TITLE 31

GOVERNMENT - MUNICIPAL

Editor's note: This title was primarily numbered as articles within chapter 139, C.R.S. 1963; however, a few sections were located in article 1 of chapter 140, C.R.S. 1963. The provisions of this title were repealed and reenacted in 1975, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1975, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title, see the comparative tables located in the back of the index.

Cross references: For local government generally, see title 29; for special districts, see title 32; for garnishment of public servants, see article 61 of title 13; for cooperation with federal government in housing, see article 55 of title 24; for local boards of health, see part 5 of article 1 of title 25; for municipal employees' retirement system, see part 2 of article 51 of title 24; for eminent domain proceedings by a municipality, see article 6 of title 38; for municipal highways, see article 2 of title 43; for the power of a city council or the board of trustees of town to establish airports, see part 2 of article 4 of title 41; for municipal courts, see article 10 of title 13.

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CORPORATE CLASS - ORGANIZATION AND TERRITORY

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PART 1

GENERAL PROVISIONS

31-1-101. Definitions.

As used in this title, except where specifically defined, unless the context otherwise requires:

(1) "Ad valorem tax" means only the general property tax levied annually on real or personal property listed with the county assessor.

(2) "City" means a municipal corporation having a population of more than two thousand incorporated pursuant to the provisions of part 1 of article 2 of this title or reorganized pursuant to the provisions of part 3 of article 2 of this title or pursuant to the provisions of any other general law on or after July 3, 1877, and a municipal corporation, regardless of population, organized as a city on December 31, 1980, and choosing not to reorganize as a town pursuant to part 2 of this article, but does not include any city incorporated prior to July 3, 1877, which has chosen not to reorganize nor any city or city and county which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution.

(3) "City clerk", "clerk", or "town clerk" means the clerk of the municipality who is the custodian of the official records of the municipality or any person delegated by the clerk to exercise any of his powers, duties, or functions.

(4) "Governing body" means the city council of a city organized pursuant to part 1 of article 4 of this title, the city council of a city organized pursuant to part 2 of article 4 of this title, the board of trustees of a town, or any other body, by whatever name known, given lawful authority to adopt ordinances for a specific municipality. For purposes of determining a quorum or the required number of votes for any matter, "governing body" includes the total number of seats on the governing body but does not include the seat held by a nonvoting city manager under section 31-4-214.

(5) "Mayor" means the mayor of the municipality; except that in a municipality having a city manager form of government, "mayor" means the presiding officer of the governing body of the municipality.

(6) "Municipality" means a city or town and, in addition, means a city or town incorporated prior to July 3, 1877, whether or not reorganized, and any city, town, or city and county which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution.

(7) "Qualified elector" means a person who is qualified under the provisions of the "Colorado Municipal Election Code of 1965" to register to vote in elections of the municipality or who, with respect to a proposed city or town or the creation of an improvement district, is qualified to register to vote in the territory involved in the proposed incorporation or district.

(8) "Qualified taxpaying elector" means a qualified elector who, during the twelve months next preceding the election, has paid an ad valorem tax on property owned by him and situated within the municipality or within the territory involved in the proposed incorporation or improvement district.

(9) "Registered elector" means a qualified elector who has registered to vote in the manner required by law.

(10) "Regular election" means:

(a) Before July 1, 2004, the election held in towns on the first Tuesday of April in each even-numbered year; the election held in cities on the first Tuesday of November in each odd-numbered year; and the election held in any other municipality at which the regular election of officers takes place;

(b) On and after July 1, 2004, the election held in any municipality in accordance with paragraph (a) of this subsection (10) unless a majority of the registered electors of the municipality voting on the question have voted to hold the regular election on a date different than specified in paragraph (a) of this subsection (10) pursuant to section 31-10-109 (1), in which case "regular election" means, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

(11) "Special election" means any election called by the governing body of any municipality or initiated by petition to be held at a time other than the regular election for the purpose of submitting public questions or proposals to the registered electors of the municipality.

(12) "Street" means any street, avenue, boulevard, road, land, alley, viaduct, right-of-way, courtway, or other public thoroughfare or place of any nature open to the use of the municipality or of the public, whether the same was acquired in fee or by grant of dedication or easement or by adverse use.

(13) "Town" means a municipal corporation having a population of two thousand or less incorporated pursuant to the provisions of part 1 of article 2 of this title or reorganized pursuant to the provisions of part 3 of article 2 of this title or pursuant to the provisions of any other general law on or after July 3, 1877, and a municipal corporation, regardless of population, organized as a town on December 31, 1980, and choosing not to reorganize as a city pursuant to part 2 of this article, but does not include any town incorporated prior to July 3, 1877, which has chosen not to reorganize nor any town which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution.

(14) "Ward" means a district, the boundaries of which have been established pursuant to section 31-2-104 or 31-4-104, from which a member of the governing body of the city or town is elected.

Source: L. 75: Entire title R&RE, p. 1004, § 1, effective July 1. **L. 79:** (10) and (11) amended, p. 1170, § 1, effective July 1. **L. 81:** (4) amended, p. 1493, § 1, effective May 28; (2) and (13) amended, p. 1488, § 1, effective June 5. **L. 85:** (10) amended, p. 273, § 6, effective April 30. **L. 89:** (4) amended, p. 1287, § 2, effective April 6. **L. 2000:** (10) amended, p. 791, § 3, effective August 2. **L. 2004:** (10) amended, p. 1522, § 2, effective May 28; (10) amended, p. 808, § 1, effective July 1. **L. 2005:** (2) and (13) amended, p. 774, § 57, effective June 1.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Amendments to subsection (10) by House Bill 04-1072 and House Bill 04-1430 were harmonized.

31-1-102. Application - legislative intent.

(1) In the recodification of this title, certain provisions which previously applied or may have been interpreted to apply to limited categories of municipalities have been applied to all municipalities, whether statutory, home rule, or special territorial charter. Except for those provisions which expressly apply only to limited categories of municipalities, it is the intent of the general assembly that the provisions of this title shall apply to home rule municipalities except insofar as superseded by charter or ordinance passed pursuant to such charter and to all statutory cities and towns and shall be available to special territorial charter cities and towns unless in conflict with the charters thereof. The general assembly further declares that in the recodification of this title and in the use of the term "municipality" in this title there is no legislative intent to affect or modify the application of the provisions of this title with respect to preemption of home rule or special territorial charter powers, which preemption may or may not have existed on the effective date of this recodification (July 1, 1975). The use of the term "municipality" in future additions or amendments to this title shall not in and of itself create a presumption for or against preemption of home rule or special territorial charter powers.

(2) Where any power is granted in this title to a specific municipal official or group of officials, that power may be exercised within any home rule municipality by the officials, to the extent and in the manner, designated in the particular home rule charter or ordinance passed pursuant to such charter.

Source: L. 75: Entire title R&RE, p. 1006, § 1, effective July 1.

ANNOTATION

The general intent expressed in this section that all of title 31 should apply to home rule municipalities cannot be construed to apply to disconnection pursuant to § 31-12-601. The general intent of this section excepts "those provisions which expressly apply only to limited categories of municipalities", and the disconnection statute applies only to statutory cities. Allely v. City of Evans, 124 P.3d 911 (Colo. App. 2005).

PART 2

CLASSIFICATION OF MUNICIPALITIES

31-1-201. Classification of municipalities.

(1) With respect to the exercise of corporate and municipal powers, the municipalities of this state are divided into the following classifications:

(a) Cities or towns incorporated prior to July 3, 1877, which have retained such organization;

(b) Cities or towns organized pursuant to the provisions of article XX of the state constitution;

(c) Cities and towns organized pursuant to the provisions of this title or of any other general law on or after July 3, 1877, which have not chosen to adopt a home rule charter under the provisions of article XX of the state constitution.

Source: L. 75: Entire title R&RE, p. 1006, § 1, effective July 1.

31-1-202. Cities or towns retaining prior status.

Every city or town incorporated prior to July 3, 1877, which chooses to retain such organization, in the enforcement of the powers or the exercise of the duties conferred by the special charter or general law under which the same is incorporated, shall proceed in all respects as provided by such special charter or general law and shall not be affected nor the powers or duties thereof in any manner changed or abridged by any provisions of this title.

Source: L. 75: Entire title R&RE, p. 1006, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-1-101 and 31-1-102 as they existed prior to 1975.

ANNOTATION

Law reviews. For note, "The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas", see 36 Dicta 414 (1959).

Annotator's note. Since § 31-1-202 is similar to former §§ 31-1-101 and 31-1-102 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The object of the saving clause inserted in this section is to preserve the existence of cities and towns which had been incorporated under general laws enacted prior to, and repealed by, the act of 1877; had the saving clause not been added, such cities and towns might have gone out of existence, as legal entities. City of Central v. Axton, 159 Colo. 69, 410 P.2d 173 (1966).

A saving clause "should be strictly construed so as not to include anything not fairly within its terms". City of Central v. Axton, 159 Colo. 69, 410 P.2d 173 (1966).

However, this section does not freeze in perpetuity the powers and duties of that city as such existed in 1876. City of Central v. Axton, 159 Colo. 69, 410 P.2d 173 (1966).

General laws applicable to municipalities repealed. In addition to spelling out the manner in which a city or town could be organized and incorporated, the general assembly in 1877 repealed all general laws providing for the organization and government of incorporated cities and towns. City of Central v. Axton, 159 Colo. 69, 410 P.2d 173 (1966).

But the existence of cities and towns incorporated before 1877 which chose to retain their then existing organizations should not be affected by this title and further, the powers and duties of such a town or city are not to be changed or abridged in any manner by any provision of this act. In other words, the injunction is that the powers and duties of a town or city which chose to retain its existence under its territorial charter are not to be altered by any provision of this act. City of Central v. Axton, 159 Colo. 69, 410 P.2d 173 (1966).

But not exempt from classification of municipalities. This section, while permitting towns which were incorporated prior to 1877 to retain their organization, and to proceed under the law under which they were incorporated in the enforcement of the powers or the exercise of the duties

conferred by such general law, does not have the effect of exempting such towns from the operation of statutes relating to the classification of municipal corporations. Kirkpatrick v. People, 66 Colo. 100, 179 P. 338 (1919).

There is nothing in this section which shows an intent on the part of the general assembly to exempt such cities and towns from the operation of any statute relating to the classification of municipal corporations. City of Central v. Axton, 159 Colo. 69, 410 P.2d 173 (1966).

All cities and towns incorporated under general laws were subject to that part of the act of 1877 which relates to the election of municipal officers, notwithstanding this section. City of Central v. Axton, 159 Colo. 69, 410 P.2d 173 (1966).

General statute on removal of local officer inapplicable. Even if there were no ordinance dealing with the appointment or removal of a town clerk in a special charter town which never elected to become subject to the general laws governing municipal corporations, the general statute on the local matter of removal of municipal officers does not apply. Glenn v. Town of Georgetown, 36 Colo. App. 431, 543 P.2d 726 (1975).

Denver not limited by title. In the area of local legislative jurisdiction, Denver is not limited by the statutes pertaining to powers of towns and cities, § 31-1-101 et seq. Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960).

Applied in Bernheimer v. City of Leadville, 14 Colo. 518, 24 P. 332 (1890).

31-1-203. Classification of statutory cities and towns.

