



Town of Green Mountain Falls

Regular Board of Trustee Meeting Agenda
10615 Green Mountain Falls Road
Tuesday September 5, 2023 at 7:00pm
Work Session at 6:00pm

To Join Zoom Meeting

<https://us02web.zoom.us/j/84841092796?pwd=bHlsKy9vVW9PaDZCRndoalBGUEhGQT09>

Meeting ID: 848 4109 2796 Passcode: 252212

6:00 WORK SESSION

7:00 REGULAR MEETING

1. CALL TO ORDER/ TECH CHECK/ ROLL CALL/ PLEDGE OF ALLEGIANCE
2. ADDITIONS, DELETIONS, OR CORRECTION TO THE AGENDA
3. CONSENT AGENDA
 - a) Meeting Minutes from 2023-08-15
4. REPORTS
 - a) Marshal's Report
5. PUBLIC COMMENT: 3 Minutes per speaker
6. BUSINESS ITEMS
 - a) Creek Week- Alli Schuch of Fountain Creek Watershed
 - b) Kirkpatrick Family Fund Grant- David Douglas
 - c) PC Memo to BoT- Code Enforcement
 - d) Rhino Rock Design Proposal
 - e) PPRBD Vacancy
 - f) Ordinance 2023-03- Nuisance Trees- Second Reading
7. DISCUSSION ITEMS

8. CORRESPONDENCE

- a) Accessibility
- b) Affordable Housing
- c) Court
- d) CADA
- e) No Knock Warrants
- f) Prejudgment
- g) FMAC Resignation

9. ADJOURN

TOWN OF GREEN MOUNTAIN FALLS
Regular Board of Trustee Meeting
August 15st, 2023 – 7:00 P.M.

MEETING MINUTES

Board Members Present

Mayor Todd Dixon
Trustee Sunde King
Trustee Katharine Guthrie
Trustee Nick Donzello
Trustee Sean Ives

Town Manager

Becky Frank

Town Clerk

Bo Ayad

Board Members Absent

Town Attorney

Marshal's Dept.

1. Call to Order/Roll Call/Pledge of Allegiance

Mayor Dixon called the meeting to order at 7:03 p.m. The Pledge of Allegiance was recited. A tech check was conducted. All Board members were present.

2. Additions, Deletions, or Corrections to the Agenda

Corrections to the agenda: The date is corrected to read August 15th and not August 8th. Item 5iii is moved to "Correspondence".

Trustee Guthrie made a motion, seconded by Trustee Donzello, to accept the agenda as modified. Motion passed unanimously.

3. Reports-

Mayor Dixon reported on Playground Mulch that was donated by the Kirkpatrick Family Foundation and thanked the many volunteers that helped with that effort. The Mayor also reported on his upcoming testimony regarding Regulation-28.

4. Public Comment

Wes Simshauser made public comment about the condition of the roads and asked the Board to fund the Public Works Department adequately in hopes that the road conditions will improve with more man hours dedicated to them.

John Bell made public comment about the importance of Ordinance 2023-03 regarding dead and dying trees. He also stressed the importance of addressing falling trees.

5. Consent Agenda

Trustee Guthrie motioned to approve the minutes from 2023-08-01. Trustee Donzello seconded the motion which passed unanimously.

6. Business

6A) Fee Schedule. A discussion took place regarding the fee schedule. A memo from the Town Planner was presented that demonstrated the strategy of incorporating more pass thru fees rather than using higher fixed fees. No action was taken pending a more complete draft.

6B) COLOTRUST. The Town Clerk projected a previous presentation from COLOTRUST Representative, Brett Parsons. A discussion about rates and risk took place. A motion to invest up to 40% of the Town's General Fund in COLOTRUST was made by Mayor Dixon and Seconded by Trustee Donzello. The motion passed unanimously.

6C) Ordinance 2023-03. A discussion took place regarding the language in the Ordinance. Mayor Dixon read the ordinance, with agreed upon changes in the first and last line of Sec. 6-147. The Ordinance was posted in The Gazette on 08/17/2023. Trustee Guthrie motioned to pass Ordinance 2023-03, as read, and the motion was seconded by Mayor Dixon before passing unanimously.

7. Correspondence

The Town Manager presented a Memo regarding Liquor Licensing for Retail Establishments. HB-23-1061 would allow most Retail Business to obtain a limited Liquor License.

8. Adjournment

At 7:51 pm Mayor Dixon called to Adjourn the meeting.

Marshal's report 8/23

| Call type | # of calls | Outcomes if any |
|--------------------------------|------------|----------------------------------------------|
| Traffic Control | 1 | |
| 911 hang ups | 3 | - |
| Assist outside agencies | 3 | |
| Domestic Violence | 0 | |
| Citizen Contacts | 6 | - |
| Missing children | 1 | Found near creek |
| Follow ups | 4 | |
| VIN verification | 2 | |
| Harassment | 2 | |
| Abandoned vehicle | 0 | |
| Traffic stops | 8 | |
| Parking complaints | 5 | |
| Check the welfare | 2 | |
| Lost property | 1 | Backpack left at gazebo- unable to locate |
| Noise complaints | 0 | |
| Reckless Endangerment | 1 | Juveniles with air soft guns |
| Motorist assist | 0 | |
| Drug activity | 1 | Meth and pipe found in Sky Space restroom |
| Traffic Accident | 0 | |
| Disturbance | 1 | |
| Warrant arrest | 1 | Parole violator for kidnapping |
| Animal complaint | 1 | |
| Alarms | 1 | |
| Total calls for service | 44 | Down from 62 last month** |

** Marshal Goings and Deputy Starks took 1 week each off during the month could contribute to lower numbers.

Other agencies assisting us – 3

Us assisting other agencies – 3

NIBERS reports completed.

Citizen Contact upload completed.

Attended Ute Pass Elementary walk thru for the Ute Pass Evacuation Exercise.

Assisted Woodland Park Police with Salute to veterans POW/MIA motorcycle rally.

**Parks, Recreation, and Trails Advisory Committee
Agenda Memorandum**

| | | |
|-----------------------------------------------------|------------------|-----------------------------------|
| DATE: 9.5.2023 | AGENDA NO | SUBJECT: Creek Week in GMF |
| Presented by: PRT - Jesse Stroope, PRT Chair | | |
| Attachments: 2023 Creek Week Proclamation | | |

Background

At the 8.10.2023 meeting, the Parks, Recreation and Trails (PRT) Committee made a recommendation to have the Board proclaim Creek Week clean up with Green Mountain Falls participating on 10/08/2023.

Discussion

Creek Week is an annual event hosted by the Fountain Creek Watershed Flood Control and Greenway District, <https://www.fountain-crk.org/creek-week/>. from September 30 - October 8. PRT committee member, Jay Kita, has agreed to be Crew Leader. He will be the point contact for this project. Once approved by the Board, PRT will post information to recruit volunteers.

Aidan Boyd from the Fountain Creek Watershed Flood Control and Greenway District has requested that the Board read the attached Creek Week proclamation.

2023 Creek Week Proclamation

WHEREAS, the **Town of Green Mountain Falls** is fortunate to have extensive and diverse natural resources, and

WHEREAS, the Fountain Creek Watershed is a unique and important asset to the Residents of and visitors to **the Town**, the Pikes Peak Region; and

WHEREAS, the Fountain Creek Watershed District is a proud partner and collaborator with its member governments; and

WHEREAS, the Fountain Creek Watershed District is celebrating the 10th Annual “Creek Week” cleanup, which offers volunteers the opportunity to protect, steward and maintain the Fountain Creek watershed; and

WHEREAS, “Creek Week” is a litter clean-up, education and restoration effort throughout the watershed set for September 30th through October 8th, 2023, the LARGEST cleanup event in the State of Colorado; and

WHEREAS, nearly 20,000 volunteers have removed over 135 tons of trash during “Creek Week” over the past 9 years during this impactful program; and

WHEREAS, “Creek Week” litter removal and restoration activities will continue to reduce pollution in our creeks and our connecting waterways, manage flooding, provide for a safer drinking water supply, and enhance wildlife habitat and property values.

NOW, THEREFORE, the Members of **the Green Mountain Falls Board of Trustees**, Colorado encourage businesses, churches, schools, non-profits, neighborhood associations, youth groups, service clubs and individuals to form “Creek Crews” to volunteer their hearts and hands to this effort.

We now, hereby proclaim September 30 – October 8, 2023, as “**10th ANNUAL CREEK WEEK**” in **Green Mountain Falls** and invite our citizens to help protect, restore and maintain our waterways by participating in the many activities, programs and events.

