

Town of Keystone
Town Council Work Session
April 9, 2024, at 4:00 p.m.
1628 Sts John Rd
Keystone, CO 80435

WORK SESSION AGENDA

- I. CALL TO ORDER, ROLL CALL
- II. DISCUSSION OF LIQUOR LICENSING
- III. DISCUSSION OF ADOPTION OF TOBACCO LICENSING CODE
- IV. DISCUSSION OF PROPOSED FEE SCHEDULES
- V. DISCUSSION OF TOWN COUNCIL PROCESSES
- VI. DISCUSSION OF PLANNING COMMISSION APPOINTMENT PROCESS
- VII. DISCUSSION OF ADOPTION OF OFFICIAL ZONING MAP
- VIII. DISCUSSION OF MANAGER/COUNCIL ISSUES
- IX. ADJOURNMENT

TOWN OF KEYSTONE, COLORADO

STAFF REPORT

TO: Mayor & Town Councilmembers

THROUGH: Gary Martinez, Interim Town Manager
Maddy Sielu, Town Clerk

FROM: Jennifer Madsen, Town Attorney

DATE: April 9, 2024

SUBJECT: Work Session – Discussion of Liquor Regulations

Executive Summary:

The purpose of this work session discussion is to provide an overview of Colorado liquor laws and to answer questions related to liquor licensing and enforcement.

The work session discussion will also provide an overview of the liquor license matters that are scheduled for the regular meeting.

Background:

Colorado liquor regulations are a matter of statewide concern. This means that municipalities, including home rule municipalities, do not have the power to enact regulations that conflict with the Colorado Liquor Code.

Under Colorado law, the state licensing authority and the local licensing authority have primary responsibility for regulating the sale of the alcohol beverages. The executive director of the state Department of Revenue serves as the state licensing authority. The Department of Revenue has vested this role in the Division of Liquor and Tobacco, referred to as “LED” (Liquor Enforcement Division). The Town Council, or any authority designed by local charter or ordinances, acts as the local licensing authority within the municipality. Because Town Council has not delegated this function, the Town Council sits as the liquor licensing authority. A local licensing authority may delegate certain authority to the Town Clerk in such routine matters such as special events permit, renewals, and transfers of ownership. Because Colorado law requires continuous licensure of almost every type of retail seller of alcohol beverages, local licensing authorities retain substantial control and discretion over the retail sale of regulated beverages within their jurisdiction. State statutes do supply the framework for the local control through established criteria that the local authority must apply when reviewing applications for licensure.

It should be noted that if the local licensing authority approves a retail license application, the state licensing authority may still deny the state license and prohibit the operation of

the business. If the local licensing authority denies the application for a local license, the state authority cannot issue a license.

A municipality does have the authority to prohibit or to limit the sale of liquor in its jurisdiction. This can be done only through a majority vote of the registered electors voting on the question. To place that question on the ballot, the registered electors must submit a petition signed by at least 15% of the registered electors.

A local licensing authority may issue the following types of liquor licenses: retail liquor store license, liquor-licensed drugstore license, a beer and wine license, a hotel and restaurant license, a tavern license, a brew pub license, a club license, an arts license, a race track license, an optional premises license, a retail gaming license, a vintner's restaurant license, a distillery pub license, and a lodging and entertainment license. The different license types authorize specific sales of alcohol beverages. The Colorado Liquor Code also allows takeout and delivery of alcohol beverages. It should be noted that if a local licensing authority does not allow for a permit process for takeout and delivery of alcohol beverages, a licensee need not obtain a local permit to sell and deliver an alcohol beverage or to allow a customer to remove an alcohol beverage from a licensed premises. In that situation, the licensee will only need a state permit for takeout and delivery of alcohol.

Overview of the licensing process

A person wanting to sell alcohol beverages must file an application first with the local licensing authority, and obtain that approval. The state licensing authority may only grant a state license if the local licensing authority approves the application. Once the state authority issues the state license, it is forwarded to the local authority, which then issues the local license.

A licensee must report each transfer or change of financial interest in a license to the state and local authority within 30 days of the change. Each licensee holding a beer and wine license, tavern license, lodging and entertainment license, club license, arts license, or racetrack must manage such premises personally or employ a separate and distinct manager.

The liquor application must be filed on appropriate form provided by the state licensing authority. In addition, the applicant must provide plans and specifications for the interior of the building if the building is in existence. If the building is not in existence at the time, then the applicant submits a plot plan and detailed sketch for the interior as well as an architect's drawing of the proposed building.

The applicant is required to provide suitable evidence of citizenship, residence, and good character and reputation, and also of the reasonable requirements of the neighborhood and the desires of the adult inhabitants. The applicant must also demonstrate entitlement to possession of the premises under a lease, rental agreement, or other arrangement for the premises.

