Town Board Agenda
Regular Meeting
December 19, 2023
5:30 P.M.

MISSION STATEMENT

"The Town of Center, Colorado shall provide strong leadership, inspire community pride, maintain fiscal accountability and through its employees offer a high level of service to the residents, businesses, and visitors of the community."

"THIS AGENDA MAY BE AMENDED"

Financial Workshop – 5:30 p.m.
2024 BUDGET HEARING – 6:00 p.m. - Tentative
MEETING CALLED TO ORDER, ROLL CALL AND PLEDGE ALLEGIANCE

1. APPROVAL OF AGENDA
2. CITIZEN COMMENTS
3. CONSENT AGENDA
    - A. MINUTES
      11/14/23 & 11/28/23
    - B. COURT REPORT
    - C. POLICE REPORT
    - D. PUBLIC WORKS DEPT. REPORTS
        1. Utilities
        2. Water
        3. Streets and Parks
        4. Code Enforcement
4. RESOLUTIONS
    - A. 12192023 -Election Information
5. APPROVAL OF FINANCIALS
6. APPROVAL OF 2024 BUDGET - Tentative
7. NEW BUSINESS
    - A. Set Smart Technologies – Bankruptcy
    - B. Police – Swear in Officer
    - C. Liquor Renewal – Alta
    - D. AT&T Contract
    - E. Text my Gov. – Contract – Grant
    - F. Planning Commission- Recommendations
    - G. 2- year Board Position- Decision
8. OLD BUSINESS
    - A. Pathway Project –FERC
    - B. ED Fund
    - C. Thank you Letters – Proud Military Parents & Shop with a Biker
9. CALENDAR ITEMS –
10. ITEMS FOR NEXT MEETING
11. ADJOURNMENT

Posted on
December 15, 2023
Center Town Hall and Center Post office
This agenda may be amended

CENTER TOWN BOARD
REGULAR MEETING
NOVEMBER 14, 2023
6:00 P.M.

The meeting was called to order at 6:05 by Mayor Garcia.

ROLL CALL

Mayor Garcia	P
Mayor Pro-Tem Martinez	P
Trustee Beiriger	P
Trustee Gonzales	E
Trustee Gallegos	P
Trustee Barela	E
Trustee McClure	P

APPROVAL OF AGENDA –
A motion to approve the agenda was made by Trustee McClure, seconded by Trustee Beiriger. Roll Call –All in favor. Motion Carries.

CITIZEN COMMENTS
Mona Garcia – Ms. Garcia has two summonses for court. Ms. Garcia said that surcharge and court costs. Ms. Garcia said that Natalia said that the cost had been approved. Ms. Garcia said that when she came in that she was told four people had approved it. Rose told her that it would have to be brought to the Judge's attention. Brian said that the Judge uses her discretion.

Audrey Chavez – Ms. Chavez said that she is concerned about no one is here on Friday. There is no one here to put utilities here to change the utilities into their name. Police Department does not have enough officers to do 24 hour coverage. When Chief Torrez was employed he did do a 24 hr. coverage. There is a lot of room for improvement in the Police Department.

CONSENT AGENDA
Minutes – 10/10/23 & 10/24/23 – Discussion and Policy for Board Members. When it is in the minutes then it should be on the next agenda.
Court Report – Fines collected on the report.
Police Report – There are 25 active cases. Mayor Pro-Tem Martinez asked about handicapped tickets are being coded right. Cpl. Fresquez said that there is a grant from Saguache County to do Christmas Shopping with some Kids. Shopping with a Cop. Chief Fresquez will find out which children are in need.

A grant was received for the balance of the Body Cams. Eric Martinez will graduate on December 3rd. Mr. Martinez will be working in the school during the school year.

Public Works Dept. Reports – Jaime Hurtado

Utilities – Jaime keeps a close eye on the prices. Jaime monitors the gas prices daily. The prices keep going up. If the prices go up then the Town's cost also go up. May 2023 was the last time the Electric price was raised. Gas was raised in August 2023. There is a list of street lights that need to be purchased. Once the budget is approved they will be ordered and they will work on having more in stock. Mayor Pro-Tem Martinez asked about the Jetter truck is working and cleaning lines.

Water – Caselle is still dropping off meters and we are looking into it. The current software Sensus, they are looking into figuring why this is happening. It may be an upgrade of a few thousand dollars. The servers and the software they will need to be upgraded. Brian said that Kamstrup has a longer warranty. Trustee McClure asked if all the money was given to the contractor. Trustee McClure said we need something in writing about the Town not spending the money. Homeowners are going to start sending letters that they need to connect to the meters.

Streets and Parks – The Department will be installing cameras at the North 90 so that the pit can be opend uring the weekends. The Dept. will also be installing one at the Community Park to alleviate cars doing donuts and drinking.

Code Enforcement - Sergio will also be sending letters to homeowners, that their property is in violation of ordinances.

A motion to approve the Consent Agenda was made by Trustee Gallegos, seconded by Mayor Pro-Tem Martinez. Roll Call –All in favor.

PAYABLES

Trustee McClure asked about the Accountant and paying her mileage to come to work. Trustee McClure said that he would not like to pay Paula Martinez for her travel expenses. Mayor Garcia said that Trustee McClure was on the Board and knew how hard it was find an accountant and she doing a substantial job. A motion to approve the payables was made by Mayor Pro-Tem Martinez, seconded by Trustee Gallegos. Roll Call –Mayor Garcia, Mayor Pro-Tem Martinez, Trustee Beiriger and Trustee Gallegos –y, Trustee McClure –y with the exception of Paula Martinez. Motion Carries.

MANAGERS REPORT

Regional road Map team – There is available for Non-competitive Fund of $41,000 from the Federal Department.

RESOLUTION – 20231114

Concerning for loan from the Utility fund to the Water fund to be paid back within a year. It was extended for one year. Brian said that he would like extend until the Water fund can pay the loan back. Trustee McClure would like a clarification on the last sentence. Trustee McClure thinks that it was taken off another resolution. Brian will review the Resolution and clarify the wording.

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NEW BUSINESS

MEAN Contract Change – March 2025- When we went from XCEL to MEAN $45 per megawatt hour. This is up for renewal in 2025. MEAN would like to have talks with the Board on which way the Board would like to go SSM or SSJ. Trustee McClure asked if Jaime if he could do any usage predictions. Jaime said he would look into it.

Brothers Keepers Motor Cycle Club – Mayor Pro-Tem Martinez spoke for the Club. Shop with a biker, they have chosen 8 kids from Center. Mayor Pro-Tem Martinez is asking for some support to purchase gifts for the 8 kids from Center. The club has supported the Town with their Poker run. Mayor Pro-Tem Martinez would like a donation of sponsoring at least 2 kids. A motion to donate $300 to shop with a biker was made by Trustee McClure, seconded by Trustee Gallegos. Roll Call –All in favor. Motion Carries.

OLD BUSINESS

There was no old business

CALENDAR ITEMS

Planning Commission – 11/20/23 – 6:30 p.m.

ITEMS FOR NEXT MEETING

Fines Report -
Policy for Board Members -
Resolution 20231114 –
Covid Money –
Fund for the ED – GASB 45 – Review the Ordinance or a Petition to have it on the ballot.

ADJOURNMENT

A motion to adjourn the meeting was made by Trustee Gallegos, seconded by Mayor Pro-Tem Martinez. Roll Call- All in favor. Motion Carries. The meeting adjourned at 7:28 p.m.

Submitted by,

Rose Marie DeHerrera – CMC
Town Clerk

Anthony Garcia
Mayor

CENTER TOWN BOARD
REGULAR MEETING
NOVEMBER 28, 2023
5:30 P.M.

A financial workshop was held at 5:30 p.m.

The meeting was called to order at by Mayor Garcia at 6:36 p.m.

ROLL CALL

Mayor Garcia	P
Mayor Pro-Tem Martinez	P
Trustee Beiriger	E
Trustee Gonzales	E
Trustee Gallegos	P
Trustee Barela	P
Trustee McClure	P

APPROVAL OF AGENDA

A motion to approve the agenda was made by Mayor Pro Tem Martinez, seconded by Trustee Barela. Roll Call – All in favor. Motion Carries.

CITIZEN COMMENTS

There were no citizen comments.

FINANCIAL STATEMENTS

A motion to approve the October Financial statements was made by Mayor Pro tem Martinez, seconded by trustee Gallegos. Roll Call – All in favor. Motion Carries.

PAYABLES

A motion to approve the payables was made by Trustee McClure, seconded by Mayor Pro Tem Martinez. Roll Call – All in favor. Motion Carries.

RESOLUTIONS

Resolution 20231128 was read aloud by Town Manager Brian Lujan. Resolution 20231128- It will be renewed and looked at every subsequent year. A motion to approve Resolution 20231128 with the following addition Trustee McClure suggested that once the Water Fund has excess monies in the bank account they should start repaying the monies for water loan was made by Trustee McClure, seconded by Trustee Barela. Roll Call – All in favor. Motion Carries.

NEW BUSINESS

ED FUND DISCUSSION – Trustee McClure brought this forward from last meeting so they can review the Economic Development Fund. Trustee McClure would like Mike to review There are several items that should be included in the question, part of the funds was supposed to go into a special fund to keep the money separate. Trustee McClure would like to bring this up on the ballot election. Brian feels that it should be left in the General Fund to keep the balance from going into the negative. Trustee McClure would like to issue to be brought up for next meeting. Trustee McClure suggested to have someone reach out to the Municipal League to talk about putting this change on the ballot for April.
Would like more information on the election calendar and to decide and talk over the ED Fund and give time to those if they need to petition this onto the election ballot.

DONATION TO SHOP WITH A COP –

Chief Fresquez spoke about a donation for shop with a cop event. The Department received a grant from Saguache County and donations from other businesses. Chief Fresquez is asking for a donation of any amount. The kids are being chosen based off on the recommendation of teachers as well as the cops, that they feel deserve this opportunity. Chief Fresquez would like to make "shop with a cop" an annual thing for their Community. The Department is looking to spend roughly around $200 for each kid. Mayor Garcia brought up as well that if the money can also be given to their utilities or bills in any way. A motion to approve donate $500 to Shop with a Cop was made by Trustee McClure, seconded by Trustee Gallegos. Roll Call – All in favor. Motion Carries.

Trustee McClure brought up the Christmas Light decoration contest. The Police and Board Members will be the judges on the Christmas Lights.

OLD BUSINESS

COVID MONEY – Trustee McClure brought up for the amount given to the Town, there is no longer premium pay due to the fact we are no longer in a pandemic. Keith provided a list of what it could be spent on. The dead line to spend the money is now to 2026 but a list of how it will be spent is due in 2025.
It has been brought up a place for the senior citizens they should have a building for them to spend their time there for bingo night or a movie night or however else they would like to spend their time. Although we would need to find someone to keep up with it.

CALENDAR ITEMS

December 21- at Eduardo's for Christmas party; she needs a head count as well as a white elephant and gift exchange.
December 19 - Move next meeting from the 12th to the 19th.

ITEMS FOR NEXT MEETING

ED Fund questions
Planning commission bring up some recommendations on codes

ADJOURNMENT
A motion to adjourn the meeting was made by Mayor Pro Tem Martinez, seconded by Barela. Roll Call – All in favor. Motion Carries.

Submitted by,

Natalia Cendejas
Utility/Court Clerk

Anthony Garcia
Mayor

Case Number	Sequence Number	Date	Code	Description	Ordinance Type
23-176	200	11/02/2023	1531	ORDINANCE VIOLATION	Local
23-184	200	11/01/2023	11019	SPEED	State
23-185	200	11/02/2023	373	RIGHT OF WAY	State
23-187	200	11/02/2023	956	OTHER	State
	300	11/02/2023	373	RIGHT OF WAY	State
23-188	200	11/03/2023	307		Local
23-189	200	11/03/2023	373	RIGHT OF WAY	State
23-190	200	11/03/2023	373	RIGHT OF WAY	State
23-191	300	11/03/2023	236	EQUIPMENT	State
	400	11/03/2023	452	OBSTRUCTED VISION	State
23-192	200	11/06/2023	373	RIGHT OF WAY	State
23-193	200	11/06/2023	373	RIGHT OF WAY	State
23-194	200	11/06/2023	11019	SPEED	State
23-195	200	11/06/2023	11019	SPEED	State
23-196	200	11/07/2023	1531	ORDINANCE VIOLATION	Local
23-197	200	11/20/2023	373	RIGHT OF WAY	State
23-198	200	11/20/2023	110119	SPEED	State
23-199	200	11/20/2023	11019	SPEED	State
23-200	200	11/20/2023	11019	SPEED	State
23-201	200	11/20/2023	362	PARKING	State
23-202	200	11/20/2023	436	SIGNALING	State
	300	11/20/2023	373	RIGHT OF WAY	State
23-203	200	11/20/2023	291(4)	ORDINANCE VIOLATION	Local
23-204	200	11/20/2023	619	LIGHTS/REFLECTORS	State
23-205	200	11/20/2023	032	REGISTRATION	State
	300	11/20/2023	615		State
23-206	200	11/20/2023	373	RIGHT OF WAY	State
23-207	200	11/20/2023	1101TF	SPEED	State
23-208	200	11/20/2023	11019	SPEED	State
23-209	200	11/21/2023	110119	SPEED	State
23-210	200	11/21/2023	032	REGISTRATION	State
	300	11/21/2023	373	RIGHT OF WAY	State
23-211	200	11/27/2023	1531	ORDINANCE VIOLATION	Local
23-212	200	11/29/2023	239		Other

Report Criteria:

Include convictions

Include dispositions for minors

Date	Case Number	Name	Description	Total Amount
11/01/2023	23-055	TORRES, LEROY N	FINE - LITTERING	85.00
11/01/2023	23-091	FRANKLIN, LLOYD D	PLEA BY MAIL - IMPROPER EXERCISING OF MOBILITY HANDICAPPED PRIVILEGES	175.00
11/01/2023	23-092	BARRON, JENNIFER A	FINE - IMPROPER EXERCISING OF MOBILITY HANDICAPPED PRIVILEGES	175.00
11/01/2023	23-135	RODRIGUEZ, DIEGO I	PLEA BY MAIL - CARELESS DRIVING	166.00
11/01/2023	23-136	MAESTAS, ELIAS A	FINE - CRIMINAL MISCHIEF	529.00
11/01/2023	23-137	RUBIO-BACA, JESUS O	FINE - CRIMINAL MISCHIEF	529.00
11/01/2023	23-140	REGESTER, BRAXTON	FINE - SPEEDING 1-4 MPH OVER LIMIT	160.00
11/01/2023	23-142	AGUILAR, SOCORRO	PLEA BY MAIL - SPEEDING 1-4 MPH OVER LIMIT	93.00
11/01/2023	23-149	MARTINEZ, MICHAEL M	PLEA BY MAIL - SPEEDING 5-9 MPH OVER LIMIT	206.00
11/01/2023	23-150	WYLAND-WHITNER, SHELLY	PLEA BY MAIL - SPEEDING 5-9 MPH OVER LIMIT	126.00
11/01/2023	23-153	MENDOZA, BRIAN	PLEA BY MAIL - DROVE VEHICLE WITHOUT VALID DRIVER LICENSE	71.00
11/01/2023	23-158	SCHNEIDER, DAVID	PLEA BY MAIL - DRIVER FAILED TO YIELD RIGHT OF WAY AT STOP SIGN	106.00
11/01/2023	23-161	BADACHI, CRISTIAN Y	PLEA BY MAIL - PERMITTED UNAUTHORIZED MINOR TO DRIVE VEHICLE	71.00
11/01/2023	23-172	SOTO-RENTERIA, ANGEL	PLEA BY MAIL - IMPROPER EXERCISING OF MOBILITY HANDICAPPED PRIVILEGES	208.00
11/08/2023	23-155	BEIRIGER, KYLE	FINE - SPEEDING 5-9 MPH OVER LIMIT	126.00
11/14/2023	23-165	VILLASENOR, CARMEN	FINE - DROVE VEHICLE WITHOUT VALID DRIVER LICENSE	71.00
11/14/2023	23-165	VILLASENOR, CARMEN	FINE - CHILD RESTRAINT SYSTEMS	82.00
11/15/2023	23-151	TREJO-CHAPARRO, JUAN CARLOS	FINE - DRIVER FAILED TO YIELD RIGHT OF WAY AT STOP SIGN	175.00
11/16/2023	23-122	SAMORA, JOSETTE	FINE - FAILED TO PRESENT EVIDENCE OF INSURANCE	600.00
11/16/2023	23-129	ESCALON GENESIS A	FINE - SPEEDING 10-19 MPH OVER LIMIT	255.00
11/16/2023	23-147	SANCHEZ, RANDOLPH	FINE - TRESPASSING	130.00
11/16/2023	23-154	PAVLOVSKY, TYLEN J	FINE - SPEEDING 5-9 MPH OVER LIMIT	120.00
11/16/2023	23-157	ALMEIDA, EVA	FINE - DRIVER FAILED TO YIELD RIGHT OF WAY AT STOP SIGN	165.00
11/16/2023	23-159	TRUJILLO, STEPHANIE M	FINE - FOLLOWING TOO CLOSELY	220.00
11/16/2023	23-167	SANCHEZ, BENISHA M	FINE - IMPROPER EXERCISING OF MOBILITY HANDICAPPED PRIVILEGES	125.00
11/21/2023	23-148	INNESS, CLINTON R	FINE - SPEEDING 5-9 MPH OVER LIMIT	206.00
11/21/2023	23-163	CARRILLO, EDER	FINE - DROVE VEHICLE WITHOUT VALID DRIVER LICENSE	71.00
11/21/2023	23-169	HUSSEY, JOHN J	FINE - SPEEDING 5-9 MPH OVER LIMIT	206.00
11/21/2023	23-178	FORD, JAMES		119.00
11/21/2023	23-179	GURROLA, ADRIAN	FINE - DROVE VEHICLE WITHOUT VALID DRIVER LICENSE	71.00
11/21/2023	23-180	MOLINA-MADRIGAL, ROSA	FINE - CHILD RESTRAINT SYSTEMS	90.00
11/21/2023	23-181	PEREZ, NEYMAR	FINE - DROVE VEHICLE WITHOUT VALID DRIVER LICENSE	46.00
11/21/2023	23-181	PEREZ, NEYMAR	FINE - GLASS IN VEHICLE DID NOT PERMIT NORMAL VISION	166.00
11/21/2023	23-182	PEREZ-MARTINEZ, ONESIMO	FINE - PERMITTED UNAUTHORIZED MINOR TO DRIVE VEHICLE	96.00
11/21/2023	23-185	LEON-VILLAGOMEZ, JANET	FINE - DRIVER FAILED TO YIELD RIGHT OF WAY AT STOP SIGN	106.00
11/21/2023	23-192	MARTINEZ DE FERRER, MARIA E	FINE - DRIVER FAILED TO YIELD RIGHT OF WAY AT STOP SIGN	120.00

