. It will include last year's numbers as well as anticipated figures for the coming year.

BUSINESS LICENSES

(see also "Licences and franchises")

C.R.S. § 31-15-501(1)(c) grants municipal governing bodies the general power to "license, regulate, and tax, subject to any law of this state, any lawful occupation, business place, amusement, or place of amusements and to fix the amount, terms, and manner of issuing and revoking licenses issued therefor." These provisions also contain a number of other, more specific regulatory grants; see "Revenue sources" in Chapter 8 regarding business and occupation taxes. Home rule municipalities are restricted in their power to impose licensing requirements by charter provisions, federal and state constitutional provisions, and pre-empting state legislation.

Typical subjects of C.R.S. § 31-15-501(1)(c) licensing requirements include retail businesses in general, or particular businesses, occupations, or events such as contractors, pawnbrokers, auctioneers, parades, and circuses. Generally, the goal of licensing requirements may be either to regulate the business or to raise revenue, or both; but in some cases only revenue-raising measures are permissible.

Pre-emption by state law is a legal issue that sometimes arises in connection with municipal licensing requirements. Where the state has adopted a comprehensive regulatory scheme, municipalities (including home rule municipalities) may be precluded from imposing additional licensing requirements, at least those regulatory in nature. Municipal requirements aimed solely at raising revenue may sometimes coexist with pre-empting state legislation.

Municipalities frequently have ordinances requiring licenses for transient merchants or peddlers, often referred to as "Green River" ordinances. These ordinances may be affected by state and federal constitutional guarantees of freedom of speech or religion if they are being applied against door-to-door political canvassers, or solicitors for charitable or religious causes. Similar problems may be encountered where licensing conflicts with rights of free speech, for example, the licensing of handbill distributors or newspaper stands.

CAFR

Comprehensive Annual Financial Report

CASB

Colorado Association of School Boards (*www.casb.org*)

CCI

Colorado Counties Inc. (*www.cci.org)*

CFR

Code of Federal Regulations

10 C.R.S. § 12-47-310(I)(a).

CGFOA

Colorado Government Finance Officers Association (*www.cgfoa.org*)
CGFOA is a 501(c)6 nonprofit organization that strives to improve the practice of government finance in Colorado by promoting ethical, high quality governmental service and facilitating education and information sharing.

CHARTER

A document required by home rule cities/towns that defines the powers and responsibilities of the local government. A charter must be approved through an election by a majority vote of the citizens.

CIRSA

Colorado Intergovernmental Risk Sharing Agency (*www.cirsa.org*)
CIRSA's work is threefold: to ensure public entity members can obtain affordable insurance coverage, receive great service, and continually improve their operations to minimize risks and exposures.

CITY

Traditionally a municipal corporation having a population of more than 2,000. C.R.S. § 31-1-101(2).

CMCA

Colorado Municipal Clerks' Association (*www.cmca.gen.co.us*)

CML

Colorado Municipal League (*www.cml.org*)
CML is a nonprofit, nonpartisan organization established in 1923, represents approximately 99 percent of the municipal population in the state, and is widely recognized as the official voice of municipal government in Colorado. CML's daily operations revolve around three areas of service to members: advocacy, information, and training.

CODE OF ETHICS

The Code of Ethics identifies several rules of conduct for local government officials and employees. C.R.S. § 24-18-101, *et seq.* and 24-18-201, *et seq.*

CODIFICATION

A process of organizing and arranging all legislation of a general and permanent nature into a municipal code.

COLORADO GOVERNMENTAL IMMUNITY ACT

The Colorado Governmental Immunity Act establishes general immunity from lawsuit to public entities and employees in tort cases. C.R.S. § 24-10-101 thru 24-10-120.

COLORADO REVISED STATUTES

C.R.S., the listing of all statutes (laws) applicable to Colorado.

CONTRACTS

Municipalities are granted the general power to enter into contracts as noted at C.R.S. § 31-15-101(1)(c). Home rule municipalities may enter into contracts for any public purpose unless restricted by a constitutional provision, charter provision, superseding state statute, or ordinance. A municipal governing body, in the exercise of its legislative power, cannot enter into a contract which will bind succeeding governing bodies, thereby depriving them of the unrestricted exercise of their legislative power.

Municipal contracts are among the public records that the clerk generally is charged with preserving. Also, even contracts that contain a confidentiality clause may be subject to public inspection under the Open Records Act. In statutory cities under 10,000 in population, a statement concerning all "contracts awarded" must be published in the same manner as proceedings for the payment of bills.[11] C.R.S. § 29-1-205 requires informational filings with the Division of Local Government of all contracts between political subdivisions.

11 C.R.S. § 31-20-202; see "Financinal administration" in Chapter 8.

COORDINATED ELECTION

An election wherein the municipality holds an election concurrent with and coordinated with the County election.

CORA / COML

Colorado Open Records Act/Colorado Open Meetings Law, also referred to as "sunshine laws." C.R.S. § 24-72-201 thru 24-72-206. For more information, see CML's *Open Meetings, Open Records: Colorado's Sunshine Laws and Municipal Government* (2008).

COUNCIL–MANAGER FORM OF GOVERNMENT

The elected governing body is responsible for the legislative functions of the municipality and the town/city manager provides professional management to the councilmembers/trustees.

DE-BRUCE

(See also "TABOR")

By election, opt out of TABOR revenut and spending limits. See also CML's *TABOR: A Guide to the Taxpayer's Bill of Rights* (2011).

DEO

Designated election official

DIRT DISTRICT

Bond issue to build infrastructure prior to development

DOLA

Department of Local Affairs (*www.colorado.gov/dola*)

EMINENT DOMAIN

Eminent domain, or condemnation, is the taking of private property for public purposes. Both the federal and state constitutions require "just compensation" when property is condemned.[12] Article XX, §1 of the Colorado Constitution specifically grants broad powers of eminent domain to home rule municipalities, both within and outside their boundaries.

Basic statutory eminent domain procedures are set forth at C.R.S. §§ 38-6-101 to 38-6-122. Part 2, provides a separate procedure for condemnation of water rights.[13] Extraterritorial condemnation by a town is prohibited under Part 1 unless otherwise specifically authorized by law.[14] Such "specific authorization" does exist for towns (and cities) for the purpose of constructing sewer lines, disposal works, electric lines, and related facilities as set forth in C.R.S. § 38-6-122. In addition, cities may condemn property outside their corporate limits for "boulevard, parkway, or park purposes" as provided in C.R.S. § 38-6-110, subject to the five-mile limitation imposed by C.R.S. § 31-25-201(1). C.R.S. § 38-6-101 provides that where special benefits are not to be assessed,[15] the procedures of C.R.S. §§ 38-1-101 to 38-1-122 may be used as an alternative to the Article 6, Part 1 procedures. Municipalities owning electric power producing or distributing facilities also are authorized to exercise eminent domain power for utility lines along "any public highway" under Article 5 of Title 38. Municipalities also may acquire rights-of-way for the purpose of conveying water under the Colorado Constitution, Article XVI, § 7.

ENTERPRISE FUND

A governmental accounting fund in which the services provided are financed and operated similarly to those of a private business. The rate schedules for these services are established to insure that revenues are adequate to meet all necessary expenditures. Examples of enterprise funds are water, wastewater and stormwater operations; these funds are intended to be self-supporting.