The hearing on the application is a quasi-judicial hearing and the local liquor licensing authority must allow any party in interest to present evidence and to cross-examine witnesses.

It is important to note that a liquor license is a property right. It is essential that the liquor licensing hearings are conducted fairly and to give all interested parties a fair and responsible opportunity to present views and information. Because it is a property right, it is important to protect the applicant's procedural due process rights. Before the liquor licensing authority conducts its first hearing, the Town Council will receive training on conducting quasi-judicial proceedings.

After the hearing is held, the local liquor licensing authority has thirty days to issue a decision in writing.

Enforcement/Suspension/Revocation

The local licensing authority may suspend or revoke a liquor license whenever a licensee violates any provision of the Liquor Code, violates any rule or regulation, or violates a condition of a license. Because the liquor license is a property right, the local liquor licensing authority must provide notice and hold a hearing on the violation.

The sale of alcohol to a minor can be grounds for revocation or suspension of a license; however, a sale of alcohol to a minor cannot constitute grounds for the revocation if the minor showed fraudulent proof of age. The state and local licensing authority may conduct underage compliance checks of licensees in which a minor under the supervision and direction of law enforcement attempts to purchase alcohol. If the minor is allowed to purchase the alcohol, the local licensing authority may consider a suspension or revocation of the license. In 2004, the Colorado General Assembly passed the "Responsible Alcohol Beverage Vendor Act." A "responsible alcohol beverage vendor is defined as a vendor that complies with the server and seller training program, and when penalizing a licensee whose employees have served a minor during an underage compliance check, the act requires licensing authorities to consider the responsible vendor training as a mitigating factor.

Other grounds for suspension and revocation include serving "visibly intoxicated persons" or if the license has been inactive without good cause for at least one year.

Renewals

A licensee that wishes to renew the license must submit an application to the local authority at least forty-five days prior to the date of its expiration. The local authority may after a hearing refuse to renew any license "for good cause." "Good cause" is defined as the licensee has violated any of the terms or conditions of the Liquor Code or there is evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood which must include a continuing pattern of fights, violent activity, or disorderly conduct.

The Liquor Code contains special requirements that there be a registered “manager in the case of hotel and restaurant license or tavern licenses, where the owner has not chosen to manage the premises personally. The manager must be registered with both the state and the local licensing authority. No person can be a registered manager for more than one licensed establishment.

Required Trainings

There is no specific law in Colorado that requires alcohol seller-server training. However, as discussed above, to qualify as a responsible alcohol beverage vendor, training is required. In addition, proof of training is required for a tasting license. The Town can recommend server training classes and can identify sources for the training classes.

Open-Container Laws

To address any concerns related to public drinking, the Town will need to adopt a regulation prohibiting public consumption of alcohol. There are state statutes that prohibit open containers in vehicles.

TOWN OF KEYSTONE, COLORADO

STAFF REPORT

TO: Mayor & Town Councilmembers

THROUGH: Gary Martinez, Interim Town Manager
Maddy Sielu, Town Clerk

FROM: Jennifer Madsen, Town Attorney

DATE: April 9, 2024

SUBJECT: Work Session – Discussion of Tobacco Licensing Regulations

Executive Summary:

The purpose of this work session discussion is to provide an overview of Colorado tobacco regulations.

Background:

In 2019, Colorado General Assembly passed a law which provides that municipalities may adopt ordinances to regulate the sale of cigarettes, tobacco products, or nicotine products to minors.

I am attaching March 18, 2019, memorandum regarding this law on the authority to regulate tobacco licensing.

It should be noted that there is currently in place an intergovernmental agreement with Summit County and the Towns of Blue River, Breckenridge, Dillon, Frisco, Montezuma, and Silverthorne. The Nicotine Tax IGA addresses a special sales tax related to the sale of cigarettes, tobacco products, and nicotine products. Under the Nicotine Tax IGA, the parties agree to cooperate in the levy, collection, enforcement and administration of the Special Sales Tax. There is no requirement that parties to the agreement implement a tobacco licensing program; however, I believe that nearly all of the parties to the agreement license tobacco retailers. Here are the highlights of the IGA:

Share of Tax Revenues: Keystone will receive a disbursement of all special sales Tax revenues collected from within Keystone's corporate limits, less:

- The County's administrative costs to collect and enforce the tax (unspecified, but reasonable inference is that it's pro-rata share); and
- Whatever amount may be necessary to ensure that each Party gets \$1K annually in revenues (again, unspecified but assumption is that this is pro-rata).
-

County Administration and Enforcement of Tax: The County bears primary responsibility to collect and enforce the Special Sales Tax, not the Town.