DONE THIS 5th day of September 2023 in **Green Mountain Falls**, Colorado.



MEMORANDIUM to BOARD of TRUSTEES

To: Board of Trustees
From: Staff
Date: 09-01-2023
Re: Kirkpatrick Family Foundation matching funds grant for 2023/2024 Fire Mitigation to match the currently funded and active CUSP SFA and FRWRM grants.

Recommendations

Staff and FMAC recommends BoT ratification of a \$65,000 grant application from Kirkpatrick Family Foundation submitted on September 1, 2023 and then to accept the funds in the event the application is approved and funds are awarded.

Background

Coalition for the Upper South Platte (CUSP) was awarded two grants (SFA and FRWRM grants) in 2020 for the purpose of fire mitigation by removal of fire fuels and thinning forest to remove dead and diseased trees on town owned land, HGMFF owned land and other private property owners. Green Mountain Falls partnered with CUSP to share in the costs on a 60/40 basis (town 60%/CUSP 40%) for work done on town owned land over the term of the grants. There are 44 untreated acres remaining under the two grants. Based on the average cost per acre (\$4000), CUSP estimates the remaining cost of the 44 acres would total approximately \$176,000. Of this amount, under the cost sharing ratio, Green Mountain Falls would need to provide matching funds of approximately \$105,00. Recognizing that the town may not have the financial ability to fund this shared cost, this KFF grant application, assuming it is awarded, would provide 60% of the GMF cost share to complete the work scope under the CUSP grants. Without the KFF grant funding, the current work with CUSP will continue in 2024 only if the BoT approves funding to continue the town match on the cost share ratio. However, because the town has expended its 2023 budgeted funds, no CUSP mitigation work will be completed for the remainder of 2023 and the full amount of the CUSP grants would not be utilized. With the KFF funding, the ROW work may be completed in 2023 and additional mitigation work can be performed in 2024.

Alternatives

- 1) Take no action.
- 2) Vote to approve.
- 3) Vote to Withdraw Application.

Application

Public Profile

Collaborate 0

GMF Fire Fuels Mitigation

Process: FY 2024 KFF Large Project Grant Application

Contact Info

Request

Documents 0

Applicant:

Ms Becky Frank
manager@gmfco.us
719-684-9414 x5
P.O. Box 524; 10615 Green Mountain Falls Rd. Green Mountain Falls Rd
Green Mountain Falls, CO 80819



Organization:

Town of Green Mountain Falls
84-6000549
719-684-9414
P.O. Box 524; 10615 Green Mountain Falls Rd. Green Mountain Falls Rd
Green Mountain Falls, CO 80819

Contact Email History



If your organization information does not appear correct, please click the edit (pencil) icon.

LOI

Application

Document Viewer

Application Packet

Question List

Fields with an asterisk (*) are required.

Summary of Request

Project Name*

Name of Project.

GMF Fire Fuels Mitigation

Project Summary*

Please provide a brief summary of your project

Green Mountain Falls is the most "At Risk" community in Colorado for wildfire. The town has partnered with Mile High Youth Corp (MHYC) and Coalition for the Upper South Platte (CUSP) to remediate approximately 60 acres over the last 5 years. The acreage includes town owned property, homeowner private property and Historic Green Mountain Falls property. The requested funds will be used to continue the fire fuels mitigation in the town undeveloped Rights of Way and continuing to increase the defensible space above and surrounding the town. Thinning the forest improves forest health and

42 characters left of 1,000

Amount Requested

\$ 65,000.00

Update Amount Requested

If the amount you are requesting has changed, please enter the new amount.

\$

Project Budget*

\$ 176,000.00

Project Start Date*

03/01/2024

Project End Date*

11/01/2024

Total Served*

4000

Geographic Area(s) Served

- Canadian County
- Cleveland County
- Grady County
- Kingfisher County
- Lincoln County
- Logan County
- Oklahoma County
- Pottawatomie County
- Other

Geographic Area Served - Other

If you selected "Other", please describe the area served.

Town of Green Mountain Falls Colorado

✓ Organization Information

Date of Incorporation***Have you registered your charitable organization with the Oklahoma Secretary of State?***

- Yes
 No

If you answered no, follow this link to register your organization: <https://www.sos.ok.gov/forms/FM0101.PDF>

Fiscal Year Beginning***Fiscal Year Ending*****Current Annual Budget*****Proposed Annual Budget*****Organization Mission***

Briefly describe the mission of your organization.

The municipal government offers the following services to our Citizens: Public Works, Parks & Recreation, Building & Planning, Community Policing, and other Administrative functions/services.
The Town is committed to providing the best possible lifestyle by insuring protection of life and property & infrastructure.

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Organization Summary*

Tell us about your organization's purpose and the issues, challenges, or opportunities your work addresses.

The Town of Green Mountain Falls enacted Ordinance 2020-03 on July 22, 2020, establishing a Fire Mitigation Advisory Committee (FMAC). Pursuant to Ordinance 2020-03, the Fire Mitigation Committee's purpose is "to advise the Board of Trustees and to coordinate with El Paso County Emergency Management, the Colorado State Patrol, and other governmental agencies on fire-related issues affecting the Town, and to develop a notification and evacuation plan for the Green Mountain Falls Community."

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Organization Focus*

Human Services - Multipurpose & Other

Project Focus*

Health and Human Services

Organization Website*

 greenmountainfalls.colorado.gov

✓ Board and Staff Information

Board President or Chairperson

First Name*

Todd

Last Name*

Dixon

Title*

Mayor

Telephone Number

719-684-9414

Telephone Extension

Email Address*

 gmfdixon@gmail.com

Additional Board Information

Board Approval Date*

Refers to the date your organization approved the submission of this application.

 09/05/2023

Number of Board Members*

5

Board Donations Total*

\$ 0.00

Percentage of Board Members Who Donate*

State the percentage of Board Members who donate.

0

Staff Information

Name of CEO/Executive Director/Lead Staff

If applicable, please state the name of your organization's lead staff member.

Becky Frank

Lead Staff Email Address

If applicable, please give the best email address for us to contact the lead staff of your organization.

 manager@gmfco.us

Full Time Employees*

State the number of full time employees.

6

Part Time Employees*

State the number of part time employees.

4

Volunteers*

State the number of volunteers.

35

✓ Narrative Questions

Project Description*

Describe the work you propose, what you plan to accomplish, the activities you plan to pursue, and why it's essential in your community. Identify where you see shared intersections and goals with Kirkpatrick Family Fund areas of interest and values.

Green Mountain Falls is the most "At Risk" community in Colorado for wildfire. The town has partnered with Mile High Youth Corp (MHYC) and Coalition for the Upper South Platte (CUSP) to remediate approximately 60 acres over the last 5 years. The acreage includes town owned property, homeowner private property and Historic Green Mountain Falls property. The requested funds will be used to match existing CUSP grant funding to continue the fire fuels mitigation in the town undeveloped Rights of Way and continuing to increase the defensible space above and surrounding the town. Undeveloped Rights of Way (ROW) within the town of Green Mountain Falls total 14 acres. To date, 5.8 acres have been remediated with CUSP grant funding and matching funds from Green Mountain Falls. The remaining 8.2 acres are targeted for remediation with the CUSP grant funding and matching funds from the funds the town may be granted by KFF. The 60 acres of CUSP grant funding remediated property includes a

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Anticipated Outcomes*

What will you pay attention to as milestones or indications of progress on the issues your work addresses? Provide qualitative and quantitative examples.

There will be multiple outcomes accomplished through the projects in and around Green Mountain Falls, CO. These projects will increase the overall health of the forest surrounding Green Mountain Falls by removing trees damaged from dwarf mistletoe, Ips beetles, and other damaging plants and animals. By decreasing the number of trees per acre, the remaining trees will be healthier, and the forest will be more resilient to future stresses in the ecosystem. Prioritizing the removal of sick, dead, and dying trees will also decrease vertical and horizontal fuel continuity, reducing the risk for catastrophic wildland fire behavior in the treated areas. Lessening the severity of future fires will also lead to less catastrophic flooding after fire events. These treatments can also tie into treatments that are planned by the USFS. Treating Town Owned Right-of-Ways are high visibility treatments that will bring forest restoration and

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Demographic Served*

Which populations and communities are priorities for your work and how do you engage them?

Town of Green Mountain Falls stakeholders (businesses, Green Box, town infrastructure and assets, assets of Green Mountain Falls, and residents and property owners of the town) will be the beneficiaries of this project. Public education through video presentations, distribution of Colorado State Forest Service brochures, Mayor's Forum during Green Box, and outside guest speakers have been utilized to make our stakeholders more knowledgeable about these large scale remediation projects encourages residents and property owners to participate in remediation of their own properties.