12 U.S. CONST. amend. V; COLO. CONST. Art. 2, § 15.

13 C.R.S. § 38-6-201, *et seq.*

14 C.R.S. § 38-6-101.

15 *See* C.R.S. § 38-6-107.

EXECUTIVE SESSION

A segment of a meeting of the governing body, closed to the public, to discuss specific topics prescribed by statute, C.R.S. § 24-6-402.

FAIR CAMPAIGN PRACTICES ACT (FCPA)

A set of federal rules governing contributions to political campaigns and reporting of same.[16]

FR

Financial reporting

FRANCHISE

A franchise is a special right granted by a municipality to a private company or other private entity to use public streets, alleys, or other public right-of-ways.[17] Historically, franchises most commonly were granted to public utilities such as electric and gas utilities and transportation systems. More recently, franchises for cable television have become commonplace in Colorado.

Procedural requirements for granting franchises by statutory cities and towns are set forth at C.R.S. §§ 31-32-101 to 31-32-105. Three weekly publications must be made prior to the formal application for the franchise, which must be made at a regular meeting of the governing body. Adoption of an ordinance, with a two-reading procedure, is required to grant a franchise. The first publication must be at least two weeks prior to final passage. A majority vote of all members of the governing body is required.

Additional substantive limitations on certain railroad and utility franchises are contained in C.R.S. §§ 31-15-706 and 31-15-707. These limitations include required consent of property owners, a 25-year limit, and a requirement that the municipality retain the right to purchase the facilities.

Home rule municipalities are no longer required to grant a franchise by election because of a 1986 constitutional amendment. Presumably, home rule cities may grant franchises by ordinance or resolution. A home rule charter provision still may require an election. In the event the home rule charter does not require an election, it may require a lesser number of registered electors to order a referendum on the ordinance than the five percent figure provided by the 1986 amendment. Finally, the ordinance granting a franchise in a home rule city, even if it contains an emergency clause, is still subject to referendum.

Article II, § 11 of the Colorado Constitution prohibits grants of irrevocable franchises by the General Assembly. This has been held applicable to municipalities. Some legal observers think that express statutory authority is required for the grant of an exclusive franchise, at least by a statutory municipality. Colorado statutes do not expressly authorize exclusive franchise grants.

Where the state grants statewide operating rights to a company, the franchise powers of both statutory and home rule municipalities may be pre-empted (see “Revenue sources” in Chapter 8). Municipal franchise requirements should probably not be inconsistent with ratemaking or other regulatory action by the state Public Utilities Commission.

FUND ACCOUNTING

A system of accounting used primarily by non-profit or government organizations emphasizing accountability rather than profitability. Unlike corporations, it is more important for public entities and nonprofit organizations to keep a record of how money was spent, rather than how it was earned. Fund accounting segregates resources into funds to identify both the source and use of the funds, so accounting records take the form of a collection of funds with each fund having a distinct purpose ranging from operating expenses to funding the various activities of the organization.

GAAP

Generally accepted accounting principles

GASB

Governmental Accounting Standards Board

16 C.R.S. § 1-45-117.

17 C.R.S. § 31-32-101 to 31-32-105.

GOVERNING BODY

In the case of Colorado muncipalities, the city council or town board of trustees.

HOME RULE MUNICIPALITY

Governed by a charter enacted by the municipality. C.R.S. §31-2-201 thru 31-2-225. See also CML's *Home Rule Handbook* (1999), *Overview of Municipal Home Rule* (2006), *A History of Home Rule* (2009), and *Matrix of Colorado Home Rule Charters* (2008).

HUTF

Highway User's Tax Fund

IGA

An intergovernmental agreement (IGA) is when municipal governments contract with other governmental entities to provide services. C.R.S. § 29-1-201, *et. seq*; Colo. Const. Art. XIV § 18.

IIMC

International Institute of Municipal Clerks (*www.iimc.com*)

INCOME STATEMENT

A document generated monthly and/or annually that reports the earnings of the municipality by stating all relevant income and all expenses that have been incurred to generate that income.

INITIATIVE

The citizen initiative process is the direct power of the voters to propose a new legislative measure or course of action, in the form of an ordinance orresolution, and secure its submission to the council/board or the electorate for approval.

LAND USE REGULATION

Land use regulation is perhaps the most important exercise of municipal police power. Police power is the extremely broad and sometimes vague general power to protect public health, safety, and welfare.[18] Because police power regulation and restrictions on land use have major economic and political consequences, many municipal governing bodies devote substantial time and effort to the establishment and implementation of land use regulatory policies.

Basic statutes governing municipal land use regulation are contained in Article 23 of Title 31. Part 2 deals with the planning commission and its adoption of a master plan and subdivision regulations. Part 3 deals with zoning, including the roles of the zoning commission and the board of adjustment. Powers under these two parts are independent, meaning that the creation of a planning commission is not necessarily required to exercise the zoning power; however, most municipalities do begin by creating a planning commission. Once a planning commission is created, it becomes the zoning commission for purposes of Part 3.[19] Some land use regulations of particular interest to clerks are:

- C.R.S. § 31-23-203 sets forth requirements for the size and membership of the planning commission and permits all municipalities to vary its provisions by ordinance. Provisions requiring planning commission members to be residents of the municipality and prohibiting compensation of planning commission members cannot be varied by ordinance.
- C.R.S. § 31-23-208 describes the notice and hearing requirements for the adoption of a master plan by a planning commission.
- C.R.S. § 31-23-214 states the notice and hearing requirements for adoption of subdivision regulations by a planning commission. This provision also discusses the required submission of evidence by a subdivider regarding adequate utility procurement.
- C.R.S. § 31-23-215 contains the notice and hearing requirements for planning commission review of particular subdivision plats.
- C.R.S. §§ 31-23-220, 31-23-221, and 31-23-222 state notice and hearing requirements and other procedural requirements for approval of plats making reservations for future acquisition of streets.
- C.R.S. §§ 31-23-304 and 31-23-305 provide the notice and hearing requirements for adopting and changing zoning provisions.

18 C.R.S. § 31-15-103 and 31-15-401.

19 C.R.S. § 31-23-306.

Whether the legislature intended these land use statutes to apply to home rule municipalities is not entirely clear.[20] However, the Colorado Supreme Court has held that land use is a matter of local concern. Consequently, home rule municipalities may supersede these statutes by charter provision or by ordinance. In practice, land use regulation procedures in many home rule municipalities follow the statutory pattern. Note that although land use control may be a local concern, other state statutes may pre-empt municipal land use regulation in specific instances. For example, statutes may pre-empt home rule authority in regards to certain forms of housing that the General Assembly declares to be of statewide concern.[21]

Other land use statutes include the Local Government Land Use Control Enabling Act (C.R.S. §§ 29-20-101 to 29-20-108); the Planned Unit Development Act (C.R.S. §§ 24-67-101 to 24-67-108); the Urban and Rural Enterprise Zone Act (C.R.S. §§ 39-30-101 to 39-30-108), and the Areas and Activities of State Interest Act (C.R.S. §§ 24-65.1-101 through 24-65.1-502).

LEGAL PUBLICATION

Publication of notices in a designated newspaper of record or by other electronic means to comply with legal requirements for a public notice.

LESSONS ON LOCAL GOVERNMENT

Lessons On Local Government (*www.lessonsonlocalgovernment.com*) provides municipal officials with resources for connecting with youth in their communities. It is also a curriculum resource on local government for K-12 teachers.

LETTER OF AGREEMENT

A document that states what has been agreed between organizations or between people.

