

KEYSTONE CHARTER COMMISSION MEMORANDUM

TO: Keystone Charter Commission Members
FROM: Jennifer Madsen
RE: Provisions of the Draft Home Rule Charter for Consideration on June 7
DATE: June 1, 2023

This document provides options and considerations related to discussion sections for the June 7 regular meeting.

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 IV ELECTIONS

Section 4.1. 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 4.2. Municipal Elections.

(a) A regular municipal election shall be held on the first Tuesday 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 4.3 Nonpartisan Elections.

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

Section 4.4. 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, shall be filed with the Town Clerk sixty (60), thirty (30) and fifteen (15) 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. The Town Council may provide by Ordinance a process for publicizing campaign finance disclosure reports.

Considerations: These draft paragraphs are consistent with state law.