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Support of mission and goals*

Tell us how the project for which you are requesting funds supports the mission and vision of your organization.

The town of Green Mountain Falls has the responsibility for the protection of life, property, and infrastructure. This project reduces the fire fuels load of our forest and promotes a healthy forest. In so doing, the project simultaneously creates and improves defensible zones for wildfire fighters to stage equipment and more effectively fight and control fires which may occur within the town. Forest health as a method of reducing wildfire risk and improvement of defensibility and wildfire control as well as aesthetic beauty is an additional goal of this project.

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Partnerships*

Describe your most important partnerships. Why are they important to your work? What other partnerships or connections would enhance your work?

MHYC and CUSP have been the primary partners with Green Mountain Falls to perform fire fuels mitigation and thinning to reduce disease and infestations to promote forest health. Both these organizations have obtained state and federal grants on behalf of Green Mountain to perform the mitigation work. Both these organizations organize and manage the contractors to perform the work under their supervision according to the prescriptions of the Colorado State Forestry Service. Teller County and El Paso Counties have collaborated with Green Mountain Falls to provide equipment for

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Board Engagement*

Provide a brief description of your board's engagement in your organization's work, the committees of the board, and the board's fundraising

The Green Mountain Falls Fire Mitigation Advisory Committee (FMAC) exists to help in preventing death, injury, and damage to property due to wildfire. The FMAC is a volunteer committee of GMF residents, organized under the authority of the Town of Green Mountain Falls.

731 characters left of 1,000

Evaluation*

Provide specific examples of how progress or change will be measured or described within the scope of this project.

Under the existing CUSP SFA and FRWRM grants there are 44 acres at an average cost of \$4000/acre remaining on the grants. Cost per acre of remediation determines the number of acres to be remediated. For example, if the cost per acre increases to \$8000 per acre due to terrain and accessibility to the acreage, then the workable acreage under the grants would be reduced to 22 acres. CUSP has prepared maps of the proposed work areas. The progress and final completion relative to the proposed work areas on the maps is the measure of the work scope. Approval and sign off of the

1,302 characters left of 2,000

Sources of Funding*

Tell us other sources of funding for this project and their level of support. Please include whether the funding is confirmed or proposed.

CUSP SFA and FRWRM grants are funded and approved. The total value under the remaining work scope is \$176,000. Cost sharing is 60/40 with the CUSP grants paying 40% of the cost. The grants term at the end of April 2024 and October 2024.

Great Outdoors Colorado (GOCO) grant with MHYC as the contractor is application pending for decision of award expected in late 2023 for 2024 funding. This grant requires matching funds or in kind funding.

1,554 characters left of 2,000

Ongoing Project

If this project is ongoing, explain how activities will be sustained in future years.

The town is initiating an update of the Ute Pass Community Wildfire Protection Plan. This includes various community partners throughout the Ute Pass corridor. This plan will accommodate various community goals.

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Marketing Activity*

Explain any marketing activity that will be used to promote this program/service/project.

Website and general town communications including social media.

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Additional Information

Is there anything else you would like us to know?

Because of the numerous factors (terrain, accessibility, weather, availability of work crews) determining the actual workable acreage and percentage completion, Kirkpatrick Family Foundation could structure its funding according to a percentage of the average cost per acre times the number of acres completed under the scope of work. This would assure that funding would be applied only to the percentage of the project completed. This would also maximize the work completed relative to the funding granted.

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✓ Attachments

Annual Audit*

Does your organization have an annual audit done?

- Yes
 No

IRS Determination Letter*

documenting the organization's 501(c)3 status.

Sales Tax & EIN information.pdf [483.6 KiB] 

Board of Directors List*

Trustee Attendance Doc.docx [12.2 KiB] 

Board Meeting Attendance Matrix*

Find an example here.

Trustee Attendance Doc.docx [12.0 KiB] 

Project Budget*

Upload your completed budget below.

2023 Budget Packet - FINAL.pdf [1.7 MiB] 

Organization Budget - Current Year*

Include revenue as well as expenses

zz - FINAL DRAFT 2023 Budget.pdf [224.2 KiB] 

Organization Budget - Proposed Project Year

If the proposed project is scheduled for a later fiscal year.

Financial Summary*

3 year summary of Revenue and Expenses. You can download and complete the PDF version or the Word Document version of this form and upload it or you may use it as a template and create your own.

zz - FINAL DRAFT 2023 Budget.xlsx [43.8 KiB] 

Financial Statements*

Current Fiscal Year Statement of Activities - These are monthly or quarterly financial statements prepared for a board of directors meeting or for use by the staff. Consolidated statements are preferred. You will need to save materials as a pdf document before upload. Please contact our office if you have any questions regarding this attachment.

-Most recent Statement of Activities (aka Profit and Loss)

19. April 4 Budget.pdf [231.1 KiB] 

Financial Statements*

Current Fiscal Year Balance Sheet - These are monthly or quarterly financial statements prepared for a board of directors meeting or for use by the staff. Consolidated statements are preferred. You will need to save materials as a pdf document before upload. Please contact our office if you have any questions regarding this attachment.

-Most recent Balance Sheet (aka Statement of Financial Position)

Statement_of_Financial_Position_2309010939344.pdf [54.6 KiB] 

Financial Statements*

Previous Fiscal Year - this should agree with your audit (if complete) but include more detailed information.

-Detailed Statement of Activities (aka Profit and Loss)

2022 Town of Green Mountain Falls financial statements - draft.pdf [1.4 MiB] 

Financial Statements*

Previous Fiscal Year - this should agree with your audit (if complete) but include more detailed information.

-Detailed Balance Sheet (aka Statement of Financial Position)

Statement_of_Financial_Position_2309010939344.pdf [54.6 KiB] 



MEMORANDIUM to BOARD of TRUSTEES

To: Board of Trustees
From: Planning Commission
Date: 8/8/23
Re: Enforcement of town codes

Recommendations

The Planning Commission recommends **code enforcement** be included in a Town staff job description.

Background

Pursuant to the priorities identified by the three town committees/commission in the Comprehensive Plan update done in 2023. One of the top three priorities that was identified was: **Enforcement of all town codes/laws/statutes/regulations.**

Discussion

In the Planning Commission's 8/8/23 meeting, this recommendation to BOT was passed by the Planning Commission and is passed on the BOT in memo form. The Planning Commission discussion reflected the urgent need for town attention to enforcing all codes to ensure the efficient and safe operation of the town for the benefit of all citizens and visitors alike. It was important to the Commission that at least one employee is made responsible (and held responsible) for carrying out this important task.

Alternatives

- 1) Vote to approve.
- 2) Vote to not approve.
- 3) Request additional information.

Rhino Rock Designs LLC
8775 W US Highway 24
Cascade, CO 80809 US
rhinorockdesigns@gmail.com

Estimate

ADDRESS

Becky Frank
Town of Green Mountain Falls

ESTIMATE # 1209

DATE 08/31/2023

| ACTIVITY | QTY | RATE | AMOUNT |
|-------------------------------------------------------------------------------------------------------------------|-----|----------|----------|
| Services | 1 | 7,500.00 | 7,500.00 |
| GMF Public Works Road Maintenance Assistance | | | |
| -large excavator and operator | | | |
| -dump truck and operator | | | |
| -additional laborer | | | |
| -under the direction of public works we will assist in the removal of excess road material, approximately 80 tons | | | |
| -includes haul away and location for disposal of removed material | | | |

Here's your estimate. We appreciate your consideration.

TOTAL

\$7,500.00

Tom

Tom R Hughes
Owner
719-301-5230
Rhino Rock Designs LLC

Accepted By

Accepted Date

TOWN OF GREEN MOUNTAIN FALLS

ORDINANCE NO. 2023-03

AN ORDINANCE AMENDING CHAPTER 6 OF THE GREEN MOUNTAIN FALLS MUNICIPAL CODE REGARDING THE DEFINITION OF NUISANCE TREES

WHEREAS, the Town wishes to modify the definition of nuisance trees in the Green Mountain Falls Municipal Code.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF GREEN MOUNTAIN FALLS, COLORADO:

Section 1. The definition of nuisance trees in Chapter 6 Article VIII Section 6-147 of the Town of Green Mountain Falls Municipal Code is hereby amended to read as follows:

Sec. 6-147. – Definitions. *Nuisance trees* are defined as trees or limbs thereof which pose a threat to public health or safety or adjacent property, including, but not limited to, public rights-of-ways, or trees which harbor any destructive or communicable disease or other pestilence which endangers the well-being of other trees in the town, or which are capable of causing an epidemic spread of insect infestation. In addition, a nuisance tree is also defined as a dead or dying standing tree or any tree that poses a fire or falling hazard.