LICENSES AND FRANCHISES

(see also "Beer and liquor licenses;" "Business licenses;" "Other types of licensing")

Licenses and franchises are part of a broad sphere of municipal regulatory activities that involve paperwork, publications, and hearings that are often the municipal clerk's responsibility. Additionally, C.R.S. § 31-4-215(1) provides that the duties of the clerk in a council–manager city include issuing licenses and collecting license fees.

LISTSERV

Listservs are a resource provided by CML to facilitate communication and email exchange between municipal staff across Colorado. One listserv has been set up for use specifically for municipal clerks; sign up at *www.cml.org/clerk.aspx*.

MAYOR-COUNCIL FORM OF GOVERNMENT

The mayor is elected by the voters; the mayor is considered either a "weak mayor" or "strong mayor" based on the powers of the office.

MILL LEVY

The tax rate that is applied to the assessed value of a property. One mill is $1 per $1,000 of assessed value.

MINUTES

A recorded and/or written record of a meeting. Sample meeting minutes are provided in the appendix.

MOTION

The means by which business is brought before the assembly.

MOU

Memorandum of understanding (a contract).

MUNICIPAL CODE

The codified ordinances that are enacted and enforced by a municipality.

---

20 C.R.S. §§ 31-23-226.

21 *See generally* C.R.S. §§ 31-23-301 and 31-23-303.

MUNICIPAL ELECTION

An election held within the municipality for the purposes of electing local members of the governing body and deciding other ballot issues. Title 31, Article 10.

NAGARA

National Association of Government Archives and Records Administrators (*www.nagara.org*)

ORDINANCE

A document passed by the governing body to enact law prescribing a general rule of conduct which citizens are expected to follow.

OTHER TYPES OF LICENSING

Apart from the statutory authority to license businesses and occupations discussed under the "Licenses and franchises" heading above, the general police power granted to municipalities by C.R.S. §§ 31-15-103 and 31-15-401 allows them to license other activities where control is necessary to protect the public health, safety, and welfare. Licensing of dogs, bicycles, and fireworks are examples of this type of licensing, with C.R.S. § 31-15-601 specifically authorizing licensing of building permits.

PERSON IN INTEREST

The person who is the subject of the record, or any representative designated by that person.

PILT

Payment in lieu of taxes (mostly used by counties)

PLENARY SESSION

All parties in attendance

POLICE POWER

Municipalities have the authority to regulate and enforce the general health, safety, and welfare of the inhabitants within their jurisdictions.

PROCLAMATION

A public or official announcement, particularly one dealing with a matter of great importance.

PROPERTY

(See also Utilities)

C.R.S. § 31-15-101(1)(d) gives municipalities the general power to acquire, hold, lease and dispose of property, both real and personal. Home rule municipalities often have charter provisions governing municipal property. Article XI, § 2 of the Colorado Constitution, prohibiting municipalities from making any "donation or grant" to private entities, may apply where municipal property is disposed of without compensation, or for inadequate compensation.

Statutes granting authority and providing procedures in connection with particular types of municipal property include:

- C.R.S. § 31-15-701 (public buildings)
- C.R.S. § 31-15-702 (streets and alleys)
- C.R.S. § 31-15-714 (city and gas interests in municipally owned land)
- Parts 2 and 3 of Article 25 of Title 31 (parks)
- Part 7 of Article 25 of Title 31 (cemeteries)

Statutory provisions for the disposition of municipal real property, by sale or lease, appear at C.R.S. § 31-15-713. Paragraph (a) requires an election to dispose of real property that is used or held for any governmental purpose. Property not so used or held may be disposed of merely by ordinance.[22]

22 C.R.S. § 31-15-713(b).

C.R.S. § 31-15-801 authorizes municipalities to acquire property (including land, buildings, and equipment) through long-term rental and leasehold agreements although lease/purchase agreements must be carefully structured to avoid debt problems. TABOR limitations concerning multiple fiscal year obligations and associated public vote requirements must be considered in connection with lease/purchase arrangements.

C.R.S. § 29-1-506 requires the governing body of each political subdivision to make an annual inventory of its real and personal property having an original cost that equals or exceeds an amount established by the governing body of each local government. Statutory authority for municipalities to insure their property appears at Article 13 of Title 29.

PROVISIONAL BALLOTS

A ballot used to record a vote when there are questions in regards to a given voter's eligibility.

PUBLIC FACILITIES

Any facility including but not limited to buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

PUBLIC HEARING

An official meeting where members of the public hear the facts about a planned road, building, etc., and give their opinions about the agenda item.

PUBLIC SERVANT

A person who is employed by the government, either through appointment or election.

PURCHASING AND PUBLIC WORKS

There are surprisingly few statutory requirements as to purchasing supplies or services or contracting for public projects. C.R.S. § 31-15-201(e) authorizes, but does not require, municipalities to adopt ordinances providing that supplies shall be furnished by contract with the lowest bidder. Purchasing procedures are sometimes established locally, by charter provision, or by ordinance. CML's 1996 publication, *Municipal Purchasing: Organization, Techniques and Strategies for Public Procurement* provides more detailed information on purchasing procedures.

The statutes provide a preference for Colorado labor on public works projects, violation of which will be punished criminally.[23] Article 19 of Title 8 provides that preference shall be given to a resident bidder over a nonresident bidder on a construction contract for a public project equal to any preference given by the nonresident bidder's state or country. A preference for resident commodities and services is given in Article 18 of Title 8, similar to the Article 19 preference for construction contracts.

The only other statutory bidding requirement to be found is C.R.S. § 31-15-712, which requires that public improvement construction contracts of $5,000 or more for cities (not towns) be let to "the lowest responsible bidder on open bids after ample advertisement." Further requirements for particular types of projects are found at C.R.S. §§ 31-25-503(2), 31-25-516, 31-25-611 (improvement districts), 31-35-602 (compulsory sewer sections), and 29-4-109 (housing projects).

C.R.S. § 31-4-109 permits city councils of mayor-council cities to contract for professional services and to pay "such fees and charges as may be agreed upon." Thus, there appears to be no compulsory bidding or other restrictions for these cities in the area of professional services.

C.R.S. § 18-8-308 is a criminal provision requiring disclosure of conflicts of interest in connection with government contracts, purchases, and other transactions. See above at Section 2.9 for more discussion of conflicts of interest.

C.R.S. §§ 38-26-105 and 38-26-106 requires performance and payment bonds for contractors on public works projects, where the contract exceeds $50,000. Article 91 of Title 24 regulates the timing of payments to contractors in public works construction projects where the contract exceeds $80,000. C.R.S. § 38-26-107 provides a procedure for "final settlement" of public works construction contracts.

QUORUM

Minimum number of members of the governing body (or other board or authority) that must be present to take official action.

23 Article 17 of Title 8.

REFERENDUM

The practice of submitting to popular vote a measure passed on or proposed by the governming body.

RESOLUTION

A document adopted by the governing body to enact rules and procedures; less formal than an ordinance. Used to establish or update fees, to accept grants, to award contracts, to designate place of meetings or posting of notices.

RETENTION GUIDE

Colorado Municipal Records Retention Schedule; may be adopted by a municipality to direct records retention periods.

SDA

Special District Association of Colorado (*www.sdaco.org*)

SEVERANCE TAX

A tax imposed upon nonrenewable natural resources that are removed from the earth.

"SHALL" VS. "MAY"

"Shall" means must be done; "may" means it is optional.

