

## KEYSTONE CHARTER COMMISSION MEMORANDUM

**TO:** Keystone Charter Commission Members  
**FROM:** Jennifer Madsen  
**RE:** Provisions of the Draft Home Rule Charter for Consideration on Tuesday, May 9  
**DATE:** May 4, 2023

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This document provides options and considerations related to discussion sections for the May 9 regular meeting.

### Section II – Elective Offices (cont'd)

#### Section 2.7. Vacancies.

(a) A Town Elective 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 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.

(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.

**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.

**Additional Considerations:** The Colorado statute on vacancies was amended in the legislature this last term. The Colorado statute allows for the Town Clerk, without further action of the Town Council, to call for a special election to fill vacancies IF the Town Council lacks sufficient numbers to establish a quorum to fill the vacancies. The Town Council could cancel the election if the Council is able to fill the vacancy prior to the date of the special election.

### **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.

**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.

**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 VI  
RECALL, INITIATIVE AND REFERENDUM**

**Section 6.1. Right of Recall.**

(a) Any person holding Town Elective Office may be recalled at any time after six (6) months in office by the electors entitled to vote for a successor of such incumbent.

(b) The procedures for recall shall be those set forth in Title 31, Article 4, Part 5, C.R.S., as now in effect and as may be amended, except that the Town Council may, by Ordinance and consistent with this Charter, amend such procedures.

(c) A recall petition shall be signed by registered electors entitled to vote for a successor to the incumbent in number equal to at least twenty-five percent (25%) of the entire vote cast at the last preceding Regular Town Election for all candidates for the office (either Mayor or Councilmember as relevant) to which the incumbent sought to be recalled was elected.

(d) After the first recall petition and election, a subsequent recall petition against the same officer in the same term shall be signed by registered electors entitled to vote for a successor to the incumbent in a number equal to at least fifty percent (50%) of the entire vote cast in the last preceding Regular Town Election for all candidates for the office (either Mayor or Councilmember as relevant) to which the incumbent sought to be recalled was elected.

(e) A recall petition may not be circulated or filed against a Town Elective Official whose office is up for election within six months.

**Considerations:** What follows is an overview of recall process. The constitutional right to recall is set forth in Article XXI of the Colorado Constitution provides the constitutional right to recall. There are additional recall procedures set forth in state statute, C.R.S. §31-4-501 *et. seq.* A municipality may provide for the manner of exercising recall powers but shall not require more petition signatures than 25% of the entire vote cast at the last candidate election. Detailed procedures for municipalities require (1) the preparation of a recall petition; (2) review and approval of the form of the recall petition by the Town Clerk; (3) a 60 day period to circulate and obtain signatures; (4) review of the completed petition for sufficiency by the Town Clerk, and (5) the Town Clerk refers the petition to the Town Council for the Town Council to set an election to be held between 30 to 90 days of the date of receiving a complete petition.

Recall petitions are required to include a statement (maximum of 200 words) providing the reason for the recall. The electorate is considered to be the “sole and exclusive judges of the legality, reasonableness and sufficiency of each ground” for recall, which essentially means the outcome of the vote is decisive regardless of the merit of the recall charges.

The right of recall is fundamental right in a representative democracy; however, the recall process can be very disruptive to local government operations and can be misused for political, rather than legitimate, public purposes. Specific recall procedures that can be altered or modified include:

- The minimum 6-month period in office before a recall petition can be submitted can be reduced (but not increased).
- The minimum 25% percent of signatures (of the entire vote cast at the last candidate election) required for a recall can be reduced (but not increased).
- The minimum 50% percent of signatures required for a second or subsequent recall can be reduced (but not increased).

- The 60 day time period for circulation of a recall petition can be altered; however, reducing the circulation period to less than 30 days could lead to a challenge that the time period is too short to safeguard the constitutional citizens' rights of recall.
- The 30-to-90-day time period for setting the date of a recall election by Council may be amended.
- Other procedural provisions can be altered, such as timeframes for Town Clerk reviews and hearing process for protests.

Other Charters: Most Charters generally follow the Colorado Constitution and municipal recall procedures provided by statute (copies of the relevant statutes are attached as an addendum to this memo). A strong majority of other charters, including Frisco and Silverthorne, follow the constitutional language requiring a petition to be signed by 25% of the number of electors voting for all candidates in the last election. Some communities have reduced the percentage of required signatures to 20% (Durango, Fruita), 15% (Dillon, Montrose), 10% (Trinidad), and 5% (Woodland Park).

Charters are evenly split on whether a higher percentage of signatures is required for second and subsequent recall petitions against the same elected officials (25% versus 50%). Silverthorne states that if the officer is not recalled, the Town Clerk shall not accept a new petition for the same officer based on the same reason(s).

Most charters allow 60 days to circulate the petition for recall while a small share of charters allow only 30 days (Morrison, Lone Tree, Gunnison, Grand Junction, Fruita, Fort Collins, Durango, Delta, Dacono, Craig, Boulder and Alamosa).

## **Section 6.2. Right of Initiative.**

(a) The power of initiative to propose any legislative Ordinance to the Town Council is reserved to the voters of the Town in accordance with the provisions of Article V, Section 1 of the Constitution of the State of Colorado insofar as such provisions are applicable.

(b) A petition for an Ordinance by initiative shall be signed in a number equal to at least five percent (5%) of the registered electors for Ordinances to be referred to a Regular Town Election [Option: and shall be signed in a number equal to at least fifteen percent (15%) of the registered electors for Ordinances to be referred to a special municipal election.]