(1) With respect to the exercises of certain municipal and corporate powers, granted by the provisions of this title, and to the duties of certain municipal officers, set forth in this title, all municipal corporations organized pursuant to the provisions of this title or of any other general law on or after July 3, 1877, which have not chosen to adopt a home rule charter under the provisions of article XX of the state constitution, are divided into cities and towns.

(2) Repealed.

Source: L. 75: Entire title R&RE, p. 1006, § 1, effective July 1. **L. 81:** (2) repealed, p. 1492, § 9, effective June 5.

Editor's note: This section is similar to former §§ 31-1-201 and 31-1-202 as they existed prior to 1975. For a detailed comparison, see the comparative tables at the back of the index.

ANNOTATION

Annotator's note. Since § 31-1-203 is similar to former §§ 31-1-201 and 31-1-202 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Intent of this and following sections is to prevent a multiplication of classes of municipalities, the giving to one within the same class different powers or functions, and imposing upon any one restrictions different from those in the same class or division. In short, it is to secure absolute uniformity, by general law, applicable to all the given classes, respecting the faculties with which they might be endowed and the limitations placed upon their functions by the general assembly so that any person, anywhere, desiring to ascertain what are the powers and restrictions of any one city of a given class in the state could be advised thereof by looking at the "general law" defining such powers and restrictions. Kirkpatrick v. People, 66 Colo. 101, 179 P. 338 (1919).

Applied in Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926).

31-1-204. Change of classification - towns - notice - effect on officeholders - options prior to reorganization - terms of office - election dates.

(1) The governor and secretary of state, within six months after the returns of any United States census have been filed in the office of the secretary of state, or within thirty days after the returns of the enumeration of the inhabitants of any town taken under and by authority of any town ordinance or resolution adopted by the board of trustees of such town have been filed in the office of the secretary of state, shall ascertain which towns are entitled to become cities. The governor shall cause a statement thereof to be prepared by the secretary of state, which statement shall be published in some newspaper published at the state capital and also in some newspaper, if there is one, printed in each of the towns entitled to such change in classification. A copy of such statement shall be transmitted by the secretary of state to the mayors of said towns and to the next general assembly.

(2) Every such town may proceed at any subsequent regular town election held not sooner than ninety days after the date of the statement's receipt by the mayor, to organize according to the new classification available to it by the election of officers properly belonging thereto. No change of classification, nor the organization of the town into a city in accordance with this section, shall cause the removal from office of any member of the governing body of such town whose term of office has not expired.

(3) Notwithstanding the provisions of sections 31-4-105 and 31-4-107 (4), prior to any election to reorganize to a statutory city under part 1 of article 4 of this title, the governing body of the town may adopt an ordinance providing for the continued appointment of the clerk and

treasurer by the governing body. If such an ordinance is repealed, the clerk and treasurer positions shall then be elective offices until changed pursuant to section 31-4-107 (4).

(4) Notwithstanding the provisions of part 2 of article 4 of this title, prior to any election to reorganize, the governing body may conduct an election under the provisions of part 2 of article 4 of this title to determine whether the town should reorganize directly into a city council-city manager form of government. If the voters vote to reorganize in such a manner, the town's form of government shall remain unchanged until the reorganization election at which time the town shall reorganize into a city council-city manager form of government. For the purpose of section 31-4-204 (1), laws of the state applicable to cities and not inconsistent with this part 2 or with part 2 of article 4 of this title shall apply to and govern the town after its reorganization into a city council-city manager form of government.

(5) Notwithstanding the provisions of sections 31-4-104, 31-4-105, 31-4-106, and 31-4-205, prior to any reorganization election, the governing body of the town may adopt an ordinance establishing the number of members to be on the city council after reorganization, which number shall not be less than six, and providing that all members shall be elected from the city at large. If such an ordinance is repealed, the members of the council shall be elected according to the provisions of part 1 or part 2 of article 4 of this title, whichever is applicable.

(6) Notwithstanding the provisions of sections 31-4-105 and 31-4-205 (1), if four-year overlapping terms for the mayor and trustees or any other elective officer were established prior to the reorganization election, such terms shall continue after reorganization for the mayor and council members and any other elective city office until changed pursuant to section 31-4-107 (3) or 31-4-205 (3).

(7) In conformity with the provisions of section 31-1-101 (10), the regular election date for towns reorganizing into cities shall remain, after reorganization, the first Tuesday of April in each even-numbered year unless a majority of the registered electors of the city voting on the question have voted to hold the regular election of the city on a different date pursuant to section 31-10-109 (1), in which case the regular election date of the city shall mean, for such city, the date on which the regular election of officers takes place as determined by the registered electors of the city. Notwithstanding the provisions of section 31-10-109 (1), after reorganization, the governing body of the city may by ordinance establish its regular election date on the Tuesday succeeding the first Monday of November in each odd-numbered year, and may include in such ordinance any alteration in the term of office of officials subsequently elected which may be necessary to accomplish the change in election dates in an orderly manner. In no event shall such ordinance shorten the term of any elected official in office at the time of its adoption.

Source: L. 75: Entire title R&RE, p. 1007, § 1, effective July 1. **L. 81:** (2) amended and (3) to (7) added, p. 1489, § 2, June 5. **L. 86:** (7) amended, p. 1220, § 29, effective May 30. **L. 2004:** (7) amended, p. 809, § 2, effective July 1.

Editor's note: This section is similar to former § 31-1-203 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-1-204 is similar to former § 31-1-203 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This and the following section are applicable to, and govern, all existing towns and cities which have been incorporated under general laws, whether of the territory or of the state. Kirkpatrick v. People, 66 Colo. 100, 179 P. 338 (1919).

Ordinary intent of language. The most reasonable construction of this section is that the language was intended to mean exactly what it says according to the ordinary meaning of the words used. Harris v. Chambers, 16 Colo. App. 250, 64 P. 688 (1901).

Mandatory provisions as to organization. This section is mandatory in its requirement that, when an incorporated town becomes a city, it shall organize by the election of such officials as are necessary and provided by statute for the municipality in its new class. Harris v. Chambers, 16 Colo. App. 250, 64 P. 688 (1901); Kirkpatrick v. People, 66 Colo. 100, 179 P. 338 (1919).

As to no removal from office. This section is explicit and mandatory in its provision that the change of class shall not work the removal from office of aldermen of the incorporated town whose terms had not expired, and that they should continue to serve as aldermen of the city in its new class until the expiration of the term for which they had been originally elected. Harris v. Chambers, 16 Colo. App. 250, 64 P. 688 (1901).

31-1-205. Organization after change.

As soon as the statement is published, as provided in section 31-1-204, showing that any town is entitled to be organized into a city, the proper authorities of such town may adopt and publish such ordinances as may be necessary to perfect such organization with respect to the election, duties, and compensation of officers and with respect to all other necessary matters. All previously adopted ordinances of any town shall remain in force after its organization as a city so far as such ordinances may be applicable.

Source: L. 75: Entire title R&RE, p. 1007, § 1, effective July 1. **L. 81:** Entire section amended, p. 1490, § 3, effective June 5.

Editor's note: This section is similar to former § 31-1-204 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-1-205 is similar to former § 31-1-204 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

The language of this section makes it mandatory upon the respondents to act as therein provided. Kirkpatrick v. People, 66 Colo. 100, 179 P. 338 (1919).

31-1-206. Change in classification - cities - notice - effect on officeholders - terms of office - election dates.

(1) The governor and the secretary of state, within six months after the returns of any United States census have been filed in the office of the secretary of state, or within thirty days after the returns of the enumeration of the inhabitants of any city taken under and by virtue of any city ordinance or resolution adopted by the city council have been filed in the office of the secretary of state, shall ascertain whether such city has a population of two thousand or less. If it appears that a city is entitled to change its classification to that of a town, the governor shall cause a statement thereof to be prepared by the secretary of state, which statement shall be published in some newspaper published at the state capital and also in some newspaper, if there is one, printed in the city involved.

(2) A copy of such statement shall be transmitted by the secretary of state to the mayor of said city and to the next general assembly; and every such city, at any subsequent city regular election held not sooner than ninety days after the date of the statement's receipt by the mayor, may proceed to organize according to the new classification available to it by the election of officers properly belonging thereto. No change of classification, nor the organization of the city into a town in accordance with this section and section 31-1-207, shall cause the removal from office of any member of the governing body of such city whose term of office has not expired; all such members shall continue to be members of the governing body of the newly classified town for their respective terms of office.

(3) Notwithstanding the provisions of section 31-4-301 (2) and (5), if four-year overlapping terms for the mayor and council members or any other elective officer were established prior to the reorganization election, such terms shall continue after reorganization for the mayor and trustees and any other elective town office until changed pursuant to section 31-4-301 (5).

(4) In conformity with the provisions of section 31-1-101 (10), the regular election date for cities reorganizing into towns shall remain, after reorganization as a town, the Tuesday succeeding the first Monday of November in each odd-numbered year unless a majority of the registered electors of the town voting on the question have voted to hold the regular election of the town on a different date pursuant to section 31-10-109 (1), in which case the regular election date of the city shall mean, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

Source: L. 75: Entire title R&RE, p. 1007, § 1, effective July 1. **L. 81:** (1) and (2) amended and (3) and (4) added, p. 1490, §§ 4, 5, effective June 5. **L. 86:** (4) amended, p. 1221, § 30, effective May 30. **L. 2004:** (4) amended, p. 809, § 3, effective July 1.

Editor's note: This section is similar to former § 31-1-205 as it existed prior to 1975.

31-1-207. Ordinances to reorganize - existing ordinances.

As soon as the statement is published, as provided in section 31-1-206, showing that any city may change in classification to a town, the governing body of such city may adopt and publish such ordinances as may be necessary to perfect such organization in respect to the election, duties, and compensation of officers and with respect to all other necessary matters. All ordinances of any city shall remain in force after its organization as a town so far as such ordinances may be applicable to such town.

Source: L. 75: Entire title R&RE, p. 1008, § 1, effective July 1. **L. 81:** Entire section amended, p. 1491, § 6, effective June 5.

Editor's note: This section is similar to former § 31-1-206 as it existed prior to 1975.

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31-2-401. Petition to change name.

31-2-402. Name filed with secretary of state.

31-2-403. Secretary to keep alphabetical list.

31-2-404. Notice of hearing on petition.

31-2-405. Hearing postponed.

31-2-406. Secretary to give notice.

31-2-407. Change does not affect liability.

PART 1

INCORPORATION

31-2-101. Petition to district court.

(1) Whenever the inhabitants of any territory not embraced within the limits of any existing municipality desire to be organized into a city or town, they shall file a petition for incorporation of such city or town with the district court of the county within which such territory, or any part thereof, is situate. The petition shall be signed by not less than one hundred fifty of the registered electors who are landowners and residents within the territory or, in cases where the territory involved is wholly situate in a county having a population of twenty-five thousand or less, signed by forty such registered electors who are landowners and residents and shall:

(a) Describe the territory proposed to be embraced in such city or town, which description shall determine the boundaries thereof;

(b) Have attached thereto an accurate map or plat thereof on a scale no less than one inch to one thousand feet;

(c) State the name proposed for such city or town;

(d) Be accompanied with satisfactory proofs of the number of inhabitants within the territory embraced within the limits of the proposed city or town, which proofs shall be based upon the last preceding federal census, as adjusted according to the records of the county planning office or other county records. At the time of the filing of said petition, the petitioners shall file a bond, in an amount to be determined and approved by the court, to cover the expenses connected with the proceedings in case the incorporation is not effected. In no case shall there be incorporated in such city or town any undivided tract of land consisting of forty or more acres lying within the proposed limits of such city or town without the consent of the owners thereof.