SPECIAL IMPROVEMENT DISTRICT

A mechanism to acquire certain kinds of public improvements and transfer all or part of the costs to property owners benefited by the improvements, through "special assessments" against the property.

Municipalities can create special improvement districts (SIDs) as a mechanism to acquire certain kinds of public improvements and transfer all or part of the costs to property owners benefited by the improvements, through "special assessments" against the property. If bonds are to be issued to obtain money to finance the improvements, TABOR requires a public vote on the issuance of such bonds. For more information, see CML's *TABOR: A Guide to the Taxpayer's Bill of Rights*.

The most commonly used statutory authorization for special improvement districts is Part 5 of Article 25 of Title 31. Part 6 of Article 25 also uses the term "improvement districts" but involves ongoing districts with broader powers, including taxing power and the power to operate improvements. Fragmentary statutes authorizing municipalities to make improvements and assess costs against property owners appear at C.R.S. §§ 31-15-702(l)(b), 31-15-703, 31-15-704, and 31-15-401(1)(d).

Special improvement districts should not be confused with special service districts organized under Title 32 as separate local governmental entities, although there are some cross-references between the two sets of statutes. Article XX, § 6 of the Colorado Constitution specifically grants home rule municipalities authority over special assessments for local improvements, and home rule municipalities frequently do provide their own procedures by charter provision or by ordinance.

The process of creating a special improvement district can be started either by a petition of present owners or by resolution of the municipal governing body.[24] When the district is initiated by petition, the petition must be signed by the "owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed" (or, where two or more "assessment units" are included in the proposed district, in each such unit).

SPECIAL EVENTS LICENSE

State and local liquor licensing authorities may issue special event permits to particular types of organizations, municipalities, and political candidates, permitting them to sell alcoholic beverages for a limited number of days at specific locations.[25]

SPECIAL SERVICE DISTRICT

A service district in Colorado is a political subdivision of the state within a municipality or county in which the unit's governing board levies an additional property tax in order to provide extra services to the residents or properties in the district. A service district is not a separate government. Colorado law limits the types of services that county government

24 C.R.S. § 31-25-503(1)(a) and (d).

25 C.R.S. § 12-48-101 *et seq*.

can provide, and special districts are formed to fill the gaps that may exist in the services the county provides and the residents desire. Simply stated, special districts raise money to pay for services or projects from those property owners that most directly benefit from the services or projects.

STATUTE

A law passed by the legislative authority that governs a country, state, city, or county.

STATUTORY TOWN OR CITY

Statutory towns and cities are subject to state statutes. Title 31, Art. 24, Part 1 for cities, and Title 31, AA.

STRONG MAYOR

A strong mayor form of government provides an elected mayor to have almost total administrative authority with a broad range of independence in the municipality.

SUNSHINE LAW

A law that mandates that meetings of governmental agencies and departments be open to the public at large.

TABOR

Taxpayer Bill of Rights, passed in 1992 in Colorado. This limits the amount of revenue a municipality (or the state) can retain. For more information, see CML's *TABOR: A Guide to the Taxpayer's Bill of Rights*.

TAXING DISTRICT

Jurisdictions such as fire, school, water, etc. that produce a tangible service to area residents.

TERM LIMITS

The number of times (or length of time) an elected official may serve consecutively in any given office. The Colorado Constitution establishes a maximum of two four-year or three two-year terms of office for elected officials. Local governments may modify or eliminate term limits with voter approval.

TOWN

Traditionally, a muncipal corporation with a population of 2,000 or fewer. C.R.S. § 31-1-101(13).

TREASURER'S REPORT

An income and expense statement and a balance sheet for the past fiscal year.

USDA-RD

The U.S. Department of Agriculture Rural Development (*www.rurdev.usda.gov*) works with state and local governmental entities and public and non-profit organizations to provide funding options to communities throughout rural America.

USE TAX

Consumer use tax is payable to the state by individuals and businesses when sales tax is due but has not been collected. Individuals and businesses always have been required to pay sales or use tax on taxable purchases from out-of-state vendors if the item is sold, leased, or delivered in Colorado for use, storage, distribution, or consumption in the state.

UTILITIES

The power to own and operate public utilities is specifically conferred upon home rule municipalities by Article XX, § 1 of the Colorado Constitution. Statutory grants of power to acquire, own, and operate utilities are found at C.R.S. §§ 31-15-707 to 31-15-709, 31-32-201, and 31-35-402. These statutes contain election requirements for acquisition of utilities other than water and sewer utilities. An election is also required for the disposition of utility property pursuant to C.R.S. § 31-15-713(a).

Article V, § 35 of the Colorado Constitution has been held to prohibit Public Utilities Commission (PUC) regulation of municipal utilities to the extent that they operate within the municipal boundaries. However, extraterritorial municipal utility services that are operated as "public utilities" are not constitutionally exempt from PUC regulation. The municipal provision of water service has been held to be in a different category from other utilities, however, because of the existence of

C.R.S. § 31-35-402(1). This statute has been construed to prohibit PUC regulation of municipal water service regardless of whether that service is inside or outside municipal boundaries.

There are federal and state constitutional constraints on the procedures used to terminate certain utility services for delinquencies. For this reason, municipal officials should work closely with the municipal attorney in situations where the possible termination of utility services arises.

WEAK MAYOR

The “weak” mayor in a mayor/council municipality has no formal authority outside of the council/board.

WORK PRODUCT

Materials which are deliberative or advisory in nature assembled for the benefit of elected officials for the purpose of assisting them in reaching a decision within the scope of their authority.

APPENDIX

This page intentionally left blank.

TOWN OF WINDSOR
COLORADO

Certificate of Authenticity

STATE OF COLORADO)
)
TOWN OF WINDSOR) SS:
)
COUNTY OF WELD)
COUNTY OF LARIMER)

I, Mary Lee, Deputy Town Clerk, for said Town of Windsor, in the County of Weld, and County of Larimer in the State aforesaid, do hereby certify that the attached is a true and correct copy of the official record (minutes) of the September 10, 2012 Town Board meeting held at 7:00 p.m. in the Windsor Town Hall, 301 Walnut Street, Windsor, CO 80550.

In witness whereof, I have hereunto set my hand and the Seal of the Town of Windsor this 17th day of September, 2012.

_____
Mary Lee
Deputy Town Clerk
Town of Windsor, Colorado

Signed by _____ before me this _____ day of

_____, 2012.

Notary Public: _____

My Commission Expires: _____

301 Walnut Street · Windsor, Colorado · 80550 · phone 970-674-2400 · fax 970-674-2456
www.windsorgov.com

This page intentionally left blank.

STATE OF COLORADO
COUNTY OF WELD
COUNTY OF LARIMER
TOWN OF WINDSOR

OATH OF OFFICE

I, _____, do solemnly swear (affirm) that I will support the Constitution of the United States of America and the State of Colorado and the Charter and ordinances of the Town of Windsor, and will faithfully perform the duties of the office of _____, upon which I am about to enter.

_____
(type name)

_____
(type position and term)

Subscribed and sworn to before me this _____ day of _____, 20__.

_____
Patti Garcia, Town Clerk

CITY SEAL

This page intentionally left blank.

SAMPLE AGENDA FOR PUBLIC MEETING

Agenda for the
Regular Meeting of the
Englewood City Council
Monday, September 17, 2012
7:30 pm

Englewood Civic Center – Council Chambers
1000 Englewood Parkway
Englewood, CO 80110

1. Call to Order.

2. Invocation.

3. Pledge of Allegiance.

4. Roll Call.

5. Consideration of Minutes of Previous Session.

   a. Minutes from the Regular City Council Meeting of September 4, 2012.