Allowed Tax Expenditures: The Town can spend the disbursed tax revenues on the following uses:

- “improving” health and “lessening” adverse “public health” consequences stemming from tobacco/nicotine product use;
- educational outreach efforts aimed at reducing teen nicotine use. including vaping and other flavored nicotine products;
- improving the availability of public health services, including substance abuse treatment, in Summit County, including services at the community health clinic and school-based clinics;
- providing addiction prevention and intervention programs and referral services;
- providing local enforcement of laws, rules, regulations and ordinances that prohibit the sale of cigarettes, tobacco products, and nicotine products;
- any other uses consistent with ballot measure.

Advisory Board Membership: membership in and representation on Special Sales Tax Advisory Board. The Advisory Board implements the “Public Health and Education Plan,” and engages in joint, strategic planning efforts relating to prevention, intervention, and treatment.

The Nicotine Tax IGA may be amended to add the Town of Keystone upon the approval of a resolution of the Town Council approving the agreement. During the work session, staff will ask for direction from the Town Council regarding joining the Nicotine Tax IGA.



ATTORNEY MEMORANDUM

To: Robert Widner
From: Jennifer Madsen
Date: 3/18/2019
Re: HB 19-1033, local government authority to regulate nicotine products

The memorandum summarizes legislation introduced this year, HB 19-1033, which effects a local government's ability to regulate and tax nicotine products. The goal of HB 19-1033 is to give local governments the authority to regulate and tax nicotine products, which includes cigarettes, tobacco products, nicotine products and e-cigarettes.

Currently, there is a statewide sales tax on nicotine products ("cigarette tax"). Colorado law provides that twenty-seven percent of this cigarette tax is apportioned to municipalities and counties. The twenty-seven percent is allocated to municipalities and counties based on the cigarette tax collected in that city, town, or county. In order to qualify for this distribution of the cigarette tax (or statutory shareback), the law provides that municipalities and counties are prohibited from imposing fees, licenses or taxes on any person as a condition for engaging in the business of selling cigarettes or from attempting in any manner to impose a tax on cigarettes.

House Bill 19-1033 amends the cigarette tax statutory shareback rules to give local governments the authority to regulate nicotine products through a licensing or fee scheme and without forgoing the cigarette tax shareback. With voter approval, municipalities and counties may also impose their own sales tax on cigarettes; however, a local government cigarette tax would disqualify the municipality or county from receiving the state cigarette sales tax.

House Bill 19-1033 also gives local governments the authority to make it unlawful for a minor to purchase nicotine products.

House Bill 19-1033 passed the House and Senate and was sent to the Governor today for his signature.



Development Review Fee Schedule

Work Sessions

Planning Commission Only - \$2305

Planning Commission & Town Council - \$7790

Zoning

Preliminary - \$5240 plus \$235 per unit/lodge room

Final - \$3,440 plus \$235 per unit or lodge room

PUD Amendments

Major - \$5,240 plus \$235 per unit or lodge room

Minor - \$1,760 plus \$235 per unit or lodge room

Site Plans

Multifamily - \$5240 plus \$235 per unit or lodge room

Commercial - \$5240 plus \$875/1,000 sq. ft. for first 30,000 sq. ft. and \$170/1000 sq. ft. thereafter

Other Site Plan Reviews – Hourly Rate

Variances:

All Types - \$2,305

Renewals - \$1,125

Conditional Use Permits (CUP's)

All Types – Hourly Rate

Temporary Use Permits (TUP's)

All Types – Hourly Rate

Non-Conforming Parcel Plan Review

Un-platted Parcels - \$2,305

Renewals - \$1,125

Subdivisions

Preliminary - \$5,240 plus \$235 per lot

Final - \$2,380 plus \$235 per lot

General Subdivision Exemptions – All \$2,530 plus 235 per lot

Marijuana

Medical - \$3,890 plus hourly fee after 10 hours

Retail - \$3,890 plus hourly rate after initial 10 hours of review time



Development Review Fee Schedule

Home Occupations

Low Impact - \$205

Moderate - \$3,255

Code Amendments

\$2,305 plus hourly rate after initial 10 hours of review time

Development Agreements:

\$2,305 plus hourly rate after initial 10 hours of review time

Signs

Sign Programs - \$1,855 plus hourly rate after initial 10 hours of review time

Sign Program Amendments - \$1,125 plus hourly rate after initial 10 hours of review time

Sign Permit - \$205

Short Term Rentals (STR's)

Resort Zone - \$280

All Other Applications

Hourly rate

Town Council Meeting Processes

Council Decision Process-Used for actions such as resolutions, ordinances, or other items requiring Council approval (note the process could be augmented by the public hearing process if a public hearing is required)