(1.5) The petition may include a request for submission to the electors of the proposed municipality at the incorporation election of any matter permitted to be submitted at the election pursuant to section 31-2-102 (1.5).

(2) No such petition shall be filed where any portion of the boundaries of the proposed city or town is within one mile from the boundaries of any existing municipality, unless the territory proposed to be included within such city or town is composed of three hundred twenty acres or more.

(2.5) (a) In addition to any other notice that may be required under this part 1, whenever the number of registered electors within the area that is the subject of a petition filed pursuant to subsection (1) of this section is less than two thousand five hundred persons, notice of the filing of the petition shall be sent by first-class mail to each person owning real property within the area at the address shown for such owner in the records of the county assessor's office. The cost of mailing the notice required by this paragraph (a) shall be borne by the petitioners.

(b) The notice required by paragraph (a) of this subsection (2.5) shall include the name, address, and telephone number of a contact person who is able to provide information on the petition to the public, the case number of the civil action concerning the petition, and the district court in which the petition is filed. The notice shall also inform the property owner that, if he or she would like to obtain a copy of the petition, the property owner shall submit to the contact person a request for a copy of the petition along with the payment of a fee. The notice shall specify the amount of the fee and instructions as to the manner in which payment shall be made. The fee charged pursuant to this paragraph (b) shall conform to the requirements of section 24-72-205 (5)(a), C.R.S. Upon receipt of payment, the contact person shall mail a copy of the petition to the property owner.

(c) The notice required by paragraph (a) of this subsection (2.5) shall be sent prior to the date on which the district court makes its findings and determination pursuant to section 31-2-102 (1).

(3) (a) No incorporation election shall be held pursuant to section 31-2-102 unless the court finds that the proposed area of incorporation is urban in character and unless the court additionally finds that:

(I) The proposed area of incorporation has an average of at least fifty registered electors residing within the boundaries of the proposed area of incorporation for each square mile of area.

(II) Repealed.

(III) (Repeal provision deleted by revision.)

(b) (I) If the proposed area of incorporation has fewer than five hundred registered electors residing therein, a public hearing shall be held before the board of county commissioners to consider whether the petitioners may hold an incorporation election. Thirty days' notice of the time and place of such hearing shall be given by one publication thereof in a newspaper of general circulation in the county.

(II) After public hearing, the board of county commissioners may refuse to permit the incorporation election to be held if the board finds upon satisfactory evidence that:

(A) Any of the criteria set forth for special districts in section 32-1-203 (2), C.R.S., exist with respect to the area proposed for incorporation;

(B) Annexation to a nearby municipality would avoid unnecessary duplication of the services referred to in sub-subparagraph (A) of this subparagraph (II); and

(C) The proposed incorporation is inconsistent with any applicable county or regional comprehensive plan.

(III) If the proposed area of incorporation includes more than one county, the board of county commissioners of each county included may meet and devise a procedure for a joint hearing to determine whether the petitioners may hold an incorporation election.

(4) If, at any time between the filing of a petition pursuant to this section and not less than ten days prior to the date of the election thereon, there is filed with the court any subsequent petition which meets the requirements of this part 1 and which embraces any of the territory embraced in the initial petition calling for such election, the court may order that all such proposals contained in the said petitions filed with the court be submitted to the registered electors of the territories embraced by such petitions, to be voted on at one election, in the alternative. The court may order the rescission of any prior call of an election, discharge any commissioners previously appointed, and order the appointment of a new commission to call the election on all such proposals, or the court may order the inclusion of the subsequent proposals in the call of an election by the originally appointed commissioners.

Source: L. 75: Entire title R&RE, p. 1008, § 1, effective July 1. **L. 79:** (3)(a) amended, p. 1183, § 1, effective June 21. **L. 81:** (3)(a)(III) amended, p. 1497, § 1, effective May 27; (3)(b)(II)(A) amended, p. 1614, § 14, effective July 1. **L. 87:** IP(1) amended, p. 325, § 73, effective July 1. **L. 94:** (1.5) added, p. 1190, § 86, effective July 1. **L. 2008:** (2.5) added, p. 49, § 1, effective September 1.

Editor's note: (1) This section is similar to former § 31-1-103 as it existed prior to 1975.

(2) Subsection (3)(a)(III) provided for the repeal of subsection (3)(a)(II), effective July 1, 1983, and is therefore deleted by revision as obsolete. (See L. 81, p. 1497.)

ANNOTATION

Annotator's note. Since § 31-2-101 is similar to former § 31-1-103 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Constitutionality of power to determine extent and boundaries. The fact that under this and the following section the power to determine the extent and boundaries of municipal corporations is conferred upon individuals does not make the sections unconstitutional. People ex rel. Rhodes v. Fleming, 10 Colo. 553, 16 P. 298 (1887).

Comprehensive act. The act of 1877 appears to be a comprehensive act upon the subject of municipal corporations, and appears to cover the whole subject matter, and plainly shows an unmistakable intention on the part of the general assembly to make the act of 1877 a substitute for the law of 1868. City of Leadville v. Colo. Mining Co., 29 Colo. 17, 67 P. 289 (1901).

Petitioners must be landowners. Velasquez v. Zimmerman, 30 Colo. 355, 70 P. 419 (1902).

Or else incorporation void. A petition for the incorporation of a town, signed by the requisite number of names, a part of whom were not bona fide electors and landowners so that the number of bona fide electors and landowners signing the petition was less than the number required by this section, would not give the district court jurisdiction, and the incorporation of a town based upon such petition is void. People ex rel. Saunier v. Stratton, 33 Colo. 464, 81 P. 245 (1905).

"Embraced" defined. The familiar and generally accepted meaning of the word "embraced" in the first sentence is: "encircled, enclosed, encompassed". Therefore, an area completely encircled by and enclosed and encompassed within the exterior limits of a city cannot be incorporated. In re Incorporation of Town of Eastridge v. City of Aurora, 41 Colo. App.

299, 590 P.2d 72 (1978), aff'd, 198 Colo. 440, 601 P.2d 1374 (1979).

A petition for incorporation must recite that petitioners are inhabitants of the territory proposed to be incorporated, so where petition filed merely recited that the signatories were "all inhabitants of a part of the county of Boulder, State of Colorado, which is not embraced within the limits of any city or incorporated town", while registered, qualified electors of the territory, the district court was correct in finding that the petition was fatally defective. In re Incorporation of N. Boulder v. Sisson, 167 Colo. 549, 448 P.2d 308 (1969).

Persons accepting deeds as gifts for signing are not landowners. Persons who accept deeds to lots from those who are interested in the incorporation of a town, as a reward for signing the petition for incorporation, are not bona fide landowners within the meaning of this section, and are not entitled to sign the petition. People ex rel. Saunier v. Stratton, 33 Colo. 464, 81 P. 245 (1905); People ex rel. Taylor v. Koerner, 92 Colo. 83, 18 P.2d 327 (1932).

Temporary residents not entitled to sign. In the incorporation of a town, persons who temporarily move into the territory proposed to be incorporated, for the sole purpose of participating in the election, are not bona fide residents within the meaning of this section, and are not entitled to sign the petition for incorporation; there must not only be a personal presence for the requisite time, but also a concurrence therewith of an intention to make the place a permanent home. People ex rel. Saunier v. Stratton, 33 Colo. 464, 81 P. 245 (1905).

A person who acquires land by the conveyance of a fee-simple title upon condition subsequent is a landowner within the meaning of this section. People ex rel. Taylor v. Koerner, 92 Colo. 83, 18 P.2d 327 (1932).

Allegations as to status of signers material. Allegations in an action in quo warranto, testing sufficiency of incorporation, that signers were not bona fide landowners, residents, and electors are statements of ultimate fact which, if denied, tender issues that not only are material, but vital, because, if proved, the petition would be insufficient, and the incorporation based thereon would be void under this section. Norton v. People ex rel. Rudbeck, 102 Colo. 489, 81 P.2d 303 (1938).

Evidence of good faith admissible. Where it is contended that a petition for the organization of a town under this section is a fraudulent scheme of the signers to defeat the statute, evidence of petitioners' conduct after signing and tending to show good faith is properly admitted. People ex rel. Taylor v. Koerner, 92 Colo. 83, 18 P.2d 327 (1932).

The requirement of accurate maps of the territory has been held to be jurisdictional. Taylor v. Pile, 154 Colo. 516, 391 P.2d 670 (1964).

The petition must contain an accurate description of the boundaries of the proposed municipal corporation, and failure of the petition for incorporation to properly set out the boundary to be incorporated has been held to make void the whole proceeding. Taylor v. Pile, 154 Colo. 516, 391 P.2d 670 (1964).

"Corrections" made after filing improper. Where there was an examination of the petition filed and the admitted fact was that after the petition was fully prepared and signatures affixed thereto changes were made in the description of the property and "corrections" were made in the boundary lines as shown on the map annexed to the petition, these facts lead inescapably to the conclusion that said petition was fatally defective and conferred no jurisdiction upon the court to order an election. Taylor v. Pile, 154 Colo. 516, 391 P.2d 670 (1964).

This statute places upon those who would incorporate territory into a municipality the burden of seeking the consent of owners of 40 acres or more. Hiwan Ranch v. City of Lakewood, 31 Colo. App. 471, 505 P.2d 16 (1972).

Or else tract not included in city. Absent laches, equitable estoppel, or the running of an applicable statute of limitations, city's failure to obtain the consent of an owner of more than 40 acres of land precludes it from including this tract of land within city boundaries. Hiwan Ranch v. City of Lakewood, 31 Colo. App. 471, 505 P.2d 16 (1972).

Mere notice does not obviate consent requirement. Although an owner of more than 40 acres of land may have notice (actual or constructive) of proposed incorporation, notice alone is not sufficient to obviate the necessity of city's obtaining consent from owner as required by statute. Hiwan Ranch v. City of Lakewood, 31 Colo. App. 471, 505 P.2d 16 (1972).

Consent provision as basis for asking a court to decree correct boundaries. Where plaintiff is not attacking incorporation procedures, but is only questioning boundaries of a city, plaintiff is entitled to rely on that portion of the incorporation statute which provides that its consent must be obtained before its land is included within the city, and it may make timely application to the court to decree the correct boundaries, so the statute of limitations contained is not applicable to this action. Hiwan Ranch v. City of Lakewood, 31 Colo. App. 471, 505 P.2d 16 (1972).

Signatories to a petition for incorporation must be registered electors, landowners, and residents of the territory sought to be incorporated. Malmgren v. Copper Mtn., Inc., 873 P.2d 44 (Colo. App. 1994).

Petition for incorporation must contain allegations that signatories are landowners within the territory sought to be incorporated regardless of whether it is filed alone or with a petition for home rule charter. Malmgren v. Copper Mtn., Inc., 873 P.2d 44 (Colo. App. 1994).