6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)

7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)

   Council Response to Public Comment

8. Communications, Proclamations, and Appointments.

9. Consent Agenda Items.

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.

a. Approval of Ordinances on First Reading.

b. Approval of Ordinances on Second Reading.

i. Council Bill No. 48 --- Approving the acceptance of a planning grant from the Colorado Water Conservation Board for implementation of Englewood's Water Conservation Plan from 2012-2021.

c. Resolutions and Motions.

10. Public Hearing Items.

a. A Public Hearing to gather input on the proposed 2013 City of Englewood Budget. (Please note a copy of the proposed 2013 City of Englewood Budget is available for viewing in the Englewood Public Library during regular business hours and on the City website http://www.englewoodgov.org/)

b. A Public Hearing to gather input on Council Bill No. 47, a proposed bill for an ordinance rezoning the Oxford Station TOD from Light Industrial (I-1) to Planned Unit Development.

11. Ordinances, Resolutions and Motions

a. Approval of Ordinances on First Reading.

i. Council Bill No. 49 –- Recommendation from the Community Development Department to adopt a Bill for an Ordinance to vacate the 3400 block of South Clarkson Street. Staff further recommends that Council set October 1, 2012 as the date for a Public Hearing to gather public input on the proposed ordinance. **Staff Source: Alan White, Director of Community Development.**

b. Approval of Ordinances on Second Reading.

c. Resolutions and Motions.

i. Recommendation from Finance and Administrative Services Department to approve a resolution authorizing a transfer and supplemental appropriation of $43,000 from the Risk Management and Employee Benefits Fund to the Capital Projects Fund for a Human Resources Oracle Standard Benefits Project which will be undertaken in 2013. **Staff Source: Frank Gryglewicz, Director of Finance and Administrative Services.**

ii. Recommendation from Finance and Administrative Services Department to approve a resolution authorizing a transfer and supplemental appropriation of $42,000 from Public Improvement Fund to the Capital Projects Fund for the Emergency Alert Siren Project. **Staff Source: Frank Gryglewicz, Director of Finance and Administrative Services.**

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.

iii. Recommendation from Finance and Administrative Services Department to approve a resolution authorizing a transfer of $120,000 (Regional Transportation District Grant funds) from the General Fund to the Public Improvement Fund for the Station Area Planning Project. **Staff Source: Frank Gryglewicz, Director of Finance and Administrative Services.**

iv. Recommendation from Finance and Administrative Services Department to approve a resolution authorizing a transfer of $200,000 from the Risk Management Fund to the General Fund. **Staff Source: Frank Gryglewicz, Director of Finance and Administrative Service.**

v. Recommendation from Finance and Administrative Services Department to authorize a (non-binding) resolution providing that active police officers will be given the option of entering the Fire and Police Pension Association's Statewide Defined Benefit System and new hire active police officers be enrolled in the Fire and Police Pension Association's Statewide Defined Benefit Plan and the ICMA-RC Money Purchase Plan for Police will close to new participants as of May 2013. **Staff Source: Frank Gryglewicz, Director of Finance and Administrative Service.**

vi. Recommendation from the Community Development Department to adopt a resolution authorizing Community Development Block Grant Application for FY2013. **Staff Source: Harold Stitt, Senior Planner.**

12. General Discussion.

a. Mayor's Choice.

b. Council Members' Choice.

13. City Manager's Report.

a. Motion approving the South Metro Denver Animal Shelter Options Memorandum of Understanding.

14. City Attorney's Report.

15. Adjournment.

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.

This page intentionally left blank.

ENGLEWOOD CITY COUNCIL
ENGLEWOOD, ARAPAHOE COUNTY, COLORADO

Regular Session

September 17, 2012

A permanent set of these minutes and the audio are maintained in the City Clerk's Office.
Minutes and streaming audios are also available on the web at:
http://www.englewoodgov.org/Index.aspx?page=999

1. **Call to Order**

The regular meeting of the Englewood City Council was called to order by Mayor Penn at 7:40 p.m.

2. **Invocation**

The invocation was given by Council Member McCaslin.

3. **Pledge of Allegiance**

The Pledge of Allegiance was led by Council Member McCaslin.

4. **Roll Call**

Present: Council Members Jefferson, Olson, Gillit, McCaslin, Wilson, Woodward, Penn
Absent: None
A quorum was present.

Also present: City Manager Sears
City Attorney Brotzman
Deputy City Manager Flaherty
City Clerk Ellis
Deputy City Clerk Bush
Director Gryglewicz, Finance and Administrative Services
Director White, Community Development
Engineering Technician I Dye, Public Works
Planner I Kirk, Community Development
Senior Planner Stitt, Community Development
Batallion Chief Ertle, Fire
Deputy Fire Chief Petau
Police Detective Garrett
Police Commander Englert

5. **Consideration of Minutes of Previous Session**

(a) **COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER McCASLIN SECONDED, TO APPROVE THE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF SEPTEMBER 4, 2012.**

Vote results:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried.

6. **Recognition of Scheduled Public Comment**

There were no scheduled visitors.

7. **Recognition of Unscheduled Public Comment**

(a) Lewis Fowler, an Englewood resident, spoke about the Englewood Depot and offered some suggestions and solutions for locations, renovations, preservation, and ownership by the Englewood Historical Society.

(b) Carlos Fraga, an Englewood resident, reviewed the problems of street parking on Elati Street near Bishop Elementary School. He believes that there should be a restriction on the parking and asked for Council's assistance.

(c) Cynthia Searfoss, an Englewood resident, spoke about the meeting held on August 25, 2012 for the Craig Hospital expansion involving South Clarkson Street. She believes that the hospital missed a good opportunity to build goodwill with the citizens.

(d) Heather Jordan, a Cherry Hills Village resident, discussed No on Amendment 64 and handed out information to Council. She would like to see a resolution passed opposing this amendment, which would legalize marijuana.

(e) Frank Sargent, a Littleton resident, spoke about Amendment 64 and presented medical facts regarding the usage of marijuana.

(f) Carly Sellaro, an Englewood student, (with Brandy Bartholomew, an Englewood High School advisor) asked Council for $680.00 for the Englewood High School homecoming parade, which is this Friday. The money is primarily to offset traffic control costs billed from the City for the parade.

(g) Ira David Sasina, an Englewood resident, spoke about the new corner by Englewood High School, the fact that he is losing some of his property, and the parking issues the High School will face. He has put his property up for sale and would like to sell his house to the City.

8. **Communications, Proclamations and Appointments**

There were no communications, proclamations, or appointments.

9. **Consent Agenda**

(a) Approval of Ordinances on First Reading

There were no additional items submitted for approval on first reading. (See Agenda Item 11 (a).)

COUNCIL MEMBER WOODWARD MOVED, AND COUNCIL MEMBER McCASLIN SECONDED, TO APPROVE CONSENT AGENDA ITEM 9 (b) (i).

(b) Approval of Ordinances on Second Reading

(i) ORDINANCE NO. 48, SERIES OF 2012 (COUNCIL BILL NO. 48, INTRODUCED BY COUNCIL MEMBER WOODWARD)

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF THE WATER CONSERVATION PLANNING GRANT AWARDED TO THE CITY OF ENGLEWOOD, COLORADO BY THE STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS.