Start Time	End Time	Description	Schedule Type
12:00 AM	12:30 AM	Case Number: 23-067 -- DURAN, DAMIYAN	Notice to Show Cause
		Case number: 23-067	
		Name: DURAN, DAMIYAN	
		All offenses: FAILED TO PRESENT EVIDENCE OF INSURANCE, CHILD RESTRAINT SYSTEMS, SAFETY BELT REQUIRED	
		Officer Name: RUYBAL, JOSEPH	
		Violation date: 07/25/2023	
12:00 AM	12:30 AM	Case Number: 23-075 -- BARBARA CHAPARRO	Notice to Show Cause
		Case number: 23-075	
		Name: BARBARA CHAPARRO	
		All offenses: NUISANCE VIOLATION AND DANGEROUS BUILDING	
		Officer Name: ADOLPH, KENDRA	
		Violation date: 07/28/2023	
04:00 PM	04:10 PM	Case Number: 23-146 -- RAMIREZ, DIEGO I	ARRAIGNMENT
		Case number: 23-146	
		Name: RAMIREZ, DIEGO I	
		All offenses: CARELESS DRIVING	
		Officer Name: RUYBAL, JOSEPH	
		Violation date: 09/21/2023	
04:00 PM	04:10 PM	Case Number: 23-151 -- TREJO-CHAPARRO, JUAN CARLOS	ARRAIGNMENT
		Case number: 23-151	
		Name: TREJO-CHAPARRO, JUAN CARLOS	
		All offenses: DRIVER FAILED TO YIELD RIGHT OF WAY AT STOP SIGN	
		Officer Name: RUYBAL, JOSEPH	
		Violation date: 09/26/2023	
04:00 PM	04:10 PM	Case Number: 23-157 -- ALMEIDA, EVA	ARRAIGNMENT
		Case number: 23-157	
		Name: ALMEIDA, EVA	
		All offenses: DRIVER FAILED TO YIELD RIGHT OF WAY AT STOP SIGN	
		Officer Name: ADAM FRESQUEZ	
		Violation date: 09/28/2023	
04:00 PM	04:10 PM	Case Number: 23-160 -- VIGIL-CANTERO, PATRICIA	ARRAIGNMENT
		Case number: 23-160	
		Name: VIGIL-CANTERO, PATRICIA	
		All offenses: DRIVER FAILED TO YIELD RIGHT OF WAY AT STOP SIGN	
		Officer Name: RUYBAL, JOSEPH	
		Violation date: 10/02/2023	
04:00 PM	04:10 PM	Case Number: 23-163 -- CARRILLO, EDER	ARRAIGNMENT
		Case number: 23-163	
		Name: CARRILLO, EDER	
		All offenses: DROVE VEHICLE WITHOUT VALID DRIVER LICENSE	
		Officer Name: BARRON, ROBINSON	
		Violation date: 10/10/2023	
04:00 PM	04:10 PM	Case Number: 23-164 -- ESTRADA-BELMAN, JOSE MANUEL	ARRAIGNMENT
		Case number: 23-164	
		Name: ESTRADA-BELMAN, JOSE MANUEL	
		All offenses: IMPROPER EXERCISING OF MOBILITY HANDICAPPED PRIVILEGES	
		Officer Name: P. AGUILERA	
		Violation date: 10/11/2023	
04:00 PM	04:10 PM	Case Number: 23-166 -- MCCURRY-GARCIA, ASHLEY	ARRAIGNMENT
		Case number: 23-166	
		Name: MCCURRY-GARCIA, ASHLEY	

		Caption	Data	
		All offenses:	SPEEDING 5-9 MPH OVER LIMIT	
		Officer Name:	BARRON, ROBINSON	
		Violation date:	10/12/2023	
04:00 PM	04:10 PM	Case Number: 23-167 -- SANCHEZ, BENISHA M		ARRAIGNMENT
		Case number:	23-167	
		Name:	SANCHEZ, BENISHA M	
		All offenses:	IMPROPER EXERCISING OF MOBILITY HANDICAPPED PRIVILEGES	
		Officer Name:	P. AGUILERA	
		Violation date:	10/16/2023	
04:00 PM	04:30 PM	Case Number: 23-138 -- SANCHEZ, BRANDON		NOTICE TO APPEAR
		Case number:	23-138	
		Name:	SANCHEZ, BRANDON	
		All offenses:	IMPROPER EXERCISING OF MOBILITY HANDICAPPED PRIVILEGES	
		Officer Name:	BARRON, ROBINSON	
		Violation date:	09/18/2023	
05:00 PM	05:30 PM	Case Number: 23-111 -- AMAYA-PULINDO, ISRAEL		Notice to Show Cause
		Case number:	23-111	
		Name:	AMAYA-PULINDO, ISRAEL	
		All offenses:	NO INSURANCE IN POSSESSION	
		Officer Name:	ADOLPH, KENDRA	
		Violation date:	08/21/2023	

Event Search Results

Start Date Reported: 11/1/2023 12:00:00 AM **End Date Reported:** 11/30/2023 11:59:59 PM

Event Number	Classification (most severe)	Address of occurrence	Date Reported	Dispatch Dispo
230326	THEFT - Shoplifting	307 S WORTH ST	11/1/2023	RPT
230327	DUI - Alcohol	HIGHWAY 112 AND WILLS	11/4/2023	RPT
230328	ASSAULT - Simple Assault	504 S SISNEROS ST	11/4/2023	RPT
230329	ANIMAL PROBLEM - Animal Ordinance Violation	500 S BROADWAY ST	11/5/2023	RPT
230330	MISSING PERSON - Missing Person	61 ARCADIA CT	11/6/2023	RPT
230331	MISCELLANEOUS - Miscellaneous Incidents	58 CENTRAL AVE	11/9/2023	RPT
230332	TRESPASSING - Trespassing, Private Property	751 MUSSMAN LN	11/9/2023	RPT
230333	CONTROLLED SUBSTANCE - Marijuana, Possession	798 S WORTH ST	11/9/2023	RPT
230334	THEFT - Larceny, from Vehicle	294 S WORTH ST	11/11/2023	RPT
230335	WARRANT - Out of County-Misdemeanor	58 CENTRAL AVE	11/12/2023	RPT
230336	PUBLIC PEACE - Disorderly Conduct	564 E 5TH ST	11/12/2023	RPT
230337	SEXUAL ASSAULT - Rape with Weapon	294 S WORTH ST	11/20/2023	RPT
230338	WARRANT - Other Warrant	294 S WORTH ST	11/21/2023	RPT
230339	PROPERTY CRIMES - Property Crimes	400 WASHINGTON ST	11/22/2023	RPT
230340	PERSON CRIMES - Crimes Against Persons	644 S WILLS ST	11/22/2023	RPT
230341	-	Garcia	11/23/2023	RPT
230342	-	North of County Road B and 49	11/23/2023	RPT
230343	PROPERTY CRIMES - Property Crimes	57 CENTRAL AVE	11/24/2023	RPT
230344	ASSAULT - Simple Assault	612 S MILES ST	11/24/2023	RPT
230345	WARRANT - Out of County-Misdemeanor	111 HIGHWAY 112	11/25/2023	RPT
230346	AGENCY ASSIST - Assist Other Agency	HWY 112 / MM 17	11/25/2023	RPT
230347	AGENCY ASSIST - Assist Other Agency	10 N & 5E	11/29/2023	RPT
230348	TRESPASSING - Trespassing, Private Property	166 S WILLS ST	11/29/2023	RPT
230349	PROPERTY CRIMES - Property Crimes	481 S WORTH ST	11/30/2023	RPT

Citation Search Results

Reported date start: 11/1/2023 12:00:00 AM **Reported date end:** 11/30/2023 11:59:59 PM

Citation Number	Date Reported	Violation	Location	Cited Person	Agency	Cited By
17737	11/2/2023				CENTER POLICE DEPARTMENT	FRESQUEZ, AARON
00085	11/2/2023	42-4-703(3) - (Disregarded/Failed to Stop as Required at) Stop Sign (TRAFFIC VIOL-STATUTE)		MARTINEZ DE FERRER, MARIA ESTELLA	CENTER POLICE DEPARTMENT	FRESQUEZ, AARON
17868	11/2/2023	42-4-604 - Failed to Stop for Traffic Control Signal at Place Required (TRAFFIC VIOL-STATUTE)		GONZALES , ROBERT	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17867	11/2/2023	42-3-114 - Displayed Expired Number Plates (TRAFFIC VIOL-STATUTE)		MONDRAGON, SAMANTHA LYNN	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17866	11/2/2023	ORD 307 (24-68) - Shoplifting (CRIMINAL VIOL)		VIALPONDO, JORDAN	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17869	11/2/2023	42-2-101(1) - Drove without Valid Drivers License (TRAFFIC VIOL-STATUTE)		MALDONADO, JORDAN	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17871	11/3/2023	42-4-1409(1) - Owner Operated an Uninsured Motor Vehicle on a Public Roadway (TRAFFIC VIOL-STATUTE)		BOLANOS, RAFAEL O	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17870	11/3/2023	42-4-1409(1) - Owner Operated an Uninsured Motor Vehicle on a Public Roadway (TRAFFIC VIOL-STATUTE)		RAMOS, DAVID	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17872	11/3/2023	42-4-1409(1) - Owner Operated an Uninsured Motor Vehicle on a Public Roadway (TRAFFIC VIOL-STATUTE)		DOMINGUEZ RIOS, JOAQUIN	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17885	11/10/2023	18-13-122(3)(b) - Illegal (Possession/Consumption) of Marijuana by an Underage Person (TRAFFIC VIOL-		WOODSON, MACHAELA	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17887	11/10/2023	42-4-1409(2) - Operated an Uninsured Motor Vehicle on a Public Roadway (TRAFFIC VIOL-STATUTE)		VALADEZ, CARLOS DAMIAN	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17886	11/10/2023	42-2-101(1) - Drove without Valid Drivers License (TRAFFIC VIOL-STATUTE)		RODRIGUEZ, DIEGO I	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17889	11/10/2023	42-4-703(3) - (Disregarded/Failed to Stop as Required at) Stop Sign (TRAFFIC VIOL-STATUTE)		SILVA, SHAINNE	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17891	11/14/2023	42-4-1409(1) - Owner Operated an Uninsured Motor Vehicle on a Public Roadway (TRAFFIC VIOL-STATUTE)		CHAVEZ, MABEL	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17890	11/14/2023	42-4-1409(1) - Owner Operated an Uninsured Motor Vehicle on a Public Roadway (TRAFFIC VIOL-STATUTE)		GRANT, KOEHN PAUL	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17763	11/14/2023	42-4-1409(2) - Operated an Uninsured Motor Vehicle on a Public Roadway (TRAFFIC VIOL-STATUTE)		PEREA, MITCHELL A	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17762	11/15/2023	42-4-1208 - Handicap Parking (TRAFFIC VIOL-STATUTE)		KAISER, TIMOTHY STEVEN	CENTER POLICE DEPARTMENT	AGUILERA, PABLO

17910	11/15/2023	42-4-608(1) - Failed to Use Turn Signal (TRAFFIC VIOL-STATUTE)		PARSONS, ERIC A	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17912	11/16/2023	42-4-206(1) - Vehicle Not Equipped With Tail Lamps as Required (TRAFFIC VIOL-STATUTE)		LOEWEN, FRANS T	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17911	11/16/2023	42-4-1409(2) - Operated an Uninsured Motor Vehicle on a Public Roadway (TRAFFIC VIOL-STATUTE)		SUAZO, CRUZITO J	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17913	11/17/2023	42-3-121(1)(a) - Failed to Display Valid Registration (TRAFFIC VIOL-STATUTE)		MONTOYA, LANELLE	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17914	11/17/2023	42-4-703(3) - (Disregarded/Failed to Stop as Required at) Stop Sign (TRAFFIC VIOL-STATUTE)		HARRIS, JENNIFER	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17915	11/17/2023	42-4-703(3) - (Disregarded/Failed to Stop as Required at) Stop Sign (TRAFFIC VIOL-STATUTE)		GARCIA, ALANNA L	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17916	11/20/2023	42-4-1101(1) - Speeding 10-19 MPH Over the Limit (TRAFFIC VIOL-STATUTE)		THIEME, NEAL DONALD	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17917	11/20/2023	42-4-1409(2) - Operated an Uninsured Motor Vehicle on a Public Roadway (TRAFFIC VIOL-STATUTE)		MARTINEZ, KAYLEEANN MARIA	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17918	11/20/2023	42-3-121(1)(a) - Failed to Display Valid Registration (TRAFFIC VIOL-STATUTE)		GARDEA, SUSAN	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17919	11/21/2023	42-3-114 - Displayed Expired Number Plates (TRAFFIC VIOL-STATUTE)		SANCHEZ, BENISHA	CENTER POLICE DEPARTMENT	AGUILERA, PABLO
17920	11/22/2023	18-9-206 - Unauthorized Release Of An Animal (OTHER)		GARCIA, VANJI	CENTER POLICE DEPARTMENT	AGUILERA, PABLO

Utility Reports November-23

Gas and Electrical System

Gas

Virtual Audit with PUC

Worked on Audit, Operators manual, Operators Qualifications and Public Awareness

Gas service on 3rd St Villagomez

Ordered and picked up ¾" gas pipe in Henderson

Checked for a possible gas leak at 512 Miles St DeHerrera's

Re-gooped gas service on 1st St Prieto's

Electrical

Replaced a 40 K fuse at west Center Transformer and reset 2 reclosures at south substation

Cut down overhead services on Washington Way Flaco's

Checked Street lights

Straightened mast on 2nd St Melia's

Water

Looked at Municipal building/office's for curb boxes and into both places to see what's needed to install meters/backflows

Looked for Pit and install/program meter on 6th St Franco's

Turned off service on 6th St, between Hurt and Warden Aguilar's

Sanitation

Miscellaneous

Locates and service orders

Read Meters

Deliver Delinquent Notices (80)

Disconnect and Reconnect of delinquent customers (6)

Team Meeting

Chlorine barrels at both wells

Mount surveillance camera at Park

Took down camera at Park

Installed plug and lights on work trailer

Cleaned shop/trucks

Looked at mini excavator

De-limbed and blocked tree on 2nd St Lopez

Helped S&P put lights on tree at Casa Blanca Park

Apprenticeship: Orientation Meeting, Zooms and Trainings

WATER AND SANITATION DEPARTMENT
NOVEMBER 2023 REPORT
12/6/2023

WATER OVERVIEW

1. Drinking Water Monitoring Schedule

We are continuing this year's monitoring schedule and results are still meeting requirements. All we have left for required sampling is the monthly Bacteria samples which continue to be negative (absent of bacteria).

2. Chlorine Residual

The residual chlorine continues to be consistent throughout the distribution system with some variation at entry point. We changed the Cl2 barrel at the East Well.

3. Water Quality

We conducted water quality assurance calls to customers as directed and we did water turn on and offs as needed. We have had a few calls for complaints on high chlorine and random discoloration. We have addressed these calls and issues immediately as we take water quality very seriously.

4. Projects

We have got several back flow testing reports in from commercial customers that had their back flows tested but failed to communicate with the Town and get us a copy of the report. A comprehensive list of customers has been created and updated on who needs back flow devices installed and who needs them tested. We are still working on getting all of the commercial water meters to read automatically. We have been in communication with Senses for help on the commercial meters to get them to intergrade with the communication system we have, Jaime has a meeting set up with the tech support. We are currently unable to get ahold of SetFlow tech support to get the residential meters working properly We are pushing to get a few more specific backflow devices tested to get them to meet the deadline so we don't have to turn the water off.

5. Water Tank

We have completed the Water Tank inspection for the month.

6. Other Tasks

Backflow compliance and commercial water meters continue to be ongoing projects. We have met the compliance ratio for the backflows. To clear on of the violations.

SANITATION OVERVIEW

1. Process Control Monitoring

We continue to run daily process control tests. There's nothing to report as all the numbers have been good.