Applied in Glennon Heights, Inc. v. Cent. Bank & Trust, 658 P.2d 872 (Colo. 1983).

31-2-102. Incorporation election.

(1) If the district court finds and determines that the territory described in the petition and the petition itself meet the requirements of this part 1, it shall appoint not less than five nor more

than nine commissioners, who shall be registered electors residing within the territory described in the petition. Each commissioner, within ten days after his appointment, shall signify by affidavit to the court his intent to serve as commissioner. The commissioners shall hold a meeting within ten days after their acceptance and shall elect a chairman and such other officers as they may determine advisable to assist them in the performance of their duties. A majority of the commissioners appointed shall constitute a quorum at any meeting for the purpose of carrying out their legal duties. Such commissioners, within ten days following their acceptance, by resolution setting the date and time therefor, shall call an election of all the registered electors residing within the territory embraced within said territory, such election to be held not later than ninety days after the date of the call thereof, except as provided in this section. The chairman or other officer of the commissioners shall promptly report to the court, by affidavit, the provisions of the call for election.

(1.5) At any election for the incorporation of a new municipality, the commissioners shall also place upon the ballot any local government matters arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4), C.R.S., as applied to the new municipality, if the petition filed pursuant to section 31-2-101 requests that such matters be submitted at the incorporation election. Notwithstanding the provisions of subsection (5) of this section, any incorporation election at which a local government matter arising under section 20 of article X of the state constitution is submitted shall be conducted at the time and in the manner required by section 20 of article X of the state constitution.

(2) The commissioners shall establish one or more precincts within said limits and shall designate one polling place for each precinct. The precincts shall consist of one or more whole general election precincts wherever practicable. The chairman shall forthwith certify the precinct boundaries to the county clerk and recorder of the county in which such territory is located. The county clerk and recorder shall prepare a registration list for each precinct in the manner provided in the "Colorado Municipal Election Code of 1965".

(3) Registration and changes of address may be made with the county clerk and recorder. The county clerk and recorder, in his or her discretion, may conduct registration from time to time within the proposed municipal boundaries.

(4) The notice of such an election shall be given by the commissioners in the manner prescribed by the "Colorado Municipal Election Code of 1965". Such notice shall include a description of the limits of the proposed town or city and shall state that the description and plat thereof are on file in the office of the clerk of the district court.

(5) The commissioners shall conduct the election in conformity with the provisions of the "Colorado Municipal Election Code of 1965" insofar as applicable. The commissioners shall act as judges and clerks of the election, and the chairman may appoint such additional judges and clerks of election as he deems necessary. The commissioners shall report the results of the

election to the court within three days following the election. The ballots or voting machine tabs used at said election shall be "For Incorporation" and "Against Incorporation".

(6) If more than one proposal is to be voted upon at the election and no proposal receives a majority of favorable votes, all the submitted proposals shall fail; and, if there is a tie in the number of favorable votes cast for any proposals, such proposals shall be voted upon in a runoff election.

Source: L. 75: Entire title R&RE, p. 1009, § 1, effective July 1. **L. 87:** (3) amended, p. 326, § 74, effective July 1. **L. 94:** (1.5) added, p. 1190, § 87, effective July 1; (3) amended, p. 1772, § 35, effective January 1, 1995. **L. 95:** (3) amended, p. 856, § 95, effective July 1. **L. 2014:** (3) amended, (HB 14-1164), ch. 2, p. 58, § 10, effective February 18.

Editor's note: This section is similar to former § 31-1-104 as it existed prior to 1975.

Cross references: (1) For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

(2) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

ANNOTATION

Annotator's note. Since § 31-2-102 is similar to former § 31-1-104 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

If a petition is fatally defective on its face, the district court does not have jurisdiction to order an election and should dismiss the petition. In re Incorporation of North Boulder v. Sisson, 167 Colo. 549, 448 P.2d 308 (1969).

It is within the power of the district court to issue an order staying an originally scheduled election, and the district court had the power to order a new election on a date agreeable to the commissioners. Wiltgen v. Berg, 164 Colo. 139, 435 P.2d 378 (1967).

That a petition to a district court for the appointment of commissioners to call the election is obtained secretly is immaterial, since under this section there is no requirement for publicity, in view of the fact that the question of incorporating is required to be submitted to a public vote of the citizens interested. Guebelle v. Epley, 1 Colo. App. 199, 28 P. 89 (1891).

Proceedings challenged by quo warranto. Under this section contest of validity of proceedings incorporating a town cannot be inaugurated by filing objections thereto in the district court in which the incorporation proceedings were had, as such contest has to be made by quo warranto. Velasquez v. Zimmerman, 30 Colo. 355, 70 P. 419 (1902).

Enjoining of properly filed election improper. After the inhabitants of a part of a county sought to be incorporated into a town have complied with all the requirements of this section, and the commissioners appointed by the district court have called an election to determine the question of so incorporating by the votes of all the qualified electors residing within the territory embraced in the proposed town, a court has no jurisdiction to enjoin such election, and disobedience of such an injunction is not punishable as contempt. Guebelle v. Epley, 1 Colo. App. 199, 28 P. 89 (1891).

Proceeding first filed has priority over second proceeding. Incorporation proceedings are judicial in nature, the usual rules apply concerning the duties of a court with respect to dual actions involving the same subject matter and substantially the same parties, the action first filed has a "priority of jurisdiction", and the second action must be stayed until the first is finally determined. Wiltgen v. Berg, 164 Colo. 139, 435 P.2d 378 (1967).

31-2-103. Approval of incorporation election.

(1) Within three days after the election, the commissioners shall file a report thereof with the court, which report shall be verified upon the oath or affirmation of each commissioner and which shall contain the following:

(a) A certification that the election was held in accordance with the law;

(b) A copy of the notice of the election, as published;

(c) The names of the judges of the election;

(d) The whole number of votes cast in the election; and

(e) The result declared on the proposal submitted as reflected by the votes cast for and against such proposal.

(2) If it appears to the court that said election was substantially regular and fair and a majority of the ballots cast at such election were for incorporation, the court shall by order adjudge said petition and election to be valid. The clerk of the court shall thereupon give notice of the result by publication in a newspaper of general circulation in the county or, if no newspaper is published in the county, by posting in five public places within the limits of the proposed city or town. In such notice he shall designate to which classification of incorporation prescribed in section 31-1-203 the city or town belongs. Three certified copies of the notice, with

proper proof of its publication, together with a certified copy of all papers and record entries relating to the matter on file in the clerk of the court's office, including a legal description and a map of the area concerned, shall be filed in the office of the county clerk and recorder of each of the counties in which the territory is situate. The county clerk and recorder shall file the second certified copy of such notice with the division of local government of the department of local affairs as provided in section 24-32-109, C.R.S., and file a third certified copy of said notice in the office of the secretary of state.

Source: L. 75: Entire title R&RE, p. 1010, § 1, effective July 1. **L. 84:** (2) amended, p. 829, § 1, effective March 22.

Editor's note: This section is similar to former § 31-1-105 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-2-103 is similar to former § 31-1-105 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Court's purely judicial role. Since the enactment of this section, the function of a district court in incorporation proceedings is clearly judicial. People ex rel. Wilson v. Blake, 128 Colo. 111, 260 P.2d 592 (1953).

Incorporation order mandatory when procedure fair and regular. When it appeared to the district judge that the petition for incorporation was substantially conformable to law and that said election was substantially regular and fair, and a majority of the ballots cast at such election was in favor of incorporation, it was mandatory upon the judge to order and adjudge that the incorporation be complete. Fiant v. Town of Naturita, 127 Colo. 571, 259 P.2d 278 (1953).

An order entered by a county court declaring the incorporation of a town is a final judgment. People ex rel. Wilson v. Blake, 128 Colo. 111, 260 P.2d 592 (1953).

The particular grounds on which the incorporation, organization, or annexation may be attacked by a quo warranto proceeding include fraud in obtaining the charter or in the incorporation, organization, or annexation proceedings, lack of jurisdiction of such proceedings and the invalidity, on its face, of an order establishing a district; but, except on these grounds, a quo warranto proceeding cannot be maintained for the purpose of attacking the judicial action or determination of a court or judge in the incorporation, organization, or annexation proceedings, and, in some jurisdictions, a like rule obtains as to the findings of a board or officer in

such proceedings. People ex rel. Wilson v. Blake, 128 Colo. 111, 260 P.2d 592 (1953).

Restricted availability. Quo warranto being an extraordinary and highly prerogative writ, its issuance may be attained only on behalf of the state or, under closely restricted circumstances, upon relation of individuals possessing a special interest. People ex rel. Wilson v. Blake, 128 Colo. 111, 260 P.2d 592 (1953).

Fraud, to form the basis of a quo warranto proceeding, must be extrinsic or collateral fraud, and reliance may not be had upon those matters intrinsically connected with the hearing or proceeding itself, or which could be, or should have been, determined therein. People ex rel. Wilson v. Blake, 128 Colo. 111, 260 P.2d 592 (1953).

The sufficiency of the original petition for incorporation cannot be attacked after an election has been held thereon and the qualified electors have spoken. Enos v. District Court, 124 Colo. 335, 238 P.2d 861 (1951).

Objectors must participate in court proceeding. There is no reason why those who object to the incorporation of a town should not enter appearance in the proceeding in the district court and there present their protests. A hearing thereon in regular manner would make for orderly proceedings on direct issues and forestall round-about attacks in an effort to accomplish indirectly that which could much better be pursued by direct method and having entered appearance and protest, in event of adverse judgment, review by writ of error would be in order. Neither is this the only avenue available where it is contended that the county court was without or exceeded its jurisdiction, or abused its discretion, since C.R.C.P. 106(a)(4) provides a "plain, speedy, and adequate remedy". People ex rel. Wilson v. Blake, 128 Colo. 111, 260 P.2d 592 (1953).

For history of section, see Enos v. District Court, 124 Colo. 335, 238 P.2d 861 (1951).

31-2-104. Organization of new city or town.

(1) After the filing of the record in the proper offices by the clerk of the court, the commissioners mentioned in section 31-2-102, in the case of a city, by resolution, shall divide the city into wards in accordance with the provisions of section 31-4-104, and the commissioners may, in the case of a town, similarly divide such town into wards. Each ward shall contain at least one precinct, and no precinct or part thereof shall be located within more than one ward. Precinct boundaries shall be the same as those established pursuant to section 31-2-102. Said resolution shall be filed with the clerk of the district court; but the first governing body shall have authority by ordinance to change the boundaries and number of wards prior to the next regular election.

(2) The commissioners by their chairman, at least four weeks before the date of the first election of officers, shall give preliminary notice thereof by publication in newspapers selected in the manner prescribed by the "Colorado Municipal Election Code of 1965". Such notice shall contain the following information:

(a) The time when the election will be held and the precinct boundaries and location of the polling place for each precinct;

(b) A description of the boundaries of the wards, if there are wards;

(c) The officers then to be elected;

(d) The fact that candidates for office may be nominated and their names placed on the ballot in accordance with the petition requirements set out in the "Colorado Municipal Election Code of 1965";

(e) The last date on which nomination petitions may be filed;

(f) The last date registration and changes of address may be made with the county clerk and recorder; and

(g) The qualifications for persons to vote in the election.