Vote results:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried.

(c) Resolutions and Motions

There were no additional resolutions or motions submitted for approval. (See Agenda Item 11 (c).)

10. **Public Hearing Items**

(a) **COUNCIL MEMBER WOODWARD MOVED, AND COUNCIL MEMBER WILSON SECONDED, TO OPEN THE PUBLIC HEARING TO GATHER INPUT ON THE PROPOSED 2013 CITY OF ENGLEWOOD BUDGET.**

Vote results:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried and the Public Hearing opened.

All testimony was given under oath.

Director Gryglewicz presented background information regarding the proposed City of Englewood 2013 Budget.

Citizens who spoke include:

Cynthia Searfoss, an Englewood resident, said she actually read the budget. She said she appreciated seeing actual goals for the various departments and hopes that they meet them.

COUNCIL MEMBER WOODWARD MOVED, AND COUNCIL MEMBER GILLIT SECONDED, TO CLOSE THE PUBLIC HEARING TO GATHER INPUT ON THE PROPOSED 2013 CITY OF ENGLEWOOD BUDGET.

Vote results:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried and the Public Hearing closed.

(b) **COUNCIL MEMBER WILSON MOVED, AND COUNCIL MEMBER OLSON SECONDED, TO OPEN THE PUBLIC HEARING TO GATHER INPUT ON COUNCIL BILL NO. 47, A PROPOSED BILL FOR AN ORDINANCE REZONING THE OXFORD STATION TOD FROM LIGHT INDUSTRIAL (I-1) TO THE PLANNED UNIT DEVELOPMENT.**

Vote results:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried and the Public Hearing opened.

All testimony was given under oath.

Planner I Kirk, from Community Development, presented background information regarding rezoning the Oxford Station TOD from Light Industrial (I-1) to the Planned Unit Development.

Jonathan Bush, a principal of Littleton Capital Partners, detailed the process and development of the project. He discussed the benefits to the City from this project including the future design and possible expansion. He hopes the rezoning is approved.

Joseph Poli, from Humphries/Poli Architects, asked for Council's approval for the rezoning of the PUD. He presented a PowerPoint presentation regarding the proposal of the transit-oriented development and the strategies involved.

Citizens who spoke include:

Cynthia Searfoss, an Englewood resident, said parking spaces seem to be crucial to this development and that that area is already stressed with the lack of parking availability. She thinks the City is running a fire sale regarding the lowering of the cost of land being developed in several projects and at the cost of less green space in the community. Ms. Searfoss stated that she is confused regarding the funding and timing some of these developments.

Pamela Beets, an Englewood resident, talked about how the development took the whole neighborhood into account in their planning. She sees how City Council has vested in this project. Ms. Beets would like to see a sense of space, a sense of community, and a sense of economic value added to this project.

COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER WILSON SECONDED, TO CLOSE THE PUBLIC HEARING TO GATHER INPUT ON COUNCIL BILL NO. 47, A PROPOSED BILL FOR AN ORDINANCE REZONING THE OXFORD STATION TOD FROM LIGHT INDUSTRIAL (I-1) TO THE PLANNED UNIT DEVELOPMENT.

Vote results:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried and the Public Hearing closed.

11. **Ordinances, Resolutions and Motions**

(a) Approval of Ordinances on First Reading

(i) Director White presented a recommendation from the Community Development Department to adopt a Bill for an Ordinance to vacate the 3400 block of South Clarkson Street. Staff further recommends that Council set October 1, 2012 as the date for a Public Hearing to gather public input on the proposed ordinance.

COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER WILSON SECONDED, TO APPROVE AGENDA ITEM 11 (a) (i) - COUNCIL BILL NO. 49 AND TO SET OCTOBER 1, 2012 AS THE DATE FOR A PUBLIC HEARING TO GATHER PUBLIC INPUT ON THE PROPOSED ORDINANCE.

COUNCIL BILL NO. 49, INTRODUCED BY COUNCIL MEMBER GILLIT

A BILL FOR AN ORDINANCE VACATING THE 3400 BLOCK OF SOUTH CLARKSON STREET BETWEEN GIRARD AND HAMPDEN AVENUES IN THE CITY OF ENGLEWOOD, COLORADO BUT RESERVING UTILITY EASEMENTS AND CITY BICYCLE ROUTE ON SOUTH CLARKSON.

Vote results:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried.

* * * * *

The meeting recessed at 9:42 p.m.

The meeting reconvened at 9:48 p.m. with all City Council Members present

(b) Approval of Ordinances on Second Reading

There were no additional items submitted for approval on second reading. (See Agenda Item 9 (b) - Consent Agenda.)

(c) Resolutions and Motions

COUNCIL MEMBER WOODWARD MOVED, AND COUNCIL MEMBER GILLIT SECONDED, TO APPROVE AGENDA ITEMS 11 (c) (i), (ii), (iii), (iv), and (v).

COUNCIL MEMBER JEFFERSON PULLED AGENDA ITEM 11 (c) (iv).

Director Gryglewicz presented recommendations from Finance and Administrative Services Department to approve the resolutions for Agenda Items 11 (c) (i),(ii), (iii), and (v).

(i) RESOLUTION NO. 77, SERIES OF 2012

A RESOLUTION TRANSFERRING AND APPROPRIATING FUNDS FROM THE RISK MANAGEMENT FUND AND EMPLOYEE BENEFITS FUND TO THE CAPITAL PROJECTS FUND (CPF) FOR THE HR ORACLE OSB PROJECT.

(ii) RESOLUTION NO. 78, SERIES OF 2012

A RESOLUTION TRANSFERRING AND APPROPRIATING FUNDS FROM THE PUBLIC IMPROVEMENT FUND (PIF) TO THE CAPITAL PROJECTS FUND (CPF) FOR EMERGENCY ALERT SIREN PROJECT.

(iii) RESOLUTION NO. 79, SERIES OF 2012

A RESOLUTION APPROPRIATING FUNDS FOR THE ENGLEWOOD, OXFORD AND BATES STATION AREA MASTER PLAN PROJECT.

(v) RESOLUTION NO. 80, SERIES OF 2012

A RESOLUTION REQUESTING COVERAGE UNDER THE FPPA DEFINED BENEFIT SYSTEM ADMINISTERED BY THE FIRE AND POLICE PENSION ASSOCIATION FOR NEW POLICE OFFICERS FOR THE CITY OF ENGLEWOOD AND PROVIDING ACTIVE POLICE OFFICERS THE OPTION TO PARTICIPATE IN THE FIRE AND POLICE ASSOCIATION DEFINED BENEFIT SYSTEM.

Vote results on Agenda Items 11 (c) (i), (ii), (iii), and (v):
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried.

(iv) Director Gryglewicz presented a recommendation from Finance and Administrative Services Department to approve a resolution authorizing a transfer of $200,000.00 from the Risk Management Fund to the General Fund.

COUNCIL MEMBER GILLIT MOVED, AND MAYOR PENN SECONDED, TO APPROVE AGENDA ITEM 11 (c) (iv) – RESOLUTION NO. 81, SERIES OF 2012.

RESOLUTION NO. 81, SERIES OF 2012

A RESOLUTION TRANSFERRING FUNDS FROM THE RISK MANAGEMENT FUND TO THE GENERAL FUND.

Vote results:
Ayes: Council Members McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: Council Member Jefferson
Motion carried.