- Presentation by Staff on the item
- Council Discussion of the item
 - This is the opportunity to ask staff questions about the action and to discuss the action
- Motions to approve the action, amend or continue the ordinance to a future meeting. (See Bob's Rules of Order for specifics on motions)
 - Motion to Approve (Rule 15.0) the Action and second
 - Normally it is a motion to approve (recommended), but could be a motion to not approve (you do not need to be in favor of an action to make a motion to approve, the motion just moves the process forward to a vote or amendments)
 - The debate on the motion
 - Vote on the motion
 - Motion to Amend (Rule 17.0) and second
 - Made after a motion to approve the ordinance is made and seconded.
 - If you know in advance you want to amend the ordinance, it is recommended that you consult the Town Attorney regarding the amendment. The Town Attorney can help you word the amendment so that the language is consistent with the ordinance and expresses your intent. This will expedite handling the motion during the meeting and provide for clear language in the ordinance. This does not preclude a council member from proposing an amendment during the meeting.
 - The debate on the motion
 - The vote
 - Return to debate of the main motion. If the amendment was approved, the debate is on the main motion with the amendment.
 - The vote.
 - Motion to Continue (Rule 16) to a specific day and time/no specific time/indefinitely (not recommended for items involving a public hearing) and second.
 - This motion can be made anytime, preferably when no motion to approve is on the floor. It must state the exact time and place of when the motion will be placed on a future agenda, or that it will be placed on a future agenda or that it is postponed indefinitely and will not be automatically placed on a future agenda. It requires a second
 - The debate on the motion
 - The vote.
 - If approved, the agenda item is continued or postponed indefinitely, if not approved we return to the current agenda item.

Public Hearing Process

- Town Clerk reads the public hearing title or subject matter into the record
- Public Hearing opened

- The presiding officer declares public hearing open and announces procedures which will be followed.
- Introductory presentation by Town Staff
 - Questions by Council allowed
- Applicant, permittee, or petitioner presents on public hearing subject
 - Questions by Council allowed
- Other Scheduled speakers who were invited to present info to the Town Council
 - Questions by Council allowed
 - If asked by council, applicant, permittee, or petitioner may rebut
- Public Comment with a 3-minute time limit per speaker
 - Questions by Council allowed (typically there are no questions)
 - If asked by council, applicant, permittee, or petitioner may rebut
- Town Council will have opportunity to ask further questions of staff and other speakers
- The Public Hearing is Closed
- The normal council decision process begins with the Discussion part of the process.

Resolution Process

- If needed, a proposed resolution may be discussed in a work session to provide guidance to staff.
- Resolutions will normally come before the council one time for consideration.
 - Follow the normal decision process for consideration
 - If non-controversial, resolutions may appear on the consent agenda

Ordinance Process (This is the typical process. There may be exceptions that do not fit this process)

- An ordinance requires approval in two council meetings followed by an additional 30 days after publication before becoming effective.
- The process normally starts with discussion in a work session with detailed questions answered by staff and direction given to staff on how and what to include in the ordinance.
- First Reading at a Council Meeting normally in the consent agenda
- Second Reading and Public Hearing
 - This provides the opportunity to get public input via a public hearing, fully discuss the ordinance, and make any needed amendments before deciding on approval of the ordinance.
 - The process is:
 - Public Hearing
 - The normal council decision process begins with the Discussion part of the process as outlined above.

Quasi-Judicial Matters Process

- Used for matters in which the council sits as a judge on issues such as liquor license applications, land use and zoning issues, appeals, etc.
- Note: Council members are precluded from having discussion with anyone on a quasi-judicial matter which has been submitted to the town.
- The process is:
 - Public Hearing
 - The normal council decision process begins with the Discussion part of the process as outlined above.

Town Council Meeting Conduct

Call to Order, Roll Call

- Clerk calls the roll of council members present.

Recognitions, Proclamations, and Appointments

- Each item follows normal council decision process

Approval of Agenda

- The council must approve the agenda via a motion to approve or modify the agenda.
- If a council member wishes to add or delete an item from the agenda, recommend they contact the Town Manager and Mayor prior to the meeting to explain their reasons, and get any questions answered. This will reduce the number of surprises and may expedite the meeting.
- If a council member has a question or concern about any item on the agenda or a question regarding what is being proposed, recommend that they contact the Town Manager directly to ask the question. Often the question can be answered quickly to resolve the concern, or the staff can then be prepared to answer the question during the council meeting.

