

## KEYSTONE CHARTER COMMISSION MEMORANDUM

**TO:** Keystone Charter Commission Members  
**FROM:** Jennifer Madsen  
**RE:** Provisions of the Draft Home Rule Charter for Consideration on May 31  
**DATE:** May 25, 2023

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This document provides options and considerations related to discussion sections for the May 31 regular meeting.

### ARTICLE XI FINANCIAL MANAGEMENT

#### **Section 11.1. Revenue.**

Subject to applicable limitations in the Colorado Constitution (including without limitation applicable provisions of TABOR) and in this Charter, the Town Council shall have all powers now or hereafter granted to municipalities of any kind in the State to raise revenue by any power of any kind, including but not limited to taxes, rates, fees, licenses, tolls, penalties and charges.

#### Considerations:

As a home rule municipality, the Town can seek additional revenue sources but cannot impose new taxes, increase existing taxes, or change any tax policies that would result in a net tax revenue increase without voter approval. Because fees are not subject to the TABOR voter requirements, there has been case law developed in Colorado that differentiates fees from taxes. It is important to understand that fees must be directly related to actual costs incurred by the government for providing a service. Therefore, the Town cannot increase a fee in order to raise money for the general fund. By example, the fee that the Town will charge for development plan reviews or for animal licensing costs must relate to the costs incurred by the Town for the planning staff time and the animal control staff time and equipment costs. A fee can only be increased when the cost of providing the service that the fee is used to support increases to the municipality. Therefore, there are checks and balances in place on both the tax (voter approval requirements) and the fee (directly related to cost of providing service) side of revenue generation.

#### Example provisions from other charters:

This provision is not necessary in the charter. However, the Towns of Frisco, Silverthorne, and Dillon contain similar provisions related to taxation.

#### **Town of Frisco:**

Section 9-2. Limitations on Taxes. [This section amended by a vote of the people held 4-202]

(a) No increase or decrease in the Town's sales or use tax rate, or extension of the period for which any temporary rate increase is effective, shall take effect until

approved at any election at which tax measures may, under Colorado law, be submitted to the registered electors of the Town by a majority of the registered electors voting thereon. The limitation of this section shall not be construed to otherwise limit the authority of the Town Council, without any election, to provide for the administration or applicability of, amend, revise, limit, or take any other action affecting the Town sales or use tax.

(b) Except for taxes provided for in Section 9-1 and in Subsection (a) of this section, any tax which the Town Council may impose shall be initially imposed and the rate of the tax increased or decreased, only by ordinance which shall be subject to a timely referendum, if one is filed in accordance with the procedures and requirements set forth in this Charter.

**Town of Silverthorne:**

**Section 10.1 - Authority to Levy Taxes**

The Council may levy and collect taxes without limitation as to amount for municipal purposes which may include but shall not be limited to: general ad valorem property taxes, sales tax, use tax, bed tax, occupation tax, excise tax or income tax. No new tax or tax rate increase shall be effective until approved, if and as required, pursuant to Article X, Section 20 of the Colorado Constitution.

**Town of Dillon:**

**Section 9-3. - Limitations on Taxes.**

No new sales tax or income tax shall be levied nor shall the existing sales tax be increased after the adoption of this Charter until such tax or increase shall have been approved by a majority of the registered electors voting at a regular or special election. For purposes of this Charter, the term "sales tax" shall mean a tax on the sale of tangible personal property at retail or the furnishing of services.

**Section 11.2. Prior Voter Approval.**

No tax rate increase or levy of any new tax shall be effective without prior voter approval.

Considerations:

Because TABOR under the Colorado Constitution requires voter approval for a new tax or tax increase, this provision is not necessary in the charter. There are no similar provisions in the Dillon, Frisco, and Silverthorne Charters.

**Section 11.3. Setting Fees for Town Services.**

In adopting any new Town-imposed fee or changing the amount of any existing Town-imposed fee for any service rendered by the Town (specifically excluding franchise fees), the Town Council shall determine the amount of such fee by considering the direct and indirect costs incurred by the Town in providing the service for which the fee is charged.

Considerations:

This provision is consistent with state law and is not necessary for the charter.

**Section 11.4. Fiscal Year.**

The fiscal year of the Town and all of its agencies shall begin on the first day of January and end on the thirty-first (31st) day of December of each year.

Considerations:

This provision is common in charters and it is recommended to identify the fiscal year. The majority of municipalities have a fiscal year that is consistent with the calendar year.

