

## KEYSTONE CHARTER COMMISSION MEMORANDUM

**TO:** Keystone Charter Commission Members  
**FROM:** Jennifer Madsen  
**RE:** Provisions of the Draft Home Rule Charter for Consideration on Monday, May 1  
**DATE:** April 27, 2023

This document provides options and considerations related to discussion sections for the May 1 regular meeting. There are revisions from these draft sections that were provided to you for the April 24 meeting based on feedback and input at the April 24 meeting. The redlines show the changes between April 24 and May 1.

### **Article II – Elective Offices (cont'd)**

#### **Section 2.3. Terms of Office--Town Elective Offices.**

(a) At the first election of Town Elective Officers, for the Councilmember position, the persons receiving the three highest numbers of votes shall be elected and shall serve until a successor is elected at the regular election in April 2028 and the successor is duly qualified. ~~and a~~ All other Councilmembers shall be elected ~~to two-year terms and shall serve until a successor is elected at the regular election in April 2026 and the successor is duly qualified.~~ and i In the event of a tie in number of votes such that persons with the three highest number of votes cannot be determined, the Town Clerk shall hold a lot drawing open to the public to assign terms to the persons tied with the three highest number of votes. ~~to the persons with the lowest number of votes.~~ The purpose of this paragraph is to create staggered terms of office for the Councilmember positions. The first-elected Mayor shall hold office until the first regular election in April 2028.

(b) The term of office for each person holding Town Elective Office shall commence upon their taking the oath of office ~~at the ensuing organizational meeting of the Town Council held at the first regular~~ or special meeting of the Town Council ~~in the January~~ following the election and shall continue during the term for which they shall have been elected until their successors shall have been elected and duly qualified. ~~An organizational meeting of the Town Council shall be held at the first regular or special meeting of the Town Council in January following the election year.~~

(c) The Mayor and each Councilmember shall be elected for a term of four (4) years.

(d) The limitations on terms imposed by Article XVIII, §11 of the Colorado Constitution, as amended, shall govern term limits in the Town. For clarity, Mayor and Councilmember shall be considered ~~different~~ the same offices for the purpose of calculating terms of office allowed under Article XVIII, §11 of the Colorado Constitution. ~~such that a person filling either the role of Mayor or Councilmember may seek and if elected or appointed serve in the other role for the full number of terms otherwise allowed despite being term limited for the previous role.~~

**Considerations:** Note, the regular election date has not yet been decided. The draft charter language is consistent with the many home rule municipalities. The Charter Commission can lengthen or shorten the terms. Statutory towns provide for two years terms and the governing body may lengthen the terms to four-year terms.

An important discussion point and option is whether the charter commission desires to waive or expand term limits through the Charter. Article XVIII, §11 of the Colorado Constitution is applicable unless the Charter determines otherwise. Under the Colorado Constitution, no elected official may serve more than two consecutive terms (if terms are greater than two years) and no more than three consecutive terms for two-year terms. The voters of a municipality may lengthen, shorten, or eliminate the limitations on terms of office imposed by the Colorado Constitution. If the Charter Commission decides to change the term limits, the addition or revising to paragraph (d) would read: "In accordance with the authority of the voters as set forth in Section 11(2) of Article XVIII of the Colorado Constitution, terms of office for elected officials of the Town shall be . . .

#### **Section 2.4. Mayor--Powers and Duties.**

The Mayor shall preside at all meetings of the Town Council and shall exercise such powers and perform such other duties as are or may be conferred and imposed upon the Mayor by this Charter or the Ordinances or the Resolutions of the Town. The Mayor shall have all the powers, rights, and privileges of a Councilmember. The Mayor shall have no power of veto. The Mayor shall be recognized as the head of the Town government for all ceremonial, dignitary and legal purposes, and the Mayor shall execute and authenticate legal instruments requiring the Mayor's signature as such official.