2. Lift Station Checks

Daily lift station checks have been completed. We have had a few issue with floats going bad or grease building up. Grease continues to be a problem that we have been addressing. As a preventative measure we are cleaning the floats off on a monthly basis at a minimum. We are creating an informational pamphlet on what not to flush including grease. We pulled pump 2 out of the influent lift station as it was in alarm. We found a piece of 2x4 wedged in the impeller. Pump 2 is operational again now that we cleared the obstruction and set the pump back in.

3. Sewer Obstructions

We have had only a few calls this last month on sewer issues and backups. We continue to address the calls as the come up.

4. Jetter Truck

The County Commissioners approved the additional funding for the vactor truck. Now we are just waiting for the truck to be built, we are hoping the vactor will be here by the end of next summer, because of the 12 month lead time.

5. Sampling and DMR's

All sampling and lab work continue to be completed with no issues. All of our labs and DMRs have been compliant.

6. Plant Operations

We are working nonstop on the up keep and preventative maintenance for the plant. We are working with technicians and representatives on the calibrations for our effluent meter as well as communications errors with a pump. The service technician for the pump communication failure came out and determined that the pump head is still good but the compact logic has gone bad. They are shipping a new one to us and it is under warranty. We have been in the process of starting up the second train in the wastewater treatment plant.

7. Other Tasks

We continue to work with the Board to update policies. The construction for our office should start soon. We have been spending a lot of time on reworking the policies and gather data especially for the commercial "BOD" customers. We are working with CRWA to finally get the apprenticeship program going again.

NOVEMBER 2023 STREETS AND PARKS

1. SWEEPED STREETS PICK UP GLASS ON STREETS
2. CHECKED AND DUMPED TRASH CANS PARKS, DOWNTOWN
3. CUT AND TRIMED TREES IN COMMUNITY PARK
4. BURNED WEEDS ALONG DITCHES ON 1ST STREET WASHINGTON ST. PICKED UP TRASH
5. PUT UP CHRISTMAS LIGHTS CASABIANCA PARK
6. TOOK DOWN CANIPES CASABIANCA PARK
7. WORKED ON STREET SIGNS
8. WORKED ON FENCE CHAMISO PARK
9. CUT TREES IN ALLY WAYS
10. ANIMAL CONTROL DOGS. SCHOOL YARD - STREETS
11. WORKED ON SNOW TRUCKS.
12. CLEANED AND ORGANIZED TOWN SHOP.
13. CUT DOWN TREES AND CLEANED UP ON NORTH 90 PROPERTY
14. DUG OUT NEW FIRE PIT.
15. ON GOING PROJECTS CONTINUE ON TREES NORTH 90 TRIMING TREES INSIDE COMMUNITY PARK SNOW PLOWING, STREET SIGNS,

Code enforcement

Sergio Valadez

December 2023

- **Have been checking on properties needing clean up, and addressing the situation with property owners,**
- **Helping people understand the ordinance they fall into and explaining why it is important to have each property cleaned.**
- **Took a ride around the Town of Center with Jaime Hurtado checking on properties that where in very bad shape, either being abandoned or just left without the care or maintenance of property owner.**
- **Jaime Hurtado has sent out 39 certified letters so far for those properties that need immediately attention.**
- **Checked on the two gazebos that are getting constructed at the parks.**
- **Talked to Benchi and Audrey property owner on trailers parks at 120 west 1st and at Garcia St.**
- **Contacted each person at trailers in trailer park having to clean and pick up any junk, garbage, rubbish or vehicles that are not plated or tagged up to date.**
- **Margaret Tafoya has cleaned her property over at Garcia St, and person is no longer living in camper.**
- **Eddy Tafoya has been given a letter as well in person about his property clean up allowed 30 days as well on Garcia St.**
- **Many people who have been receiving a letter through mail have been contacting both Jaime and myself for questions on regards on what they have to clean and making sure they do comply.**
- **Spoke with Davis plumbing, explained to him about his letter and on how or what he needed to get cleaned and organized. Even though he does have a commercial side he has to put up a fence to cover water heaters, materials and equipment he has thrown out there in the alley and also pick up and clean house on 2nd St.**
- **Tony Garcia contacted me to get more information on the letter that was sent out to him as well I explained to him about having his alley with tires, and trash.**

RESOLUTION NO. 12192024

A RESOLUTION OF THE TOWN OF CENTER, COLORADO, CALLING THE REGULAR ELECTION TO BE HELD ON APRIL 2, 2024

WHEREAS, the Town's regular elections are held on the first Tuesday of April in even-numbered years, with April 2, 2024 being the next election date; and

WHEREAS, the Board of Trustees wishes to document its desire regarding conduct of the election;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF CENTER, COLORADO, THAT:

1. The Town's Regular Election will be conducted on April 2, 2024 pursuant to CRS 31-10-101 et sec, also known as the Municipal Election Code.
2. This election will be conducted as a mail ballot election.
3. The Town Clerk is designated as the Designated Election Official.
4. Pursuant to CRS 31-10-401, the Board of Trustees delegates authority to the Town Clerk to recruit and secure Election Judges in a number that they deem appropriate.

ADOPTED this _____ day of December 2023.

TOWN OF CENTER, COLORADO

_____
Anthony Garcia, Mayor

(SEAL)

ATTEST:

_____
Town Clerk

Symphony Wireless

44 S Broadway • White Plains, NY • 10601

Josiah Cobbs
Suite 1202 - 44 South Broadway
White Plains, NY 10601

November 21st, 2023

Town of Center
Center, CO

CELL TOWER ACQUISITION (LOCATION 698 W 2nd St, Center, CO)

For the Board of Center,

Offer variations below:

Term:	Perpetual
Buy-out:	100% Cash Flow + easement for wireless communications
Price:	$ 108,000.00 USD

Easement:
Our easement is for the sole purpose of wireless communications, and it only lasts as long as the site is active. If the site ever decommissions, we have a period of 5 years to find a new tenant, and if we fail, our easement will then revert to the town.

Revenue Share:

The current size of the compound area held under the Crown Castle lease sits at 3,000 SF. Due to the large area held by Crown Castle, there is no opportunity for revenue share. If our firm adds another carrier, under the same circumstance, Crown Castle will receive that revenue and neither of our parties will be impacted by the increased revenue.

Sincerely,

Josiah Cobbs
44 South Broadway, Suite 1202
White Plains, NY 10601
Tel: (914) 435-7817
www.symphonywireless.com
jcobbs@symphonywireless.com

Site: Center
Market: CO-07

Site Lease with Option Agreement

THIS SITE LEASE WITH OPTION (this "Lease") is effective this 1st day of December 2004 between **The Town of Center** ("Landlord") and **WWC Holding Co., Inc.**, a Delaware corporation ("Tenant").

1. Option to Lease

(a) In consideration of the payment of Five Hundred Dollars ($500.00) (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease the use of a portion of the real property described in attached Exhibit A (the "Property"), on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of twelve (12) months, commencing on the date hereof and ending November 30 2005 (the "Option Period"). The Option Period may be extended by Tenant for an additional twelve (12) months upon written notice to Landlord and payment of the sum of five Hundred Dollars ($500.00) ("Additional Option Fee") at any time prior to the end of the Option Period.

(b) During the Option Period and any extension thereof, and during the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises, as defined below, from all applicable government and/or regulatory entities (the without limitation zoning and land use authorities, and the Federal Communication Commission ("FCC") (the "Governmental Approvals"), including without limitation, appointing Tenant as agent for all land use and zoning permit applications. Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, conditional-use permits, perform surveys, soils tests, and other engineering procedures or environmental investigations on, under and over the Property, necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Government Approvals. During the Option Period and any extension, Tenant may exercise the Option by notifying Landlord in writing, at Landlord's address in accordance with Section 12 herein.

c) If Tenant exercises the Option, then, subject to the following terms and conditions, Landlord hereby leases to Tenant (the "Lease") the use of that certain portion of the Property sufficient for placement of Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in attached Exhibit B (collectively referred to hereinafter as the "Premises").

The Premises, located at 658 West 2nd Street Center, Saguache County, Colorado 81125, comprises approximately three thousand (3,000) square feet.

2. Term. The initial term of this Lease shall be five (5) years commencing on the Exercise Date of the Option (the "Commencement Date"), and terminating at Midnight on the last day of the initial term.

3. Permitted Use. The Premises may be used by Tenant for, among other things, the transmission and reception of radio communication signals and for the construction, maintenance, repair or

replacement of related facilities, towers, antennas, equipment or buildings, and related activities. Tenant shall obtain, at Tenant's expense, all Governmental Approvals and may (prior to or after the Commencement Date) obtain a title report, perform environmental and other surveys, soil tests, and other engineering procedures on, under and over the Property, necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations, and Governmental Approvals. Landlord agrees to reasonably cooperate with Tenant, where required, to perform such procedures or obtain Governmental Approvals. If necessary, Tenant has the right to immediately terminate this Lease if Tenant notifies Landlord of unacceptable results of any title report, Governmental Approvals, environmental survey or soil tests prior to Tenant's installation of the Antenna Facilities on the Premises.

4. Rent.

(a) Tenant shall pay Landlord, as Rent, Five Hundred Dollars ($500.00) per month ("Rent"). Rent shall be payable in advance beginning on the Commencement Date for the remainder of the month in which the Commencement Date falls and for the following month, and thereafter rent will be payable monthly in advance on the fifth day of each month for the following months to The Town of Center at Landlord's address specified in Section 12 below. For purposes of this lease, all references to "month" shall be deemed to refer to a calendar month. If the Commencement Date does not fall on the fifth day of the month, then Rent for the period from the Commencement Date to the last day of the following month shall be prorated based on the actual number of days from the Commencement Date to the last day of the following month.

(b) If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason other than a default by Tenant, and all prepaid Rent shall be refunded to Tenant.

5. Renewal. Tenant shall have the right to extend this Lease for five (5) additional five-year terms ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, except that rent shall be increased by fifteen percent (15%) of the rent paid over the preceding term.

This Lease shall automatically renew for each successive Renewal Term unless Tenant shall notify Landlord, in writing, of Tenant's intention not to renew this Lease, at least sixty (60) days prior to the expiration of the term or any Renewal Term.

If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

6. Interference. Subject to Tenant's right to use the Premises as set forth in Section 3, Tenant shall not otherwise use the Premises in any way which interferes with the use of the Property by Landlord, or lessees or licensees of Landlord, with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including without limitation, noninterference). Similarly, Landlord shall not use nor shall Landlord permit its tenants, licensees, employees, invitees or agents to use, any portion of the Property in any way that interferes with Tenant's use of the Premises or the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating, said interference. In the event any such interference does

not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to (i) bring a court action to enjoin such interference or (ii) terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its system, including without limitation radio transmitting and receiving antennas, and tower and bases, an electronic equipment shelter, and related cables and utility lines (collectively the "Antenna Facilities"). The Antenna Facilities shall be initially configured generally as set forth in Exhibit C. Tenant shall have the right to replace or upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities upon termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including the construction of a fence.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Premises in commercially reasonable condition and repair during the term of this Lease, normal wear and tear excepted. Upon termination of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear. The antenna's and accessorized materials shall be removed , at tenants expense, from the premises upon termination of the lease.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Premises (including, but not limited to, the installation of emergency power generators). Tenant shall, wherever practicable, install separate meters for utilities used on the Property. In the event separate meters are not installed, Tenant shall pay the periodic charges for all utilities attributable to Tenant's use. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant and Tenant's agents, employ or contractors, an easement ("Easement") for ingress, egress, and access (including access for the purposes described in Section 3) to the Premises adequate to install and maintain utilities, which include, but are not limited to the installation of overhead or underground power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the term of this Lease or any Renewal Term. Upon prior written notice, provided Tenant's Antenna Facilities remain fully functional and continue to transmit at full power, Landlord shall have the right, at Landlord's sole expense, to relocate the Easement, provided such new location shall not materially interfere with Tenant's operations. Any Easement provided hereunder shall have the same term as this Lease.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the term of this Lease and any Renewal Term.

8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days written notice by Landlord for failure to cure a material default for payment of amounts due under this Lease within that thirty (30) day period;

(b) upon thirty (30) days written notice by either party if the other party defaults and fails to cure or commence curing such default within that 30 day period, or such longer period as may be required to diligently complete a cure commenced within that 30 day period;

(c) upon ninety (90) days written notice by Tenant, if it is unable to obtain, maintain, or otherwise forfeits or cancels any license, permit or Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(d) upon ninety (90) days written notice by Tenant if the Property, Building or the Antenna Facilities are or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(e) immediately upon written notice if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction;

(f) at the time title of the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

9. Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facilities. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Property. In the event that Landlord fails to pay said real property taxes, then Tenant shall have the right, but not the obligation to pay said taxes and deduct them from Rent amounts due under this agreement.

10. Insurance and Subrogation.

(a) Tenant will provide Commercial General Liability Insurance in an aggregate amount of $1,000,000 and name Landlord as an additional insured on the policy or policies. Tenant may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance Tenant may maintain.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

11. Hold Harmless. Tenant agrees to hold Landlord harmless from claims arising from the installation, use, maintenance, repair or removal of the Antenna Facilities, except for claims arising from the negligence or intentional acts of Landlord, its employees, agents or independent contractors.

12. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Tenant, to:

WWC Holding Co., Inc.
Attn: Leasing Administrator
3650 – 131st Avenue SE, #400
Bellevue, WA 98006
Phone: (425) 586-8700
Fax: (425) 586-8666

With a copy to:

WWC Holding Co., Inc.
Attn: Legal Department
3650 – 131st Avenue SE, #400
Bellevue, WA 98006
Phone: (425) 586-8700
Fax: (425) 586-8666

If to Landlord, to:
Center Town Council
294 Worth Street
Center, Colorado 81125
Phone: (719) 754-3497
Fax: (719) 754-3379

With a copy to:
Michael H. Trujillo Esq.
1120 Park Ave
Monte Vista, Colorado 81144
Phone: (719) 852-5993
Fax: (719) 852-3331

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord.

Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

Landlord covenants that during the terms of this Lease, Landlord will not lease any real property or tower space to any person or entity in direct or indirect competition with Tenant, including but not limited to, providers of cellular service, SMR service, PCS service, paging service, or any other form of wireless telecommunications service provided to the public within a three (3) mile radius of the Property.

14. Environmental Laws. Tenant represents, warrants, and agrees that it will conduct its activities on the Property in compliance with all applicable Environmental Laws (as defined in attached Exhibit D). Landlord represents, warrants, and agrees that has in the past and will in the future conduct its activities on the Property in compliance with all applicable Environmental Laws and that the Property is free of Hazardous Substance (as defined in Exhibit D) as of the date of this Lease.

Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law, of all spills or other releases of Hazardous Substance, not caused solely by Tenant, that have occurred or which may occur on the Property.

Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that Landlord may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment arising solely from Tenant's activities on the Property.

Landlord agrees to defend, indemnify and hold Tenant harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that Tenant may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment, that relate to or arise from Landlord's activities during this Lease and from all activities on the Property prior to the commencement of this Lease.

The indemnifications in this section specifically include without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

15. Assignment and Subleasing. Tenant may assign this Lease upon written notice to Landlord, to any person controlling, controlled by, or under common control with Tenant, or any person or entity that, after first receiving the necessary FCC licenses, acquires Tenant's radio communications business or assets and assumes all obligations of Tenant under this Lease. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Tenant may sublease the Premises, upon

written notice to Landlord, only if such sublease is subject to the provisions of this Lease. Tenant may otherwise assign this Lease upon written approval of Landlord, which approval shall not be unreasonably conditioned, delayed or withheld.

Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (hereinafter collectively referred to as "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagee located on the Premises, except that the cure period for any Mortgagee shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 8 of this Lease. All such notices to Mortgagees shall be sent to Mortgagee at the address specified by Tenant upon entering into a financing agreement. Failure by Landlord to give Mortgagee such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagee to cure any default and to remove any property of Tenant or Mortgagee located on the Premises, as provided in Section 17 of this Lease.

16. Successors and Assigns. This Lease and any easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof which shall be deemed personal property for the purposes of this Lease, regardless of whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagee the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(d) If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

(e) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached as Exhibit E) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease, by either party.

(f) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(g) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties intend that the provisions of this Lease be enforced to the fullest extent permitted by applicable law. Accordingly, the parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

(h) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(i) The submission of this document for examination does not constitute an offer to lease or a reservation of or option for the Premises and shall become effective only upon execution by both Tenant and Landlord.

(j) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(k) The parties understand and acknowledge that Exhibit A (the legal description of the Property), Exhibit B (the Premises location within the Property), and Exhibit C (the site plan) may be attached to this Lease in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, B and/or C, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Lessee with such final, more complete exhibit(s).

The Execution Date of this Lease is the 7 day of Dec, 2004.

LANDLORD: The Town of Center	TENANT: WWC Holding Co., Inc.
By: Adelene Sanchez	By:
Its: MAYOR	Its: Vice President
SS/Tax ID: [redacted]	

STATE OF COLORADO)
) ss:
COUNTY OF SAGAUCHE)

On this 20th day of December, 2004, before me personally appeared Adeline Beaudoin known to me to be the individual that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Carol L. Brewer
NOTARY PUBLIC in and for the State of Colorado
My Commission Expires: 3-30-06.

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

On this 7 day of DEC, 2004, before me personally appeared ERIC BAKER, known to me to be the VICE PRESIDENT of WWC Holding Co., Inc., the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Dorothy J. Kelly
NOTARY PUBLIC in and for the State of Washington
My Commission Expires: 10-15-06.

DOROTHY J. KELLY NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 10-15-06

EXHIBIT A

Legal Description

To the Site Lease with Option dated December 1, 2004, between The Town of Center and WWC Holding Co., Inc., as Tenant.