(3) Registration and changes of address may be made in the office of the county clerk and recorder. The county clerk and recorder has authority in his or her sole discretion, from time to time, to conduct registration within the proposed corporate limits. Each nomination petition must be filed with the clerk of the district court. Nominating petitions shall be made and filed and vacancies in nomination shall be filled in accordance with the "Colorado Municipal Election Code of 1965".

(4) At least twenty days before the election, the commissioners by their chair shall give notice of the election in the manner prescribed by the "Colorado Municipal Election Code of 1965".

(5) At such election the registered electors of such city or town residing within the limits of such city or town shall choose officers therefor, to hold their offices until the first regular election. The commissioners shall act as judges and clerks of the election; but the chairman may appoint such additional judges and clerks as he deems necessary for the proper conduct of the election. The election shall be conducted by the commissioners in the manner prescribed by the "Colorado Municipal Election Code of 1965", insofar as applicable.

(6) Candidates for election and elected officers shall bear the same qualifications for office as required of candidates and officers of a city or town as the case may be.

(7) All costs and expenses connected with such incorporation proceedings, including all election expenses and fees for necessary legal expenses, shall be paid by the governing body of the newly incorporated city or town within one year from the date of incorporation.

Source: L. 75: Entire title R&RE, p. 1011, § 1, effective July 1. **L. 87:** (3) amended, p. 326, § 75, effective July 1. **L. 94:** (3) amended, p. 1772, § 36, effective January 1, 1995. **L. 95:** (3) amended, p. 856, § 26, effective July 1. **L. 2014:** (3) amended, (HB 14-1164), ch. 2, p. 58, § 11, effective February 18. **L. 2015:** (4) amended, (HB 15-1130), ch. 230, p. 854, § 3, effective August 5.

Editor's note: This section is similar to former § 31-1-106 as it existed prior to 1975.

Cross references: (1) For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

(2) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

(3) For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

31-2-105. Incorporation complete - first ordinances - when effective.

(1) When certified copies of the papers and record entries are made and filed, as required by section 31-2-103, and officers are elected and qualified for such city or town, as provided in section 31-2-104, the incorporation thereof shall be complete, and all courts thereafter shall take due notice of the fact of such corporate status in all judicial proceedings.

(2) No ordinance enacted by the governing body of such city or town at the first meeting of such body shall take effect until thirty days after passage and publication, as provided in section 31-16-105.

Source: L. 75: Entire title R&RE, p. 1012, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-107 as it existed prior to 1975.

ANNOTATION

Applied in Norton v. People ex rel. Rudbeck, 102 Colo. 489, 81 P.2d 393 (1938).

31-2-106. Legal incorporation - validation - dedication of public property.

(1) Any city or town which is formed, organized, or incorporated and which exercises the rights and powers of a city or town and has in office a governing body exercising its duties is deemed legally incorporated. The legality of such formation or organization shall not be legally denied or questioned after six months from the date thereof; it is deemed a legally incorporated city or town; and its formation, organization, or incorporation shall not thereafter be questioned.

(2) All cities and towns organized pursuant to the general laws of this state prior to July 1, 1975, are hereby validated, and the proceedings adopted therein, and obligations incurred by such cities and towns are hereby validated and confirmed.

(3) All streets, parks, and other places designated or described as for public use on the map or plat of any city or town are public property, and the fee title thereto is vested in such city or town.

Source: L. 75: Entire title R&RE, p. 1012, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-1-108 and 31-1-109 as they existed prior to 1975.

ANNOTATION

I. General Consideration.

II. Public Dedication.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 31-2-106 is similar to former §§ 31-1-108 and 31-1-109 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Legal existence conclusively presumed. The legal existence of a municipal corporation will be conclusively presumed under this section when, without question, a board of municipal officers exercising their official duties has been maintained for more

than one year (now six months). People v. Curley, 5 Colo. 412 (1880).

Where it appears that a town, acting as such, has, for more than 12 years, exercised the powers of a municipal corporation, and for more than two years has had a full complement of officials, exercising their offices, the regularity of its organization is conclusively presumed. Lavelle v. Town of Julesburg, 49 Colo. 290, 112 P. 774 (1910).

Compliance with § 31-2-105 prerequisite to application of this section. Where a decree rendered under § 31-1-105 (now § 31-2-103) recited that a town was adjudged incorporated "upon the further compliance with the law in such cases made and provided", the quoted phrase had reference to § 31-3-107 (now § 31-2-105) and a compliance with the provisions thereof was necessary before the limitation prescribed by this section would begin to run. Norton v. People ex rel. Rudbeck, 102 Colo. 489, 81 P.2d 393 (1938).

II. PUBLIC DEDICATION.

Law reviews. For article, "Resubdividing and Replatting", see 28 Rocky Mt. L. Rev. 529 (1956). For note, "Ownership of Streets and Rights of Abutting Land — Owners in Colorado", see 40 Den. L. Ctr. J. 26 (1963).

Annotator's note. For additional annotations concerning the dedication of public property, see § 31-23-107.

The intent and purpose of subsection (3) is to clothe the city in its governmental capacity with the entire title to the streets, as such, for public use, and not for the "profit or emolument of the city". City of Leadville v. Bohn Mining Co., 37 Colo. 248, 86 P. 1038 (1906).

Upon the incorporation of a town, all avenues, streets, and alleys appearing on the map annexed to the petition for incorporation became public property and the fee thereof became vested in the town. Brell v. Ovid, 88 Colo. 198, 293 P. 961 (1930).

Subsection (3) applies only to cities and towns and does not apply to county or state highways. Buell v. Redding Miller, Inc., 163 Colo. 286, 430 P.2d 471 (1967).

Term "fee" means a "complete" title in city. Because under subsection (3) the general assembly intended, by the use of the term "street", to vest in the city such estate or interest as is reasonable necessary to enable it to utilize the surface and so much of the ground underneath as might be required for laying gas pipes, building sewers, and other municipal purposes. In other words, the general assembly used the term "fee", not according to its technical legal meaning, but as vesting in the city a complete, perpetual, and continuous title to the space designated as streets, so long as it used them for the purpose intended. City of Leadville v. Bohn Mining Co., 37 Colo. 248, 86 P. 1038 (1906).

The fee passes by statutory dedication, unburden of a trust. City of Leadville v. Colo. Mining Co., 29 Colo. 17, 67 P. 289 (1901).

But a city has no interest in the ores that may exist under a street. City of Leadville v. Bohn Mining Co., 37 Colo. 248, 86 P. 1038 (1906).

Where, in an action to recover lands formerly included in certain streets alleged to have reverted to the original grantor, it appears from the complaint that the map or plat of the town was duly recorded in the office of the recorder of the county and that the plats of the streets in controversy were also duly recorded, it will be presumed as against the pleader that all the plats mentioned were made, certified, acknowledged, and recorded as required by law; and from a further allegation that this town was later included in another town duly incorporated, it will be presumed that the limits of the latter town were extended in the manner recognized by law, and that the title to said streets dedicated by the plats became vested therein by statutory dedication, which divests the original grantor of title without acceptance by the town, in accordance with this section. Bothwell v. Denver Union Stockyards Co., 39 Colo. 221, 90 P. 1127 (1907).

No statutory dedication. When a plat plan specifically excludes an avenue from the dedication of other streets and avenues to public use, no statutory dedication of the excluded avenue has taken place. State Dept. of Hwys. v. Town of Silverthorne, 707 P.2d 1017 (Colo. App. 1985).

Where it was undisputed that land used as a park was not designated for public use on a map or plat, it was not statutorily dedicated as a park. Save Cheyenne v. City of Colo. Springs, 2018 COA 18, 425 P.3d 1174 (decided based on 1877 statutory language similar to subsection (3)).

31-2-107. Adoption of home rule charter upon incorporation.

A city or town may be organized as a home rule city or town upon incorporation, in which event the form of the petition and the proceedings attendant upon the election of commissioners and other matters relating thereto shall be governed by the provisions of section 31-2-209.

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-111 as it existed prior to 1975.

31-2-108. Continued county services.

(1) The county within which any newly incorporated city or town, or any part thereof, lies and the officers thereof shall continue to perform all duties and responsibilities within such territory as required by law and shall:

(a) Continue to apply all zoning, subdivision, and other regulations within the municipal limits of such city or town for a period of ninety days after the election of officers in accordance with section 31-2-104 or until superseded by ordinance, whichever is sooner; and

(b) Continue to provide to such territory and its inhabitants, upon request by the governing body of such city or town, the same services it was providing, which services shall be continued to be rendered until the ad valorem taxes levied by such city or town for the rendering of such services are collected and become available, but in no event for a period longer than one year subsequent to the date of the city's or town's incorporation.

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-1-107 and 31-1-110 as they existed prior to 1975.

ANNOTATION

For validity of extension of county zoning regulations to newly incorporated municipal territory, see Allred v. City of Lakewood, 40 Colo. App. 238, 576 P.2d 186 (1977).

31-2-109. Assessment - taxes - collection.

When any municipality incorporates under the provisions of this title or any municipality reorganizes under the provisions of part 3 of this article after the time for making the annual assessment for taxation has passed, the governing body of each such city or town may provide, by ordinance or resolution, for the assessment of taxable property within the corporate limits of said city or town. When such assessment is made and approved by the governing body, it may proceed to levy the necessary taxes for the fiscal year, which levy shall be certified by the clerk of such city or town to the county assessor, who shall extend the same upon the tax list of the current year, as required by section 31-20-104. The county treasurer shall proceed in the collection of such taxes in all respects as provided by law for the collection of taxes in cities and towns. It is not necessary for any such city or town to pass the annual appropriation ordinance or resolution required by section 29-1-108, C.R.S. This section shall apply only to the assessment and collection of taxes for the first fiscal year after such incorporation or reorganization.

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1. **L. 90:** Entire section amended, p. 1435, § 3, effective January 1, 1991.

Editor's note: This section is similar to former § 31-4-109 as it existed prior to 1975.

PART 2

MUNICIPAL HOME RULE

Cross references: For home rule cities and towns, see article XX of the state constitution; for home rule counties, see article 35 of title 30.

31-2-201. Short title.

This part 2 shall be known and may be cited as the "Municipal Home Rule Act of 1971".

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-101 as it existed prior to 1975.

31-2-202. Legislative declaration.

The general assembly declares that the policies and procedures contained in this part 2 are enacted to implement section 9 of article XX of the state constitution, adopted at the 1970 general election, by providing statutory procedures to facilitate adoption and amendment of municipal home rule charters, and, to this end, this part 2 shall be liberally construed. The provisions of this part 2 shall supersede the requirements of article XX of the state constitution, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, as provided in section 9 (3) of article XX of the state constitution.

Source: L. 75: Entire title R&RE, p. 1013, § 1, effective July 1. **L. 94:** Entire section amended, p. 1191, § 88, effective July 1.

Editor's note: This section is similar to former § 31-2-102 as it existed prior to 1975.

31-2-203. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Ballot title" means a ballot title as defined in section 31-11-103 (1).

(2) "Publication" means one publication in one newspaper of general circulation within the municipality. If there is no such newspaper, publication shall be by posting in at least three public places within the municipality.

Source: L. 75: Entire title R&RE, p. 1014, § 1, effective July 1. **L. 2000:** Entire section amended, p. 791, § 4, effective August 2.