**Considerations:** This draft charter language is consistent with the Council-Manager form of government and consistent with state law for statutory towns.

#### **Section 2.5. Mayor Pro-Tem.**

The Town Council shall, at a regular meeting in February [May/June – if an April election date] of each year, elect one of its Councilmembers to serve as Mayor Pro-Tem for a term of approximately one (1) year, commencing and expiring at the first regular meeting of the Town Council scheduled for March [July – if an April election date] of each year. The Mayor Pro-Tem shall be elected by a majority of the members of Town Council present at said meeting and may be removed by a majority of members of Town Council in office ~~at the time a vote is taken~~. In the absence or disability of the Mayor, the Mayor Pro-Tem shall preside at meetings of Town Council and shall have all powers and duties of the Mayor. The Mayor Pro-Tem shall have all the powers, rights, and privileges of a Councilmember.

**Considerations:** This draft charter language is consistent with other home rule municipalities. The language is also consistent with state law except that under state law, the term of the mayor pro-tem is two years rather than only one year. Options include changing the provisions for election of the Mayor Pro-Tem [could be by a majority of the Town Council in office] or the term of the position. The month of the election of the Mayor Pro Tem and the commencement of the term will change based on the date of the regular election – April or November.

#### **Section 2.6. Qualifications.**

(a) To be eligible to hold Town Elective Office, either by election or by appointment, a person, at the time of nomination and election or appointment, shall be a registered elector as defined by the laws of the State of Colorado, ~~a primary resident~~ and registered elector of the Town. To be eligible to hold Town Elective Office, a person shall have resided within the Town at the time of election or appointment for one (1) year immediately preceding such election or appointment.

(b) Each person holding Town Elective Office, either by election or by appointment, shall maintain primary residency in the Town and district (if elected by district), throughout such person's term of office. If any person holding Town Elective Office shall move from the Town or from the district (if elected by district), during such person's term of office, such person's seat shall be vacant and such vacancy shall be filled by the Town Council as provided by this Charter.

(c) No person holding Town Elective Office, either by election or by appointment, shall be an employee of the Town during such person's term of office or perform personal services for the Town for which such elected official is compensated other than as provided in this Charter.

(d) No person holding Town Elective Office, either by election or by appointment, shall hold any other elective position with a federal, state, county, or municipal governmental entity, excluding an office on a new charter commission to be formed in accordance with Part 2 of Article 2 of Title 31, C.R.S., as may be amended from time to time, during such person's term of office.

**Considerations:** The draft charter language is consistent with state law as to the qualifications of elected officials except that the provisions regarding employment by the Town are new and are common in many charters. Options include provisions prohibiting convicted felons (or persons convicted of certain enumerated offenses, crimes of involving breach of the public trust, treason, bribery of public officials, embezzlement, extortion or theft of public money, perjury, or conspiracy to commit those crimes) from holding office, limiting employment by the Town for a period after leaving office, or changing the residency requirements (extending or decreasing the period). You may also include a minimum age such as 21 years of age.

The Colorado statute on the qualification to hold municipal elected office:

**§ 31-10-301. Electors eligible to hold municipal office:**

Every registered elector eighteen years of age or older on the date of the election may circulate a nominating petition and hold office in any municipality, unless another age is required by local charter or ordinance, if he or she has resided in the municipality or municipality and ward, as the case may be, from which he or she is to be elected for a period of at least twelve consecutive months immediately preceding the date of the election. In case of an annexation, any person who has resided within the territory annexed for the prescribed time shall be deemed to have met the residence requirements for the municipality and precinct to which the territory was annexed. No person may be a candidate for two municipal offices at the same election nor hold two elective municipal offices simultaneously; except that, in statutory cities, the offices of clerk and treasurer may be sought and held by the same person.