Section 2. Severability. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or enforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 3. Safety. The Board of Trustees finds that the adoption of this Ordinance is necessary for the protection of health, safety and welfare of the public.

Section 4. Effective Date. This Ordinance shall become effective after final approval and adoption and 30 days after the posting date.

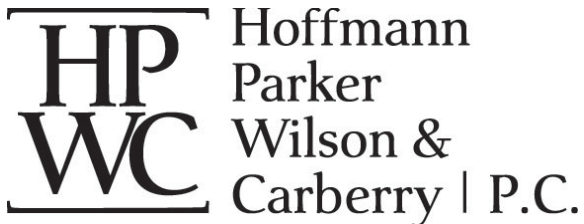
INTRODUCED AND ORDERED PUBLISHED this 15th day of August 2023, at the Green Mountain Falls Town Hall, 10615 Green Mountain Falls Road, Green Mountain Falls, Colorado.

Adopted on Second Reading on this 5th Day of September, 2023

Bo Ayad, Town Clerk/Treasurer

Todd Dixon, Mayor

Published in the Gazette on August 17th, 2023.



Corey Y. Hoffmann
Kendra L. Carberry
Jefferson H. Parker
M. Patrick Wilson

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Katharine J. Vera
Elizabeth G. LeBuhn
Austin P. Flanagan
Kunal A. Parikh

TOWN OF GREEN MOUNTAIN FALLS
MEMORANDUM

**TO: MAYOR AND BOARD OF TRUSTEES
BECKY FRANK, TOWN MANAGER**

**FROM: JEFFERSON H. PARKER, TOWN ATTORNEY ^{HP}
KUNAL A. PARIKH, ESQ.**

DATE: AUGUST 17, 2023

RE: DIGITAL ACCESSIBILITY

This memorandum addresses recent Colorado legislation imposing new standards for accessibility to protect individuals with disabilities and remedies for individuals with disabilities. The Town of Green Mountain Falls (the "Town") must comply with these new accessibility rules by July 1, 2024, and the new rules for remedies immediately. C.R.S. § 24-85-103(3).

In 2021, the Colorado General Assembly passed House Bill 21-1110 ("HB 1110") which set up the initial framework for the forthcoming accessibility rules. In the 2023 legislative session, the Colorado General Assembly passed Senate Bill 23-244 ("SB 244"), which cleaned up some of the changes made by HB 1110. SB 244 will now require the Governor's Office of Information Technology ("OIT") to promulgate new rules and accessibility criteria that local government entities will be required to adopt. OIT has not yet released a Notice of Proposed Rulemaking, but we anticipate that more details will be released this year. In addition, the Colorado General Assembly passed House Bill 23-1032 ("HB 1032"), which establishes that a person need not exhaust administrative remedies before filing a lawsuit for disability discrimination and protects an individual with a disability from being excluded from participation in, or denied the benefits of, services, programs, or activities to places of public accommodation.

This memorandum provides an overview of HB 1110, SB 244, and HB 1032, as well as summarizing some of the materials that will be considered by the OIT in promulgating the new accessibility standards.

8/17/2023

Q:\USERS\GREEN MOUNTAIN FALLS\MEMOS\2023\DIGITAL ACCESSIBILITY-M081723.DOCX

Protected Individuals

The Colorado Anti-Discrimination Act ("CADA") states that it is unlawful for any person to discriminate against an individual with a disability. C.R.S. § 24-34-801(1). Under the Americans with Disabilities Act (the "ADA"), a disability is a "physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A). This definition is construed in favor of broad coverage of disabilities, including disabilities that may only be episodic in nature. *Id.* at (4).

HB 1110 expands protections to "individuals with disabilities" as to those laws which relate to accessibility to government information technology. C.R.S. § 24-34-301(5.6).

Accessibility Standards and Covered Technologies

SB 244 modifies the definitions of "accessible" and "accessibility" by inserting a reasonability standard:

"Accessible" or "accessibility" means perceivable, operable, and understandable digital content that *reasonably* enables an individual with a disability to access the same information, engage in the same interactions, and enjoy the same services offered to other individuals, with the same privacy, independence, and ease of use as exists for individuals without a disability.

C.R.S. § 24-85-102(1.5) (emphasis added).

HB 1110 states that OIT shall maintain accessibility standards for an individual with a disability for information technology systems employed by state agencies that: (1) provide an individual with a disability access to information stored electronically by ensuring compatibility with adaptive technology systems so that an individual with a disability has full and equal access when needed; and (2) are designed to present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use, such as the use of text-only options. C.R.S. § 24-85-103(1).

Under SB 244, the new accessibility criteria will require OIT to promote and monitor the accessibility standards for individuals with a disability in the state's information technology infrastructure. C.R.S. § 24-85-103(1.5). OIT will be required to consider and incorporate the most recent version of World Wide Web Consortium's (the "WC3") Web Content Accessibility Guidelines ("WCAG") in developing the new accessibility standards for individuals with a disability. C.R.S. § 24-85-103(2.5). Generally speaking, WCAG measures the accessibility of a particular website or technology using "success criteria" ranging from "A" (the lowest level of accessibility) to "AAA" (the highest level of accessibility). Web Content Accessibility Guidelines 2.1, WORLD WIDE WEB CONSORTIUM (Jun 5, 2018) <https://www.w3.org/TR/WCAG21/>. Once OIT has established accessibility standards, each state agency is directed to comply with the

accessibility standards for individuals with a disability in the creation and promulgation of any online content and materials used by such state agency. C.R.S. § 24-85-103(1.5).

OIT's accessibility standards apply to *all* technology, hardware, and software, that is both public-facing and internal-facing. This includes any technology provided by or procured by a government entity that is used by the public or used by a government entity employee. This technology includes without limitation websites, applications, kiosks, digital signage, documents, video, audio, and third-party tools. FAQ: HB21-1110 Colorado Laws for Persons With Disabilities, <https://oit.colorado.gov/hb21-1110-faq> (last visited Aug. 1, 2023).

Once OIT issues its Notice of Proposed Rulemaking, we anticipate that there will be additional guidance including which edition of WCAG will be used in developing the rules, which level of success criteria will be required, if any additional accessibility standards will be considered in promulgating the rules that local governments will be required to implement, and additional guidance concerning which technologies the accessibility standards apply to. In addition, because this additional guidance will likely be released after you consider the 2024 budget, you should be prepared to have funds available in the 2024 budget to address such changes.

Potential Liability

HB 1032 establishes that a person must first exhaust the proceedings and remedies available to them before filing an action in district court based on an alleged discriminatory or unfair practice related to certain employment practices, housing practices, or discriminatory advertising. C.R.S. § 24-34-306(14). Further, HB 1032 prohibits an individual with a disability from being excluded from participation in, or denied the benefits of services, programs, or activities provided by a place of *public accommodation*, public entity, or state agency. C.R.S. § 24-34-802(1)(b) (emphasis added). A place of public accommodation means "any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public" including without limitation "to any business offering wholesale or retail sales to the public; any place to eat, drink, sleep, or rest, or any combination thereof; any sporting or recreational area and facility; any public transportation facility; a barber shop, bathhouse, swimming pool, bath, steam or massage parlor, gymnasium, or other establishment conducted to serve the health, appearance, or physical condition of a person; a campsite or trailer camp; a dispensary, clinic, hospital, convalescent home, or other institution for the sick, ailing, aged, or infirm; a mortuary, undertaking parlor, or cemetery; an educational institution; or any public building, park, arena, theater, hall, auditorium, museum, library, exhibit, or public facility of any kind whether indoor or outdoor. Place of public accommodation shall not include a church, synagogue, mosque, or other place that is principally used for religious purposes." C.R.S. § 24-34-601(1).

The addition of "public accommodation" creates a significant layer of potential liability for the Town, as this definition encompasses many of the services the Town provides to both its residents and visitors. Further, HB 1110 clarifies that such prohibition includes the failure of a

public entity or state agency to develop an accessibility plan and fully comply with the accessibility guidelines established by OIT on or before July 1, 2024. C.R.S. § 24-34-802(1)(c).