Editor's note: This section is similar to former § 31-1-103 (2) as it existed prior to 1975.

31-2-204. Initiation of home rule.

(1) Proceedings to adopt a home rule charter for a municipality may be initiated:

(a) By the submission of a petition, signed by at least five percent of the registered electors of the municipality, to the governing body thereof; or

(b) By the adoption of an ordinance by the governing body of the municipality, without the prior submission of a petition therefor.

(2) Within thirty days after the initiation of the proceedings, in accordance with either paragraph (a) or (b) of subsection (1) of this section, the governing body of the municipality shall call an election for the purpose of forming a charter commission and of electing members thereof to frame a charter for the municipality, which election shall be held within one hundred twenty days after the date of the call of the election. The governing body shall cause notice of the election to be published not less than sixty days prior to the election.

(3) Candidates for the charter commission shall be nominated by filing with the clerk, on forms supplied by the clerk, a nomination petition signed by at least twenty-five registered electors and a statement by the candidate of consent to serve if elected. Said petition and statement shall be filed within thirty days after publication of the election notice. A second notice of the election, as soon as possible after the completion of filings, shall be published by the governing body and shall include the names of candidates for the charter commission.

Source: L. 75: Entire title R&RE, p. 1014, § 1, effective July 1. **L. 84:** (1)(a) amended, p. 831, § 1, effective April 25. **L. 85:** (1)(a) amended, p. 1346, § 13, effective April 30.

Editor's note: This section is similar to former § 31-2-104 as it existed prior to 1975.

31-2-205. Election on formation of charter commission and designation of members.

(1) At the election voters shall cast ballots for or against forming the charter commission. If a majority of the registered electors voting thereon vote for forming the charter commission, a commission to frame a charter shall be deemed formed.

(2) At the election voters shall also cast ballots for electing the requisite number of charter commission members. Those candidates receiving the highest number of votes shall be elected. In the event of tie votes for the last available vacancy, the clerk shall determine by lot the person who shall be elected.

Source: L. 75: Entire title R&RE, p. 1014, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-105 as it existed prior to 1975.

31-2-206. Charter commission.

(1) The charter commission shall be comprised as follows:

(a) In municipalities having a population of less than two thousand, nine members; and

(b) In municipalities having a population of at least two thousand, nine members unless the initiating ordinance or petition establishes a higher odd-number of members not to exceed twenty-one members.

(c) (Deleted by amendment, L. 94, p. 1191, § 89, effective July 1, 1994.)

(2) If the petition or ordinance initiating home rule proceedings pursuant to section 31-2-204 (1) or initiating proceedings for forming a new charter commission pursuant to section 31-2-210 (2) specifies that the members of the charter commission shall be elected by and from single- or multi-member districts or by a combination of such districts and at-large representation, the governing body, prior to publishing the notice provided for in section 31-2-204 (2) or 31-2-210 (4), shall divide the municipality into compact districts of approximately equal population. In

such event the members of said charter commission shall be elected by and from districts, or partly by and from districts and partly at large, as specified in said petition or ordinance.

(3) Eligibility to serve on the charter commission shall extend to all registered electors of the municipality. Any vacancy on the charter commission shall be filled by appointment of the governing body.

(4) The charter commission shall meet at a time and date set by the governing body, which shall be not more than twenty days subsequent to the certification of the election, for the purpose of organizing itself. At such meeting, the commission members shall elect a chairman, a secretary, and such other officers as they deem necessary, all of which officers shall be members of the commission. The commission may adopt rules of procedure for its operations and proceedings. A majority of the commission members shall constitute a quorum for transacting business. Further meetings of the commission shall be held upon call of the chairman or a majority of the members. All meetings shall be open to the public.

(5) The commission may employ a staff; consult and retain experts; and purchase, lease, or otherwise provide for such supplies, materials, and equipment as it deems necessary. Upon completion of its work, the commission shall be dissolved, and all property of the commission shall become the property of the municipality.

(6) The governing body may accept funds, grants, gifts, and services for the commission from the state of Colorado, or the United States government, or any agencies or departments thereof, or from any other public or private source.

(7) Reasonable expenses of the charter commission shall be paid out of the general funds of the municipality, upon written verification made by the commission chairman and secretary, and the governing body shall adopt such supplemental appropriation ordinances as may be necessary to support such expenditures. Members of the commission shall receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(8) The charter commission may conduct interviews and make investigations in the preparation of a charter, and, to the fullest extent practicable, municipal officials and employees shall cooperate with the commission by providing information, advice, and assistance.

(9) The charter commission shall hold at least one public hearing in preparation of a proposed charter.

(10) Within one hundred eighty days after its election, the charter commission shall submit to the governing body a proposed charter.

Source: L. 75: Entire title R&RE, p. 1014, § 1, effective July 1. **L. 81:** (1)(b) amended and (1)(c) added, p. 1491, § 7, effective June 5. **L. 94:** (1) amended, p. 1191, § 89, effective July 1.

L. 2009: (2) amended, (SB 09-292), ch. 369, p. 1977, § 106, effective August 5. **L. 2011:** (4) and (10) amended, (HB 11-1122), ch. 63, p. 164, § 1, effective September 1.

Editor's note: This section is similar to former § 31-2-106 as it existed prior to 1975.

31-2-207. Charter election - notice.

(1) Within thirty days after the date that the charter commission submits the proposed charter to it, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved, which election shall be held not less than sixty nor more than one hundred eighty-five days after publication of the notice thereof. Such notice of the election shall contain the full text of the proposed charter.

(1.5) The governing body shall set the ballot title for the proposed charter within sixty days after the date that the proposed charter is submitted pursuant to subsection (1) of this section.

(2) If a majority of the registered electors voting thereon vote to adopt the proposed charter, the charter shall be deemed approved and it shall become effective at such time as the charter provides.

(3) If a majority of the registered electors voting thereon vote to reject the proposed charter, the charter commission shall proceed to prepare a revised proposed charter, utilizing the procedures set forth in section 31-2-206, and the governing body shall submit the revised proposed charter to an election in the manner set forth in subsection (1) of this section. If a majority of the registered electors voting on such revised proposed charter vote to adopt the revised proposed charter, it shall be deemed approved and it shall become effective at such time as the revised charter provides. If a majority of the registered voters voting thereon vote to reject the revised proposed charter, the charter commission shall forthwith be dissolved.

Source: L. 75: Entire title R&RE, p. 1016, § 1, effective July 1. **L. 2000:** (1.5) added, p. 791, § 5, effective August 2. **L. 2011:** (1) amended, (HB 11-1122), ch. 63, p. 164, § 2, effective September 1. **L. 2015:** (1) amended, (HB 15-1130), ch. 230, p. 854, § 4, effective August 5.

Editor's note: This section is similar to former § 31-2-107 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

31-2-208. Filings - effect.

(1) Within twenty days after its approval, a certified copy of the charter shall be filed with the secretary of state and with the clerk.

(2) Upon such filings all courts shall take judicial notice of the charter.

(3) This section shall also apply to any amendment or repeal of a charter.

Source: L. 75: Entire title R&RE, p. 1016, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-108 as it existed prior to 1975.

31-2-209. Special procedure for adopting a charter upon incorporation.

(1) Proceedings to adopt a home rule charter may be initiated at the time of incorporation.

(2) In order to initiate home rule at the time of incorporation, the petition for incorporation shall be in the form and meet the requirements required by the provisions of section 31-2-101, except that:

(a) The petition shall be signed by at least five percent of the registered electors of the territory to be embraced within the boundaries of the proposed municipality, notwithstanding any provision of section 31-2-101; and

(b) The petition for incorporation shall request the initiation of proceedings for the adoption of a home rule charter pursuant to the provisions of this part 2.

(3) The election commissioners appointed by the court pursuant to section 31-2-102 shall exercise, to the extent practicable, the powers, functions, and responsibilities otherwise assigned by this part 2 to the governing body or clerk, and the procedures for incorporation and adoption of a home rule charter shall be modified as necessary to effectuate concurrent consideration.

(4) At the incorporation election, conducted under the provisions of section 31-2-102, the registered electors shall vote upon:

(a) The question of incorporation, as set forth in section 31-2-102 (5);

(b) The question of whether a charter commission should be formed, as set forth in section 31-2-205 (1); and

(c) The election of charter commission members, as set forth in section 31-2-205 (2).

(5) If a majority of the registered electors voting thereon vote for incorporation and for formation of a charter commission, the first election of officers shall be stayed pending drafting and approval of the charter pursuant to sections 31-2-206 and 31-2-207. Upon ratification of the charter or after rejection of a charter and revised charter pursuant to section 31-2-207, the election commissioners shall proceed to the first election of officers and to completion of incorporation pursuant to part 1 of this article.

(6) If a majority of the registered electors voting thereon vote for incorporation but against the formation of a charter commission, the procedures set forth in part 1 of this article shall be followed as if the petition for incorporation had not included a request for the adoption of home rule at the time of incorporation.

Source: L. 75: Entire title R&RE, p. 1016, § 1, effective July 1. **L. 84:** (2)(a) amended, p. 831, § 2, effective April 15. **L. 85:** (2)(a) amended, p. 1346, § 14, effective April 30.

Editor's note: This section is similar to former § 31-2-109 as it existed prior to 1975.

ANNOTATION

General Assembly's purpose in enacting subsection (2) was to ensure that request for initiation of home rule proceedings filed at same time as petition for incorporation does not ignore the independent statutory requirements for obtaining home rule status. Malmgren v. Copper Mtn., Inc., 873 P.2d 44 (Colo. App. 1994).

A proceeding to obtain a home rule charter may be initiated at the same time a petition for incorporation is filed. Malmgren v. Copper Mtn., Inc., 873 P.2d 44 (Colo. App. 1994).

The requirements for obtaining a home rule charter are the same regardless of whether a charter is sought after incorporation or at the same time a petition for incorporation is filed. Malmgren v. Copper Mtn., Inc., 873 P.2d 44 (Colo. App. 1994).

Unlike the signatories to a petition for incorporation, signatories to a petition for home rule charter need not demonstrate that they are landowners. Malmgren v. Copper Mtn., Inc., 873 P.2d 44 (Colo. App. 1994).

Petition for incorporation must contain allegations that signatories are landowners within the territory sought to be incorporated regardless of whether it is filed alone or with a petition for home rule charter. Malmgren v. Copper Mtn., Inc., 873 P.2d 44 (Colo. App. 1994).

31-2-210. Procedure to amend or repeal charter.

(1) Proceedings to amend a home rule charter may be initiated by either of the following methods:

(a) Filing of a petition meeting the following requirements, in the following manner:

(I) The petition process shall be commenced by filing with the clerk a statement of intent to circulate a petition, signed by at least five registered electors of the municipality. The petition shall be circulated for a period not to exceed ninety days from the date of filing of the statement of intent and shall be filed with the clerk before the close of business on the ninetieth day from said date of filing or on the next business day when said ninetieth day is a Saturday, Sunday, or legal holiday.

(II) The petition shall contain the text of the proposed amendment and shall state whether the proposed amendment is sought to be submitted at the next regular election or at a special election. If the amendment is sought to be submitted at a special election, the petition shall state an approximate date for such special election, subject to the provisions of subparagraph (IV) of this paragraph (a) and subsection (4) of this section.