**Section 11.5. Proposed Annual Budget.**

The Town Manager shall present to the Town Council a proposed budget for the ensuing fiscal year on or before the fifteenth (15th) day of October of each year.

Considerations:

A similar provision is common in charters. This provision is consistent with state budget law. Some other charters require that the budget is submitted to the Town Council at an earlier date, e.g., on or before the twentieth of September. The charter could also identify who needs to present the budget to Town Council, such as the Town Manager.

**Section 11.6. Budget Hearing.**

The Town Council shall hold a public hearing on the proposed budget each year. Notice of the time and place of such hearing shall be published at least once seven (7) days prior to such hearing and copies of the proposed budget shall be made available to the public by depositing them in the office of the Town Clerk. The Town Council may, at any time before final adoption of the budget, increase, decrease, add or strike out any item in the budget.

Considerations:

A similar provision is common in charters. This provision is consistent with state budget law. State budget law does not require the seven (7) days' notice.

**Section 11.7. Scope of Annual Budget.**

- (a) The budget adopted by the Town Council shall contain:
  - (1) an estimate of anticipated revenue from all sources for the ensuing year;
  - (2) an estimate of the general fund cash surplus at the end of the current fiscal year or of the deficit to be made up by appropriation;
  - (3) the estimate of expenditures for the operation of the departments, offices and agencies of the Town;
  - (4) debt service requirements for the ensuing fiscal year;
  - (5) an estimate of the sum required to be raised by any tax levy for the ensuing fiscal year and the rate of levy necessary to produce such sum; and
  - (6) a balance between the total estimated expenditures, including any deficit to be met and monies set aside for public improvements, and total anticipated revenue, plus any surplus.

(b) All estimates shall be in detail showing revenues by source and expenditures by departments, organizational units, activities, character and object.

Considerations:

A similar provision is common in charters. This provision is consistent with state budget law.

**Section 11.8. Certification of Tax Levy.**

In accordance with the requirements of Colorado law, the Town Council shall fix the amount of tax levy, if any, which shall be assessed upon each dollar of assessed valuation of all taxable property within the corporate limits of the Town and shall cause the same to be certified to the County as required by law. If the Town Council should fail in any year to make such levy as above provided, the rate last fixed shall be the rate for the ensuing fiscal year, which rate shall be levied as provided by law.

Considerations:

A similar provision is common in charters. This provision is consistent with state budget law.

**Section 11.9. General Fund.**

There is hereby established a fund to be known as the general fund. All revenues not specifically allocated to any other fund shall be placed in the general fund. All general functions of the Town shall be financed by expenditures from the general fund.

Considerations:

This provision is not necessary. It is consistent with common practice; however, not many charters have a similar provision.

**Section 11.10. Contingencies.**

The general fund shall contain a line item for contingencies.

Considerations:

This provision is not necessary. It is consistent with common practice; however, not many charters have a similar provision.

Considerations and Other Charters:

Options for the Charter language: These budget provisions reflect the requirements of the Local Government Budget Law of Colorado, which sets forth time frames for adoption of an annual budget, requires a public hearing before adoption of the budget, lists the mandatory contents of the annual budget and sets forth the process for amending the budget. While the draft Charter provisions does not go into the detail of the Local Government Budget Law, the provisions address the broadest issues of the budget process that ensure public disclosure and opportunity for comment. One option for the Charter is to simply refer back to the state law. The City of Lone Tree's provision reads:

**Section 5. Budget, Audit, Investments.**

*All applicable laws of the State of Colorado now or hereafter existing relating to budgets, audits, lawful investments and other financial matters for Colorado municipalities shall, to the extent not in conflict herewith, be followed by the City.*

**ARTICLE XII  
BONDED INDEBTEDNESS**

The Town may, subject to applicable limitations in the Colorado Constitution (including without limitation applicable provisions of TABOR), borrow money or enter into other obligations and issue securities or other evidences of such obligations in such form and manner as determined by the Town Council to be in the best interests of the Town.

Considerations and Other Charters:

This provision maintains the status quo. TABOR provides the ultimate control over municipal borrowing, requiring prior voter approval before incurring any multiple year fiscal obligation. The election procedures (timing, content of notices, etc.) are also set forth in TABOR, justifying this relatively broad language in the charter. Many charters have similar language although such provisions are not necessary in the charter because municipalities are recognized to have borrowing authority within the confines of the constitution.