The Town should be aware that any individual with a disability that believes they have been discriminated against by a public entity, state agency, or place of public accommodation, for failure to implement accessibility or be denied the benefits of services, programs, or activities provided by places of public accommodation, may file a civil claim against that public entity, state agency, or place of public accommodation. C.R.S. § 24-34-802(2)(a). For example, if a court finds that a local government has failed to implement accessibility as required by law, the remedies include a court order requiring compliance with the provisions of the applicable section and either: (1) the recovery of actual monetary damages resulting from the lack of accessibility; or (2) a fine of \$3,500 payable to each plaintiff for each separate violation. *Id.*

SB 244 clarifies what constitutes a "separate violation" of the new accessibility rules. Provided that the violation occurred "on a single digital product, including a website or application," then the violation may only be considered a single incident. C.R.S. § 24-34-802(2)(b). In practice, this means that, even if multiple webpages within a single domain are not accessible to persons with disabilities, there will only be one violation for the purpose of the remedies or damages that may be sought by a putative plaintiff.

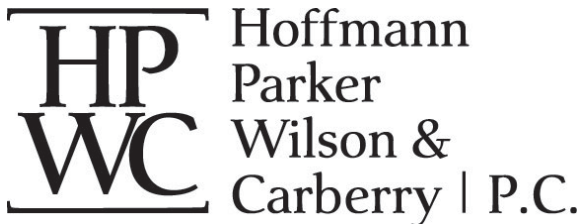
While this may limit the Town's potential liability, a class action is still possible. Under such a lawsuit, each individual plaintiff could be entitled to \$3,500 in damages. Depending on the size of the putative "class," this could result in significant liability.

Finally, the new accessibility rules specify that the public entity is liable for discrimination even if the public entity relies on a third-party to host or publish its web content. C.R.S. § 24-34-802(1)(c).

Conclusion

As noted above, this memorandum discusses the accessibility standards OIT will be implementing and that local governments are required to comply with these standards by July 1, 2024. Additionally, HB 1110, SB 244, and HB 1032 have expanded protections available for individuals with disabilities in places of public accommodation and access to government information technologies. As OIT continues to provide additional information and guidance throughout the process of the formal rulemaking – yet to be announced – we will keep you informed regarding any relevant developments or updates.

As always, please feel free to contact us if this memorandum raises any additional questions.



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TOWN OF GREEN MOUNTAIN FALLS
MEMORANDUM

**TO: MAYOR AND BOARD OF TRUSTEES
BECKY FRANK, TOWN MANAGER**

FROM: JEFFERSON H. PARKER, TOWN ATTORNEY JHP
ELIZABETH G. LEBUHN, ESQ.

DATE: AUGUST 15, 2023

RE: AFFORDABLE HOUSING - HOUSE BILL 1304 AND PROPOSITION 123

This memorandum addresses Colorado House Bill 2023-1304 ("HB 1304"), which modifies affordable housing programs created by voters' approval of Proposition 123 at the November 2022 general election. In sum, Proposition 123 created new affordable housing programs and the Act implements those programs by expanding access, clarifying certain qualifications, and establishing additional processes. Specifically, HB 1304 amends affordable housing programs by allowing tribal governments to participate; transferring administration to the Division of Local Government within the Department of Local Affairs ("DOLA"); permitting the Office of Economic Development and International Trade ("OEDIT") to use financing funds for administrative expenses; clarifying income and rent calculations; specifying unit counting for the 3% growth obligation; establishing a process for rural resort communities to adjust income percentages; exempting federal coronavirus funds from maintenance of effort requirements; and requiring annual reports on the programs.

Background

Proposition 123 created the State Affordable Housing Fund (the "SAHF"), dedicating 40% of funds to the Affordable Housing Support Fund (the "Support Fund") and 60% to the Affordable Housing Financing Fund (the "Financing Fund"). C.R.S. § 29-32-104(1). DOLA and the OEDIT are responsible for administering these programs. Using income tax revenue retained by the state through Proposition 123's voter-approved revenue change, the affordable housing programs are

administered by both the Financing Fund and Support Fund through their respective funding percentage allocations. C.R.S. § 29-32-103(1).

To receive this funding, local governments must first file a commitment to increase the number of affordable housing units within the local government by 3% annually. "Affordable housing" is defined as rental housing affordable to a household with an annual income at or below 60% of the area median income ("AMI"), and that costs the household less than 30% of its monthly income. C.R.S. § 29-32-101(2). "Affordable housing" also includes for-sale housing that could be purchased by a household with an annual income of at or below 100% of AMI. *Id.* HB 1304 clarifies that, to qualify, the mortgage payment must cost the household 30% or less of its monthly income. *Id.*

Application

To receive funding under HB 1304, the Town must file a commitment with the Division of Housing by November 1, 2023. This application must include evidence of how the combined number of newly constructed affordable housing units and existing units converted into affordable housing will be increased each year by 3% over the "baseline number" of affordable housing units in the Town. C.R.S. § 29-32-104(1)(a). HB 1304 encourages collaboration and partnership with neighboring jurisdictions to help more communities receive at least partial funding. C.R.S. § 29-32-105(3)(d)(II).

The "baseline number" of affordable housing units resets after every three-year period, with the first period spanning November 1, 2023 through December 1, 2026. C.R.S. § 29-32-104(1)(d). Any new residential housing units are counted at the time they are permitted and fully funded, as opposed to when they are constructed. C.R.S. § 29-32-105(3)(d)(I). Likewise, any housing units that are subsequently funded under the Act will count toward the Town's growth requirement for a future application year. *Id.*

The application can be found and filed online¹ and requires the following steps:

1. Set an affordable housing baseline.
 - a. The name of the county, municipality, or tribe;
 - b. The baseline amount of affordable housing in the jurisdiction; and

¹ The form requires creation of an account through the Division of Housing and must be filed by authorized officials. The filing can be submitted here: <https://co.accessgov.com/doh/Forms/Page/prop123/prop123-affordable-housing-commitment/1>.

- c. The type of income limit used to calculate the baseline amount of affordable housing (such as the area median income of the jurisdiction, or the state household median income).
2. Provide information supporting the baseline.
 - a. Select the data source used to calculate the baseline. A baseline reference table is publicly available and can be used as a starting point, but the Town is ultimately responsible for establishing its own baseline;
 - b. Enter information on the county and household size used to determine the income limit (if applicable); and
 - c. Describe the methods used to produce the baseline.
3. (Optional) – Justify a petition to use an alternative income limit. As discussed above, this is not required in all cases and only applies if the Town calculates its baseline amount of affordable housing using the state median household income or the area median income of an adjacent jurisdiction.
 - a. Describe how the alternative income limit reflects local housing and workforce needs better than the area median income; and
 - b. Describe why the area median income is inconsistent with the housing and workforce needs of the jurisdiction.
4. File a commitment.
 - a. Describe if and how high-density housing, mixed income housing, environmental sustainability, and the de-concentration of affordable housing will be prioritized; and
 - b. (Optional) – List jurisdictions the Town intends to cooperate with for the purpose of collaborative affordable housing growth.

If the Town wants to "fast track" its approval process, the Town must establish and provide evidence of processes to enable it to provide a final decision on any application for a special permit, variance, or other development permit, excluding subdivisions, of a development project for which 50% or more of the residential units in the development constitute affordable housing. C.R.S. § 29-32-105(2)(a). This must be done within 90 days after the submission of a complete application.
Id.

At the end of the three-year cycle of the program in 2026, or in any other subsequent third "reset" year, if the Town refiles its commitment by November 1 of that year after having otherwise

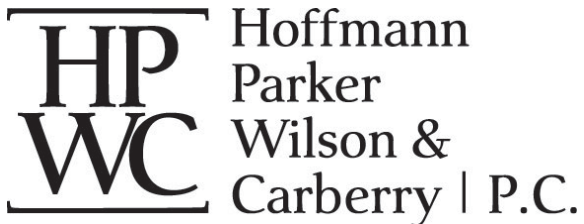
met its commitment throughout that cycle, the Town will have satisfied the duration of its commitment. C.R.S. § 29-32-105(3)(b)(II). For the first cycle, the Town will be deemed to have satisfied its commitments if it first files its application by November 1, 2023. C.R.S. § 29-32-105(3)(b)(I). If the Town misses the November 1 deadline this year, it will be ineligible for funding in the following calendar year. C.R.S. § 29-32-105(3)(b)(III).

Starting in 2027, the Town must commit to and achieve the prerequisite annual increases and meet the "fast track" evidentiary requirements to expedite its approval process in subsequent program periods. C.R.S. § 29-32-105(3)(a). If the Town fails to meet its commitment in any given year, the Town will be ineligible for funding during the following calendar year. C.R.S. § 29-32-105(3)(b)(IV). The Town may then reapply in a subsequent year to regain eligibility for the remainder of that 3-year cycle. C.R.S. § 29-32-105(3)(b)(V).