(III) A petition to submit an amendment at the next regular election must be signed by at least five percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the date of said regular election.

(IV) A petition to submit an amendment at a special election must be signed by at least ten percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the approximate date of the special election stated in the petition.

(b) An ordinance adopted by the governing body submitting the proposed amendment to a vote of the registered electors of the municipality. Such ordinance shall also adopt a ballot title for the proposed amendment.

(2) Proceedings to repeal a home rule charter or to form a new charter commission may be initiated by either of the following methods:

(a) Filing of a petition in the manner prescribed by, and meeting the requirements of, paragraph (a) of subsection (1) of this section; except that:

(I) The petition shall state the proposal to repeal the charter or to form a new charter commission;

(II) The petition must be signed by at least fifteen percent of the registered electors of the municipality, regardless of whether the petition seeks submission of the proposal at a regular or special election; and

(III) If the proposal is for formation of a charter commission, the petition must be filed with the clerk at least ninety days prior to the date of the regular election or the approximate date stated in the petition for a special election, as the case may be.

(b) An ordinance adopted by a two-thirds vote of the governing body submitting the proposed repeal or formation of a charter commission to a vote of the registered electors of the municipality.

(3) The clerk shall, within fifteen working days after the filing of a petition pursuant to paragraph (a) of subsection (1) of this section or paragraph (a) of subsection (2) of this section, certify to the governing body as to the validity and sufficiency of such petition. If the petition is sufficient, the governing body shall set a ballot title for the proposed amendment at its next meeting. If the petition is declared insufficient, such petition may be withdrawn by a majority of the persons representing the registered electors who signed such petition, may be amended or signed by additional registered electors of the municipality in accordance with paragraph (a) of subsection (1) of this section and paragraph (a) of subsection (2) of this section within fifteen days after such insufficiency is declared, and may be refiled as an original petition.

(3.5) If the subject matter of the petition is proposed for submission at a regular or special election that will be coordinated by the county clerk pursuant to section 1-7-116, C.R.S., and the municipal clerk has certified to the governing body that the petition is valid and sufficient, the clerk shall certify the proposed ballot question to the county clerk and recorder sixty days prior to the coordinated election as provided in section 1-5-203 (3), C.R.S., unless the petition has by the sixtieth day been determined to be insufficient pursuant to section 31-2-223. Should the petition be found to be insufficient pursuant to section 31-2-223 following certification to the county clerk and recorder, the election on such question shall be deemed canceled, and any votes cast on the question shall not be counted.

(4) The governing body shall, within thirty days of the date of adoption of the ordinance or the date of filing of the petition (if the same is certified by the clerk to be valid and sufficient), publish notice of an election upon the amendment or proposal, which notice shall contain the full text of the amendment or statement of the proposal as contained in the ordinance or petition. The election shall be held not less than sixty nor more than one hundred twenty days after publication of such notice; except that, if the proposal is for formation of a charter commission, the election shall be held not less than sixty days after publication of such notice. If the amendment or proposal is initiated by petition and is sought to be submitted at a special election, the election shall be held as near as possible to the approximate date stated in the petition, but in any event shall be held within the time limits stated in this subsection (4).

(5) The procedure for the forming and functioning of a new charter commission shall comply as nearly as practicable with sections 31-2-204 to 31-2-207, relating to formation and functioning of an initial charter commission.

(6) If a majority of the registered electors voting thereon vote for a proposed amendment, the amendment shall be deemed approved. If a majority of the registered electors voting thereon vote for repeal of the charter, the charter shall be deemed repealed and the municipality shall proceed to organize and operate pursuant to the statutes applicable to a municipality of its size.

Source: L. 75: Entire title R&RE, p. 1017, § 1, effective July 1. **L. 79:** Entire section R&RE, p. 1170, § 2, effective July 1. **L. 85:** (1)(a)(I), (1)(a)(II), (1)(a)(IV), and (2)(a)(II) amended, p. 1346, § 15, effective July 1. **L. 96:** (1)(a)(III) and (1)(a)(IV) amended and (3.5) added, p. 1767, § 61, effective July 1. **L. 2000:** (1)(b) and (3) amended, p. 791, § 6, effective August 2. **L. 2007:** (3.5) amended, p. 2046, § 84, effective June 1. **L. 2015:** (4) amended, (HB 15-1130), ch. 230, p. 855, § 5, effective August 5.

Editor's note: This section is similar to former § 31-2-110 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

ANNOTATION

The governing body of a home rule city may initiate proceedings to amend the home rule charter by adopting an ordinance to submit the proposed amendment to the voters of the municipality. Wilde v. City of Wheat Ridge, 967 P.2d 213 (Colo. App. 1998).

Municipality may enforce its ordinances regulating the process for amending its charter. This section leaves room for a home rule municipality to establish the criteria for a proposed amendment to its charter. Because there was no conflict between the ordinances and the state constitution, the municipality could enforce its ordinances regulating the process for amending its charter. McCarville v. City of Colo. Springs, 2013 COA 169, 338 P.3d 1033.

"To submit" means to present and leave to the judgment of the qualified voters. Wilde v. City of Wheat Ridge, 967 P.2d 213 (Colo. App. 1998).

Ordinance requiring a single subject for citizen-initiated proposals to amend city charter does not alter the charter amendment process outlined in the Municipal Home Rule Act of 1971 (Act), but works in tandem with that process. Neither the city charter nor the Act set requirements for proposed charter amendments. Because the Act's procedures are undisturbed by the city's single-subject rule, the rule does not conflict with or

effectively amend the charter provision stating that the Act shall govern the submission of charter amendments. Citizens for Cmty. Rights v. Colo. Springs, 2015 COA 120, 360 P.3d 271.

Expiration of emergency ordinance did not invalidate the results of the election since defendants had submitted the proposed charter amendment to the voters prior to the expiration of the emergency ordinance by fulfilling all of the election duties that could be performed before the day of the election. Wilde v. City of Wheat Ridge, 967 P.2d 213 (Colo. App. 1998).

31-2-211. Elections - general.

(1) Except as otherwise specifically provided, all elections held pursuant to this part 2 shall be conducted as nearly as practicable in conformity with the provisions of the "Colorado Municipal Election Code of 1965".

(2) All necessary expenses for elections conducted pursuant to this part 2 for existing municipalities or for municipalities incorporated pursuant to part 1 of this article shall be paid out of the treasury of the municipality.

(3) A special election shall be called for any election held pursuant to this part 2 when a regular election is not scheduled within the time period provided for such election.

Source: L. 75: Entire title R&RE, p. 1017, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-111 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Charter provision granting the right to vote to nonresident property owners does not violate the municipal home rule act. May v. Town of Mtn. Vill., 969 P.2d 790 (Colo. App. 1998).

31-2-212. Initiative, referendum, and recall.

Every charter shall contain procedures for the initiative and referendum of measures and for the recall of officers.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-112 as it existed prior to 1975.

31-2-213. Determination of population.

When a determination of the population or number of registered electors of the municipality is required under this part 2, said determination shall be made upon the best readily available information by the governing body, clerk, election commissioners, or court, as the case may be. Such determination shall be final in the absence of fraud or gross abuse of discretion.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1. **L. 84:** Entire section amended, p. 831, § 3, effective April 25. **L. 85:** Entire section amended, p. 1346, § 16, effective April 30.

Editor's note: This section is similar to former § 31-2-113 as it existed prior to 1975.

31-2-214. Time limit on submission of similar proposals.

No proposal for a charter commission, charter amendment, or repeal of a charter shall be initiated within twelve months after rejection of a substantially similar proposal.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-114 as it existed prior to 1975.

31-2-215. Conflicting or alternative charter proposals.

(1) In submitting any charter or charter amendment, any alternative provision may be submitted for the choice of the voters and may be voted on separately without prejudice to others. The alternative provision receiving the highest number of votes, if approved by a majority of the registered electors voting thereon, shall be deemed approved.

(2) In case of adoption of conflicting provisions which are not submitted as alternatives, the one which receives the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1. **L. 84:** Entire section amended, p. 832, § 4, effective April 25.

Editor's note: This section is similar to former § 31-2-115 as it existed prior to 1975.

31-2-216. Change in classification of municipalities.

Notwithstanding the provisions of part 2 of article 1 of this title, a town having a population exceeding two thousand may reclassify itself as a city, and a city having a population of two thousand or less may reclassify itself as a town, upon adoption of a home rule charter without otherwise complying with the procedures in said part 2.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1. **L. 81:** Entire section amended, p. 1491, § 8, effective June 5.

Editor's note: This section is similar to former § 31-2-116 as it existed prior to 1975.

31-2-217. Vested rights saved.

The adoption of any charter, charter amendment, or repeal thereof shall not be construed to destroy any property right, contract right, or right of action of any nature or kind, civil or criminal, vested in or against the municipality under and by virtue of any provision of law theretofore existing or otherwise accruing to the municipality; but all such rights shall vest in and inure to the municipality or to any persons asserting any such claims against the municipality as fully and as completely as though the charter, amendment, or repeal thereof had not been

adopted. Such adoption shall never be construed to affect any such right existing between the municipality and any person.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-117 as it existed prior to 1975.

31-2-218. Finality.

No proceeding contesting the adoption of a charter, charter amendment, or repeal thereof shall be brought unless commenced within forty-five days after the election adopting the measure.

Source: L. 75: Entire title R&RE, p. 1018, § 1, effective July 1.

Editor's note: This section is similar to former § 31-2-118 as it existed prior to 1975.

ANNOTATION

The 45-day provision refers to the contest of a charter amendment which allegedly had been adopted with procedural defects. City of Aurora v. Aurora Firefighters' Protective Ass'n, 193 Colo. 437, 566 P.2d 1356 (1977).

And the courts are not thereby ousted of jurisdiction to subsequently determine the constitutionality of the substance of an amendment. City of Aurora v. Aurora Firefighters' Protective Ass'n, 193 Colo. 437, 566 P.2d 1356 (1977).

31-2-219. Additional petition requirements.

Any petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, shall be subject to the provisions of sections 31-2-220 to 31-2-225, in addition to any other requirements imposed by this part 2. Any such petition which fails to conform to the requirements of this part 2 or is circulated in a manner other than that permitted in this part 2 is invalid.

Source: L. 84: Entire section added, p. 832, § 5, effective April 25.

31-2-220. Warning on petition - signatures - affidavits - circulators.

(1) At the top of each page of a petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, must be printed, in plain red letters no smaller than the impression of ten-point, bold-faced type, the following:

WARNING:

IT IS AGAINST THE LAW:

For anyone to sign any petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to sign such petition when not a registered elector.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A

REGISTERED ELECTOR:

Do not sign this petition unless you have read or had read to you the text of the proposal in its entirety and understand its meaning.

(2) Any such petition shall be signed only by registered electors by their own signatures to which shall be attached the residence addresses of such persons, including street and number, if any, city or town, and the date of signing the same. To each such petition shall be attached an affidavit of the person who circulated the petition stating the affiant's address, that the affiant is eighteen years of age or older, that the affiant circulated the said petition, that each signature thereon was affixed in the affiant's presence, that each signature thereon is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each of the persons signing said petition was at the time of signing a registered elector, and that the affiant has not paid or will not in the future pay and that the affiant believes that no other person has so paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to such

petition. No petition shall be accepted for filing that does not have attached thereto the affidavit required by this section.