**ARTICLE XIII  
EMINENT DOMAIN**

The Town shall have the power of eminent domain, within and without the limits of the Town, for public purposes as provided by the Constitution of the State of Colorado, as now in effect and as may be amended from time to time. In invoking the power of eminent domain, the Town Council shall recognize that the taking of private property for a public purpose is a serious action that should be invoked only after careful consideration of its effect on the rights of affected property owners. Whenever the Town Council exercises the power of eminent domain by Ordinance, the Ordinance shall recite and thoroughly describe the public purpose for such action.

**ARTICLE XIV  
FRANCHISES**

**Section 14.1. Term; Non-exclusivity.**

No franchise shall be granted for a period of longer than twenty (20) years. Upon the expiration of any franchise, the right to use the public streets, ways or places granted thereby shall cease unless a new or extended franchise is granted. No exclusive franchise shall ever be granted.

**Section 14.2. Franchise Fees Not an Exemption.**

Nothing contained herein shall exempt any grantee or assignee of a franchise from any lawful assessment upon such grantee's property or from any lawful licenses, charges or other impositions levied by the Town Council not related to the franchise privilege. Failure to pay any franchise fee may result in forfeiture of the franchise at the option of the Town Council.

Considerations:

Taxpayers pay for building and maintaining the public rights-of-way. The Town will be a "franchising authority" -- an entity which controls the public rights of way and gives permission to for-profit utility companies to use a street or area along residential property, where telephone, cable or electric poles or lines are located for a private purpose. A public franchise is a special, revocable, limited privilege to use public property dedicated to public use. A public franchise is less than a lease or easement interest, but personal to the grantee and not freely transferable. A municipal franchise is treated at law as a contract binding the operator and the community.

Federal and state law allows municipalities to charge utility providers for "renting" space in the public rights-of-way. In the case of cable TV companies, federal law allows the cable company to pass on to subscribers, as a line item on their bills, the franchise fees that the cable companies pay for "renting" space in the public rights-of-way. While cable companies have the option of absorbing that "rental" cost as a part of the cost of doing business, Comcast, like most cable companies, chooses not to do that.

Franchise fees would be paid to the Town as compensation for the company's use of the public rights-of-way or easements. Franchise fees have always been a part of customer bills. Communities use franchise fees for a variety of purposes. Franchise fees are calculated as a percentage of the monthly bill. Many municipalities have negotiated franchise fees with companies providing cable television, natural gas, and electricity to residents. These three companies have a policy of passing the franchise fee directly through to consumers. This fee is typically listed on the monthly statement from each of these companies.

Other Charters:

Many other Colorado charters, in recognition of quickly changing technologies and the resulting need to renegotiate franchise agreements in order to keep up with such changes, set a time limit on franchises in the charter. Most commonly, charters limit the term to twenty years.

The Towns of Dillon, Silverthorne, and Frisco's Charter Provisions on Utilities; Franchises and Permits are attached to this memorandum.

**ARTICLE XV  
MISCELLANEOUS PROVISIONS**

**Section 15.1. Bequests, Gifts and Donations.**

The Town Council, on behalf of the Town, may receive bequests, gifts and donations of all kinds of property in fee simple or in trust, for public, charitable or other purposes, and do all things and acts necessary to carry out the purposes of such bequests, gifts and donations, with the power to manage, sell, lease or otherwise dispose of the same in accordance with the terms of the bequest, gift or trust.

**Section 15.2. Contracts for Purchases, Leases, Services and Construction of Public Works.**

The Town Council may establish by Ordinance the procedure for entering into contracts for purchases, contracts for leases, contracts for services and contracts for construction of public works.

**Section 15.3. Conveyance of Interests in Real Property.**

The Town Council by Ordinance may purchase, sell or exchange any fee interest in real property. Any conveyance of real property interests less than a fee interest shall be effected in the manner as set forth by Ordinance adopted by the Town Council.

**Section 15.4. Amendment.**

This Charter may be amended in the manner provided by Article XX of the Constitution of the State of Colorado at any general election or special election called for such purpose (1) upon questions that may be submitted to the electors by a majority of the Town Council or (2) upon questions that may be submitted by the electors. Unless the procedures are amended by the Town Council by Ordinance, the Charter may be amended in accordance with the procedures set forth in State statute. If provisions of two (2) or more proposed amendments adopted or approved at the same election conflict, the amendment receiving the highest affirmative vote shall become effective.