Conclusion

While the setup and administration of the Proposition 123 affordable housing programs may seem daunting, there are ample resources available online to assist the Town in preparing to file its commitment, and we are available to assist as well. On or before November 1, 2023, the Town must file its commitment for the first three-year cycle, showing how it will increase affordable housing in the Town by at least 3% by December 31, 2026, and therefore be eligible for funding under the affordable housing programs.

As always, please let us know if you have any questions or need additional information.



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TOWN OF GREEN MOUNTAIN FALLS
MEMORANDUM

**TO: MAYOR AND BOARD OF TRUSTEES
BECKY FRANK, TOWN MANAGER**

FROM: JEFFERSON H. PARKER, TOWN ATTORNEY JHP
ELIZABETH G. LEBUHN, ESQ.

DATE: AUGUST 9, 2023

RE: REMOTE PUBLIC ACCESS TO MUNICIPAL COURT

This memorandum addresses Colorado House Bill 2023-1182 ("HB 1182"), which expands requirements for public access to criminal court proceedings by requiring municipal courts to make available, in real time, remote viewing and listening options for open criminal court proceedings, unless the municipality can show certain conditions exist.

HB 1182 takes effect on September 1, 2023, and applies to municipal courts operating in both home rule and statutory municipalities.

Analysis

HB 1182 Act expands upon COVID-19 pandemic-era changes that facilitated expanded remote observation of criminal court proceedings in district court to now include municipal courts. HB 1182 applies to all municipal courts unless certain conditions exist. Municipal courts **do not** need to provide remote observation of criminal court proceedings where:

- The courtroom is not technologically equipped to provide such access (*i.e.*, the court does not utilize a web conferencing platform);
- A court order excludes members of the public from viewing the criminal proceeding;

- Technology, staffing, or internet issues prevent the court from providing remote access; **or**
- A party, witness or victim requests the court not provide such access, or the court makes a motion and finds on the record that remote access should not be provided.

C.R.S. § 13-1-132(3.5)(a).

In addition, following a request by a party, witness or victim, or on the court's own motion, the court may find that remote court access should not be permitted because the following conditions exist:

- There is a reasonable likelihood that remote observation would "compromise the safety" of any person; the defendant's right to a fair trial; or the victim's rights under C.R.S. § 24-4.1-302.5(1)(a); **and**
- There is no "less restrictive alternative" that preserves the public interest while mitigating the identified risk.

C.R.S. § 13-1-132(3.5)(a)(IV).

HB 1182 defines "risks compromising the safety" as "risks to physical and emotional safety, intimidation or harassment" and "less restrictive alternate" as audio-only, restricting particular witnesses from observation or restricting only certain portions of the proceeding. C.R.S. §§ 13-1-132(3.5)(a)(IV)(B); (b).

If a municipal court must provide remote public access, they must also take "reasonable steps" to ensure neither audio or visual recordings of the proceedings, including screenshots or photography, nor audio or visual transmission of privileged, confidential communications occur without the court's explicit permission. C.R.S. §§ 13-1-132(3.5)(c)-(d). "Reasonable steps" must include an on-screen warning that any recordings are prohibited without a court order, and the court may provide additional verbal warnings if needed. C.R.S. § 13-1-132(3.5)(c). If the court believes an individual viewer has violated this rule, the court may prohibit them from remote participation. *Id.* The court must notify parties and attorneys of microphone locations and the ability to mute microphones, to ensure nothing privileged or confidential is transmitted inadvertently because of the remote observation. C.R.S. § 13-1-132(3.5)(d).

If a proceeding subject to sequestration is made available for remote public access, the court must take reasonable steps to ensure compliance with the sequestration order and the right to a fair trial. C.R.S. § 13-1-132(3.5)(e). Such steps may include frequently announcing the sequestration order; requiring remote observers to identify themselves to ensure none are potential witnesses; or terminating remote access if necessary to protect the parties' right to a fair trial or to ensure compliance with the sequestration order. *Id.*

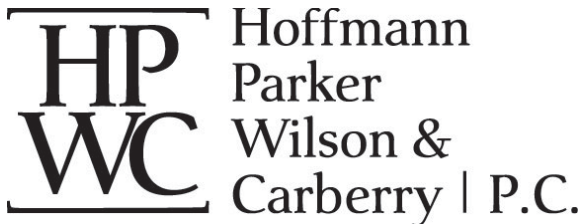
August 9, 2023
Page 3

Finally, if the court does not currently have the staff or technology to comply with HB 1182, but subsequently obtains these resources, the court must comply within 90 days of the change in staffing or technical capabilities. C.R.S. § 13-1-132(3.5)(f).

Conclusion

Under HB 1182, municipal courts must offer remote court access for criminal proceedings by September 1, 2023, unless a court order or lack of resources prevents the court from doing so. HB 1182 does not specify how a municipal court would make a showing that it does not have the resources to comply, but if the Town's Municipal Court would like to be exempt, please let us know so that we can work with the Municipal Court to establish the exemption.

As always, please let us know if you have any questions or need additional information.



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TOWN OF GREEN MOUNTAIN FALLS
MEMORANDUM

**TO: MAYOR AND BOARD OF TRUSTEES
BECKY FRANK, TOWN MANAGER**

**FROM: JEFFERSON H. PARKER, TOWN ATTORNEY JHP
KUNAL A. PARIKH, ESQ.**

DATE: AUGUST 10, 2023

RE: PROTECTING OPPORTUNITIES AND WORKERS' RIGHTS ACT

In the 2023 legislative session, the Colorado General Assembly passed Senate Bill 23-172 ("SB 172"), the Protecting Opportunities and Workers' Rights ("POWR") Act, which expands the Colorado Anti-Discrimination Act ("CADA") by transforming Colorado's employment discrimination legal framework, effective August 7, 2023. SB 172 redefines the standard for harassment claims, sets stringent requirements on nondisclosure provisions, expands the protections afforded to marital status as a protected category in the employment context, and includes new requirements on the retention of personnel records.

New Harassment Definition and Standard of Proof

Previously, CADA incorporated the definition of "harassment" under federal law, which required that for conduct to be considered unlawful harassment, it must be "severe or pervasive." C.R.S. § 24-34-400.2(2)(a). However, under the POWR Act, this severe or pervasive standard no longer applies in Colorado. C.R.S. § 24-34-400.2(2)(b). The POWR Act expands the definition of "harassment" to include any "unwelcome physical or verbal conduct or any written, pictorial, or visual communication directed at an individual or group of individuals because of that individual's or group's membership in, or perceived membership in, a protected class" that "is subjectively offensive to the individual alleging harassment" and "objectively offensive to a reasonable individual who is a member of the same protected class." C.R.S. § 24-34-402(1.3)(a).

This new definition excludes "petty slights, minor annoyances, and lack of good manners," unless that behavior "when taken individually or in combination and under the totality of the circumstances" meets the definition of harassment above. C.R.S. § 24-34-402(1.3)(c)(I). The POWR Act specifies that "the totality of the circumstances" includes the frequency, duration, and location of the conduct or communication; the number of individuals involved; and "the type or nature of the conduct or communication," and whether it is threatening, involves epithets or slurs, or reflects stereotypes. C.R.S. § 24-34-402(1.3)(c)(II)(A-I).

Conduct or communication constitutes actionable harassment if: (1) "submission to the conduct or communication is explicitly or implicitly made a term or condition of the individual's employment"; (2) "submission to, objection to, or rejection of the conduct or communication is used as a basis for employment decisions affecting the individual"; or (3) "the conduct or communication has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment." C.R.S. § 24-34-402(1.3)(a)(I-III).

To address these changes, the POWR Act requires the Colorado Civil Rights Division ("CCRD") to include "harassment" as a basis or description of discrimination on any charge form or charge intake mechanism. C.R.S. § 24-34-306(1)(a)(II).

Limitation on Affirmative Defenses

The POWR Act also limits the ability of employers to assert an affirmative defense to a harassment claim if an employee can prove harassment by a supervisor. An employer is prevented from asserting an affirmative defense unless the employer can establish that it has "a program that is reasonably designed to prevent harassment, deter future harassers, and protect employees from harassment." C.R.S. § 24-34-402(1.5)(a)(I). To fulfill this requirement, the employer must demonstrate its program meets each of the following requirements: (1) that it "takes prompt, reasonable action to investigate or address alleged discriminatory or unfair employment practices" and "when warranted, in response to complaints"; (2) that it has communicated the existence and details of the program... to both its supervisory and nonsupervisory employees; and (3) that the employee has unreasonably failed to take advantage of the employer's program." C.R.S. §§ 24-34-402(1.5)(a)(I)(A-B); 24-34-402(1.5)(a)(II-III).