Consent Agenda

- The purpose of the consent agenda is efficient meeting conduct. One motion is used for approval of all items on the consent agenda. The consent agenda is normally used for non-controversial resolutions, first reading of ordinances, approval of decisions regarding councilmember absences, and the minutes of prior meetings.
- The items on the consent agenda are read out loud for the record by either the Clerk or meeting chair.
- If the consent agenda is approved (by motion "I move to approve the consent agenda.", items on the consent agenda are approved and will not be further discussed in the council meeting.
- A council member may request that an item be removed from the Consent Agenda and discussed as part of the meeting.
 - The council member must make a motion to review the item from the consent agenda: "I move to remove Ordinance 2024-O-05 from the consent agenda and ask that it be place on continued business for discussion." If there is a second and a council vote of approval, the item will be removed the item from the consent agenda.
 - If a council member has a concern with an item on the consent agenda, it is recommend that they contact the Town Manager and Mayor prior to the meeting to explain the concern and get any questions that they have answered prior to the meeting. This will reduce the number of surprises and may expedite the meeting.

Public Comment

- Members of the public are given 3 minutes to speak on any topic not on the agenda
- Council normally does not respond to public comment
- The presiding officer can respond and ask staff to research the issue that was raised.

- If a council member desires, they can bring the topic up during the “Other Matters” portion of the meeting.

Continued Business-Consideration of Ordinances

- First reading of an ordinance (if not on the consent agenda)
 - The process is the normal Council Decision process with no public hearing.
- Second reading and public hearing of an ordinance
 - It is the opportunity to conduct the public hearing, fully discuss the ordinance, offer amendments, and approve/not approve or continue the ordinance.
 - The consideration of an ordinance (second reading) consists of:
 - The Public Hearing
 - Council Decision Process
 - Process begins at the Council Discussion stage
 - When possible, it is recommended that amendments to the ordinance be raised with the Town Attorney in advance of the meeting so that the Town attorney can draft language which reflects the intent of the party moving for the amendment.
 - Normally, if there are no major amendments which would require major changes to the ordinance the process will result in a yes or no vote on the ordinance as amended.
 - If there are major changes to the ordinance or further information is needed, the council could decide to continue the agenda item to a future meeting or postpone indefinitely the consideration of the ordinance.
 - The vote on an ordinance or amendment to an ordinance must be a roll call vote.

Continued Business-Consideration of Resolutions and Other

- The process is the normal Council Decision Process

Planning Matters

- Report by staff on items in the planning, zoning, and building area which may be for council information, council guidance, council decision or quasi-judicial matters.

Report of Manager and Staff

- Reports from the Town Manager and Staff on items of council interest and items where council guidance is requested.

Report of Mayor and Council

- Reports by the Mayor or Council members on items of council interest and items where full council guidance and direction is needed

Other Matters

- Town Manager, Mayor or Council members may bring up any matter not on the agenda for discussion and council guidance to staff if needed. This is the place in the agenda where a council member can open discussion on an item raised during the public comment portion of the meeting.

Scheduled Meetings

- Discussion of future meetings and work sessions of the council

Executive Sessions

- Requires a $2/3$ vote of the quorum to enter Executive Session.
- Normally, at the conclusion of the executive session no other business is conducted and the meeting is adjourned.

Adjournment

TOWN OF KEYSTONE, COLORADO

STAFF REPORT

TO: Mayor & Town Councilmembers

THROUGH: Gary Martinez, Interim Town Manager
Jennifer Madsen, Town Attorney

FROM: Lindsay Hirsh, Community Development Director

DATE: Work Session Meeting of April 9, 2024

SUBJECT: Planning and Zoning Commission Appointment Process Update

Executive Summary:

Article IX of the Town Home Rule Charter authorizes the Town Council the authority to establish boards, commissions, and committees. On March 26, 2024, the Council approved Ordinance NO. 2024-0-01 to establish the membership, powers and duties and appointment procedures for the Keystone Planning and Zoning Commission.

Recommendation:

Select a date and time to conduct the Planning and Zoning Commission interviews.

Background:

As Council is aware, Staff has initiated the recruitment process and has garnered approximately 16 potential applicants. Staff has provided the Council with the applicant's letters of interest/resumes with suggestions on whom to interview. Based on this information, the next order of business is to schedule interviews for the 9 vacant seats. Given the number of seats, Staff suggests conducting 20-minute interviews for the applicants. Staff recognizes the significant time commitment and as such suggests conducting a Special Meeting on April 16th commencing at 5:30 p.m. to conduct the interviews. In the event we need additional time, we can schedule the remaining interviews at the April 23rd meeting. The Town Council should then follow the appointment process as set forth in Bob's Rules of Order, Section 25.0 (attached as Exhibit A¹). The process allows Town Council to fill multiple positions concurrently. There is a nomination process as provided in Section 24.0(C)(1) through (6). Then, the Election process as provided in Section 25.0(D)(2).