(vi) Senior Planner Stitt presented a recommendation from the Community Development Department to adopt a resolution authorizing Community Development Block Grant Application for FY2013.

COUNCIL MEMBER WOODWARD MOVED, AND COUNCIL MEMBER GILLIT SECONDED, TO APPROVE AGENDA ITEM 11 (c) (vi) – RESOLUTION NO. 82, SERIES OF 2012.

RESOLUTION NO. 82, SERIES OF 2012

A RESOLUTION AUTHORIZING THE CITY OF ENGLEWOOD, COLORADO, TO FILE APPLICATIONS WITH ARAPAHOE COUNTY FOR A 2013 COMMUNITY DEVELOPMENT BLOCK GRANT.

Vote results:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried.

12. **General Discussion**

(a) Mayor's Choice

(b) Council Members' Choice

(i) Council considered the funding request for the Englewood High School Homecoming Parade.

COUNCIL MEMBER OLSON MOVED, AND MAYOR PENN SECONDED, TO APPROVE GIVING $400.00 TO ENGLEWOOD HIGH SCHOOL FOR THEIR HOMECOMING PARADE.

COUNCIL MEMBER OLSON AMENDED THE AMOUNT FROM $400.00 TO $340.00, WITH THE STIPULATION THAT THE ENGLEWOOD HIGH SCHOOL STUDENTS AND THEIR ADVISOR BE NOTIFIED THAT THEY ARE TO COME BEFORE COUNCIL IN NOVEMBER/DECEMBER WHEN COUNCIL IS DECIDING ON AID TO OTHER AGENCIES. MAYOR PENN ACCEPTED THE AMENDMENT.

Vote results on the motion as amended:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried.

13. **City Manager's Report**

(i) A motion approving the South Metro Denver Animal Shelter Options Memorandum of Understanding was considered.

COUNCIL MEMBER WILSON MOVED, AND COUNCIL MEMBER McCASLIN SECONDED, TO APPROVE THE SOUTH METRO DENVER ANIMAL SHELTER OPTIONS MEMORANDUM OF UNDERSTANDING.

Vote results:
Ayes: Council Members Jefferson, McCaslin, Wilson, Penn, Woodward, Olson, Gillit
Nays: None
Motion carried.

14. **City Attorney's Report**

City Attorney Brotzman did not have any matters to bring before Council.

15. **Adjournment**

MAYOR PENN MOVED TO ADJOURN. The meeting adjourned at 10:16 p.m.

___/s/ Loucrishia A. Ellis_____
City Clerk

This page intentionally left blank.

SAMPLE RESOLUTION #1

TOWN OF WINDSOR

RESOLUTION NO. 2012-18

A RESOLUTION OF THE WINDSOR TOWN BOARD DELEGATING TO THE WINDSOR TOWN CLERK THE AUTHORITY AND RESPONSIBILITY TO APPOINT JUDGES OF ELECTION FOR THE MUNICIPAL ELECTION ON APRIL 3, 2012, PURSUANT TO THE AUTHORITY GRANTED BY C.R.S. § 31-10-401

WHEREAS, the Regular Municipal Election for the Town of Windsor will take place on April 3, 2012; and

WHEREAS, C.R.S. § 31-10-401 grants the Town Board the authority to act by resolution to delegate to the Town Clerk the authority and responsibility to appoint judges of election; and

WHEREAS, the Town Board wishes to delegate the statutory authority for appointment of election judges to the Town Clerk as provided by law.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN BOARD FOR THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The Town Clerk for the Town of Windsor is authorized to appoint election judges pursuant to C.R.S. § 31-10-401, and to make and file a list of all persons so appointed.

2. Such list shall be a public record and shall be subject to inspection and examination during office hours by any qualified elector of the municipality with the right to make copies thereof.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 12th day of March, 2012.

TOWN OF WINDSOR, COLORADO

_____

John S. Vazquez, Mayor

ATTEST:

_____

Patti Garcia, Town Clerk

This page intentionally left blank.

SAMPLE RESOLUTION #2

TOWN OF WINDSOR

RESOLUTION NO. 2011-54

A RESOLUTION DESIGNATING A PUBLIC PLACE FOR THE POSTING OF NOTICES CONCERNING PUBLIC MEETINGS

WHEREAS, in compliance with the Colorado Sunshine Act of 1972 and amendments thereto, the Town Board desires to designate a public place for the posting of notices concerning public meetings;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. That a bulletin board has been placed in the reception area of Windsor Town Hall at 301 Walnut Street, Windsor, Colorado, and that such bulletin board is hereby designated as a public place for the purpose of giving full and timely notice of public meetings.

2. That the designation of a public place by this Resolution shall not be deemed to preclude the Town from providing other or different notice of public meetings, so long as such notice is full and timely and otherwise in compliance with the Colorado Sunshine Act of 1972 and subsequent amendments thereto.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 12th day of December, 2011.

TOWN OF WINDSOR

By:_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

This page intentionally left blank.

TOWN OF WINDSOR

ORDINANCE NO. 2012-1431

AN ORDINANCE IMPOSING LIMITATIONS UPON THE SALE OF TREATED WATER THROUGH WATER HYDRANTS AND WATER HYDRANT METERING DEVICES WITHIN THE TOWN OF WINDSOR, COLORADO, AND FINDING THAT CAUSE EXISTS FOR THE PASSAGE OF AN EMERGENCY ORDINANCE PURSUANT TO SECTION 4.11 OF THE WINDSOR HOME RULE CHARTER

WHEREAS, the Town of Windsor ("Town") is a Colorado home rule municipality with all powers and authority vested pursuant to Colorado law; and

WHEREAS, the Town operates a Water Utility Enterprise, the purpose of which is to assure a predictable, suitable and affordable supply of treated water for use by its citizens, commercial users and industrial users; and

WHEREAS, the Town's Water Utility purchases treated water from third-party sources pursuant to agreements with the providers, under which the allowable supplies, rates and methods for calculation of charges to the Town are set forth; and

WHEREAS, over the past year, the Town has experienced a dramatic increase in demand for the sale of treated water to businesses serving oil field operations and construction sites, some of which are located outside of the Town's corporate limits; and

WHEREAS, the Town has in place a system for regulating the bulk sale of treated water through the leasing of water hydrant meters, which system is administered through the Town's Department of Public Works in coordination with the Office of the Town Clerk; and

WHEREAS, the demand for both oil field bulk water and construction site bulk water has created a circumstance where the Town must more-closely administer, monitor and evaluate the bulk water sales; and

WHEREAS, the demand for bulk water sales, both for oil field use and construction site use, has caused concerns that the Town's system for regulating bulk water sales through its water hydrant meters is or may be inadequate, out-of-date and in need of revision; and

WHEREAS, the 2011/2012 seasonal snowpack is significantly below average, thus raising a distinct risk that water supplies will be adversely affected, the impact of which will be felt with little warning; and

WHEREAS, the amount of 2012 seasonal precipitation is below average, the effect of which is an increase in demand from citizens who need irrigation water to maintain their property; and

WHEREAS, the Town Board believes that in times of threatened water scarcity, the homeowners and businesses within Windsor should have first priority on treated water resources owned by the Town; and

WHEREAS, the increased demands placed by bulk water users on the Town's treated water system raises the imminent and unforeseen risk that the Town will be forced to exceed maximum water allowances available through its treated water supply contracts, the result of which may be the curtailment of water use and higher water fees to the Town, which increased fees must either be absorbed by the Town or passed along to citizens through rate increases; and

WHEREAS, the Town Board is concerned that the use of water hydrant meters without Town-issued backflow prevention devices presents an imminent threat of contamination of the Town's Water Utility system; and

WHEREAS, in order for the Town to properly address the implications of continued bulk water sales, and in order to assure that the Town properly protects its water resources, the Town Board has concluded that immediate limitations must be placed upon bulk water sales through water hydrant meters; and

WHEREAS, the Windsor Home Rule Charter Section 4.11 authorizes the Town Board to finally adopt upon a single reading emergency ordinances that go into effect immediately upon an affirmative vote of at least five (5) members of the Town Board with a specific statement of the nature of the emergency set forth in the ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD FOR THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

Section 1. The recitals contained in this Ordinance are hereby adopted and incorporated as findings of fact of the Town Board.