The Property is legally described as follows:

Lots 5,6,7,8 and 9, in Block 27, in Jones Addition
To the Town of Center Saguache County, Colorado

EXHIBIT B

Premises Location Within the Property

To the Site Lease with Option dated December 1 2004, between The Town of Center as Landlord, and WWC Holding Co., Inc., as Tenant.

The location of the Premises within the Property is more particularly described and depicted as follows:

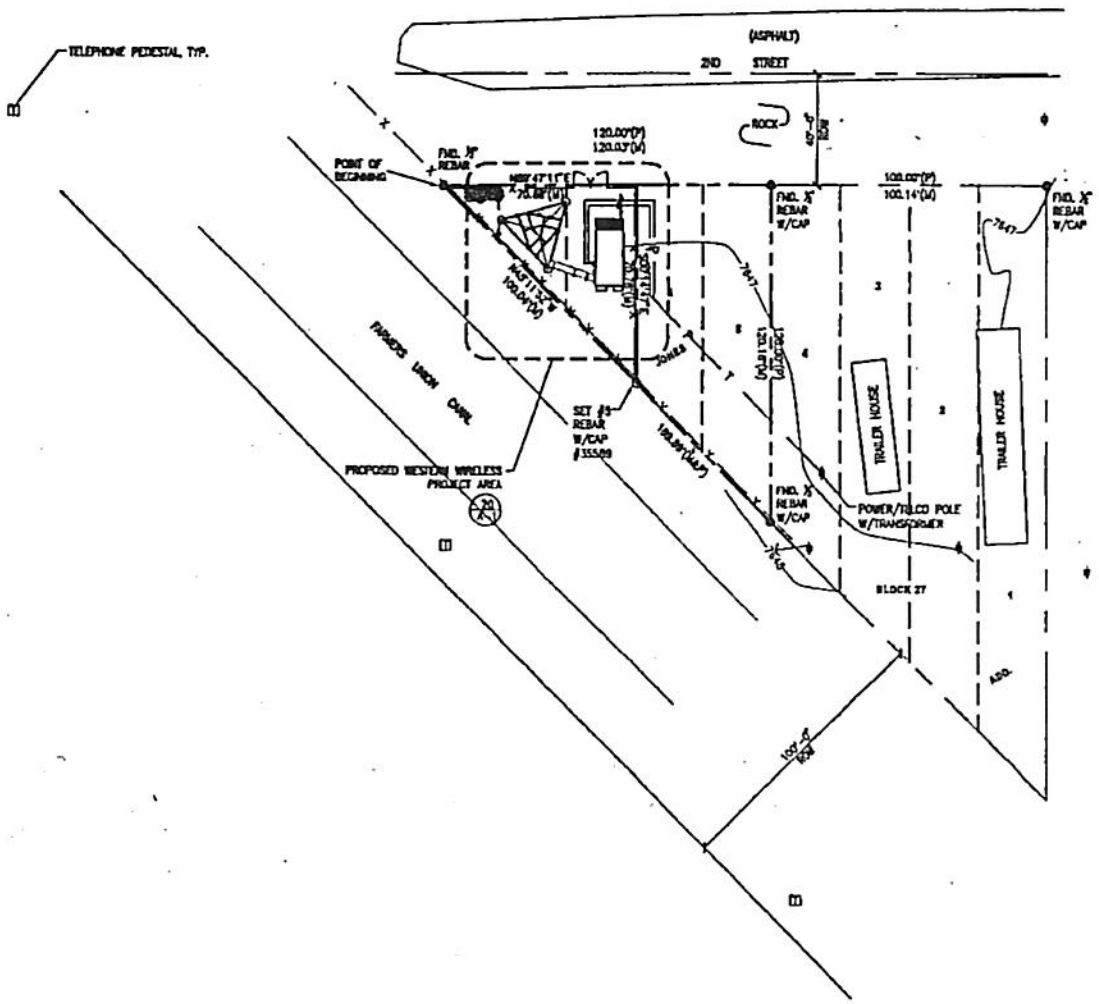

EXHIBIT C

Site Plan

To the Site Lease with Option dated December 1, 2004, between The Town of center as Landlord, and WWC Holding Co., Inc., as Tenant.

Site Plan and Equipment

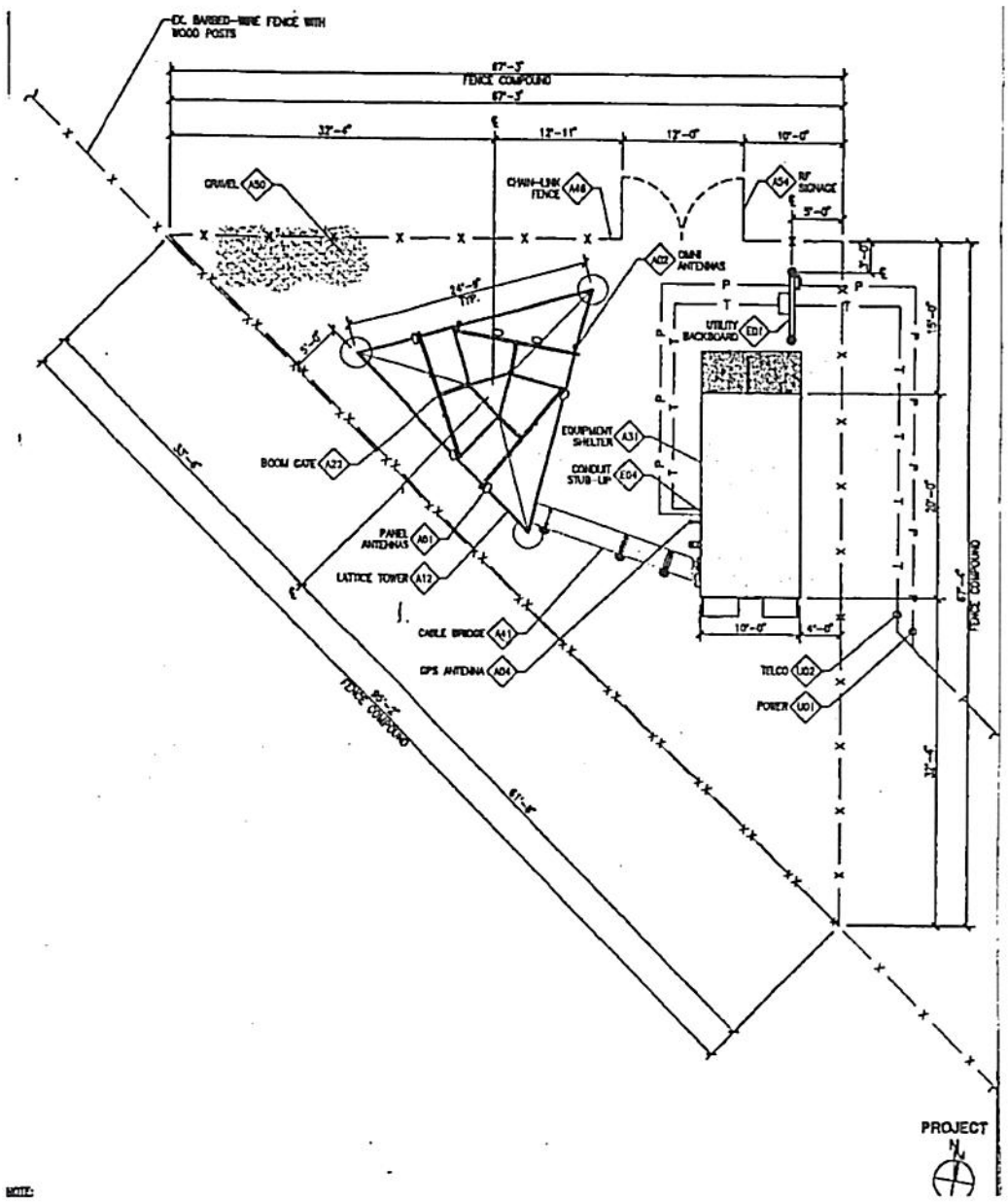

EXHIBIT D

Environmental Laws

To the Site Lease with Option dated December 1, 2004, between . The Town of Center as Landlord, and WWC Holding Co., Inc., as Tenant.

As used in this Lease, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. "6901, et seq., the Clean Air Act, 42 U.S.C. "7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C., "1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. "1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act U.S.C. "9601, et seq., the Toxic Substances Control Act, 15 U.S.C. "2601, et seq., the Oil Pollution Control Act, 33 U.S.C. "2701, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. "1801, et seq., the Safe Drinking Water Act, 42 U.S.C. "300f through 300f, and state laws, or any other comparable local, state or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.

As used in this Lease, " Hazardous Substance" means any hazardous substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time; any and all material or substance defined as hazardous pursuant to any federal, state or local laws or regulations or orders; and any substance which is or becomes regulated by any federal, state or local governmental authority; any oil, petroleum products and their by-products.

EXHIBIT E

Memorandum of Lease

To the Site Lease with Option dated December 1 2004, between The Town of Center as Landlord, and WWC Holding Co., Inc., as Tenant.

After recording, please return to:

WWC Holding Co., Inc.
Attn: Leasing Administrator
3650 – 131st Avenue SE, #400
Bellevue, WA 98006
Phone: (425) 586-8700
Fax: (425) 586-8666

Site Identification: Center Market: CO-07

Memorandum of Lease Between The Town of Center ("Landlord") and WWC Holding Co., Inc. ("Tenant")

A Site Lease with Option between The Town of Center ("Landlord") and WWC Holding Co., Inc. ("Tenant") was made regarding the following premises:

See attached Exhibit A

The date of execution of the Site Lease with Option was December 1, 2004. Subject Lease is for a term of five (5) years and will commence on _____ (the "Commencement Date") and shall terminate at midnight on the last day of the initial term. Tenant shall have the right to extend this Lease for five additional five year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum this 20th day of December, 2004.

LANDLORD: Town of Center

By: Adeline Sanchez

Its: MAYOR

TENANT: WWC Holding Co., Inc.

By: _____

Its: VICE President

STATE OFCOLORADO)
) ss:
COUNTY OF SAGUACHE)

On this 20th day of December 2004, before me personally appeared Adeline Saucedo, known to me to be the individual that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Carol Brewer
NOTARY PUBLIC in and for the State of Colorado
My Commission Expires: 3-30-06

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

On this 7 day of DEC, 2004, before me personally appeared ERIC BAKER, known to me to be the VICE President of WWC Holding Co., Inc., the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Dorothy J. Kelly
NOTARY PUBLIC in and for the State of Washington
My Commission Expires: 10-15-06.

DOROTHY J. KELLY NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 10-15-06

C007 Center
- LL signed drawings
- Executed lease w/ drawings

EXHIBIT A

Legal Description

To the Site Lease with Option dated December 1, 2004, between The Town of Center and WWC Holding Co., Inc., as Tenant.

The Property is legally described as follows:

Lots 5,6,7,8 and 9, in Block 27, in Jones Addition
To the Town of Center Saguache County, Colorado

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Premises Location Within the Property

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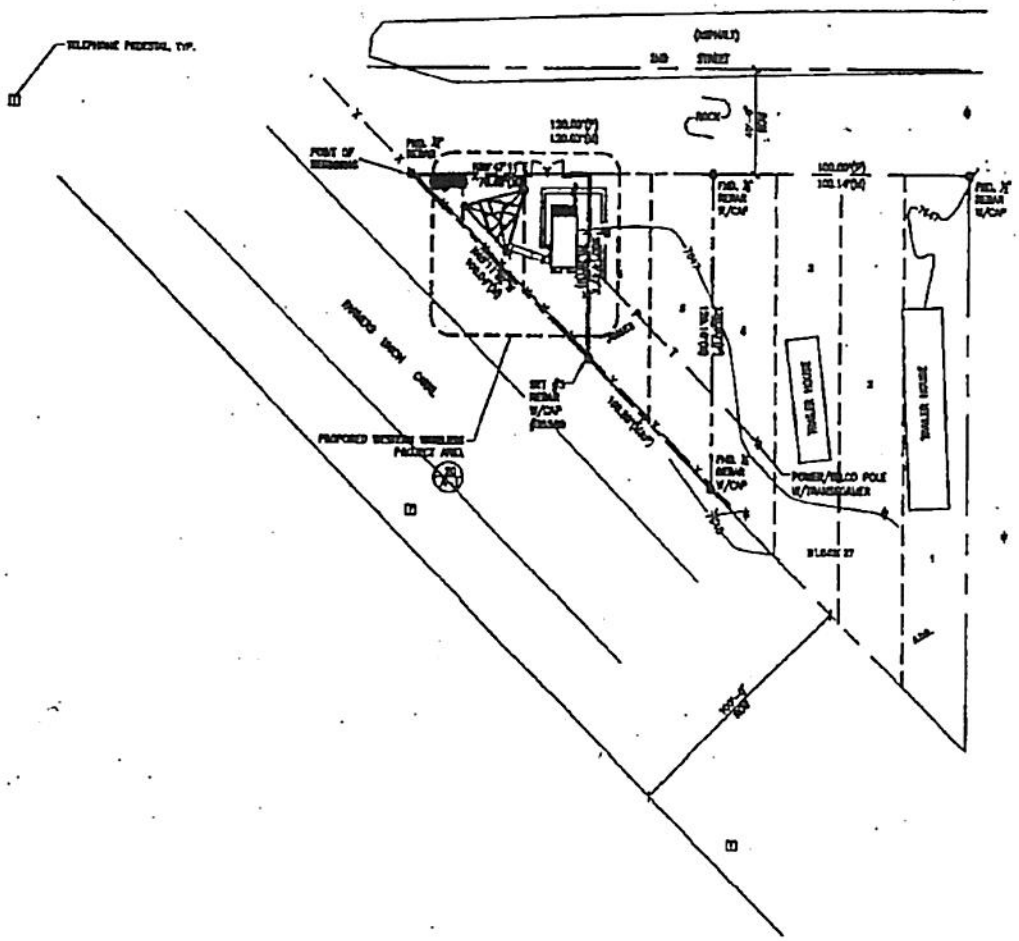


EXHIBIT E

Memorandum of Lease

To the Site Lease with Option dated December 1 2004, between The Town of Center as Landlord, and WWC Holding Co., Inc., as Tenant.

After recording, please return to:
WWC Holding Co., Inc.
Attn: Leasing Administrator
3650 – 131st Avenue SE, #400
Bellevue, WA 98006
Phone: (425) 586-8700
Fax: (425) 586-8666

Site Identification: Center Market: CO-07

Memorandum of Lease Between The Town of Center ("Landlord") and WWC Holding Co., Inc. ("Tenant")

A Site Lease with Option between The Town of Center ("Landlord") and WWC Holding Co., Inc. ("Tenant") was made regarding the following premises:

See attached Exhibit A

The date of execution of the Site Lease with Option was December 1, 2004. Subject Lease is for a term of five (5) years and will commence on _____ (the "Commencement Date") and shall terminate at midnight on the last day of the initial term. Tenant shall have the right to extend this Lease for five additional five year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum this 10th day of December, 2004.

LANDLORD: Town of Center

By: Adeline Sanchez

Its: MAYOR

TENANT: WWC Holding Co., Inc.

By: _____

Its: VICE President

Cell Site No: 132000098/CO07_Center_WS-102628
Site Address: NW ¼ SE ¼ Section 32, Township 41 N, Range 8 E

FIRST AMENDMENT TO SITE LEASE WITH OPTION AGREEMENT

THIS FIRST AMENDMENT TO SITE LEASE WITH OPTION AGREEMENT ("Amendment") is entered into and is effective as of the date below Tenant's signature ("Effective Date") by and between The Town of Center, having a mailing address at P.O. Box 400, Center, CO 81125 (hereinafter referred to as "Landlord") and WWC Holding Co., Inc., a Delaware corporation, having a mailing address at One Allied Drive, B2F02-A, Little Rock, AR 72202, or to PO BOX 2177, Little Rock, AR 72203-2177 (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into a Site Lease with Option Agreement dated December 1, 2004; whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the property located at NW ¼ SE ¼ Section 32, Township 41 N, Range 8 E ("Lease"); and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Landlord and Tenant hereby agree as follows:

1. **Term.** Section 2 of the Lease is deleted in its entirety and replaced with the following:

Initial Term. The initial term of this Lease shall commence on October 1, 2007 and expire on September 30, 2022 ("Initial Term"). From the period of time from the Effective Date until October 1, 2007, the parties agree that the Lease is effective and binding as if the parties did not execute this Amendment. Notwithstanding anything to the contrary herein, the "Commencement Date" as used in the Lease shall mean January 1, 2005.

2. **Renewal.** Section 5 of the Lease is deleted in its entirety and replaced with the following:

Renewal Term. Tenant shall have the right to extend this Lease for 3 additional terms of 60 months each on the same terms and conditions as set forth in this Lease (each a "Renewal Term"). Unless Tenant notifies Landlord of its election not to exercise any Renewal Term at least 60 days prior to the expiration of the Initial Term or the current Renewal Term, each Renewal Term shall automatically be exercised without notice or other action of any kind by Tenant.

If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

3. **Rent.** Section 4 of the Lease is deleted in its entirety and replaced with the following:

(a) Tenant agrees to pay to Landlord the amount of $35,873.00 ("Fee"). The Fee is accepted by Landlord and is agreed by both Landlord and Tenant to be full consideration for all rent to be paid to Landlord for the Initial Term. Tenant shall pay the Fee to Landlord on or before the later of (a) 30 days after the Effective Date, or (b) October 1, 2007.