(c) After a final determination of petition sufficiency, the Town Council shall have thirty-five (35) days to adopt the proposed Ordinance or refer the proposed Ordinance to the registered electors of the Town at an election.

**Considerations:** What follows is an overview of initiative process. The constitutional right of initiative is the ability to compel the enactment of legislation through direct democracy. The statutory procedure for initiative includes: (1) filing the proposed ordinance with the Town Clerk; (2) submitting a petition signed by at least 5% of the registered electors of the Town within 180 days of filing the proposed ordinance; (3) Town Clerk's review and approval of the petition for sufficiency; (4) referral of the initiated ordinance to Town Council for its consideration and adoption within 20 days; and (5) if the ordinance is not adopted by Town Council, referral by the Town Council of the initiated ordinance to an election to be held in 60 to 150 days of the date of receipt of the petition.

The rights of initiative can be expanded, the required number of signatures can be increased to 15%, and the procedures can be amended in any of the following ways:

- The percent of required signatures can be higher for initiated ordinances that are referred to special elections and lower for initiated ordinances that are referred to regular elections (which encourages petitions that refer initiated ordinances to regular elections, thereby avoiding the cost of special elections).
- The initiative petition committee can be required to accept referral of the initiated ordinance to the next regular election or pay for the cost of a special election.
- The petition for the initiated ordinance could be reviewed by the Town Clerk for sufficiency of form.
- The period for circulation of the petition for signatures could be amended.
- Limitations on Town Council's ability for a set timeframe to amend an ordinance adopted through the initiative process can be incorporated into the Charter.
- The period for Town Council to adopt an initiated ordinance or refer the ordinance to an election can be increased above 20 days.

Other Charters: Other charters are fairly divided on whether they require 5%, 10% or 15% of signatures for a valid initiative petition. One notable approach (as suggested in the draft language) is to require lower percentage of signatures for initiatives that are referred to a regular election and a higher percentage for special elections – this is different from state statute. Some charters have reduced the time period for circulating an initiative petition (90 days, 60 days, 30 days, 21 days). Some charters contain a limitation on Council actions to amend an initiated ordinance after adoption (6-month, 1 year and 4 year prohibitions). Silverthorne has a detailed charter provision on the initiative process. Frisco and Dillon have language that is consistent with the Constitution and state statute.

### **Section 6.3. Right of Referendum.**

(a) The power of referendum to require reconsideration by the Town Council of any legislative Ordinance, except an Emergency Ordinance passed in accordance with this Charter, is reserved to the voters of the Town in accordance with the provisions of Article V, Section 1 of the Constitution of the State of Colorado insofar as such provisions are applicable.

(b) A petition for a referendum shall be signed in a number equal to at least five percent (5%) of the registered electors of the Town.

**Considerations:** What follows is an overview of referendum process. The constitutional right of referendum is the ability to compel Town Council to reconsider and repeal of certain ordinances or obtain voter approval. The constitutional reservation for referendum is limited to ordinances on legislative matters and does not extend to ordinances adopted for the immediate preservation of public peace, health and safety. It also does not extend to most quasi-judicial matters.

The referendum process includes (1) submitting a petition for referendum within 30 days of publication of final adoption of a legislative ordinance (in which case, the ordinance does not take effect); (2) the sufficiency of the petition is determined by the Clerk; (3) if deemed sufficient, Council then “promptly” reconsiders the ordinance; (4) Council can repeal the ordinance or must refer the ordinance to the electorate with 60 to 150 days after



the final determination of petition sufficiency; and (5) the ordinance takes effect only if, and when, a majority of voters vote in favor of the ordinance.

The Colorado constitution requires a referendum petition to be signed by at least 5% of registered voters and authorizes the percentage to be increased to 10%.

Considerations:

- The percentage of required signatures for a referendum petition can be increased up to 10%.
- The percentage of required signatures can be defined as the number of registered voters in the last election, at the time a petition is submitted, or some other defined time.
- The time period for circulating a referendum petition can be extended.
- The timeframe for referring an ordinance to an election could be extended to allow more opportunity to refer the ordinance to a regular election.

Other Charters: Many charters (Frisco), require at least 10% of registered voters to sign a petition for referendum. Some charters require 5% and others use a percentage based on the number of voters voting at the last election, or election for Mayor. Many charters specifically except from the right of referendum those ordinances that refer matters to special elections, appropriate funds, set mill levies, and those enacted for the immediate preservation of public peace, health and safety. Ordinances referring matters to special elections take effect immediately pursuant to C.R.S. § 31-16-105, because it does not make sense to have a vote on whether to have a vote. Colorado Budget Law categorizes the adoption of budgets, appropriation of funds, and certification of mill levies as administrative acts that can be adopted by resolution or ordinance, and further specifies that ordinances take effect immediately. The immediate effect of budget related actions is necessary to coordinate with state budgeting timeframes for certification of assessed valuation and deadlines for Counties to certify their budgets to the state. Colorado Budget Law and charter provisions notwithstanding, TABOR still requires any tax rate increase and certain revenue increases to be approved by voters.

**Section 6.4. Procedures for Initiative and Referendum.**

The procedures for initiative and referendum shall be those set forth in Title 31, Article 11, C.R.S., as may be amended, except that the Town Council may, by Ordinance and consistent with this Charter, amend such procedures.