Section 2. All sales of bulk water through Town-issued water hydrant meters shall be limited as follows:

a. No single water hydrant meter user shall receive more than 64,000 (sixty-four-thousand) gallons of treated water during any calendar month, as measured by a water hydrant meter issued by the Town in accordance with this Ordinance; and

b. No person shall receive treated water from any water hydrant operated by the Town's Water Utility Enterprise unless such person shall have first received a water hydrant meter issued by the Town in accordance with this Ordinance; and

c. Each and every person in possession of a Town-issued water hydrant meter at the time of adoption of this Ordinance shall immediately discontinue the use of any such meter, and shall within twenty-four (24) hours return such meter to the Town for reissuance in accordance with this Ordinance.

d. No treated water acquired from any Town Water Utility-owned hydrant shall be used upon any site outside of the Town's corporate limits, including any site within unincorporated areas entirely surrounded by incorporated areas.

Section 3. For purposes of this Ordinance, "single water hydrant meter user" is defined as any person or entity who receives treated water from water hydrants owned by the Town's Water Utility through a hydrant meter provided by the Town. The limitations on bulk water receipt set forth herein shall not apply to the sale and receipt of bulk water purchased through the Town's coin-operated bulk water sale facility located at 630 Ash Street, Windsor, Colorado.

Section 4. The Town's Director of Public Works ("Director") is hereby directed to receive all water hydrant meters returned to the Town in accordance with Section 2 (c) above. Upon receipt, the Director shall record the meter reading, which reading shall be communicated to the Water Utility Department for billing purposes. The Director shall thereafter see to it that each water hydrant meter is fitted with a Town-approved and Town-tested backflow prevention device before any such water hydrant meter is made available for use. Upon the effective date of this Ordinance, no Town-issued water hydrant meter shall be used for any purpose unless such water hydrant meter is at such time fitted with a Town-approved and Town-tested backflow prevention device.

Section 5. Notwithstanding any prior Ordinance, the deposit required upon issuance of a water hydrant meter from the Town shall be set at $2,100 per meter.

Section 6. The Water Utility Department shall render a billing statement to all water hydrant meter users who have returned water hydrant meters to the Town in accordance with Section 2 (c) above. No water hydrant meter shall be thereafter issued to any person until such person has paid in full the balance due for past water hydrant meter use (including daily rental fees water volume charges, and applicable penalties). In addition, no person shall receive a Town-issued water hydrant meter until such person has complied with the Director's then-applicable regulations for leasing and use of water hydrant meters in accordance with the authority granted to the Director pursuant to Section 7 of Ordinance 2003-1143. The Town Board herein expressly affirms the

Director's authority to establish and revise regulations for the leasing and use of water hydrant meters necessary to protect the water resources of the Town.

Section 7. Any person found in violation of this Ordinance shall upon conviction be subject to the penalty provided in *Windsor Municipal Code* Section 1-4-20. Each day such violation continues shall be considered a separate offense. Nothing herein shall be deemed to limit the Town's authority to enforce this Ordinance through legal or equitable remedies in addition to prosecution under this Ordinance, which remedies shall be cumulative and non-exclusive.

Section 8. Pursuant to Town of Windsor Home Rule Charter Section 4.11, this Ordinance shall take effect immediately upon adoption, and shall continue in effect until expressly terminated by further Town Board ordinance.

Section 9. If any section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of and shall be severable from the remaining portions of this Ordinance. The Town Board hereby declares that it would have adopted this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts may be declared unconstitutional or invalid.

Section 10. All other ordinances or portions thereof, and all Windsor Municipal Code provisions inconsistent or conflicting with this Ordinance or any portion hereof, are hereby superseded by this Ordinance and their legal effect held in abeyance but only to the extent of such inconsistency or conflict and only for the effective period of the within Ordinance.

Section 11. The Town Board finds and determines that, in accordance with the foregoing recitals, an emergency exists requiring the immediate passage of this Ordinance for the preservation of the health, safety, morals and welfare of the citizens of the Town of Windsor.

Introduced, finally adopted by a vote of ____ in favor and ____ opposed on first reading, and ordered published this 14th day of May, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

TOWN OF WINDSOR

ORDINANCE NO. 2012-1424

AN ORDINANCE FIXING THE COMPENSATION OF THE MUNICIPAL COURT JUDGE AND MUNICIPAL COURT CLERK FOR THE TOWN OF WINDSOR IN COMPLIANCE WITH SECTIONS 13-10-107 AND 13-10-108, C.R.S., AND SECTION 2-4-90 OF THE WINDSOR MUNICIPAL CODE

WHEREAS, the Town of Windsor (hereinafter, "Town") is a Colorado home rule municipality, with all powers and authority attendant thereto; and

WHEREAS, the Town's Home Rule Charter, at Section 9.2, provides for the establishment of the Windsor Municipal Court (hereinafter, "Court") and the office of Municipal Judge (hereinafter, "Judge"); and

WHEREAS, by Ordinance No. 2010-1392, the Town Board established the Court as a statutory "court of record", subject to the requirements of the Colorado Revised Statutes; and

WHEREAS, § 13-10-107, C.R.S., requires that the compensation of the Municipal Judge and Municipal Court Clerk be fixed by ordinance; and

WHEREAS, Windsor Municipal Code Section 2-4-90 provides:

> In conjunction with the annual budgeting process, the Town Board shall on an annual basis by ordinance budget and appropriate such moneys as may be necessary for the proper operation of the Municipal Court. Such appropriations shall include the fixing of compensation for the Municipal Court Judge and any Assistant Judge assigned to the Municipal Court, with due regard for the limitations established in Section 9.2(D) of the Home Rule Charter. Such appropriations shall include the fixing of compensation for the office of the Municipal Court Clerk.

and

WHEREAS, the Town Board has approved the annual budget for fiscal year 2012, in which the compensation for the Judge and Municipal Court Clerk have been approved; and

WHEREAS, the Town Board wishes by this Ordinance to incorporate by reference the previously-budgeted annual compensation for both the Judge and the Municipal Court Clerk in compliance with the within-referenced Code and statutory requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

Section 1. The compensation of the Municipal Court Judge and Municipal Court Clerk for the 2012 fiscal year shall be as stated in the 2012 Annual Budget previously approved by the Town Board.

Section 2. Nothing herein shall be deemed a waiver or modification of the provisions of Section 9.2 (D) of the Town of Windsor Home Rule Charter.

Introduced, passed on first reading, and ordered published this 23rd day of January, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

Introduced, passed on second reading, and ordered published this 13th day of February, 2012.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk