



## **Keystone Town Council Work Session Agenda**

The Keystone Town Council will have a Work Session on June 11, 2024, at 4:00 p.m. at 1628 Sts. John Rd, Keystone, CO 80435.

- I. CALL TO ORDER, ROLL CALL
- II. UPDATE FROM TRAVIS DAVIS, FIRE CHIEF, SUMMIT FIRE & EMS
- III. UPDATE FROM CHRIS SORENSEN, VICE PRESIDENT AND GENERAL  
MANAGER, KEYSTONE RESORT
- IV. DISCUSSION OF TABOR
- V. DISCUSSION OF QUASI-JUDICIAL TRAINING
- VI. DISCUSSION OF MANAGER/COUNCIL ISSUES
- VII. ADJOURNMENT

# TOWN OF KEYSTONE, COLORADO

## STAFF REPORT

TO: Mayor & Town Councilmembers  
THROUGH: John Crone, Town Manager  
FROM: Jennifer Madsen, Town Attorney  
DATE: June 11, 2024  
SUBJECT: [Work Session] Primer on TABOR

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### **Executive Summary:**

The purpose of this work session item is to provide an overview on TABOR for future discussions of financial management and ballot measures.

The Taxpayers' Bill of Rights, Section 20 of Article X of the Colorado Constitution (TABOR), has been in effect since its approval by Colorado voters in 1992 and contains several key provisions:

1. Prior voter approval required for tax revenue increases, to include:
  - new taxes
  - tax rate increases
  - tax policy changes resulting in net revenue growth.
2. Prior voter approval required for multi-fiscal year debt, to include loans and bonds but not multi-year lease purchase agreements.
3. Limitation on types of taxes that can be imposed such as no new real estate transfer taxes.
4. Limitation on spending by limiting revenue collection, and
5. Requiring excess revenues to be refunded.

## **Background:**

TABOR formally became law on January 14, 1993, and began a new era for Colorado municipalities. Those supporting and opposing TABOR characterized the amendment as a dramatic departure from business as usual – and significant legislation that would, at the very least, restrict the growth of government.

Since the adoption of TABOR, there has been significant litigation to interpret the meaning of the complex constitutional amendments. At the time that TABOR passed, some were worried that TABOR would cause deterioration of governmental services; however, that fear has not generally been founded. TABOR created and continues to create certain burdens on municipalities, but no empirical study has shown how, if at all, municipal services or infrastructure has suffered since 1983 as a result of the constitutional amendment.

TABOR is applicable to “districts” which include the state and any local government, other than “enterprises.” The Town of Keystone is a “district.” TABOR proponents convinced a majority of Colorado voters to approve it in 1992 with a campaign essentially based on the message: “VOTE ON TAXES!” What may be interesting is that TABOR did not give rise to any significant voting right. Several preexisting state and local laws and charter provisions already required municipal voters to approve tax increases. However, by broadly constitutionalizing the principle that voters should always be allowed to vote on new taxes, TABOR did raise the stakes on the most fundamental interpretive questions: What is the difference between a fee and tax? When does a change to an existing tax law trigger the need for voter approval?

The biggest change caused by the adoption of TABOR is its formulaic limitation on the annual growth of municipal revenues. TABOR does not limit the amount of money that can be budgeted. It does not limit the amount of money that may be appropriated. It does not limit the amount of money that may be spent. Instead, it limits the amount of revenue that may be retained in any particular year from most sources (including both

taxes and fees) according to a revenue cap and requires a refund of excess revenue received in any particular year absent voter approval to keep the excess.

TABOR also contains many detailed requirements on how elections and fiscal matters may be handled. It is important to note that TABOR only allows for elections on these questions to be held with the (1) state general election (November of even numbered years); (2) first Tuesday of November in odd-numbered years; or (3) biennial local district election dates. A TABOR ballot issue may not be sent to the voters for a special election.

Most TABOR ballot questions seek voter approval of (1) new taxes, (2) long-term debt (issuance of bonds and new tax or tax increases to support repayment), or (3) retaining revenues in excess of the TABOR revenue limits, rather than refund those excess revenues.

TABOR prohibits certain taxes: real estate transfer taxes, state property taxes, and local income taxes. TABOR requires the maintenance of an Emergency Reserve equal to 3% of Fiscal Year Spending (excluding debt service) and the reserve must be replenished in the next year.

#### Revenue Limitation:

The revenue limitation is one TABOR issue that will certainly need to be considered by Keystone.

It is easiest to understand the revenue limitations requirement of TABOR by using the “black box theory”. This theory starts with a base year of revenue flowing into a box. Under TABOR, the amount of revenue that the government can keep for the next year is limited to the base year’s revenue plus an annual growth factor (which is derived from property valuation increases plus inflation). Here is a mathematical example:

<p><i>BASE YEAR</i> Year 1 Revenue \$1,000,000</p>	<p>Multiplied by Growth Factor (Inflation (CPI) + % increase in real property valuations) Ex. 5%</p>	<p><i>NEXT YEAR</i> Year 2 Revenue Cap \$1,050,000</p>
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Applying TABOR to the above scenario, if revenues in Year 2 exceed \$1.05 million, the Town would be required to refund the excess over the \$1.05 million. All revenue is included in this calculation including tax sources and all other revenue streams (permit fees, development fees, grants, court fines, etc.)

A municipality can submit a question to voters asking for a TABOR waiver. A TABOR waiver (sometimes referred to as a “deBrucing” because TABOR was authored in part by Douglas Bruce) ballot question asks voters to allow the government to retain and spend funds in excess of the TABOR revenue and spending cap. With a TABOR waiver, if revenues exceed the TABOR revenue cap, the Town would be permitted to keep revenues in excess of the cap.

This deBrucing ballot issue has been submitted to voters by many local governments and the overwhelming majority of voters in these local governments have approved of the deBrucing measure.

# Quasi-Judicial Training

Jennifer Madsen  
Widner Juran LLP  
June 11, 2024

**WE WEAR  
MANY HATS.**



- Legislative Action
- Quasi-Judicial Action
- Administrative/Executive Action

# Legislative Action





# Administrative Action



**Deep Breath.....**

# Quasi-Judicial Action



# Quasi-Judicial Action

Determining Rights of Specific Individuals

Formal Application/Permit Usually Involved

Notice & Hearing Required

Fair & Unbiased “Tribunal” Required

# Conduct of Hearing

Open meeting/discuss process

Staff presents the application

- Ask only questions of Staff (no opinion statements)

Applicant opportunity to present

- Ask only questions of Applicant (again, no opinion statements)

# Conduct of Hearing

Public Comment

Applicant can rebut

- Council can ask questions of Applicant or Staff (still, no opinion statements)

# Conduct of Hearing

## Close the Public Hearing

- No more evidence is considered

## Deliberation occurs

- Again, no more evidence is accepted
- What are facts based on evidence?
- Provide thoughts/opinions how evidence meets the criteria

# “Rule 106” Appeals



“THE BOX”



# What is evidence?

Staff Report, Presentation

Applicant Materials

Public Comment



# Questions to ask

- Learn more information or to clear up confusion
- Related to application criteria
- Understand how the speaker is affected/impacted by the application

**Decision must be based on the evidence  
as applied to criteria**

# “**Ex parte** Communication Rule”

**ONLY**



**Rule: NO**

# Ex Parte Rule

- Application filed
- Ways to avoid ex parte contacts:
  - Contacts: None outside of the public hearing
  - Written Materials should be provided to include in the packet
  - Don't conduct outside research
  - Site Visits?
  - Contact with Staff



# Ex Parte Contact

- Contact Community Development Director/Town Attorney
- Disclose at Start of Hearing
- Describe its Content