Employers can establish and publicize a program to deter harassment and put a system in place to investigate harassment complaints in order to preserve their ability to assert an affirmative defense to a harassment claim. The POWR Act does not define what constitutes a "program," but we would recommend reviewing personnel policies to ensure the new definition of harassment is reflected in the policies and there are clear policies for reporting harassment. Once policies are updated, staff training on harassment and investigation procedures is further recommended.

Disability Discrimination

Previously, CADA provided that it was not a discriminatory practice for an employer to take an adverse employment action "if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job." C.R.S. § 24-34-402(1)(a). Now, the POWR Act has eliminated the requirement that the disability have "a significant impact on the job." C.R.S. § 24-34-402(1)(b)(II). This new standard provides that it is not a discriminatory practice for an employer to take an adverse employment action "if there is no reasonable accommodation that the employer can make with regard to the disability that would allow the individual to satisfy the essential functions of the job and the disability actually disqualifies the individual from the job." C.R.S. § 24-34-402(1)(a)(II). This new standard eliminates the Town of Green Mountain Falls' (the "Town") ability to assert that an employee's disability has a "significant impact" on the job as a rationale to take an adverse employment action against the employee. The Town can only refuse to hire, to discharge, or to promote or demote an employee with a disability who is otherwise qualified for the job if the employer cannot reasonably accommodate the employee's disability which would allow the employee to successfully satisfy their job requirements.

Marital Status as a Protected Category

Previously, marital status was protected under CADA in places of public accommodation, but such protections were limited in the employment context. C.R.S. § 24-34-402(1)(h)(I). The POWR Act adds "marital status" as a protected category in the employment context, meaning that employers cannot take any adverse action against an employee based on marital status. C.R.S. §§ 24-34-402(1)(a)(I); 24-34-402(1)(b)(I)(A); 24-34-402(1)(b)(I)(B); 24-34-402(1)(c); 24-34-402(1)(d); 24-34-402(1)(f)(I)(A); 24-34-402(1)(f)(II); 24-34-402(1)(f)(III). However, the POWR Act maintains that it is not unfair or discriminatory for an employer to discharge an employee or to refuse to hire or promote a person based on marital status under circumstances where: (1) one spouse directly or indirectly would exercise supervisory, appointment, or dismissal authority or disciplinary action over the other spouse; (2) one spouse would audit, verify, receive, or be entrusted with moneys received or handled by the other spouse; or (3) one spouse has access to the employer's confidential information, including payroll and personnel records. C.R.S. § 24-34-402(1)(h)(II)(A)-(C). CADA defines marital status to include "the relationship or a spousal status of an individual, including without limitation being single, cohabitating, engaged, widowed, married, in a civil union, or legally separated, or a relationship or a spousal status of an individual who has had or is in the process of having a marriage or civil union dissolved or declared invalid." C.R.S. § 24-34-301(14).

Limitations on Nondisclosure Agreements

The POWR Act adds a new section to CADA that places limitations on agreements between employers and employees or prospective employees that contain nondisclosure or

confidentiality provisions. Specifically, any agreement that limits an individual's ability to disclose an alleged discriminatory or unfair employment practice is considered void unless it:

- (1) Applies equally to both the employer and employee or prospective employee;
- (2) States that it does not prohibit the individual "from disclosing the underlying facts of any alleged discriminatory or unfair employment practice," including "the existence and terms of a settlement agreement," to the individual's "immediate family members, religious advisor, medical or mental health provider, mental or behavioral health therapeutic support group, legal counsel, financial advisor, or tax preparer";
- (3) States that it does not prohibit the individual from disclosing the underlying facts of any alleged discriminatory or unfair employment practice to any government agency, including the existence and terms of a settlement agreement, or in response to a subpoena "without first notifying the employer";
- (4) States that disclosure of the underlying facts of any alleged discriminatory or unfair employment practice...does not constitute disparagement of the employer or others involved;
- (5) States that "the employer may not seek to enforce the non-disparagement or nondisclosure provisions of the agreement or seek damages" if the employer has disparaged the individual in violation of the non-disparagement provision;
- (6) Includes a no liquidated damages provision that penalizes or punishes the employee for breach, which means that a liquidated damages provision must be "reasonable and proportionate in light of the anticipated actual economic loss" for a breach and is varied to account for the "nature or severity" of the anticipated breach; and
- (7) Contains an addendum, signed by all parties, attesting to the agreement's compliance with the act.

C.R.S. § 24-34-407(1)(a)-(f). If an employer does not follow these requirements, this could expose the employer to potential liability.

If an employee is presented with a non-compliant nondisclosure agreement, the employee may immediately sue the employer and recover penalties. C.R.S. § 24-34-407(2)(b). Each violation is subject to a penalty of \$5,000, plus actual damages, reasonable costs, and attorney fees, which may be reduced upon a showing of good faith by the employer. C.R.S. §§ 24-34-407(2)(a)-(b); 24-34-407(4). In addition, an employee can support their punitive damages claim with evidence that the employer offered other employees nondisclosure agreements "involving the conduct of the same individual or individuals who are alleged in the action to have engaged in the discriminatory or unfair employment practice." C.R.S. § 24-34-407(3).

Recordkeeping Requirements

The POWR Act requires an employer to maintain "any personnel or employment record" for a period of five years from the later of the date the employer created or received the employment record, the date the personnel action giving rise to the personnel record occurred, or the final disposition of a charge of discrimination or related action. C.R.S. § 24-34-408(1).

"Personnel or employment records" are broadly defined to include: (1) requests for accommodations; (2) employee complaints of discriminatory or unfair employment practices (whether oral or written); (3) application forms submitted by applicants for employment; (4) other records related to hiring, promotion, demotion, transfer, layoff, termination, rates of pay or other terms of compensation; (5) selection for training or apprenticeship; and (6) records related to employees selected for training. C.R.S. § 24-34-408(3).

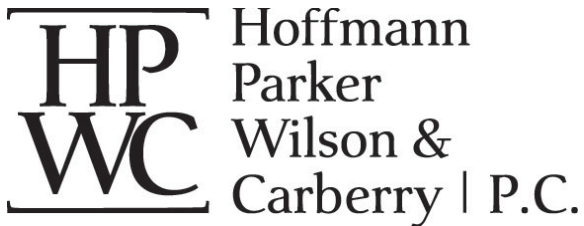
In addition, employers must maintain a "designated repository" of all written and oral complaints of discrimination, harassment, or unfair employment practices, including "the date of the complaint, the identity of the complaining party, if the complaint was not made anonymously, the identity of the alleged perpetrator, and the substance of the complaint." C.R.S. § 24-34-408(2)(a).

The POWR Act does not specify specific penalties if an employer fails to maintain this repository.

Conclusion

The POWR Act contains numerous provisions that increase liability risks for employers. Given the new definition of harassment, lower burden of proof, and mandated complaint repository, the Town should promptly begin taking steps to ensure compliance. This includes updating employment agreements with nondisclosure provisions and reviewing and reassessing the strength of harassment prevention policies, practices, reporting mechanisms, and training.

As always, please feel free to contact us if this memorandum raises any additional questions.



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TOWN OF GREEN MOUNTAIN FALLS
MEMORANDUM

**TO: MAYOR AND BOARD OF TRUSTEES
BECKY FRANK, TOWN MANAGER**

**FROM: JEFFERSON H. PARKER, TOWN ATTORNEY JHP
KUNAL A. PARIKH, ESQ.**

DATE: AUGUST 16, 2023

RE: SEARCH WARRANT PROCEDURES

This memorandum discusses Senate Bill 23-254 ("SB 254"), which modifies the requirements for search warrants executed by law enforcement officers. The Town of Green Mountain Falls must comply with these new rules effective immediately.

No-Knock Search Warrant Legislative Declaration

SB 254 amends C.R.S. § 16-3-305 to add the following declarations: (a) when law enforcement enters a dwelling, the safety and preservation of life of all occupants and law enforcement is paramount; (b) a no-knock entry into a dwelling can increase danger and confusion because occupants may not recognize law enforcement is making entry and may mistake the entry as entry by an unlawful intruder; (c) no-knock entries into dwellings have, in several instances across the country, included negative outcomes and the loss of life; (d) making no-knock entries to prevent the destruction of evidence, especially in drug cases, does not justify the risk to human life; (e) no-knock entries should be made only when doing so is necessary to protect human life and not when doing so would increase the risk to human life; and (f) the standard for warrantless no-knock entries should be substantially the same as the standard for no-knock warrants. C.R.S. § 16-3-305(1).

Further, SB 254 provides that a search warrant must be directed to any officer authorized by law to execute it in the county wherein the property is located. C.R.S. § 16-3-305(1.5)

Definition and Applicability of No-Knock Search Warrant

SB 254 amends the definition of a no-knock search warrant by adding that a no-knock search warrant means "a search warrant that does not require compliance with C.R.S. § 16-3-305(7)(d)." C.R.S. § 16-3-303(6) (emphasis added). Pursuant to C.R.S. § 16-3-305(7)(d),:

When a peace officer, having a warrant for the search of a dwelling, executes the search warrant, the officer shall: knock-and-announce the officer's presence at a volume loud enough for the officer to reasonably believe the occupants inside can hear, allow a reasonable amount of time before entering given the size of the dwelling for someone to get to the door, and delay entry if the officer has reason to believe that someone is approaching the dwelling's entrance with the intent of voluntarily allowing the officer to enter the dwelling...

Id.

SB 254 also adds a requirement that "a no-knock search warrant shall be issued only if the affidavit for such warrant: establishes that a no-knock entry is necessary because of a credible threat to the life of any person, including the peace officers executing the warrant." C.R.S. § 16-3-303(4)(a.5) (emphasis added).

Search Warrant Requirements

SB 254 applies regardless of a municipality's status as statutory or home rule. Under SB 254, a peace officer must:

- (a) Execute the warrant between the hours of 7:00 a.m. and 7:00 p.m. unless the judge, for good cause, expressly authorizes execution at another time;
- (b) Be readily identifiable as a law enforcement officer in uniform or wearing a visible law enforcement badge and clearly identify themselves as a law enforcement officer;
- (c) Wear and activate a body-worn camera as required by C.R.S. § 24-31-902(1)(a)(II)(A) when entering a premises for the purpose of enforcing the law; and
- (d) Knock-and-announce the officer's presence at a volume loud enough for the officer to reasonably believe the occupants inside can hear, allow a reasonable amount of time before entering given the size of the dwelling for someone to get to the door, and delay entry if the officer has reason to believe that someone is approaching the dwelling's entrance with the intent of voluntarily allowing the officer to enter the dwelling; except that this subsection does not apply if:
 - (I) A court authorizes a no-knock warrant pursuant to C.R.S. § 16-3-303; or

(II) The circumstances known to the officer at the time provide an objectively reasonable basis to believe that a no-knock entry or not waiting a reasonable amount of time is necessary because of an emergency threatening the life of or grave injury to a person, provided that the imminent danger is not created by law enforcement itself.

C.R.S. § 16-3-305(7).

Warrantless Search Requirements

SB 254 also addresses warrantless searches of dwellings. Specifically, when a peace officer makes a warrantless entry into a dwelling in which occupants are unaware law enforcement is present and making entry, the officer shall:

(a) Wear and activate a body-worn camera as required by C.R.S. § 24-31-902(1)(a)(II)(A) when entering a premises for the purpose of enforcing the law; and

(b) Knock-and-announce the officer's presence at a volume loud enough for the officer to reasonably believe the occupants inside can hear, allow a reasonable amount of time before entering given the size of the dwelling for someone to get to the door, and delay entry if the officer has reason to believe that someone is approaching the dwelling's entrance with the intent of voluntarily allowing the officer to enter the dwelling; except that this subsection does not apply if the circumstances known to the officer at the time provide an objectively reasonable basis to believe that a no-knock entry or not waiting a reasonable amount of time is necessary because:

(I) Of an emergency threatening the life of or grave injury to a person, provided that the imminent danger is not created by law enforcement itself; or

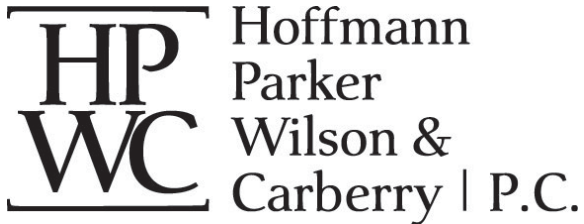
(II) The officer is engaged in the hot pursuit of a feeling suspect.

C.R.S. § 16-3-312(1). However, C.R.S. § 16-3-312(1) does not apply to a law enforcement officer working in an undercover capacity. C.R.S. § 16-3-312(2)

Conclusion

Effective immediately, SB 254 changes search warrant procedures by establishing new limitations and requirements for search warrants executed by law enforcement officers. This includes requiring no-knock search warrants to be issued only when there is a credible threat to the life of a person, adding additional requirements for law enforcement to follow when executing a search warrant, and adding similar requirements for when law enforcement conduct a warrantless search.

As always, please feel free to contact us if this memorandum raises any additional questions.



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TOWN OF GREEN MOUNTAIN FALLS
MEMORANDUM

**TO: PLANNING COMMISSION
BECKY FRANK, TOWN MANAGER**

**FROM: JEFFERSON H. PARKER, TOWN ATTORNEY ^{HP}
AUSTIN P. FLANAGAN, ESQ.**

DATE: AUGUST 31, 2023

RE: PREJUDGMENT OF LAND USE CODE APPLICATIONS

This memorandum applies the legal principle known as prejudgment to applications that the Planning Commission has the authority to decide under the recently adopted Land Use Code (the “LUC”). Specifically, this memorandum concludes that a Planning Commissioner is legally prevented from serving as a town planner because such a scenario would result in the impermissible prejudgment of applications.

The concept of prejudgment only applies to quasi-judicial actions. An important distinction between legislative action (*e.g.*, recommending approval of a LUC amendment) and quasi-judicial action (*e.g.*, approving a major site plan) is that the courts apply a more lenient standard in their review of legislative decisions. Generally, a court will not inquire into elected and appointed officials’ motives in making a legislative decision. On the other hand, courts have shown a willingness to inquire into motives when the action taken is quasi-judicial in nature. *See City of Colorado Springs v. District Court In and For El Paso County*, 519 P.2d 98 (Colo. 1973).

In quasi-judicial proceedings, the role of the Planning Commission is analogous to that of a judge who is required to hear facts and objectively apply pre-established standards such as the LUC. However, in the realm of land use decision-making, it is unlikely that Planning Commission members will be totally without opinions concerning the development of their community. Therefore, to avoid the appearance of prejudgment, the Planning Commission must allow all

testimony and evidence to be presented during a public hearing and not express any personal opinions about an application. Members should avoid making statements which indicate they have prejudged a matter (*e.g.*, informing opposing speakers that they are wasting their time in testifying). Moreover, personal opinions about a particular quasi-judicial matter should play no role in a member's decision. Rather, members must limit their decisions to a determination of how the facts presented at the public hearing meet the specific quasi-judicial criteria set forth in the LUC.

The Town Planner is responsible for reviewing applications, evaluating them, meeting with applicants, and providing the Town Planner's evaluation of applications to the Planning Commission for review during a duly noticed public hearing. The Town Planner, therefore, will have already received information, had communications with an applicant, and provided a detailed evaluation of an application outside of the public hearing. This is at odds with the duty of a Planning Commission member, which is to refrain from receiving information, having communications, and evaluating (*i.e.*, prejudging) an application outside of a duly noticed public hearing. Such an arrangement jeopardizes the due process required of public hearings not only because it risks a claim that the individual has prejudged the application, but also because the individual will have engaged in substantial communications outside of the public hearing (which is referred to as *ex-parte* communications, another concept that is highly discouraged and which can jeopardize any decision made by the Planning Commission). Therefore, a Planning Commissioner should not also serve as a town planner.

As always, please let us know if you have any questions.

From: John Bell <jbell5927@outlook.com>
Sent: Friday, September 1, 2023 1:04 PM
To: gmfdixon@gmail.com; Becky Frank; David Douglas
Cc: paul.l.yingling@gmail.com; kellygrn@comcast.net; Lisa Huizenga; Nicholas Donzello; Carolyn Bowers; Town Clerk
Subject: Resignation for FMAC

Todd, Becky and David,

I want to thank BOT, Staff, and FMAC for the opportunity to serve as a member of the committee. I am resigning my position.

The work all of you are doing to serve the community is extremely valuable. Best wishes to you all in your continued efforts to help raise awareness, reduce risk factors, and improve forest health.

Sincerely,
John Bell