**Section 15.5. Severability.**

If any provision, article, section, sentence, clause or part of this Charter, or the application thereof to any person or circumstances be held by any court of competent jurisdiction to be unconstitutional or invalid, such holding shall not affect, impair or invalidate the Charter as a whole or any part hereof other than the part so held to be invalid, and to this end the provisions of this Charter are declared to be severable.

**Section 15.6. Interpretation.**

Where any question exists as to the meaning of any portion of this Charter, it shall be interpreted consistently with the Charter's purpose to reserve to the Town and its citizens the broadest possible powers of home rule and self-government available under the Constitution, as limited only by the specific language of this Charter and the Constitution of the State of Colorado.

**Section 15.7. Effective Date of Charter.**

This Charter shall become effective immediately upon voter approval and canvassing at a regular or special election held for the purpose of considering this Charter.

Considerations:

These provisions are consistent with other charters and with state law. The reason for identifying that some actions need to be taken by ordinance is that an ordinance is subject to the right of referendum.

## ***ARTICLE XII Franchises and Public Utilities***

### **Section 12.1 Town Powers**

- a. The Town shall have and exercise with regard to all utilities and franchises all municipal powers, functions and authority now existing and which may be hereafter provided by the Colorado Constitution and State Statutes.
- b. The Town shall have power and authority within or without the territorial limits of the Town, to construct, condemn, purchase, acquire and lease public utilities and assets, equipment and everything in relation to or in connection therewith, in whole or in part, for the use of the Town and its inhabitants.
- c. Except as otherwise provided by the Colorado Constitution or this Charter, all powers concerning the granting, amending, revoking or otherwise dealing in franchises shall be exercised by the Council.

### **Section 12.2 Grant of Public Utility Franchises**

- a. Grants of public utility franchises and all extensions and amendments shall be granted only by ordinance. The granting of franchises by the Town shall be limited only by the provisions of the Colorado Constitution and Statutes which may be applicable to home rule municipalities as now in effect or as hereafter amended and shall be submitted to a vote of the people only if required by the Colorado Constitution or by ordinance.
- b. No exclusive franchise shall be granted.

### **Section 12.3 Water Rights**

The Town shall have the power to buy, exchange, lease, sell, own, control and otherwise deal in water rights.

### **Section 12.4 Utility Rates**

The Council shall, by ordinance, establish rates, rules and regulations for services provided by municipally owned utilities. If the Council desires to extend the municipal utilities beyond Town boundaries, it shall do so by ordinance.

### **Section 12.5 Term; Compensation; Restriction**

No franchise, lease or right to use the streets, or the public places or property of the Town shall be granted for a term which exceeds twenty years. Every grant of a franchise shall fix the amount and manner of payment of compensation to be paid by the grantee for the use of the same. Such compensation shall be paid as provided and be subject to mutual periodic renegotiation, and failure to pay shall result in forfeiture of the franchise at the option of Council. The grantee of any franchise shall be and remain subject to any and all lawful taxation upon property and any license, charge or other imposition levied by the Council not levied on account of the use granted by the franchise.

### **Section 12.6 Review**

Each franchise granted under the provisions of this Charter shall include a section specifying a periodic review of said franchise by the Council.



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## **Section 12.7 Assignment**

Any assignment or leasing of a franchise shall be considered a forfeiture unless consent is given by the Council by ordinance.

## **Section 12.8 Common Use of Facilities**

The Council shall have the power to require good faith negotiations by any holder of a franchise or other public utility to allow the use of its rights-of-way, poles, wire, cable or other device placed in the public right-of-way and trenches by any franchise holder, or by the Town itself. Agreement by the franchise holder to such use shall not be unreasonably withheld. The Council in its discretion may require payment of a reasonable rental for the use of any rights-of-way, poles, wires, cable or other device placed in the public right-of-way and trenches of any franchise holder. The Town may, under the terms prescribed by the Council, allow any franchise holder to use rights-of-way, poles, wires, cable or other device placed in the public right-of-way and trenches of Town-owned utilities.

## **Section 12.9 Franchise Records**

The Council shall cause to be kept in the office of the Town Clerk and open to the public for view, a franchise record in which shall be transcribed copies of all franchises granted by the Town. The record shall give the name of the grantee and any assignees. The record shall be a complete history of all such franchises and shall include a comprehensive and convenient reference to all actions at law affecting the same, copies of all annual reports and such other information and matters of public interest as Council may from time to time require.

## **Section 12.10 Existing Franchises**

All franchise ordinances of the Town in effect at the time that this Charter is adopted shall remain in full force and effect according to their provisions and terms until the expiration date provided in such ordinance or until modified by another franchise.