Once the selections are made, direct Staff to initiate the training process for the Planning and Zoning Commission members. This process can all likely occur prior to the May 9th Community Development start-up date.

¹ Reproduced with the permission of the author.

Alternatives:

Select another date for the Planning and Zoning Commission interviews that works for a majority of the Council members.

Financial Considerations:

None

Previous Council Actions:

None

Next Steps:

Conduct interviews and make selections.

CHAPTER 8

APPOINTMENT & ELECTION PROCESSES

From time to time, the appointment or election of either a Member of the Body or another person to a position of service to the local government is necessary or desired. This chapter offers procedures to aid the Body when making appointments or conducting elections in a fair, consistent, and effective manner.

23.0 Simple Appointment

Many appointments of Members or others to serve on committees, subcommittees, or in other positions of service to the Body or the government are not complicated. These uncomplicated appointments do not necessitate a formal process. For example, the Body may seek to appoint one of its Members or another person to serve on the local open space and trails committee or to act as the government's liaison with the local school district. When only one person seeks the appointment and there exists a consensus that the appointment is acceptable to the Body, a formal selection process is unwarranted.

The Body is authorized by the *Rules of Order* to forgo a formal nomination and election process when the Presiding Officer decides that there exists no competition or disagreement for an appointment. Simple appointment by a motion or an informal action will advance efficiency.

24.0 Formal Nomination & Election – Single Position

Local governments often find it necessary to formally elect a Member or another person to serve in a specific role within the Body or to serve on a board, commission, committee, subcommittee, or in another

capacity. A formal process will advance fairness, especially where two or more persons seek the position. As examples, a municipal governing body may need to elect one of its Members to serve as the mayor, president, or mayor pro tem. A Body may also need to elect a Member to serve on a committee or subcommittee of the Body. A board of county commissioners may need to appoint the board chairperson or vice chairperson. A planning commission may need to elect from among its membership a person to serve as the chairperson or vice chairperson. A citizen may seek the Body's appointment to serve on a formally constituted board or commission.

Where two or more persons seek an available position, simple appointment pursuant to Section 23.0 is unavailable, and a formal election of a person to serve in that position may be necessary. Instead, Section 24.0 provides for a process for formal election in the event that two or more persons seek to fill a single available position.

Election Process

A. Generally

The following procedure shall apply to the Body's election of a person to serve in a special capacity on the Body or in a position on another body.

The process for the election shall be conducted during a regular or special meeting of the Body at which a quorum exists unless the bylaws or other governing policy of the Body provide for another process or procedure.

B. Determination of Process

1. **Regular Process.** The nomination and election process of Section 24.0 shall be followed unless the Body approves an alternative process.

2. **Alternative Process.** The Presiding Officer or another Member may offer a Principal Motion to the Body proposing the use of a process other than the process provided by Section 24.0. In order for the Principal Motion to be stated in clear and understandable language as required by Rule 5.2, the Moving Member shall provide to the Body in advance of the meeting a written process detailing the steps to be followed for the proposed alternative election process. The offered Principal Motion shall require a second and is debatable. See Section 15.0, Principal Motion.

The Body may, by a majority vote of a quorum on the Principal Motion (as it may be amended), require the use of the proposed alternative process. In such an event, the process for nominations and election provided by Section 24.0 will be modified as needed to comply with the Body-approved alternative election process.

C. Nominations

1. **Nomination Required.** To be eligible, a person seeking to fill a position must be nominated by a Member. If the position is available to be filled by a Member, a Member may nominate themselves.
2. **Written Nominations.** Nominations may be submitted in writing (which includes electronic mail and text messaging) to the Presiding Officer prior to the meeting at which nominations will be offered and accepted.
3. **Nominations from the Floor.** At the meeting, the Presiding Officer shall announce a call for nominations from the Floor.
4. **Closing and Announcement.** Upon a determination by the Presiding Officer that no further nominations are offered, the Presiding Officer shall announce that the opportunity for

nominations is closed. The Presiding Officer shall announce the name of each person who was nominated from the Floor and the name of any person for whom a written nomination was received prior to the meeting.

5. Acceptance of Nomination.

(a) For Positions of Leadership

Where the position to be filled is one of leadership¹⁴¹ on the Body, the Presiding Officer shall obtain an acceptance of the nomination from each nominee to avoid the election of a Member unwilling to serve. Members expecting to be nominated but who will be absent from the meeting at which nominations will be offered must inform the Presiding Officer prior to the meeting of their willingness to accept a nomination for leadership in the event they are nominated. A Member who does not affirmatively express an acceptance of a nomination for leadership shall be deemed unwilling to serve if nominated and shall be excluded from candidacy in the election.