(b) In the event Tenant terminates this Lease for an event of Landlord default, the Fee shall be refunded to Tenant on a proportionate basis for the period of the Initial Term remaining at the time of such termination. After the Initial Term, all prepaid Rent shall be refunded to Tenant in the event of termination for any reason.

(c) In the event Tenant elects to renew this Lease for the first Renewal Term, commencing on October 1, 2022, the Rent payable by Tenant shall be $500.00 per month ("Rent"). In the event the Tenant elects to renew this Lease for additional Renewal Terms, the Rent during each successive Renewal Term shall be increased by 15% over the then current Rent, which adjustment shall be made during the first month of each successive Renewal Term.

4. **Notices.** Section 12 of the Lease is hereby deleted in its entirety and replaced with the following: NOTICES. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, by registered or certified mail, or by nationally recognized overnight courier having a record of receipt to the addresses indicated below: As to Tenant, WWC Holding Co., Inc., Attn: Network Property Management, One Allied Drive, B2F02-A, Little Rock, AR 72202, Toll Free 1-877-557-8226 for Tenant, or to PO BOX 2177, Attn: Network Property Management, Little Rock, AR 72203-2177, Cell Site # 132000098, Cell Site Name CO07_Center; and as to Landlord, The Town of Center, P.O. Box 400, Center, CO 81125. Either party hereto may change the place for the giving of notice to it by 30 days prior written notice to the other as provided herein.

5. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.

6. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

7. **Miscellaneous.**

(a) Each party hereby represents and warrants to the other party that such party has the full power and authority to execute and deliver this Amendment and to perform hereunder without the necessity of any act or consent of any other person, entity or enterprise.

(b) Any term or provision of this Amendment which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Amendment or affecting the validity or enforceability of any of the terms or provisions of this Amendment in any other jurisdiction. If any provision of this Amendment is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

(c) This Amendment is the complete and entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings (whether written or oral) with respect to the subject matter hereof.

(d) The terms and conditions of this Amendment may be amended or waived only in writing executed by duly authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this Amendment on the date and year below.

LANDLORD:

The Town of Center

By: Adeline Sanchez

Name: Adeline Sanchez

Title: Mayor

Tax Id [redacted]

Date: 9-5-07

TENANT:

WWC Holding Co., Inc., a Delaware corporation

By: [signature]

Name: James E. McDonald

Title: Vice President – Network Services

Date: 10/12/07

WITNESSED BY:

By: Bill McClure

Name: Bill McClure

Title: Town Clerk

By: Gianna Gregory-Lloyd

Name: Gianna Gregory-Lloyd

Title: Contract Specialist – Property Management Assets

LANDLORD ACKNOWLEDGEMENT

PARTNERSHIP (consisting of corporate partners) ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

I CERTIFY that on _____ ____, 200__, _____ personally came before me and this/these person(s) acknowledged under oath to my satisfaction, that:

(a) this/these person(s) signed, sealed and delivered the attached document as _____ [title] of _____ [name of corporation] a corporation of the State of _____, which is a general partner of the partnership named in this document;

(b) the proper corporate seal of said corporate general partner was affixed; and

(c) this document was signed and delivered by the corporation as its voluntary act and deed as [a] general partner(s) on behalf of said partnership [by virtue of authority from its Board of Directors].

_____
Notary Public: _____
My Commission Expires _____

CORPORATE ACKNOWLEDGEMENT

STATE OF Colorado)
)
COUNTY OF Saguache)

I CERTIFY that on September ____, 2002, Adeline Sanchez [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the MAYOR [title] of Town of Center [name of corporation], the corporation named in the attached instrument,

(b) was authorized to execute this instrument on behalf of the corporation and

(c) executed the instrument as the act of the corporation.

_____
Notary Public: _____
My Commission Expires:_____

LUELLA M. LEBLANC
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 11/28/2010

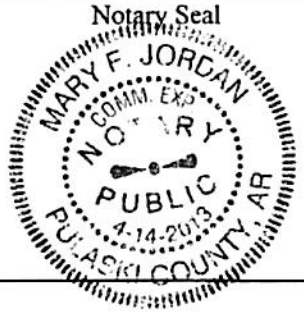
TENANT ACKNOWLEDGEMENT

STATE OF Arkansas)
) SS.
COUNTY OF Pulaski)

I certify that I know or have satisfactory evidence that James E. Mc Donald is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice President – Network Services of WWC Holding Co., Inc., a Delaware corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 10-12-2007.

Notary Seal



Mary F. Jordan
(Signature of Notary)
Mary F. Jordan
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Arkansas
My appointment expires: 4-14-2013

Received $5,200 from Saguache County

Cost is $5,250.00

Town of Center

TextMyGov

Center, Colorado

WHY
TEXTMYGOV

The most efficient way to communicate with your citizen is via text. No app, no email, no sign up required.

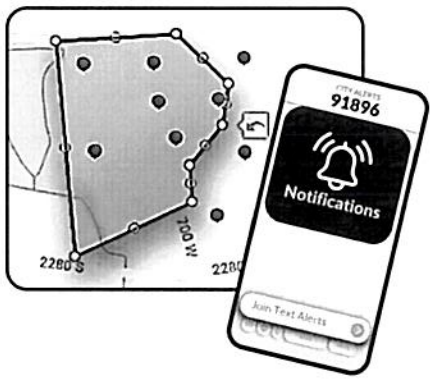
Our two-way smart response allows citizens to ask questions, and report issues all from their cell phone.

Customize your notifications/alerts based on groups, departments, or physical location.

- Receive Alerts
- Request Information
- Report Issues

TEXTMYGOV FOR CENTER, COLORADO

Every agency uses TextMyGov a little bit differently. Here are some ***KEY*** features that would best help.



Based on our conversations. Here is how we can help:

- Mass Notify Utility Customers
- Map Tool for Notifying Areas/Households
- Utility Database Import for Instant ROI
- Examples of Mass Notifications:
  - Water/Utility Alerts
  - Snow Alerts
  - Road Issues
  - Power Outages
  - Events

WHY TEXTMYGOV?

No Download Needed

- Citizens don't need to download an app, or subscribe to an email service. If they have a cell phone they have access to alerts/notifications.

Dedicated Account Management

- Every account has a Dedicated Account Manager who hill help set up your entire account. We specifically work with local governments so they will be able to provide suggestions on best practices and ideas on how you can maximize the service.

Unlimited Training

- Your account manager will provide unlimited training for staff. We know that departments can turn over, so we are here to help train new staff, new departments, or even just a refresher.

RECOMMENDATION FOR ZONING CODE AMENDMENTS
CENTER PLANNING COMMISSION

INTRODUCTION

Dear Center Board of Trustees,

The Town of Center Planning Commission is pleased to recommend the implementation of several amendments to our municipal zoning and land-use codes. In response to changing needs, our commission finds that several targeted updates would help our code's align with their purposes of (1) "promoting the health, safety, morals, and welfare of the present and future inhabitants of the town", and (2) "promoting coordinated and sound development, to encourage innovation in the residential development or removal so that the housing demands may be met by a greater variety of types and design of housing units." (Ord. No. 320, § 1.3(exh.), 7-11-1995).

Understanding the critical housing needs and development challenges within our Center community, our commission has carefully evaluated possible amendments to our zoning code. Our resulting recommendations are outlined in this document.

BACKGROUND

For several years, the need for increased housing options and greater community-centric development has been a priority of the Center Board of Trustees. These needs were defined more clearly by various studies and reviews of the Town of Center. In 2021, the San Luis Valley Housing Coalition's Housing Needs Assessment identified a critical shortage of housing in our community. Their 2022 Action Plan found that a key opportunity to respond to this challenge and promote further housing availability was to update and modernize aspects of our municipal land-use codes. Additionally, reviews of our codes by certified planners at Community Planning Strategies and Short Elliot Hendrickson with our Town Council in 2022 further encouraged updates. Collectively, the evidence laid the foundation for a more dedicated review of our zoning and land use codes.

Building off of the need to consider amendments to zoning codes, our Western San Luis Valley (WSLV) Regional Roadmaps team applied for a DOLA Planning Grant Program (IHOP) grant to propose zoning code revisions that would increase the availability of affordable housing in our communities. After putting out to bid, we selected Short Eliot Hendrickson (SEH) to review our existing codes and promote updates. SEH provided recommendations. These form the foundation of the amendments we are proposing today.

Lastly, implementing these updates would also enable us to meet five of the HB21-1271 Qualifying Strategies, thereby allowing us to qualify for additional funding for affordable housing from the State of Colorado.

PURPOSE OF RECOMMENDED AMENDMENTS TO THE ZONING CODE

Our primary objective is to use our codes to address our community's housing needs and foster sustainable development for our community by:

- Facilitating the development of additional dwelling units.
- Simplifying / clarifying our codes to increase transparency.

SUMMARY OF THE RECOMMENDED AMENDMENTS:

Recommended Code Update #1: Allow Accessory Dwelling Units (ADUs)

- Permitting Accessory Dwelling Units (ADUs), which are small, independent dwelling units situated on the same lot as stand-alone single-family homes, offers a way to create more housing options for residents within our existing town limits.

Recommended Code Update #2: Allow Tiny Homes

- Allowing Tiny Homes enables development on small lots throughout Center. For instance, we recommend that Tiny Homes can be built on lots greater than 3,500 square feet and 25 ft in width. Thus, we enable more housing options within our existing town limits while still preserving open space and lower density.

Recommended Code Update #3: Regulate Short Term Rentals (STRs)

- Introducing regulations for short-term rentals ensures their integration without hindering future housing development or availability for local residents. We are proposing to start by allowing 3 STRs in Center. Any individual owner is limited to 1 STR in town and they must be residents of Saguache County or Rio Grande County for at least six months of the year.

Recommended Code Update #4: Eliminate Max Lot Coverage Requirements

- By removing the maximum lot coverage restriction, we allow for more flexible construction, such as ADUs or duplexes, as over 40% of a lot can now be developed. Density standards will still be controlled through setback standards.

Recommended Code Update #5: Add a PUD Zone

- Allowing Planned Unit Developments (PUDs) that do not have to conform to dimensional or permitted use standards promotes development for locations like the North 90 that may benefit from using innovative development approaches.

Recommended Code Update #6: One Residential Zone (combined R1 & R2)

- Consolidating our residential zoning into a single district simplifies regulations and enhances clarity for everyone.

Recommended Code Update #7: Add a Zoning Map to Our Code

- We recommend providing a clear, easily accessible zoning map that serves as an easy to access resource for residents, developers, and all interested parties.

Recommended Code Update #8: New Dimensional Standards

- We recommend making minor adjustments to dimensional standards for residential and commercial setbacks to provide property owners more flexibility in their building and land use. For instance, this brings downtown Worth St. commercial properties into compliance.

Recommended Code Update #9: Table of Allowed Uses

- We recommend establishing a Table of Allowed Uses to enhance the clarity and accessibility of permitted activities within each zone. This amendment takes what is currently written out in long sentences, and puts them into an easy to read, centrally located table.

Recommended Code Update #10: Table of Dimensional Standards

- We recommend the creation of a Table of Dimensional Standards aimed to provide residents and developers with easily accessible and transparent guidelines.

Recommended Code Update #11: Expand Definitions

- We recommend adding new definitions into our zoning code to reflect new additions and enhance its comprehensiveness.

FULL PROPOSED ZONING CODE DRAFT

While the above list is just a summary, we encourage you to review a draft of the revised municipal zoning code with the proposed amendments incorporated. Please see the link below:

Center Proposed Zoning Code - with Amendments 12-15-2023.pdf

ADDITIONAL BACKGROUND INFORMATION

We would also like to provide you with additional information that helped inform our decision, if you would like to review it.

1. SEH's summary of their recommendations:
   CENTER_Land Use Code Update Final Packet.docx
2. A reference guide to provide more information on each update. This was prepared by Keith Brockhurst, Economic Development Coordinator of the Town of Center. Please note, not all of the updates proposed in this document were eventually recommended by the planning commision. Please refer the "Center Proposed Zoning Code - with Amendments 12-15-2023" document for up-to-date information:
   Center Zoning Recommendations 2023 Reference Guide

CONCLUSION

The Center Planning Commission has dedicated significant time and effort to considering the potential implications of these recommendations. We have met with professional land-use consultants, weighed various options across more than six months, and made minor adjustments to the consultants recommendations to reflect the unique character of our Center community. As a result, we are very pleased to ask that you consider proposing for adoption of these amendments.

Thank you for your consideration.

Sincerely,

The Center Planning Commission

Brian Lujan

From: Heather Starnes <heather@healylawoffices.com> on behalf of Heather Starnes
Sent: Thursday, November 30, 2023 5:57 PM
To: Bruce Doll; Tyler Christoff; Matthew Langhorst; brian@centerco.gov
Subject: Re: Confidential and Attorney-Client Privileged - Draft Complaint

Hi guys! Just wanted to let you know myself and my law partner, Doug Healy, are meeting with FERC Chairman Phillips and Commissioners Clements and Christie next week in DC regarding our complaint. This is the last step before we file, as this is our chance to make our case to them before anything is filed and we can't then communicate with them directly.

Below are the bulletpoints I plan to use in our presentation: (I'm just talking from these, not providing them in writing, so excuse any grammar issues)

- PSCO developed Pathway Project, a more then $2 B EHV transmission project, through its local planning process rather than through a regional planning process
    - 560 miles of 345kV transmission line
    - 3 new substations, connections with 4 existing substations
- Rather than submitting the project for review under the Westconnect Order 1000 process, PSCo developed this through its "local planning process" and submitted it for approval for construction by the Colorado PUC with plan for recovering costs from both retail and wholesale customers
    - PSCO only submitted the project into the Westconnect process after it was an already approved project, so no analysis of beneficiaries or if it was the right project
        - No opportunity for the project to be competitively bid
- Colorado Commission approved project and construction has commenced
- MEAN is the wholesale PSCo network service customer for Aspen, Glenwood Springs, and Center
    - PSCO's wholesale ATRR is expected to more than double between December of 2023 and December of 2027 thanks to this project
        - PSCO is also predicting decreased wholesale load
        - PSCO's Network Service rate will more than double over just the 4 year period through end of 2027.
        - PSCO will not indicate how much of this increase is due to Pathway, but it is likely the vast majority of it.
    - The cities WILL NOT receive any benefit from the project
        - None have a need or plan for any of renewable generation PSCO is using this project to connect to its system
            - Aspen and Glenwood Springs already serve their customers with a 100% renewable generation portfolio
        - **PSCO has indicated directly that there are NO BENEFITS to the Western Slope (where cities are located) from this Project**
            - No additional transfer capability to Western Slope
- Commission precedent provides that extra-high voltage transmission facilities provide broad benefits
    - No customers in Colorado other than PSCO wholesale and retail customers are bearing the cost of this project
    - Customers of other utilities in Colorado will benefit from this project but aren't bearing any of the cost
    - Due to size and breadth of this project, it is likely customer outside of Colorado also benefit, but bear none of the cost
    - No analysis has been performed to show the regional and non-PSCO customer beneficiaries of the project.

- FERC is only option for assistance for MEAN and Cities
    - The project should have been analyzed through a regional planning process for determination if this was the correct project for the needs and determination of beneficiaries
    - Regional planning process involvement could have also lead to competitive bidding of the project, allowing for other entities to participate in ownership and lower costs
    - Only option for MEAN/Cities to raise concerns is through TFR update process
        - Project is already under construction and has been approved by the CPUC
    - NO costs should be assigned to MEAN/Cities if they see Zero benefits
    - Those who benefit should not get a free ride off this project at the expense of PSCO customers

Please let me know if you have any questions or think of anything I should add.

Heather H. Starnes
Healy Law Offices
(501) 516-0041
heather@healylawoffices.com

From: Bruce Doll <bdoll@nmppenergy.org>
Date: Friday, October 13, 2023 at 5:28 PM
To: Heather Starnes <heather@healylawoffices.com>, Tyler Christoff <Tyler.christoff@aspen.gov>, Matthew Langhorst <matthew.langhorst@cogs.us>, "brian@centerco.gov" <brian@centerco.gov>
Subject: RE: Confidential and Attorney-Client Privileged - Draft Complaint

Heather,

While just a draft, I think the content in this complaint is well organized and identifies the core issues of the project. Pulling in the WestConnect piece was well done. I agree with the information being presented.

Thanks,

Bruce Doll
Manager of Resources, Planning & Transmission

NMPP ENERGY

NMPP MEAN NPGA ACE

8377 Glynoaks Drive | Lincoln, NE 68516
Direct: 402-473-8246
Office: 402-474-4759 x246
NMPPEnergy.org

From: Heather Starnes <heather@healylawoffices.com>
Sent: Tuesday, October 10, 2023 7:00 AM
To: Bruce Doll <bdoll@nmppenergy.org>; Tyler Christoff <Tyler.christoff@aspen.gov>; Matthew Langhorst <matthew.langhorst@cogs.us>; brian@centerco.gov
Subject: Confidential and Attorney-Client Privileged - Draft Complaint

Brian Lujan

From: Rachel Woolworth <rwoolworth@cml.org> on behalf of Rachel Woolworth
Sent: Thursday, November 30, 2023 3:39 PM
To: Brian Lujan
Cc: Rachel Bender
Subject: RE: Election Ballot Question

Hello Brian,

I asked our legal team to weigh in on this and they advised that you consult with your city attorney to determine whether this is a TABOR question and whether restricting the funds further would require voter approval.