The Colorado statute on the qualification to be a registered elector;

**§ 31-10-201. Qualifications of municipal electors:**

(1) Every person who has attained the age of eighteen years possessing the following qualifications is entitled to register to vote at all municipal elections:

- (a) He is a citizen of the United States.
- (b) The person is a resident of the municipal precinct and has resided in this state for twenty-two days immediately preceding the election at which the person offers to vote. In order to vote in a municipal election conducted under this article, a person must be a registered elector. An otherwise qualified and registered elector who moves from the municipal election

precinct where registered to another precinct within the same municipality is permitted to cast a ballot for an election at the polling place in the precinct where registered.

(2) No person confined in any public prison is entitled to register or to vote at any regular or special election. Every person who was a qualified elector prior to such imprisonment and who is released by pardon or by having served his full term of imprisonment shall be vested with all the rights of citizenship except as otherwise provided in the state constitution.

(3) The judges of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

- (a) The residence of a person is the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence. In determining what is a principal or primary place of abode of a person, the following circumstances relating to such person may be taken into account: Business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, and motor vehicle registration.
- (b) A person shall not be considered to have lost his residence if he leaves his home and goes into another state or territory or another county or municipality of this state merely for temporary purposes with an intention of returning.
- (c) A person shall not be considered to have gained a residence in this state or in any municipality in this state while retaining his home or domicile elsewhere.
- (d) If a person moves to any other state or territory with the intention of making it his permanent residence, he shall be considered to have lost his residence in the municipality from which he moved.
- (e) If a person moves from one municipality in this state to any other municipality in this state with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the municipality from which he moved.
- (f) If the residence of a person is destroyed or becomes uninhabitable, due to a natural disaster or for any other reason, and the person has the present intention of returning to the residence once it is habitable or returning to a newly constructed residence at the same address, the person may continue to use the address of the destroyed or uninhabitable residence as the person's residence for purposes of this section. The residence given

for motor vehicle registration and for state income tax purposes may be different from the address given for voting purposes pursuant to this subsection (3)(f).

- (4) (a) For the purpose of voting and eligibility to office, no person is deemed to have gained a residence by reason of his presence or lost it by reason of his absence while in the civil or military service of this state or of the United States, nor while a student at any institution of higher education, nor while kept at public expense in any public prison or state institution unless the person is an employee or a member of the household of an employee of such prison or institution.
- (b) The provisions of paragraph (a) of this subsection (4) notwithstanding, no person otherwise qualified under the provisions of this article shall be denied the right to vote at any municipal election solely because he is a student at an institution of higher education if such student, at any time when registration is provided for by law, files with the county clerk and recorder a written affidavit under oath, in such form as may be prescribed, that he has established a domicile in this state, that he has abandoned his parental or former home as a domicile, and that he is not registered as an elector in any other municipality of this state or of any other state. The fact that such affidavit has been filed shall be noted in the registration book.
- (c) No provisions of this subsection (4) shall apply to the determination of residence or nonresidence status of students for any college or university purpose.

### **Section 2.7. Vacancies.**

(a) ~~An A Town Elective Official official~~ shall continue to hold a Town Elective Office until the official's successor is duly qualified except when such office is vacated as set forth in this Section. A Town Elective Office shall become vacant whenever any officer fails to qualify within thirty (30) days after the ~~date of the officer's election or the date of the officer's appointment commencement of such officer's term~~ or retain qualification for Town Elective Office as set forth in Section 2.6, or is recalled, removed, dies, becomes incapacitated, resigns, refuses to serve, or is judicially declared incompetent or ceases to be a resident of the Town.

(b) In the event of a vacancy in a Town Elective Office, the Town Council may fill the vacancy by appointment or by calling for a special election as soon as practicable.

(1) If ~~the Town Elective Office is~~ filled by appointment, the person appointed to fill the vacated Town Elective Office shall hold such office only until the term of office of a successor elected at the next Regular Town Election has commenced. ~~At the next Regular Town Election, to retain staggered terms of office for Councilmembers, the successor elected to fill the office of Councilmember which was filled by appointment shall be nominated and elected to a term of either two (2) years or four (4) years.~~

(2) If the Town Elective Office is filled by special election, the person elected to fill the vacated Councilmember office shall hold office only until the expiration of the term of office held by the Councilmember whose office was vacated.