(b) For All Other Positions

To avoid election of a person unwilling to serve, the acceptance of a nomination is desired. The Presiding Officer shall endeavor to obtain an acceptance of the nomination by each person nominated. When the nominee is present, a simple verbal inquiry and confirmation of acceptance is sufficient. For absent nominees, acceptance may be expressed by a confirmation from the nominating Member that the nominee agreed to serve if elected, or written

acceptance of a nomination from the nominee may be accepted. The Presiding Officer is authorized to forgo a need for a formal acceptance of a nomination where there is an understanding or expectation by the Body that the nominee will serve if elected.

6. Nomination of Presiding Officer. In the event that the Presiding Officer is nominated and accepts the nomination, the Presiding Officer shall temporarily relinquish the position as Presiding Officer to another Member in accordance with the Body's bylaws or other established policy.

D. Election

1. Selection of a Single Nominee. Should only one person be nominated for the available position, the Presiding Officer shall declare without vote that the nominated person is elected. The Presiding Officer's declaration is subject to a Point of Appeal. All Members of the Body, including any nominated Member, may vote on the Point of Appeal. Upon successful appeal by a majority of the Body, the appeal will require that a vote be conducted in order to elect the nominee.
2. Election from Multiple Nominees. In the event that two or more persons are nominated for one available position, an election from among the nominees shall be conducted.
3. Option for Nominee Statements. Prior to the casting of votes, the Presiding Officer may offer an opportunity to each nominee to provide a brief statement as to the nominee's qualifications for and interest in the position. In the interest of efficiency, the Presiding Officer may forgo the opportunity for statements or may set a uniform limit on

the duration of each nominee's statement. Nominees absent from the meeting may prepare a statement in advance and may request that a person in attendance read the nominee's statement if an opportunity for statements is offered and provided that the statement can be read within any time limitations set by the Presiding Officer.

4. **Process for Election.** The Presiding Officer shall call for each Member's vote for a nominee.
 - (a) For a leadership¹⁴² position of the Body, the Presiding Officer may direct that the votes be cast by written secret ballot.¹⁴³ The Presiding Officer's direction is subject to a Point of Appeal. A Member who is a nominee may vote.
 - (b) For all other positions, election shall be by any method acceptable to the Body that will allow the identity of the Member and the vote cast by each Member to be publicly known.¹⁴⁴ A Member who is a nominee may vote.
5. **Counting of Votes.** The Presiding Officer or an administrative staff person shall be responsible for counting and publicly announcing the results of all voting. The Presiding Officer may appoint an administrative staff person to assist in verifying the accuracy of the vote. A vote cast for any person other than a nominee shall be invalid and not counted.
6. **Election Outcome.** Based on the number of nominees and the resulting vote, the following determination and process shall be applied:
 - (a) **Election Between Two (2) Nominees** – The nominee receiving the greater number of votes shall be declared

elected. In the event of a tie vote between the two nominees, the Presiding Officer or administrative staff person shall conduct a drawing from among the names of the two nominees. The drawn nominee shall be declared elected.

- (b) **Between Three (3) or More Nominees** – Should only one nominee receive the highest number of votes, the nominee shall be declared elected.

In the event that two or more nominees receive both the highest and the same number of votes (a tie vote), a revote shall be conducted from among the tied nominees only. Should only one nominee receive the highest number of votes, the nominee shall be declared elected. If upon revoting two or more nominees remain tied for the highest number of votes, the Presiding Officer or administrative staff person shall conduct a drawing from the names of the tied nominees, and the drawn nominee shall be declared elected.

25.0 Formal Nomination & Election - Multiple Positions

Local governments often encounter the need to fill multiple positions at one time on a single board, committee, subcommittee, or other Body. Multiple positions may arise, for example, with the initial creation of a committee or subcommittee or the need to fill positions created by the resignation of two Members of an existing committee. Individually filling each open position one at a time through the formal nomination and election process of Section 24.0 may be less efficient than filling the positions at one time from among a slate of nominees.

This section provides a process to fill multiple positions at one time.

Election Process

A. Generally

The following procedure shall apply for the election of two or more persons to fill two or more available positions on the Body, a committee, or subcommittee or to serve in appointed or representative positions on another Body.

The process for the election of persons shall be conducted during a regular or special meeting of the Body at which a quorum exists unless the bylaws or other governing policy of the Body provide for another process or procedure.