I do have a few resources that may be of interest:

- CML's Tabor publication can be downloaded for free on our website store. Specifically, "Chapter 12: Fourteen Kinds of Tabor Ballot Issues" should be of help.
- Two municipal ballot measures relevant to your question were passed in Frederick and Steamboat Springs in this year's November election. The ballot language of the measures is below:
    - Frederick: WITHOUT RAISING THE RATE OF ANY TAX OR IMPOSING ANY NEW TAX, SHALL THE EXISTING HALF CENT TOWN SALES AND USE TAX COLLECTED TO FUND THE MAINTENANCE, RESTORATION, ACQUISITION, AND PRESERVATION OF OPEN SPACE LAND BE AMENDED TO INCLUDE THE USE OF FUNDS FOR THE MAINTENANCE, ACQUITISION, AND CONSTRUCTION OF PARKS, TRAILS, AND RELATED AMENITIES AS A VOTER APPROVED REVENUE CHANGE?
    - Steamboat: Without increasing taxes, shall the City of Steamboat Springs, upon expiration of the 2013 ballot question 2A, allocate revenues from the Public Accommodations Tax approved by the voters in 1986 to be used for the following purposes: to fund development and maintenance of improvements and amenities in Steamboat Springs that will enhance the community identity, environmental sustainability and economic health of Steamboat Springs; to acquire real property for parks, recreation, and open space purposes; and to preserve the City's natural resources?

I hope this is helpful and please let me know if you have any questions.

Best,

Rachel

From: Brian Lujan <brian@centerco.gov>
Sent: Wednesday, November 29, 2023 3:09 PM
To: Rachel Woolworth <rwoolworth@cml.org>
Subject: RE: Election Ballot Question

Rachel,

Thank you for the quick reply and I will try to keep it as brief as possible.

For our April 2020 election the town asked the citizens for a 2% sales tax increase (see attached) and we state a few reasons for that increase. Now we have a council member who wants to go to the vote of the people and take .5% of the past 2% sales tax and restrict it to a specific fund. Such as our 1% sales tax that goes to strictly for street improvement and it is within its own pool of money. (see also attached)

CHAPTER 12:
FOURTEEN KINDS OF TABOR BALLOT ISSUES

As it was promoted prior to the Nov. 3, 1992, election, TABOR promised every citizen a "vote on taxes." The central theme of the campaign in support of the amendment was the idea that representative democracy has somehow failed, especially in the area of taxation, and that tax increases should require voter approval in every instance. In reality, of course, TABOR goes far beyond merely requiring a vote on new or increased taxes. If it merely required voter approval for new taxes, it would not have dramatically changed the way most municipalities were doing business in the first place. Numerous statutory and charter provisions already required voter approval for new sales taxes, while referendum and initiative elections were commonplace on a wide variety of revenue and spending issues.[246] In the years preceding the adoption of TABOR, there seemed to have been no lack of direct democracy at the municipal level of government, whether it was on taxes or any other legislative matter.

The key change wrought by TABOR was that, beyond the preexisting right of municipal voters to force a vote on a fiscal matter on a case-by-case basis through an initiative or referendum petition, it automatically requires a vote on a wide range of matters. Since 1992, the overwhelming majority of TABOR ballot question has been referred to the ballot by the governing body, and far less commonly have initiated tax measures appeared on the ballot. Fortunately for local governments, both the courts and the statutes acknowledge that elected officials enjoy the prerogative to unilaterally refer TABOR questions to the ballot.[247]

A close reading of TABOR reveals that the constitutional amendment actually requires a vote for 14 distinct types of propositions:

- New tax
- Tax rate increase
- Mill levy above that for the prior year
- Assessment ratio increase
- Extension of an expiring tax
- Tax policy change resulting in a revenue increase
- Ratification of an emergency tax
- Debt increase
- Multiple-fiscal year obligation
- Revenue change not involving a tax increase
- Retention of revenue in excess of a projected tax increase
- Four-year delay in voting
- Additions to election notices
- Weakening of "other limits"

This chapter is designed to alert municipal officials to special legal and policy consideration that may apply to each of these various categories as they formulate and refer ballot issues to the voters.

TAX INCREASES

General considerations for all tax measures

TABOR requires voter approval for tax and revenue increases, but not tax decreases.[248] According to CML statistics, from 1993 through the spring of 2018, 992 municipal tax questions had been put to the voters. Of these, 601 had been approved and 391 failed, with an overall approval rate of 60.6 percent.

246 Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994)(TABOR "does not give rise, however, to a substantive new voting right ... Since 1910 the citizens of Colorado have reserved to themselves 'the power to propose laws and amendments to the constitution, and to enact or reject the same at the polls." Bickel v. City of Boulder, 885 P.2d at 226 (Colo. 1994) (quoting Colo. Const. Art. V, § 1)).

247 Havens v. Bd. of Cty. Comm'rs of Archuleta Cty., 924 P.2d 517, 520 (Colo. 1996); C.R.S. § 1-1-104 (34.5).

248 Havens v. Bd. of Cty. Comm'rs of Archuleta Cty., 924 P.2d 517 n.9 (Colo. 1996).

TABOR § 4(a), which requires advance voter approval for taxes, actually appears to break down tax increases into six categories: "any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district." Expressly excepted from the voter approval requirement are tax measures necessitated "when annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments"[249] as provided in TABOR § 1.

Two other apparent exceptions to the TABOR voter-approval requirement are worth noting. TABOR § 6 would appear to allow the imposition of emergency taxes under very limited circumstances without a vote. Furthermore, common sense would suggest that a tax or tax rate that has been reduced upon what is expressly a "temporary" basis to provide a refund under TABOR § 1 presumably could rebound to its prior level without voter approval.[250]

The courts also have inferred several other exceptions to the voter-approval requirement for tax increases. The most significant early decision in this regard was *Bolt v. Arapahoe County School District Number Six*.[251] The Supreme Court held that property taxes could be increased without a vote to pay debt service on general obligation bonds that had received voter approval prior to the adoption of TABOR. Of potentially greater significance, the court also held that a district could increase its mill levy to recoup property tax abatements and refunds from prior years. In so doing, the court made this famous pronouncement: "We refuse to adopt a rigid interpretation of TABOR that would have the effect of working a reduction in government services." This holding begs the intriguing but still unsettled question of whether the courts will tolerate tax rate increases without voter approval, if the purpose and effect of the rate increase is merely to keep revenue and government services constant.

The holding in *Bolt* may be read to say that any tax increase approved by voters any time prior to the adoption of TABOR is grandfathered and can be implemented after the amendment went into effect. The attorney general also took a sanguine view of grandfathering of tax measures in two formal opinions. In one, the attorney general opined that the State Board of Equalization continues to enjoy the authority to order counties to increase their mill levies as necessary to reimburse the state for excess school equalization payments.[252] In the other, the attorney general said that a tax credit could sunset without voter approval (thus effectively increasing a tax) if the sunset provision was provided in the law prior to the adoption of TABOR.[253]

Much later, the Colorado Supreme Court crafted two additional exceptions to the general rule that all tax increases require voter approval under TABOR. First, in the case of *Huber v. Colorado Mining Association*,[254] the court approved formulaic increases in the state coal severance tax rate that were provided for in a state statute that pre-dated TABOR. The old statute contemplated that there would automatic non-discretionary rate increases each year keyed to the federal producers' price index. Shortly after the adoption of TABOR, state officials suspended the automatic rate increases, but decided to resume the increases in 2007. The Supreme Court opined "the limitations in Amendment 1 apply only to discretionary action taken by legislative bodies" and not to a non-discretionary action to escalate a tax that existed prior to 1992.

Second, in the case of *TABOR Foundation v. Regional Transportation District*[255] the court crafted a *de minimis* exception to the general rule that any "new tax" or "tax policy change" that causes a "net tax revenue gain" requires voter approval. If the new tax or policy change "serves to simplify tax collection and ease administrative burdens, and it only incidentally increases the Districts' tax revenue by a de minimis amount," then no voter approval is required under TABOR. The court upheld in this case 2013 legislation that conformed the sales tax base for the Regional Transportation District (RTD) and the Scientific and Cultural Facilities District to the state's

249 The ability to raise taxes to pay court judgments without voter approval implies that a preexisting statute allowing judgment creditors to force a mill levy to cover the judgment may still be viable. C.R.S. § 13-60-101. However, the exception in TABOR is ambiguous as to whether the government must exhaust other available funds to pay the judgment before raising new taxes without a vote.

250 This assumption underlies "temporary" tax credits adopted by the general assembly in HB 99-1137 (temporary capital gains tax cut) and HB 99-1311 (temporary credit against state income tax for business personal property taxes). "Temporary" credits are also discussed in Formal Opinion No. 98-2 (Colo. A.G. Oct. 26, 1999).

251 Bolt v. Arapahoe Cty. School Dist. No. Six, 898 P.2d 525 (Colo. 1995), *see also* TABOR Found. v. Reg'l Transp. Dist., 417 P.3d 850 (Colo. App. 2016); *aff'd on other grounds*, 416 P.3d 101 (Colo. 2018).

252 Formal Opinion No. 94-5 (Colo. A.G. Oct. 11, 1999).

253 Formal Opinion No. 95-2 (Colo. A.G. April 14, 1995).

254 Huber v. Colorado Mining Ass'n, 264 P.3d 884 (Colo. 2011).

255 TABOR Found. v. Reg'l Transp. Dist., 416 P.3d 101 (Colo. 2018).

own base. This conforming change increased RTD's revenue by $2.7 million or 0.06 percent, which the court determined to be a *de minimis* amount. The Court also emphasized that a new law changing tax policy in a way that increases revenue, even by a *de minimus* amount, is permissible without voter approval only if the revenue increase is "incidental" to a legislative objective that is unrelated to enhancing revenue, in this case the objective of simplifying state collection procedures.

Unless a tax measure can be said to fall within one of the foregoing exceptions then voter approval probably will be required. However, determining that a vote is necessary is only half the equation. The other half then becomes: How must the election be conducted?

One key unsettled question centers on the degree to which the various procedural requirements contained in TABOR § 3 apply to the whole range of tax propositions itemized in § 4(a). TABOR § 3 is quite specific about the content of election notices for a "tax increase" and prescribes very precise ballot wording for any "tax increase." However, TABOR § 4(a) does not use the term "tax increase" per se, but instead requires a vote on the six distinct categories of tax measures provided therein. It is sometimes difficult to reconcile the two. For example, the provisions of TABOR § 3(c) require a tax increase to be expressed as a dollar amount. So what is a municipality to do if it wants the voters to approve a "tax rate increase" under § 4(a) in a manner that will keep revenues constant, where there is no dollar increase to be reflected in the ballot language on the election notice? What about an "extension of an expiring tax" (discussed below)? Must this be characterized as a "tax increase" when it will simply preserve the status quo?

The Supreme Court has at least shed some light on ballot issues that may only incidentally or hypothetically implicate a "tax increase" at some point in the future. The court declared that nothing about TABOR compels a title-setting board "to disclose every possible ramification of a proposed tax measure."[256] The court also has allowed a "contingent" tax increase to be subsumed in a larger ballot question (a franchise question) which was not primarily related to taxes.[257]

The critical requirement for "tax increase" ballot issues in TABOR § 3(c) is as follows:

> *Ballot titles for tax ... increases shall begin,* ***"SHALL DISTRICT TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY ... ?***

Many of the early TABOR cases centered on alleged technical defects in the way ballot questions were worded. Some municipalities added or subtracted a word or two from the prescribed text, or stated the dollar increase as a "not to exceed amount," or used lower case rather than all capital letters in the question. (One court ruled that capital letters should be used as they appear in TABOR, and the secretary of state administratively opined that not only the first seven words but also the entire question should be capitalized.[258]) And a couple of municipalities erred by reverting to opening language in the ballot question that expressed a tax increase the traditional way, as a percentage rate increase rather than a dollar amount.

Although in the early litigation the courts consistently have held government entities to only a "substantial compliance" standard for meeting all of the technical election requirements in TABOR,[259] municipalities would be well advised to avoid needlessly giving the opposition ammunition to use in an election contest. Municipalities can express the tax increase as a dollar amount and otherwise strictly adhere to the prescribed wording for the first seven words of the question, and then rest assured that the remainder of the ballot wording after the ellipsis (" ... ") can be fleshed out any way the governing body chooses.[260] For example, many municipalities have chosen to include within the body of the question the proposed source of the tax increase, the proposed uses for the new revenue, time limits for the tax, and language to make it absolutely clear that the tax increase is also a "voter approved revenue change" that the municipality will have full authority to spend over and above the spending limits contained in TABOR § 7.

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256 *In re* Title, Ballot Title and Submission Clause Proposed Tobacco Tax Amendment, 872 P.2d 689 (Colo. 1994).

257 Bickel v. City of Boulder, 885 P.2d 215, 234 (Colo. 1994).

258 *See* Campbell v. Meyer, 883 P.2d 617 (Colo. App. 1994).

259 Bickel v. City of Boulder, 885 P.2d 215, 227 (Colo. 1994).

260 Of course, ballot titles on all referred measures including TABOR measures must be accurate. "The ballot title shall correctly and fairly express the true intent and meaning of the measure." C.R.S. § 31-11-111. And municipal officials should beware of any local charter or ordinance provisions that prohibit catch-phrases and other skewed language in ballot titles that are designed to "create an argument," similar to the standards that govern state title setting.

In the age of TABOR, virtually all tax increase ballot measures inform the voters of the purposes for which the tax money will be spent, sometimes with great specificity, sometimes just with illustrative examples of how the tax revenue may be used. One of the great unresolved legal questions in Colorado is whether, after the voters have approved a tax increase for a particular purpose, the government may later change the purpose without returning to the voters.[261] TABOR is completely silent on this question, and the appellate courts have never been called upon to rule definitively on the matter.[262]

In completing the wording of a TABOR tax question, the single most controversial question in the early years was whether the dollar amount derived from the new or increased tax could increase after the first year. Proponents of TABOR adamantly maintained that new or increased taxes could only be approved in fixed, immutable annual dollar amounts, and the amount stated in the ballot question could never be exceeded in any year without additional voter approval. District courts around the state unanimously rejected this interpretation, culminating in the landmark decision in *City of Aurora v. Acosta*,[263] confirming that the dollar amount stated in the ballot question can be expressed only as a cap on first-year revenues from a tax increase, and that the ballot question can go on to provide that the municipality can keep and spend any and all revenues derived in future years from the rate increase. Subsequently, the style of ballot wording approved in Acosta has been copied by many local governments, as well as the State of Colorado.[264]

Attempts by TABOR proponents to further amend TABOR and penalize those local governments that did not express their tax increases in a fixed dollar amount have so far proven unsuccessful.[265]

TABOR § 3(c) also contemplates the option of a "phased in" tax increase. For example, if a municipality wishes to propose to the voters a 1 mill property tax increase, but phase it in with incremental one-quarter mill increases over four years, the dollar amount of the tax increase would be expressed in the ballot question as the "final, full fiscal year dollar increase," i.e., the projected revenue from the mill in the fourth year of collection. Municipal officials should note, however, that the State of Colorado took quite a different approach to a type of "phased in" tax when referring state marijuana taxes to the voters in 2013. The ballot question asked for permission to set the original retail marijuana sales tax rate at 10 percent, but then to grant discretion to the General Assembly to increase the rate of taxation up to 15 percent in the future without the need for additional voter approval. In this case, the estimated dollar amount of the tax increase in the ballot question was based on the "first" fiscal year of collections because it would be impossible to identify when or if the "final" year of the tax increase would occur. In 2017, the General Assembly did indeed exercise the full authority granted by the voters in 2013 by increasing the retail marijuana sales tax rate to 15 percent without further voter approval and without legal challenge.[266]

New tax

Perhaps the most conventional application of TABOR § 4(a) would be to propositions that would impose a tax when none existed before. One wrinkle, however, arises for both municipalities and special districts with new taxes that are associated with the creation of an entirely new "district." To help alleviate some of the ambiguity in this situation, the General Assembly amended existing statutes to clarify that TABOR questions such as a new tax proposal can be considered simultaneously with the organizational election required for a new municipality, a new special district, or a downtown development authority.[267]

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261 Although the appellate courts have never directly addressed the authority of a local government to change the purpose or use of a voter-approved tax, there is a body of law addressing the circumstances under which the local government may have the authority to change the specific projects to be funded via a voter-approved debt question. *See, e.g.*, Busse v. City of Golden, 73 P.3d 660 (Colo. 2003).

262 The State of Colorado may have set an important precedent in this regard when the General Assembly changed the uses for which voter-approved retail marijuana sales taxes may be used. When state voters approved the adoption of a special retail marijuana sales tax in 2013, the ballot question assured the voters that the tax revenue would be used "to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana." Later, the state made budgetary decisions to use the revenue for other purposes, most notably the decision in SB 17-267 to redirect tens of millions of dollars in retail marijuana sales tax revenue to K-12 schools. *See* C.R.S. § 39-28.8-203 (1)(b).

263 City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

264 C.R.S. § 32-9-119.3 (establishing the ballot wording for an unsuccessful Regional Transportation District tax increase in 1997).

265 *In re* Title, Ballot Title and Submission Clause and Summary for 1997-98 #30, 959 P.2d 822 (Colo. 1998).