## **Section 12.11 Revocable Permits**

The Council may grant a permit at any time for the temporary use or operation of any street, alley or Town owned place, provided such permits shall be revocable by the Council at its pleasure, regardless of whether or not such right to revoke is expressly reserved in such permit.

## **ARTICLE XII UTILITIES; FRANCHISES AND PERMITS**

### **Section 12-1. Acquisition of Utilities.**

The Town shall not acquire any municipal utility system by purchase or condemnation, nor construct any municipal utility system, unless the question of such acquisition or construction is first approved by a majority of the registered electors voting thereon at a regular or special election. The foregoing requirement shall not apply to any improvement, extension, expansion, betterment, repair, replacement or modification of any existing municipal utility system, nor shall the foregoing requirement apply to the institution of condemnation proceedings as may be provided in this Charter or by statutory law with respect to water facilities or sewerage facilities.

### **Section 12-2. Utility Rates.**

The Council shall by ordinance establish rates for services provided by any municipal utility system.

### **Section 12-3. Granting of Franchises.**

- (a) No franchise shall be granted or renewed for a longer period than twenty (20) years.
- (b) No franchise shall be granted, renewed or amended by the Council except by ordinance. Any ordinance granting, renewing or amending a franchise shall be subject to a timely referendum if one is filed in accordance with the procedures and requirements set forth in this Charter. Notwithstanding the provisions of Section 5-2(b) of this Charter, such a petition shall be signed by registered electors of the Town equal in number to at least fifteen percent (15%) of the total number of electors of the Town registered to vote at the last regular election. If such an election is ordered, the grantee of such franchise shall deposit the cost of the election with the Town Clerk in an amount determined by the Town Clerk.
- (c) Each franchise granted pursuant to this Charter shall include a provision for a periodic review of the franchise by the Council.
- (d) The Council shall establish, by ordinances not inconsistent with this Charter, the terms, fees, compensation, conditions, record-keeping and other matters relating to franchises.

### **Section 12-4. Existing Franchises.**

All franchise ordinances and agreements of the Town in effect on the effective date of this Charter shall remain in force in accordance with their respective terms and conditions unless modified by another franchise.

### **Section 12-5. Revocable Permits or Licenses.**

Any permit or license granted for the temporary use or occupation of any street, alley, other public way or Town-owned place, shall be revocable by the Town at any time and without cause, whether or not such right to revoke is expressly reserved in the permit or license.

## ARTICLE XII

### UTILITIES; FRANCHISES AND PERMITS

Section 12-1. Acquisition of Utilities. The Town shall not acquire any municipal utility system by purchase or condemnation, nor construct any municipal utility system, unless the question of such acquisition or construction is first approved by a majority of the registered electors voting thereon at a regular or special election. The foregoing requirement shall not apply to any improvement, extension, expansion, betterment, repair, replacement, or modification of any existing municipal utility system.

Section 12-2. Utility Rates. The Council shall by ordinance establish rates for services provided by any municipal utility system.

Section 12-3. Granting of Franchises.

(a) No franchisee shall be granted or renewed for a longer period than twenty (20) years.

(b) No franchise shall be granted, renewed, or amended by the Council except by ordinance. Any ordinance granting, renewing, or amending a franchise shall be subject to a timely referendum if one is filed in accordance with the procedures and requirements set forth in this Charter. Notwithstanding the provisions of Section 5-2(b) of this Charter, such a petition shall be signed by registered electors of the Town equal in number to at least five (5) percent of the total number of electors of the Town registered to vote at the last regular election. If such an election is ordered, the grantee of such franchise shall deposit the cost of the election with the Town Clerk in an amount determined by the Town Clerk.

(c) Each franchise granted pursuant to this Charter shall include a provision for a periodic review of the franchise by the Council.

(d) The Council shall establish, by ordinances not inconsistent with this Charter, the terms, fees, compensation, conditions, record-keeping, and other matters relating to franchisees.

Section 12-4. Existing Franchises. All franchise ordinances and agreements of the Town in effect on the effective date of this Charter shall remain in force in accordance with their respective terms and conditions unless modified by another franchise.

Section 12-5. Revocable Permits or Licenses. Any permit or license granted for the temporary use or occupation of any street, alley, other public way, or Town-owned place, shall be revocable by the Town at any time and without cause, whether or not such right to revoke is expressly reserved in the permit or license.