(3) In order to maintain staggered terms on the Town Council, in the event that in any election year there are more than three (3) councilmember positions to be filled, the persons receiving the three highest numbers of votes shall be elected to four-year terms and all others shall be elected to two-year terms. In the event of a tie in number of votes such that persons with the three highest number of votes cannot be determined, the Town Clerk shall hold a lot drawing open to the public to assign terms to the persons tied with the three highest number of votes. ~~and in the event of a tie in number of votes such that persons with the three highest number of votes cannot be determined, the Town Clerk shall hold a lot drawing open to the public to assign terms to the persons with the lowest number of votes.~~

**Considerations:** The draft charter language follows state law. Options include requiring special elections to fill a vacancy (which are costly) or possibly even requiring special elections depending on how far a term has progressed at the time of the vacancy.

The Town of Silverthorne Home Rule Charter has a different approach to vacancies:  
Section 3.6 - Vacancies

- a. An elected officer shall continue to hold office until his or her successor is duly qualified. An elective office shall become vacant whenever an elective officer fails or refuses to qualify, dies, resigns, is removed from office, is incapacitated to an extent which prohibits him or her from properly performing his or her duties as an elective officer, is absent continuously from the Town for more than three months without a leave of absence given by a vote of three-fourths of the entire Council in office at the time the vote is taken, is convicted by a court of law of any act constituting misconduct in office or constituting a felony, is judicially declared mentally ill, or moves from the Town of Silverthorne.
- b. The existence of a vacancy shall be established by competent evidence thereof placed on record in the Council minutes. The Council shall determine the validity of the evidence and decide when a vacancy exists.
- c. Not less than ten days nor more than thirty days after a vacancy in an elective office has been determined to exist by the Council, the remaining Councilmembers shall appoint an eligible person as defined by Sections 3.2 and 3.3, to fill such vacancy to serve until the next regular Town election. Such appointment shall be decided by a majority vote of the members of the Town Council in office at the time the vote is taken. If there will be remaining unexpired time in the term of office for which the appointment was made after the next regular election, then such vacancy for the remaining unexpired time shall be filled by vote of the registered electors at the next regular Town election. At the election, the candidates receiving the first, second and third highest number of votes shall serve terms of four years. The candidate receiving the fourth highest number of votes shall serve a term of two years, to serve the unexpired time in the office for which an appointment was made. Additional unexpired terms caused by additional vacancies, if any, shall be filled by candidates receiving the next highest number of votes.
- d. In the event of a vacancy in the office of Mayor, the Council shall fill the vacancy by appointing one of the members of the Council to serve as Mayor until the next Town election. In the event there will be remaining unexpired time in the then current Mayor's term after the next Town election, candidates for the office of Mayor at that election

shall run for a four-year term. In such event, the schedule for election of the Mayor by Section 3.5.a shall be superseded by this Section.

### **Section 2.8. Compensation.**

All persons holding Town Elective Offices shall receive such compensation as established by Ordinance of the Town Council; provided, however, that the compensation of any person holding Town Elective Office shall not be increased or decreased in any term of office during which the increase or decrease is approved by the Town Council. All persons holding Town Elective Offices may, upon order of the Town Council, be paid their actual and necessary expenses incurred in the performance of their duties of office.

**Considerations:** This draft charter language is consistent with state statute and with ethical principles and public trust concepts that the Town Council should not be deciding matters that provide an economic benefit to the persons on Town Council. If there is an interest in providing compensation to the first elected officers, the Charter could specify that amount.

### **Section 2.9. Powers of Town Council.**

The Town Council shall constitute the legislative and governing body of the Town and shall have all legislative powers and functions of municipal government, except as otherwise provided in the Constitution of the State of Colorado or this Charter and shall have the power and authority to adopt such Ordinances, Resolutions, and Motions, as it shall deem proper.