B. Determination of Process

1. **Presiding Officer's Direction.** Where multiple positions on a Body are to be filled at the same time, the Presiding Officer is authorized to direct the Body to follow the nomination and election process of Section 24.0¹⁴⁵ (filling each position individually) or Section 25.0 (filling multiple positions concurrently).
2. **Alternative Process.** A Member may offer a Principal Motion to the Body proposing the use of a process other than the process directed by the Presiding Officer. In order for the motion to be stated in clear and understandable language as required by Rule 5.2, the Moving Member shall provide to the Body in advance of the meeting a written process detailing the steps to be followed for the alternative selection process. The Principal Motion shall require a second and is debatable. See Section 15.0, Principal Motion.

The Body may, by majority vote on the Principal Motion (as it may be amended), require the use of the proposed alternative

process. In such an event, the process for nominations and selection or election provided by Section 25.0 will be modified as needed to comply with the Body-approved alternative selection process.

C. Nominations and Acceptance

Nominations and the acceptance of nominations shall follow the process provided by Section 24.0(C)(1) through (6) unless an alternative nomination process is approved by the Body.

D. Election

1. **Nominees for Less than or Equaling the Number of Positions.**
Where the number of nominees is less than or equal to the number of available positions, the Presiding Officer shall declare without vote that the nominated members are all elected for the available positions. The Presiding Officer's declaration is subject to a Point of Appeal. All Members of the Body, including any nominees who are also Members, shall vote on any Point of Appeal. If a majority of a quorum voting on the appeal rejects the Presiding Officer's declaration, the election to the positions shall be addressed by filling each position individually in accordance with Section 24.0.
2. **Election from Among More Nominees than Positions.**
If there are more nominations than available positions, an election from among all nominees shall be held. The Presiding Officer shall call, or shall direct an administrative staff person to call, for each Member's vote for nominees.

When voting, each voting Member shall cast a vote by a written ballot identifying those nominees the Member desires to fill the number of open positions. The written ballot must include:

- (a) at the top of the written ballot, the name of the Member casting the vote on the ballot; and
- (b) the names of the persons the Member seeks to elect to available positions.

A Member who is also a nominee may vote and may vote for themselves. A Member need not cast a vote for a number of persons equal to the available number of positions. However, a ballot failing to identify the name of the Member voting or a ballot identifying a person other than a nominee or identifying a greater number of persons to be elected than available positions shall be declared invalid, and the vote of such a ballot shall not be counted.

3. **Counting of Votes.** The Presiding Officer or an administrative staff person shall be responsible for counting the votes on each ballot and publicly announcing the results of all voting. The Presiding Officer may appoint an administrative staff person to assist in verifying the accuracy of the vote.

All ballots shall be available for inspection by each Member of the Body and shall be a public record subject to inspection upon request.

4. **Election Outcome.** Based on the number of nominees, the number of available positions to be filled, and the resulting vote, the following process and determination shall apply:
 - (a) Where the votes cast identify that the number of available positions can be filled by the persons receiving the highest number of votes, then the Presiding Officer or administrative staff person shall announce the names of the persons elected to the available positions. For example:

Three (3) available positions are to be filled from among six (6) nominees. The voting outcome is:

Jones	6	Elected
Garcia	5	Elected
Smith	5	Elected
Johnson	4	Not Elected
Williams	1	Not Elected
Brown	0	Not Elected

- (b) Where the votes cast identify that one or more of the available positions can be filled by one or more of the persons receiving the highest number of votes but a tie vote prevents a determination that all positions can be filled, the Presiding Officer or administrative staff person shall announce the names of the persons receiving the highest number of votes, who shall each be declared elected to an available position. A revote shall then be conducted from among all other remaining nominees for the position(s) that remain unfilled. Such a revoting process shall continue until a determination can be made that all available positions can be filled by persons receiving the highest number of votes. For example:

Three (3) available positions are to be filled from among six (6) nominees. The voting outcome is:

Jones	6	Elected
Garcia	5	Elected
Smith	4	Revote
Johnson	4	Revote
Williams	2	Revote
Brown	0	Revote

If the revote identifies that the remaining available positions can be filled with a nominee or nominees receiving the highest number of votes, the nominee or nominees receiving the highest number of votes shall be declared elected to the remaining positions. For example:

Following the election of Jones and Garcia above, one (1) available position remains. A revote from among the four (4) remaining nominees is held and results in election to the remaining position:

Smith	5	Elected
Johnson	3	Not Elected
Williams	2	Not Elected
Brown	0	Not Elected

If revoting fails to result in the election of the needed number of nominees for the available positions due to tie votes, the Presiding Officer may continue with a new revote from among the remaining nominees, proceed to a revote from among those nominees who each received the highest but same number of votes, or conduct a drawing from the names of the tied nominees, with the drawn nominee(s) being declared elected.