266 SB 17-267; C.R.S. § 39-28.8-202 (1)(a)(I).

267 C.R.S. §§ 31-2-102, 32-1-803.5, 31-25-804, respectively.

The question sometimes arises about whether or not an annexation to an existing municipality somehow triggers the need to conduct a TABOR election. After all, persons residing or owning property in the annexed territory will be subjected to "new taxes" that they did not previously have to pay as a result of the annexation. To date, this question has never been litigated, while hundreds of annexations and special district inclusions have occurred since 1992 without a TABOR vote. The General Assembly put its imprimatur on the theory that annexation does not trigger a TABOR vote in the Water Activity Enterprise enabling statute,[268] but the municipal annexation statutes have never been amended to further clarify this point. If and when this question is ever litigated, a compelling argument could be made that, in an annexation, the municipality itself is neither adopting a "new tax" nor increasing its tax rates in any way. Newly annexed territory is merely being taxed on the same basis as everyone else already in the municipality. TABOR's own "local growth" formula seems to contemplate that government revenues are expected to increase commensurate with "additions of taxable real property." Therefore, neither the letter nor the spirit of TABOR would seem to require a tax increase vote for an annexation.

Is it possible to adopt two separate new taxes in one ballot question? On two occasions, the State of Colorado has bundled two distinct tax increases in one question. In 2011, the failed education funding measure known as Proposition 103 proposed to increase state taxes by more than half a billion dollars annually, with the revenue to be generated by rate increases to both the income tax and the sales tax. Then, in 2013, the state bundled two distinct marijuana taxes in one question, one an excise tax on wholesale transactions and the other a special retail sales tax. The format of the marijuana tax ballot question simply repeated the mandatory TABOR language for tax increases twice in the question, once at the beginning of the question and again in the middle of the question.[269]

Tax rate increase

Again, aside from the "exceptions" discussed above, the applicability of TABOR to any and all tax rate increases would appear to be fairly clear cut. In fact, this is the most common circumstance under which municipalities have conducted tax elections since the adoption of TABOR, typically seeking to raise sales and use tax rates.

As explained above, while TABOR § 4 (a) obviously requires approval for a "rate" increase, TABOR § 3 requires a tax increase to be expressed as a dollar amount in the first few words of the ballot question. Thus, a municipality typically will express the tax increase both ways in the ballot question, taking care to specify the estimated first-year revenue from the tax first in the question. However, there is nothing in TABOR that expressly requires the rate to be fixed, and the courts have indicated on a couple of occasions that the ballot question can be crafted in such a way as to allow the rate to fluctuate in future years.[270]

Mill levy above that for the prior year

Curiously, besides broadly requiring voter approval for any tax increase, TABOR § 4 (a) goes on to somewhat redundantly require voter approval for mill levy increases as well. Relatively few municipalities have attempted to increase mill levies since the adoption of TABOR, as sales and use tax increases continue to be their primary revenue source. However, this does not mean that the field of mill levies has been a quiet one, as reflected by some of the early litigation.

Far and away, the single most important question in interpreting the phrase "mill levy above that for the prior year" centered on the continued viability of general obligation bonding. TABOR proponents claimed in several of the early cases that, in the context of bonds or other debt issuance, a so-called "unlimited tax pledge" is no longer possible, that voters cannot approve mill levies that "float" on a year-to-year basis to cover annual debt service as they have in the past because a debt-service mill levy certified in any year the debt is in existence absolutely cannot exceed the levy for the immediately preceding year. Thus, TABOR proponents asserted that general obligation bonding was dead in Colorado — in spite of the fact that such an outcome would drastically increase the cost of municipal financing for all Colorado taxpayers.

Local governments countered that voters can and should be able to approve mill levies to support bonds as they had before TABOR. Whether or not the mill levy "floats" is irrelevant. The voters have approved a debt

268 C.R.S. § 37-45.1-105 (2).

269 C.R.S. § 39-28.8-401.

270 *In re* Title, Ballot Title & Submission Clause, & Summary for 1997-98 #30, 959 P.2d 822, 826 (Colo. 1998); Bickel v. City of Boulder, 885 P.2d 215, 233-34 (Colo. 1994)..

service mill levy "above that for the prior year" in the sense that it represents an increase over the mill levy which existed in the year prior to when the vote was taken. The Supreme Court ultimately sustained this view in *Bickel v. Boulder*[271] , thus dispelling a cloud that had hung over municipal bonds in Colorado for the first two years of TABOR's existence.

As discussed above, mill levy increases were also the focus of *Bolt v. Arapahoe County School District Number Six*,[272] in which, among other things, the court allowed a school district to impose an extra mill levy without voter approval to recoup revenue lost due to abatements and refunds from a prior year. *Bolt* also seemed to suggest that it is may be appropriate to break a local government's aggregate mill levy into its component parts to determine TABOR compliance; however, the text of TABOR would not necessarily appear to require this approach. One important question left hanging by the Bolt decision is whether or not any local government, in the face of declining assessed values, will be able to raise their mill levy rate without a vote in order to keep revenues constant.

Valuation for assessment ratio increase

In 1982, Colorado voters approved the so-called Gallagher Amendment[273] to the state constitution to ensure that residential properties would never have to shoulder more than approximately 45 percent of the total property tax burden statewide. To implement this formula, residential property originally was assessed at 21 percent of actual value while commercial property was assessed at 29 percent of actual value. The General Assembly was charged with the responsibility for adjusting these ratios periodically to ensure that residential properties cumulatively never pay more than approximately 45 percent of the total amount of property taxes collected in the state. Since the sheer amount and value of residential property has increased so dramatically in relation to commercial property, the residential ratio for assessment has plummeted.[274] Meanwhile, individual nonresidential properties are feeling a bigger and bigger tax bite.

Now TABOR § 4(a) provides that the valuation for assessment ratio for any class of property can never increase without voter approval. When the trend is reversed due to a statewide decline in residential property values (as occurred during the Great Recession circa 2008), the residential ratio could not increase without a vote. Therefore, TABOR calls into question the continued viability of the Gallagher Amendment and may lock residential properties into an even more favorable status for property tax purposes. As explained in greater detail in Chapter 6, the residential assessment ratio plummeted again after the recession due to skyrocketing residential values, thus reducing the tax base in outlying areas of the state that are heavily reliant on collecting property taxes on residential property. To cope with this phenomenon, some taxing districts including the Colorado Mountain College (CMC) District,[275] referred unique questions to the November 2017 ballot, questions that would allow the districts to increase their mill levy rate, but only to the extent necessary to offset the declining residential assessment ratio and thereby keep the district's revenue constant. Although the CMC District question failed, such questions succeeded in a handful of other smaller Title 32 districts in Colorado at the 2017 election. Similar questions are anticipated in future local elections particularly in fire protection districts that are often heavily reliant on residential property taxes.

Extension of an expiring tax

Prior to the adoption of TABOR, many municipalities were already in the habit of placing a time limit on their voter-approved taxes. This approach has been viewed as a key to success in many tax elections in which the voters are trusting enough to grant additional revenue authority, so long as the decision is not cast in stone forever and the matter can be re-evaluated on a certain date.

Soon after TABOR was adopted, the General Assembly referred to the voters the question of whether or not to keep the statewide tourism tax that had been in effect since 1983 and was due to expire on June 30, 1993. However, the ballot wording proposed in the bill did not characterize the question as the extension of an expiring tax. Between the time the General Assembly referred the measure and the time the voters went to the polls in November 1993, the tax already would have expired. Therefore, the legislature characterized it as a tax increase.

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271 Bickel v. Boulder, 885 P.2d 215 (Colo. 1994).

272 Bolt v. Arapahoe Cty. School Dist. No. Six, 898 P.2d 525 (Colo. 1995).

273 Colo. Const. Art. X, § 3.

274 C.R.S. § 39-1-104.2(3)(g).

275 C.R.S. §§ 23-71-101, et seq.

If municipalities adopt this same line of reasoning, then it argues strongly for good advance planning so "expiring" taxes can be voted upon before they expire.

In contrast, during the 1994 session the legislature formulated ballot wording for extension of the expiring sales tax that supports the Denver-area Scientific and Cultural Facilities District in HB 94-1222.[276] In this case, the legislature did indeed characterize it as an "extension" because the tax had not yet expired, and eschewed the mandatory TABOR ballot wording for "tax increases."

The Supreme Court used the same reasoning in a 2006 decision involving the adequacy of ballot issue notices in a City of Colorado Springs election on the continuation of a tax yet to expire. The Supreme Court held that "(a) tax extension is not a tax increase."[277] Consequently, the particular notice requirements applicable to tax increase elections do not apply to elections concerning extension of an expiring tax. Notably, voters extended the Colorado Springs tax prior to its actual expiration.[278]

Finally, when the campaign to finance a new professional football stadium in Denver occurred in 1998, heavy emphasis was placed on the fact that the tax to fund the bonds simply would be a continuation of the existing tax that was being used to finance the new professional baseball facility. Nevertheless, the ballot question approved by the General Assembly for this purpose did not characterize the matter as an "extension of an expiring tax."[279] Part of the reasoning in this case was that an entirely new entity, the Metropolitan Football Stadium District, would be assessing the tax when the tax switched from supporting baseball to supporting football.

As explained further below, one variation on the meaning of "extension of an expiring tax" arises in the context of general obligation debt ballot questions, and the increasing interest in characterizing the unlimited tax pledge in a general obligation, commonly referred to as G.O., debt question as an "extension" of an existing debt service levy, not as a tax increase.

Tax policy change directly causing a net tax revenue gain

The potentially broad sweep of language in TABOR §4(a) that requires advance voter approval of any "tax policy change directly causing a net tax revenue gain to the government," combined with an absence of direction from the courts, led many governments to chart a conservative course with respect to this requirement during TABOR's first two decades. Then, in 2008, the Colorado Supreme Court decided *Board of County Commissioners of Mesa County v. Ritter*,[280] which finally provided some direction as to the meaning of TABOR's "tax policy change" provision.

The court in the Mesa County case described this requirement as "a 'catch all' phrase attempting to encompass any district action that is the equivalent of a new tax or tax rate change" covered by the more specific election requirements in TABOR §4(a).[281] The court thus sought to construe the requirement in a way that provides "some workable parameters."[282]

The most significant aspect of the court's opinion may be to substantially limit the application of this election requirement to local governments where voters have approved standard revenue retention or de-Brucing measures. The court said that the "tax policy change" election requirement in TABOR §4 (a) should be read in conjunction with the revenue limits imposed in TABOR § 7 and that voter approval is required only when the" tax policy change" at issue causes "revenue gain [that] exceeds the limits dictated by subsection (7)."[283]

Since the purpose of a de-Brucing ballot issue is to exempt a government from TABOR § 7 revenue limits, this remarkable portion of the court's opinion appears to permit tax policy changes that cause a net tax revenue gain to be implemented without an election, provided that the revenues realized are within the scope of an adopted de-Brucing question.

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276 C.R.S. § 32-13-105.

277 Bruce v. City of Colorado Springs, 129 P.3d 988, 990 (Colo. 2006).

278 Bruce v. City of Colorado Springs, 129 P.3d 988, 990 (Colo. 2006).

279 C.R.S. § 32-15-107.

280 Bd. of Cty. Commr's of Mesa Cty. v. Ritter, 203 P.3d 519 (Colo. 2009).

281 Bd. of Cty. Comm'rs of Mesa Cty. v. Ritter, 203 P.3d 519, 529 (Colo. 2009).

282 Bd. of Cty. Comm'rs of Mesa Cty. v. Ritter, 203 P.3d 519 (Colo. 2009).

283 Bd. of Cty. Comm'rs of Mesa Cty. v. Ritter, 203 P.3d 519 (Colo. 2009).

The *Mesa County* court also found in the "tax policy change" election requirement to be a *de minimis* exception. The court said that the requirement "cannot be applied to any policy modifications that may have *de minimis* impact on a district's revenue."[284] While the court did not define the parameters of this exception, it did mention, by way of example, a situation where the cost of the election on retention of the revenue exceeded the amount of "revenue gain" at issue. As explained above, in its 2018 decision in the case of *TABOR Foundation v. Regional Transportation*, the Supreme Court much more definitively recognized a ˆ exception to the requirement that a tax policy change must be voted, at least when the primary objective of the tax policy change is not to increase revenue.

Despite the apparent breadth of the *Mesa County* court's opinion, there has not been the anticipated flurry of sales tax exemption or tax credit repeals, tax base expansions, and other revenue raising steps that might be characterized as "tax policy changes" by locally collecting home rule municipalities. Rather, it was the General Assembly that relied most heavily on the latitude offered by the court's decision. During the legislative sessions following the decision, the General Assembly repealed or suspended a variety of state sales and use tax exceptions as part of the effort to address the state's revenue shortfall in those years.[285] At this writing, none of these repeals and suspensions, all enacted without an election, has been challenged in the courts on TABOR grounds.

Finally, the state created an unusual dilemma in 2017 when the General Assembly inadvertently changed state sales tax policy in a way that reduced tax revenue for the Regional Transportation District (RTD) and the Scientific and Cultural Facilities District (SCFD). As explained in the case of *TABOR Foundation v. Regional Transportation District*,[286] in 2013 state tax laws were amended to bring the RTD and SCFD sales tax base perfectly into sync with the state sales tax base. However, four years later, in the hasty drafting and adoption of the omnibus state budget bill known as SB 17-267 at the end of the 2017 session, the General Assembly suddenly inserted a provision exempting retail marijuana from the state's standard sales tax rate. No one realized that the SCFD and the RTD would take a major hit from the new exemption. Thus, to correct the error, the General Assembly adopted SB 18-088, restoring the authority of the districts to resume applying their taxes to retail marijuana sales without the need for voter approval TABOR, implying that the measure was not a "new tax" or a "tax policy" change when it merely restored the status quo for the districts and corrected a mistake.

Ratification of an emergency tax

Beyond the categories of tax elections enumerated in § 4(a), TABOR § 6(c) apparently provides that emergency taxes will terminate if not ratified by the voters at the next election. Again, this provision begs the question of whether or not the municipality would have to characterize such an action as a "tax increase" for purposes of the mandatory ballot language in § 3(c) or as an extension of an expiring tax. Through 2018, CML was not aware of any municipality imposing an emergency tax without voter approval or seeking to ratify an emergency tax as provided in § 6(c).

DEBT AND FINANCIAL OBLIGATION BALLOT ISSUES

The debt provisions of TABOR suffer from the same drafting and interpretive problem described above for tax increases. TABOR § 4(b) broadly requires advance voter approval for the "creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever." In contrast, the detailed procedural provisions of TABOR § 3 would appear to apply only to "bonded debt." In particular, § 3(c) requires:

> *Ballot titles for ... bonded debt increases shall begin ...* ***"SHALL (DISTRICT) DEBT BE INCREASED (principal amount) WITH A REPAYMENT COST OF (maximum total district costs) ... ?***

Some municipalities contemplating a multiyear financial obligation other than "bonded debt" have argued that they need not use the ballot wording prescribed in TABOR, either because the proposition does not involve the issuance of "bonds" in any traditional sense of the term or because, although an "obligation" may be involved, it

284 Bd. of Cty. Comm'rs of Mesa Cty. v. Ritter, 203 P.3d 519, 529 (Colo. 2009).

285 HB 09-1342 eliminated cigarette exemption; HB 10-1189 eliminated direct mail advertising exemption; HB 10-1190 suspended industrial fuels exemption; HB 10-1191 narrowed candy and soft drinks exemption; HB 10-1194 narrowed nonessential items provided with food exemption; HB 10-1195 suspended agricultural production items exemption; HB 13-1120 eliminating exemptions regarding the special fuels tax.

286 TABOR Found. v. Re'l Transp. Dist., 416 P.3d 101 (Colo. 2018).

is not really a "debt" as the Colorado courts traditionally have defined the word. Indeed, a number of free-form "obligation" questions have been drafted and approved in municipalities.

However, municipalities should exercise extreme caution in this area, recognizing that the ultimate judgment about the validity of the ballot wording may be made by the party agreeing to loan the money to the municipality. For example, in the past, the Colorado Water Resources and Power Development Authority (CWRPDA) has refused to close loans to municipalities in spite of overwhelming voter approval of ballot questions approving the loan. The ballot questions in each case failed to specifically characterize the loan as "bonded debt." Although the loans were evidenced primarily by a loan agreement, CWRPDA also compelled loan recipients to execute a document called a "bond," thus making it "bonded debt" in its view. Some experts believe any debt or obligation may be characterized as "bonded" in a broad sense of the word, thus arguing for strict adherence to the required ballot wording in TABOR.

For additional discussion of debt and other financial obligations, see Chapter 8.

Debt questions

In formulating a ballot question to incur a debt, municipalities have always been under some obligation to exercise special care through the assistance of bond counsel, underwriters, and other financial experts. This has always been necessary to ensure compliance with federal tax laws (providing for the tax-exempt status of the bonds), to comply with other applicable state and local laws, and to properly structure the bond deal to the satisfaction of bond rating agencies, bond insurance companies, and "the market" of potential bond purchasers. TABOR now imposes some additional requirements for bond ballot questions that simply underscore the need for careful, expert advice, and assistance in this area.

As explained in Chapter 8, the landmark decision in *Bickel v. Boulder* confirmed the authority of Colorado local government to continue to engage in general obligation bonding by allowing them to pledge future mill levy increases to secure the bonds. The *Bickel* case also offers a lot of specific guidance on how debt questions can and should be written. For example, prior to the decision, there was considerable debate about whether or not local government could include a tax increase and a debt increase in one ballot question. After all, TABOR § 3(c) implied that a ballot issue must be either one or the other, and § 3(a) contains some troublesome language that appears to prohibit the consolidation of bonded debt ballot issues. Nevertheless, the Supreme Court held in *Bickel* that a single ballot question can authorize both the incurring of debt and an increase of taxes to pay for the debt service. For such questions, all of the requirements of TABOR as to ballot wording and the content of election notices for both debt and tax increases must be followed.[287] Based on the specific ballot measures that were approved in *Bickel*, it appears that a combined ballot question can address either the debt first or the tax first. In practice, most local governments begin the question with the mandatory ballot language for a bonded debt, and then go on to mention the tax increase in the body of the question.[288]

It is also possible under *Bickel* to structure the tax pledge in a contingent way and authorize the tax to fluctuate in the future as necessary to service the bonds. Furthermore, the court also approved language in a debt question that would expressly allow the local government to refund the bonds in the future.

