

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 15
DATE: May 11, 2023

This document provides options and considerations related to discussion sections for the May 15 regular meeting.

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.

**ARTICLE VIII
ADMINISTRATIVE AND OTHER OFFICIALS**

Section 8.1. Appointment and Qualifications of Town Manager.

The Town Council shall hire a Town Manager who shall be the chief administrative officer of the Town and who shall serve at the pleasure of the Town Council. The Town Manager shall be chosen by the Town Council based on executive and administrative qualifications with particular emphasis on experience and training with respect to the duties of the office and shall have the minimum qualifications, if any, as may be set by the Town Council by Ordinance. No person holding or who has held Town Elective Office shall be hired as Town Manager during or within one (1) year after the termination of the term of such elected official.

Section 8.2. Absence of Town Manager.

The Town Manager shall designate by letter filed with the Town Clerk, a qualified administrative Town employee to perform the Town Manager's duties during a temporary absence or disability. In the event of a failure of the Town Manager to make such a designation, the Mayor may designate a qualified administrative Town employee to perform the duties of the Town Manager until the Town Manager returns or the disability ceases.

Section 8.3. Dismissal of Town Manager.

The Town Council may terminate the employment of the Town Manager upon the affirmative vote of a majority of the Town Council at any regular or special meeting called for that purpose and subject to the Town Manager's employment agreement, if any. The action of the Town Council in removing the Town Manager shall be final, it is the intention to vest all authority and fix all responsibility for such removal in the Town Council.

Section 8.4. Powers and Duties of Town Manager.

The Town Manager shall be responsible to and report directly to the Town Council on the proper administration of all affairs of the Town placed in the Town Manager's charge, and to that end, the Town Manager shall have the powers and duties as set forth by the Town Council by Ordinance, including, but not limited to:

- (a) Enforcing or supervising the enforcement of all laws of the Town; and
- (b) Supervising and overseeing all aspects of Town functions and activities, services, contracts, personnel, and departments that report to the Town Manager; and
- (c) Performing or supervising the performance of budget-related duties, accounting duties and financial and risk planning, reporting, and management; and
- (d) Reporting regularly to the Town Council on the functioning of all Town departments, services, activities, and financial matters; and

(e) Performing such other duties as set forth in the Ordinances of the Town or by direction of the Town Council.

Section 8.5. Clerk, Treasurer, and Police Chief.

The Town Manager shall appoint and may remove the Town Clerk, Town Treasurer, and Police Chief.

Section 8.6. Relationship of Town Council to Administrative Service.

Neither the Town Council nor any member thereof shall have the authority to require the hiring, promotion, suspension, transfer, or termination of any person by the Town Manager. Except for the purpose of making specific inquiries, all members of the Town Council shall deal with administrative personnel or consultants solely through the Town Manager or the Town Manager's designee and no member of the Town Council shall give orders to any employee of the Town.

Considerations:

Town Manager: An experienced and educated Town Manager will be essential to the smooth functioning of the municipality and all of its departments and services. Council appointment of a manager is present in the vast majority of home rule charters. Residency (either within the municipality or within the surrounding area) and executive and administrative qualifications for managers are very common. A few charters define the required education such as a master's in public administration.

Treasurer: A statutory requirement for statutory towns is a treasurer. While the treasurer adds an extra pair of eyes to the Town's finances, financial policies and decisions are made by Council as a whole and implemented by a professional financial staff. The draft charter varies from the state statute requiring that the Town Council appoint the Treasurer. As a general matter, the Town Manager supervises the duties and day-to-day activities of the treasurer. The Town Manager likely has the most intimate knowledge of the hiring needs for this position. An option is to identify in the charter the responsibilities of the treasurer: (a) The Treasurer shall collect all monies for the Town, the collection of which is not provided for elsewhere by Charter or ordinance. The Treasurer shall receive from other officers and employees of the Town all monies belonging to and receivable by the Town and collected by such officers and employees, including fines, license fees, taxes, assessments, and all other charges. All monies shall be turned over to the Treasurer after collection or receipt; (b) The Treasurer shall keep and deposit all monies or funds in such manner and only in such places as the Town Council may determine; (c) The Treasurer shall disburse all Town funds in accordance with the provisions of statute, this Charter and procedures established by the Town Council.

(d) The Treasurer shall perform such other duties as may be prescribed by the Town Council or Town Manager.

Town Clerk: Statutory towns are required to have a Town Clerk. The Town Clerk is a position appointed by the governing body. The draft charter varies from the state statute requiring that the Town Council appoint the Treasurer. As a general matter, the Town Manager supervises the duties and day-to-day activities of the treasurer. The Town Manager likely has the most intimate knowledge of the hiring needs for this position.

Another option for the Town Clerk and the Town Treasurer is that the positions are filled through an election. Elected positions do not require the person to possess any particular

qualifications or experience and it would be highly, highly unlikely that an elected clerk or treasurer would possess the expertise and experience needed.

ARTICLE X BOARDS AND COMMISSIONS

Section 10.1. Right to Establish.

To the extent not otherwise required by this Charter, the Town Council shall have authority to create and disband boards, commissions and committees and confer upon the same such powers and duties as it deems advisable by Resolution or by Ordinance.

Section 10.2. Membership.

To the extent the number and qualifications of members of any board, commission or committee is not otherwise required by this Charter, members of such boards commissions and committees shall be appointed by the Town Council in accordance with an Ordinance or Resolution setting forth the number of members, qualifications, terms, appointment procedures and compensation, if any, for each board, commission or committee. Members shall serve at the pleasure of the Town Council and may be removed at any time, with or without cause, by an affirmative vote of 2/3 members of the Town Council. The Mayor shall make appointments to fill vacancies for the unexpired terms.

Considerations: The current draft provides Town Council with the flexibility to create boards and commissions and establish the purposes, types and membership of any boards or commissions by ordinance. Certain boards and commissions, such as a liquor licensing authority, must be maintained as liquor licensing will remain heavily governed by state statute (matter of mixed state and local concern). This approach follows the flexible approach suggested by CML in the Home Rule Handbook.

Another approach is to list out the boards and commissions, their functions and membership requirements in the charter. Many charters list the board of adjustment, planning and zoning and local liquor licensing and then allow the flexibility to establish other boards and commissions as needed. If the HRCC decides to form an election commission, audit committee or investment committee and include those within the charter, these provisions should probably go here (or in the section on council committees depending on the proposed membership).