**Considerations:** This draft charter language reflects the philosophy that the charter should be broad in its approach to avoid tying the hands of the city government at this level (i.e. it is much more difficult to amend a charter than to amend legislation).

### **Section 2.10. Oath of Office.**

Every person holding elected office, before entering upon the duties of such office, shall take an oath or affirmation of office that the officer will support the Constitution and the laws of the United States and of the State of Colorado and this Charter and the Ordinances of the Town and will faithfully perform the duties of the office upon which the officer is about to enter in accordance with the requirements of Article 12, Title 24, C.R.S., as may be amended ~~from time to time~~.

**Considerations:** This draft charter language is consistent with state statute.

### **Section 2.11. Standards of Conduct.**

The Town Council may adopt an Ordinance governing disclosure of conflicts of interest, recusals from voting and other standards or code of conduct or ethics that shall supersede statutory or constitutional provisions governing or addressing the same matters. To the extent not superseded by or conflicting with this Charter or such local Ordinance, the Town Council shall be governed by the Standards of Conduct as contained in Title 24, Article 18 of the C.R.S., as may be amended ~~the same may be amended from time to time~~.

**Considerations:** The draft charter language is consistent with the standards set forth in Title 24, Article 18 of the Colorado Revised Statutes. A separate memorandum will be provided on the Colorado Code of Ethics applicable to local government officials.

### **Section 2.12. Removal from Office.**

By an affirmative roll call vote of two-thirds (2/3) of the members of the Town Council in office at the time of such vote, the Mayor or any Councilmember may be removed from office for good

cause. No removal shall be made without notice to such elected official which contains the charge in writing and the facts upon which the charge is based and an opportunity of a hearing before the Town Council, which hearing shall be held no sooner than ten (10) days after the date the notice is given.

**Considerations:** The draft charter language creates a different standard for removal from office. Under state law, only a majority vote is needed for removal. The other requirements are consistent with state law. Option to delete the language related to removal from office. It should be noted that this section does not define “good cause.”

## **ARTICLE III MEETINGS OF TOWN COUNCIL**

### **Section 3.1. Regular Town Council Meetings.**

The Town Council shall meet regularly at least once each month at a day and hour and place to be fixed by the procedures and rules of order of each Town Council adopted by Resolution.

**Considerations:** The draft charter language creates a different standard for the requirement of regular meetings. There is no requirement under state law for a statutory town to hold a regular meeting. To accomplish the Town’s business, regular meetings are encouraged. A once a month regular meeting is consistent with other charters.

### **Section 3.2. Special Meetings.**

Special meetings of the Town Council shall be called by the Town Clerk on the oral request of two (2) or more members of Town Council with at least twenty-four (24) hours notice to each member of the Town Council and to the public, delivered in accordance with the procedures and rules of order of the Town Council and the requirements of this Charter and the Colorado Open Meetings Law, as now in effect and as may be amended.

**Considerations:** A special meeting is a meeting held on different date and time than the regularly scheduled meeting. Other Charters allow for the scheduling of a special meeting at the request of the Mayor or two (2) or more members of Town Council.

### **Section 3.3. Emergency Meetings.**

An emergency meeting may be called in the event of an immediate danger or threat to the public health, welfare, peace, safety or property for the purpose of preservation or protection of the public health, welfare, peace, safety or property. Unless it is impractical, all members of the Town Council shall be notified of such meeting and such meeting may be held if a Quorum consents. Maximum practical notice, including posted notice, shall be given to the public stating the purpose, time, place and manner of any such meeting.

**Considerations:** An emergency meeting is called with less than twenty-four hours’ notice to the public. The twenty-four hours’ notice is required by the public.