Increasingly through the years, questions have been posed about whether the tax component of a general obligation needs to be expressed as a "tax increase" in some circumstances. Certainly, the most conventional approach since the decision in the *Bickel* case has been to express the taxes that will service the debt as a property tax increase, and express it as the anticipated dollar amount to be raised in the first year or the "highest" year when property taxes will be levied to pay debt service. But what about a city such as Denver that manages its debt portfolio and structures its annual debt service payments in a manner that keeps the debt service mill levy rate constant year after year? Even as the voters approve new debt, the debt service levy remains constant because old bonds are being retired as new bonds are being issued. In this scenario, is the unlimited tax pledge in the ballot question truly a tax increase? Or is it more logically understood as an "extension" of a debt service mill levy rate that would otherwise be "expiring." The conservative approach is to continue to characterize the tax pledge as a tax "increase," but municipal officials should consult with bond counsel about whether there are ways to communicate to the voters that the debt service mill levy "rate" is not expected to increase in the scenario described above. (See an example of a 2017 Denver general obligation debt question in Appendix B.)

287 Bickel v. City of Boulder, 885 P.2d 215, 230 (Colo. 1994).

288 *See, e.g.*, City of Aurora v. Acosta, 892 P.2d 264, 269 (Colo. 1995).

In construing the language in TABOR § 3(a) that states that local governments cannot "consolidate" bonded debt questions, the Supreme Court noted, "the logical interpretation of the phrase ... is that districts may not present to the voters in a single ballot issue more than one question involving a ... bonded debt."[289]

Due to the ambiguous provisions of TABOR § 7(d) concerning the calculation of annual revenue limitations, municipalities routinely have included language in their debt ballot questions clarifying and confirming that the receipt and expenditure of bond proceeds and the revenue and spending associated with debt service will be deemed "voter approved revenue changes" that can occur over and above the limits. The Supreme Court has interpreted § 7(d) to mean precisely that, and apparently voter approval of a bond issue necessarily will imply full authority to receive and spend money associated with the bonds.[290]

Other multiple fiscal year financial obligations

The Supreme Court has now made it abundantly clear that TABOR requires voter approval for types of multiyear financial obligations that may not have been governed by earlier constitutional restrictions on "debt." (See Chapter 8.) However, TABOR contains no explicit requirements on how to word a ballot question for an obligation that is not a "bonded debt." In fact, in *Bickel*, the court went so far as to suggest that revenue bonds, not being a form of "bonded debt" in the traditional sense of the term, are not governed by TABOR § 3 restrictions on how "bonded debt" ballot issues must be structured.[291]

Accordingly, municipalities have submitted a number of ballot questions for multiyear obligations without styling them as "debt" questions. Such questions typically will use the term "multiple fiscal year financial obligation" and reference the fact that the matter is submitted to the voters to comply with TABOR § 4(b), but generally no effort is made to state a "principal amount" or a "maximum total district repayment cost" as is required for bonded debt questions. Basically, the wording of such a question is left to the imagination of municipal officials. Examples have included multiyear intergovernmental revenue sharing contracts and agreements for multiyear development incentive packages.

The State of Colorado has been somewhat inconsistent in addressing the legal question of how to word a ballot question for a multiyear obligation that is not a debt. For example, in 1995 the state eschewed the mandatory debt ballot language in TABOR and referred a ballot question to the voters in the following form:

> *Shall the state be authorized to enter into financial obligations that are part of contracts or agreements for the confinement and maintenance of juvenile or adult state prisoners in non-state facilities for up to ten years?*[292]

However, in 1999, the state referred the issuance of transportation revenue anticipation notes to the voters as a "debt," using the mandatory language set forth in TABOR § 3(c), notwithstanding the fact that the Supreme Court had ruled that the arrangement was not a "debt" in the conventional sense of the word.[293]

Finally, in 2005, the state referred a multiple fiscal year obligation measure to the voters known as Referendum D, with the obligation to be repaid through the extra state revenue to be derived from the passage of Referendum C, the state's landmark revenue retention measure under TABOR.[294] Referendum D was not framed as a "debt" question; instead, the ballot question started with the following language:

> WITHOUT INCREASING ANY TAX RATES OR IMPOSING ANY NEW TAXES, SHALL THE STATE BE AUTHORIZED TO ADDRESS CRITICAL STATE NEEDS BY ISSUING NOTES IN TOTAL AMOUNTS OF UP TO $2,072,000,000, WITH A MAXIMUM TOTAL REPAYMENT COST OF UP TO $3,225,000,000,

Ultimately, while Referendum C passed, Referendum D did not pass.

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289 Bickel v. City of Boulder, 885 P.2d 215 n.11 (Colo. 1994).

290 *In re* Interrogatories on House Bill 99-1325, 979 P.2d 549, 559 (Colo. 1999).

291 Bickel v. City of Boulder, 885 P.2d 215, 230 (Colo. 1994).

292 HB 95-1353.

293 In re Interrogatories on HB 99-1325, 979 P.2d 549, 554-56 (Colo. 1999). The irony here is, unlike municipalities, the state's authority to incur true "debt" in any form is severely constrained by Article XI, Sec. 3 of the Colorado Constitution. Nevertheless, as discussed in Chapter 8, the Colorado General Assembly contingently referred another question to the November 2019 ballot seeking voter approval to issue another set of transportation revenue anticipation, and has again characterized it as a "debt" question using the ballot wording prescribed by TABOR.

294 See Chapter 5 for a discussion of Referendum C.

OTHER VOTER APPROVED REVENUE CHANGES

Revenue change not involving a tax increase

In *City of Aurora v. Acosta*,[295] the Supreme Court identified three categories of "revenue change" ballot questions that may be approved under TABOR. Obviously, one would be a conventional tax increase that would increase revenue to the government. However, the more common type of TABOR ballot question considered by municipal voters are "voter approved revenue changes," which are authorized expressly by TABOR § 7(d) to keep and spend excess monies from existing revenue sources without imposing any new tax or raising any tax rate. TABOR provides no particular wording for this type of "revenue change." As explained more fully in Chapter 5, the Supreme Court has held that local governments and their voters enjoy tremendous latitude to structure and approve a voter approved revenue change as broadly or as tightly as they may choose.

Retention of revenue in excess of a projected tax increase

The third category of voter approved revenue change identified by the Supreme Court in *Acosta* is based on the provision of TABOR § 3(c) that allows a local government to exceed the dollar amount of a projected tax increase "by later voter approval." As explained above, a proper tax increase ballot question and election notice will include an absolute dollar amount of revenue from the tax that cannot be exceeded the first year the tax is in existence, as well as an estimate of fiscal year spending without the tax increase. If these estimates are exceeded, TABOR § 3(c) requires the refunding of any excess unless additional voter approval is obtained to keep the extra revenue. For many years, there were no examples in Colorado of ballot issues being submitted under this provision, perhaps reflecting the fact that municipal officials tend to err on the high side when estimating the dollar amount of a projected tax increase and projected fiscal year spending, thus reducing the risk of a refund or of a need to return to the voters for additional revenue approval. However, beginning in 2015, potential violations of TABOR § 3(c) became a very real issue. In 2013 state voters and voters in the City and County of Denver had approved new marijuana taxes. When the books were closed on the next fiscal year, both the state and the city determined that they had exceeded the estimates of the first-year tax revenue and/or fiscal year spending that had been included in the 2013 ballot questions and TABOR notices mailed to voters. Therefore, both the state and the city returned to the 2015 ballot and successfully obtained "later" voter approval to retain the marijuana revenue that exceeded the original 2013 estimates. Since the events of 2015, other local governments have been challenged for exceeding the estimated first year revenue.[296]

OTHER TABOR BALLOT ISSUES

Four-year delay in voting

TABOR § 3(a) provides, "Except for petitions, bonded debt, or charter or constitutional provisions, district ... voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period." The meaning and effect of this provision is so murky that municipalities generally have been hesitant to take advantage of it. The most important questions focus on what happens to the municipality's revenue base during the four-year interim. If this provision is construed broadly as a complete, albeit temporary, "opt-out" from TABOR, then the base can continue to grow during the interim and, if the voters do not reapprove another four-year opt out, the city merely becomes subject to TABOR again with a new, higher base. On the other hand, if this provision is interpreted narrowly as being only a "delay in voting" and the voters decide after four years to reject excess revenue and spending that occurred in the interim, the municipality could be in dire straits indeed, with a potentially devastating refund liability. Thus, caution should be exercised by any municipality that intends to invoke the provisions of § 3(a).

Colorado courts addressed the meaning of the provision for the first time in 2008, rejecting an argument by the City of Lone Tree and concluding that the language of § 3(a) "cannot be interpreted to mean that the state or local

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295 City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

296 In one example, El Paso County was sued by Douglas Bruce for a refund of sales tax revenue that exceeded the first-year estimate in a voter-approved 2012 ballot question. However, the trial court held for the county, reasoning that the standard de-Brucing language in the ballot question allowing the county to keep all revenue derived from the tax "without limitation" by TABOR overcame the strictures of TABOR § 3(c) and eliminated the need for "later" voter approval to retain the extra revenue. The implication of the court's ruling is that both the State of Colorado and the City and County of Denver unnecessarily returned to the voters in 2015 to retain excess marijuana revenue as described above. The ruling in this case was on appeal when this publication went to press. Bruce v. El Paso Cty., 2017CV156 (El Paso Cty. Dist. Ct. March 8, 2018).

governments may impose new taxes, collect them, and postpone submitting them to the voters for approval for up to four years."[297]

Perhaps influenced by this four-year provision, some local governments in the early years of TABOR implementation wrote their ballot questions for the retention of excess revenue with a four-year sunset date.[298] However, there appears to be nothing in the court decisions or in the text of TABOR itself that would appear to require this approach.

Additions to election notices

TABOR § 3(b) apparently allows municipal voters to permit or require additional information to be included in TABOR election notices. In the absence of such voter-approved additions, the content of these notices is strictly limited to the detailed information mandated by § 3 itself. While some of the early TABOR cases involved alleged errors, omissions, and deletions from election notices, no Colorado municipality is known to have proposed a ballot issue that would change the content of such notices. The State of Colorado did, however, totally exempt itself from having to do TABOR notices at all through a 1994 constitutional amendment and substituted a requirement that the state's "Blue Book" analysis of ballot issues be mailed to all registered electors instead.[299]

Weakening of "other limits"

TABOR §1 provides, "Other limits on district revenue, spending, and debt may be weakened only by future voter approval." What may or may not be an "other limit" could be in the eye of the beholder. The analysis of the applicability of this phrase is complicated by the fact that § 1 also says that TABOR supersedes "conflicting" provisions of state and local law. Certainly, both state law and municipal charters contain many forms of revenue, spending, and debt limitations, including a wide variety of voter approval requirements. Some of these limits are quantitative and others are qualitative. Some are substantive while others are procedural. Whether TABOR is cumulative to or supersedes an "other limit" on municipal revenue, spending, and debt should be carefully considered on a case-by-case basis. During the early years of TABOR implementation, two key interpretations of this provision emerged.

As more fully discussed in Chapter 6, the Colorado attorney general has issued three separate opinions on the continuing viability of the statutory 5.5 percent property tax revenue limit that predated TABOR. Read collectively, these three opinions offer some good news and some bad news for municipalities. On the one hand, the attorney general continues to maintain that TABOR imposes only "maximum" limitations, and those limitations can coexist side by side with stricter limits that may be imposed by another law. Both limits must be taken into account and the stricter one will control on a case-by-case basis. However, the attorney general also has adopted the view that, while TABOR may carry forward preexisting limits, it also carries forward any preexisting exceptions to those limits. Thus, for example, if voters could elect to override the 5.5 percent statute prior to TABOR, they can still elect to do so after TABOR.[300]

A second trend of some significance is the consistent position taken by the General Assembly that an "other limit" on local government revenue, spending, or debt that may exist in a state statute can be amended without the need for a statewide vote, assuming that any "weakening" of the limit as applied to a particular local government will be subject to a local vote. The attorney general has acknowledged and apparently agrees with this approach.[301]

The Supreme Court has entered the edge of this issue, at least to identify an example of what is not an "other limit" for the purposes of this election requirement. In its Mesa County decision, the court refused to characterize a provision of the School Finance Act that incorporated TABOR limits by reference as an "other limit." Rather, the School Finance Act provision simply reiterated the TABOR limits as well as the school district's ability to waive

297 HCA-Healthone, LLC v. City of Lone Tree, 197 P.3d 236 (Colo. App. 2008).

298 *See, e.g.*, Havens v. Bd. of Cty. Comm'rs of Archuleta Cty., 924 P.2d 517 (Colo. 1996).

299 Colo. Const. Art. V, § 1 (7.5).

300 Formal Opinion No. 99-5, (Colo. A.G. July 30, 1999).

301 Formal Opinion No. 99-5 (Colo. A.G. July 30, 1999); *see also* HB 99-1159, increasing the debt limit for county public improvement districts, C.R.S. § 30-22-522; HB 95-1289, increasing the debt limit for school districts, C.R.S. § 22-41.5-101; HB 95-1023, increasing the mill levy limit for cemetery districts, C.R.S. § 30-20-801; SB 08-128, repealing aggregate sales and use tax rate cap for cities, towns and counties in C.R.S. § 29-2-108.

that limit. Accordingly, the court found TABOR's "other limit" language inapplicable in a challenge to subsequent legislation that arguably weakened that provision of the School Finance Act.[302]

Any number of "other limits" on municipal revenue, spending, and debt also existed at the local level prior to TABOR, particularly in home rule charters. To eliminate any confusion about whether or not TABOR supplemented or superseded their existing limits, a few home rule municipalities have amended their charters with voter approval to eliminate the old local restrictions and provide that, henceforth, the municipality would be governed solely be TABOR's limitations.

TABOR does not require any particular ballot wording for a vote to weaken another limit.

PROHIBITED BALLOT ISSUES

Ironically, despite the fact that TABOR is supposed to be about empowering voters to control their own taxation, the amendment positively bars them from doing so in four situations. It would be unconstitutional for state or local voters to approve a ballot issue for any of the following.

Real estate transfer taxes (RETTs)

TABOR § 8(a) prohibits any "new or increased transfer tax rates on real property." Prior to the adoption of TABOR, 13 home rule municipalities had a real estate transfer tax (one has since been repealed). Since TABOR only prohibits a "new" RETT, voters in a couple of municipalities have seen fit to renew a RETT that was due to sunset after TABOR went into effect. These cities reasoned that an "extension of an expiring" tax is acknowledged to be something distinct from a "new tax" under the provisions of TABOR itself, and no legal challenges were filed to their actions. To date, however, no municipality has attempted to adopt an entirely new RETT in defiance of TABOR.

Local government income taxes

TABOR § 8 also somewhat gratuitously bars local governments and their voters from adopting income taxes. In fact, municipalities were already prohibited from doing so under an earlier constitutional provision and longstanding prior case law.[303]

State property taxes

TABOR § 8 also prohibits state voters from approving a "new" statewide property tax. Thus, the state's authority to charge a property tax of up to four mills pursuant to an earlier constitutional provision,[304] a power that has lain dormant in recent years, is apparently repealed by implication by TABOR.

Emergency property taxes

Although municipalities enjoy some discretion to adopt emergency taxes without a vote of the people, emergency property taxes are completely prohibited by TABOR § 5.

302 Bd. of Cty. Comm'rs of Mesa Cty. v. Ritter, 203 P.3d 519 (Colo. 2009).

303 Colo. Const. Art. X, § 17; City & Cty. of Denver v. Sweet, 329 P.2d 441 (Colo. 1958).

304 Colo. Const. Art. X, § 11.

December 4, 2023

Greetings,
On behalf of the SLV Bikers and Brothers Keepers Motorcycle Club, I want to thank you for the 300.00 donation you granted us to go towards our "Shop with a Biker" campaign.

We know you have a lot of choices when it comes to donating, and we are so grateful that you chose to donate to our cause.

We have a lot of children we want to serve and your generous donation helps us get that important work done.

None of our success would be possible without generous donors like you. So thank you again for your commitment and kindness.

Together we will make a difference in the San Luis Valley.

Sincerely,

Julie Gomez-Nuanes
719-580-4789

Proud Military Parents & Supporters
0123 County Road 28
Monte Vista, Co 81144
(719) 580-6280

Dear Town of Center

On behalf of the Proud Military Parents and Supporters, we want to express our gratitude for your donations. With the donations from our community members, we were able to package and send out 38 care packages to our local military men and women. For some of these service members it may be their first holidays away from home.

One of the military members said, "I just got a care package in the mail from the PSP&S, and I love it! I'm not on deployment, but I think it would really help quite a lot to get me through it. I can't thank whoever made it enough. They did their best to give me a little taste of home from the SLV. They did good. I was surprised when I checked my mail and wondered "what did I order this time?" I was pleasantly surprised that it was a care package. Thank you for what you're doing!"

Without the support of our community, we would not be able to make this happen.

Thanks again,
Michelle Velasquez
Proud Military Parents and Supporters