### **Section 3.4. Work Sessions.**

The Town Council may hold study or work sessions as deemed necessary in accordance with its procedures and rules of order, as may be adopted. No Quorum shall be required at any study or work session and no legally binding or formal action shall be taken at any such session.

**Section 3.5. Open Meetings.**

All meetings of the Town Council shall be open to the public except as permitted by law. At Town Council meetings, members of the public shall have a reasonable opportunity to be heard except for those meetings that are designated as study or work sessions. In compliance with the Colorado Open Meetings Law, the Town Clerk shall keep a record of the proceedings of each meeting.

**Considerations:** This draft paragraph is consistent with state law.

**Section 3.6. Executive Sessions.**

Executive sessions may be held in compliance with the Colorado Open Meetings Law, as now in effect.

**Considerations:** This draft paragraph is consistent with state law.

**Section 3.7. Quorum.**

In order for the Town Council to conduct business, a Quorum shall be required at all meetings of the Town Council except for study or work sessions. In the absence of a Quorum, a lesser number may reschedule any meeting to a later date and time.

**Considerations:** This draft paragraph is consistent with state law.

**Section 3.8. Procedures and Rules of Order.**

The Town Council may prescribe the procedures and rules of order governing meetings, which rules shall remain in effect until amended in accordance with the provisions of the adopted procedures and rules of order.

**Considerations:** This draft paragraph is an addition and not required by state law. The Town Council may allow for Procedures and Rules of Order in an ordinance or in the Town Council Rules and Procedures.

**Section 3.9. Attendance Required.**

Three (3) or more unexcused absences by a member of the Town Council in any one (1) calendar year shall constitute grounds for sanctions. The procedures for excusing absences, including which types of meetings require attendance and appropriate sanctions, shall be as set forth in procedures and rules of order of the Town Council, as may be adopted and amended from time to time.

**Considerations:** This draft paragraph is an addition and not required by state law. The Town Council may establish this standard or a similar standard in an ordinance or in the Town Council Rules and Procedures.

## **ARTICLE IV POSTING OF MEETINGS**

The Town Council shall adopt a Resolution which establishes public notice and posting requirements in accordance with the Colorado Open Meetings Law, as now in effect and as may be amended from time to time, including designating the Town official web site for posting the agenda at least 24 hours in advance of the public meeting (except for emergency meetings as governed by Section 3.3) and such designation shall be deemed automatically readopted at the Town Council's first regular meeting of each calendar year unless otherwise determined by the Town Council.

**Considerations:** This draft paragraph is consistent with state law. This section could be moved to Article III on meetings. Consider removing the Town official website because technology may change.

## **ARTICLE V ELECTIONS**

### **Section 5.1. Laws Governing Elections.**

Special and general municipal elections shall be governed by the Colorado Municipal Election Code of 1965, and as may be amended, and the Town Home Rule Charter, except as the Town Council may prescribe by Ordinance or Resolution calling an election.

### **Section 5.2. Municipal Elections.**

(a) A regular municipal election shall be held on the date in April of each even-numbered year.

(b) Any special municipal election may be called by Resolution or Ordinance of the Town Council at least thirty (30) days in advance of such election. The Resolution or Ordinance calling a special municipal election shall set forth the purpose or purposes of such election.

### **Section 5.3 Nonpartisan Elections.**

All municipal elections shall be nonpartisan. No municipal election ballot shall contain any language referring to any political party affiliation.

### **Section 5.4. Campaign Finance Reporting.**

Reports setting forth the information required by C.R.S. 1-45-108, as now in effect and as may be amended from time to time, shall be filed with the Town Clerk twenty-one (21) and eight (8) days before and thirty (30) days after any Town election. Nothing contained herein shall preclude the Town Council from adopting an Ordinance requiring more frequent campaign finance disclosure reporting. The Town Council may provide by Ordinance for penalties for the violation of campaign finance disclosure requirements. D and for publicizing campaign finance disclosure reports.

**Considerations:** These draft paragraphs are consistent with state law.