(3) (Deleted by amendment, L. 2000, p. 792, § 7, effective August 2, 2000.)

(4) The clerk shall inspect timely filed petitions and attached affidavits to ensure compliance with subsection (2) of this section. Such inspection may consist of an examination of the information on the signature lines for patent defects, a comparison of the information on the signature lines with a list of registered electors provided by the county, or any other method of inspection reasonably expected to ensure compliance with subsection (2) of this section.

Source: L. 84: Entire section added, p. 832, § 5, effective April 25. **L. 85:** (1) and (2) amended, p. 1347, § 17, effective April 30. **L. 92:** (1) amended, p. 2177, § 38, effective June 2. **L. 94:** (1) amended, p. 1772, § 37, effective January 1, 1995. **L. 96:** (2) amended, p. 1768, § 62, effective July 1. **L. 2000:** (2) and (3) amended and (4) added, p. 792, § 7, effective August 2. **L. 2013:** (1) amended, (HB 13-1303), ch. 185, p. 750, § 132, effective May 10. **L. 2014:** (1) amended, (HB 14-1164), ch. 2, p. 59, § 12, effective February 18.

Cross references: (1) In 2013, subsection (1) was amended by the "Voter Access and Modernized Elections Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 185, Session Laws of Colorado 2013.

(2) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-2-221. Form of petition - representatives of signers.

(1) Petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, shall be printed on pages eight and one-half inches wide by eleven inches long, with a margin of two inches at the top for binding; the sheets for signature shall have their ruled lines numbered consecutively and shall be attached to a complete copy of what is proposed, printed in plain block letters no smaller than the impression of eight-point type. Petitions may consist of any number of sections composed of sheets arranged as provided in this section. Each petition shall designate by name and address not less than three nor more than five registered electors who shall represent the signers thereof in all matters affecting the same. No such petition shall be printed, published, or otherwise circulated in a municipality until the clerk has approved it as to form only, and the clerk shall assure that the petition contains only the matters required by this part 2 and contains no extraneous material. The clerk shall approve or disapprove such form within five working days of submission. All

such petitions shall be prenumbered serially, and the circulation of any petition described by this part 2 by any medium other than personally by a circulator is prohibited.

(2) Any disassembly of the petition which has the effect of separating the affidavits from the signatures shall render the petition invalid and of no force and effect. Prior to the time of filing, the persons designated in the petition to represent the signers shall attach the sheets containing the signatures and affidavits together, which shall be bound in convenient volumes together with the sheets containing the signatures accompanying the same.

Source: L. 84: Entire section added, p. 833, § 5, effective April 25.

31-2-222. Ballot.

Proposals to adopt, amend, or repeal home rule charters, including the formation of a new charter commission, shall appear upon the official ballot by ballot title only and, if more than one, shall be numbered consecutively in such order as the governing body may provide and shall be printed on the official ballot in that order, together with their respective numbers prefixed in boldface type. Each ballot title shall appear once on the official ballot and shall be separated from the other ballot titles next to it by heavy black lines and shall be followed by the words "yes" and "no" as follows:

(HERE SHALL APPEAR THE

BALLOT TITLE IN FULL)

YES

NO

Source: L. 84: Entire section added, p. 834, § 5, effective April 25.

31-2-223. Affidavit - evidence - protest procedure.

(1) All petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, shall have attached thereto an affidavit of the circulator of the petition stating that each signature on the petition is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the

affiant each of the persons signing such petition was at the time of signing a registered elector. A protest in writing, under oath, may be filed in the office in which such petition has been filed by some registered elector of the municipality or territory proposed to be incorporated within thirty days after such petition is filed, setting forth with particularity the grounds of such protest and the names protested. In such event the officer with whom such petition is filed shall mail a copy of the protest to the persons named in such petition as representing the signers thereof at the addresses therein given, together with a notice fixing a time for hearing the protest not less than five nor more than twenty days after such notice is mailed. If, at such hearing, such protest is denied in whole or in part, the person filing the same, within ten days after such denial, may file an amended protest, a copy of which shall be mailed to the persons named in the petition and on which a hearing shall be held as in the case of the original protest; but no person shall be entitled to amend an amended protest.

(2) All records and hearings shall be public, and all testimony shall be under oath. The officer with whom such petition is filed shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents. Upon failure of any witness to obey the subpoena, the officer may petition the district court, and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court. Hearings shall be had as soon as is conveniently possible and must be concluded within thirty days after the commencement thereof, and the result of such hearings shall be certified to the persons representing the signers of such petition. In case the petition is declared insufficient in form or number of signatures of registered electors, it may be withdrawn by a majority in number of the persons representing the signers of such petition and, within fifteen days after the insufficiency is declared, may be amended or additional names signed thereto as in the first instance and refiled as an original petition. The finding as to the sufficiency of any petition may be reviewed by the district court of the county in which such petition is filed, but any such review shall be timely made, and, upon application, the decision of such court thereon shall be reviewed by the supreme court.

Source: L. 84: Entire section added, p. 834, § 5, effective April 25. **L. 85:** Entire section amended, p. 1348, § 18, effective April 30. **L. 2000:** (1) amended, p. 792, § 8, effective August 2.

31-2-224. Receiving money to circulate petition - penalty. (Repealed)

Source: L. 84: Entire section added, p. 835, § 5, effective April 25. **L. 89:** Entire section repealed, p. 861, § 156, effective July 1.

31-2-225. Unlawful acts - penalty.

(1) With respect to any petition to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, it is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of such person, organization, association, league, or political party;

(b) For any person to sign any name other than his own to any such petition or knowingly to sign his name more than once for the same measure at one election;

(c) For any person to sign any such petition who is not a registered elector of the municipality or of the territory proposed to be incorporated at the time of signing the same;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in such affidavit to be true;

(e) For any person to certify that an affidavit attached to such petition was subscribed or sworn to before him unless it was so subscribed and sworn to before him and unless such person so certifying is duly qualified under the laws of this state to administer an oath; or

(f) For any person to do willfully any act in reviewing the petition or setting the ballot title which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election held under this part 2 or to refuse to submit any such petition in the form presented for submission at any election held under this part 2.

(2) Any person who violates any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 84: Entire section added, p. 835, § 5, effective April 25. **L. 85:** (1)(c) amended, p. 1349, § 19, effective April 30. **L. 2002:** (2) amended, p. 1543, § 289, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 3

REORGANIZATION OF CITIES AND TOWNS FORMED UNDER PRIOR LAW

Cross references: For notices required in municipal dissolution and new incorporation, see § 24-32-109.

31-2-301. Procedure.

Any city or town incorporated prior to July 3, 1877, which has not previously reorganized pursuant to this part 3 may abandon its organization and organize itself under the provisions of this title, with the same territorial limits, by pursuing the course prescribed in this part 3.

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-101 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-2-301 is similar to former § 31-4-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Where a town has never exercised the privilege of this section or the following sections, its original charter is the sole measure of its powers, rights, and liabilities, except insofar as that charter has been amended or is in conflict with the constitution. Georgetown v. Bank of Idaho Springs, 99 Colo. 519, 64 P.2d 132 (1936).

Section does not apply unless it can be demonstrated that a city or town was incorporated prior to July 3, 1877. Residents & Registered Electors of Town of Frankstown v. Bd. of County Comm'rs, 214 P.3d 485 (Colo. App. 2008).

31-2-302. Petition - election.

Upon the petition of the registered electors of any such town or city equal in number to ten percent of the votes cast for all candidates for mayor at the last preceding regular election, the governing body thereof shall immediately, by ordinance or resolution, call a special election on the question of organizing under this title. Such question shall be submitted to the registered

electors of the city or town at a special election to be held on the date set by the governing body and conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965", insofar as possible.

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1. **L. 87:** Entire section amended, p. 326, § 76, effective July 1.

Editor's note: This section is similar to former § 31-4-102 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-2-303. Notice of election.

The mayor or, if there is no mayor, the presiding officer of the governing body, immediately upon the effective date of the ordinance or resolution, shall cause notice to be given of the election, of the question to be submitted thereat, and of the time and place of the holding thereof, which notice shall be published once each week for four consecutive weeks in some newspaper of general circulation within the city or town. If there is no such newspaper, publication shall be by posting a copy of said notice in three public places within the municipal limits.

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-103 as it existed prior to 1975.

31-2-304. Ballot.

The form of ballot or voting machine tabs at such election shall be: "For Municipal Organization Under the General Law" and "Against Municipal Organization Under the General Law".

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-104 as it existed prior to 1975.

31-2-305. Election of officers - terms.

If a majority of the votes cast at such election are for organization under this title, the governing body shall immediately call a special election for the election of officers for such reorganized city or town. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965". After the election and qualification of such officers, the former organization of such city or town shall be considered as abandoned, and such city or town shall be considered as organized under the provisions of this title. The officers so elected shall hold their offices only until the next regular election in such city or town.

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-105 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-2-306. No similar proposal for one year.

If a majority of the votes cast at such election are against organization under this title, no petition for another vote upon such question shall be accepted less than one year after such vote.

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-103 as it existed prior to 1975.

31-2-307. Property remains vested - rights - cumulative remedy.

All rights and property of every description vested in any city or town under its former organization shall be deemed and held to be vested in the reorganized city or town. No right or

liability, either in favor of or against such city or town, existing at the time and no suit or prosecution of any kind shall be affected by such change. Where a different remedy is given by this title which can properly be made applicable to any right existing at the time such change is made, the same shall be deemed cumulative to any other remedies available prior to such change and may be used accordingly.

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-106 as it existed prior to 1975.

31-2-308. Duty of county treasurer - sale - redemption.

If any city or town abandons its old organization and incorporates under this title, it is the duty of the county treasurer to collect, in the same manner as other taxes are collected, any taxes of such city or town which, at the time of such incorporation, have become due or delinquent. If property has been sold before such reorganization for taxes due any such city or town and the same has not been redeemed nor the deed executed therefor prior to incorporation, it is the duty of the county treasurer to act in all respects regarding the redemption of such property, the collection of taxes thereon, and the execution of the deed therefor as though the same had been sold subsequent to such reorganization.

Source: L. 75: Entire title R&RE, p. 1019, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-108 as it existed prior to 1975.

31-2-309. Ordinances remain effective.

When any city or town incorporated prior to July 3, 1877, reorganizes under this title, the bylaws and ordinances adopted and in force in such city or town previous to such reorganization shall remain in full force and effect for all purposes until the same are changed, amended, or repealed by the governing body elected under the new organization.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-110 as it existed prior to 1975.

PART 4

CHANGE OF NAME

31-2-401. Petition to change name.

Proceedings to change the name of any city or town in this state may be initiated by filing with the governing body thereof a written petition therefor, which petition shall be signed by registered electors thereof equal in number to fifty percent of the total votes cast for all candidates for mayor in the last regular election of the city or town, requesting that the name of the city or town be changed.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1. **L. 87:** Entire section amended, p. 326, § 77, effective July 1.

Editor's note: This section is similar to former § 31-1-301 as it existed prior to 1975.

31-2-402. Name filed with secretary of state.

After the presentation of the petition mentioned in section 31-2-401, the name proposed to be given to such city or town shall be filed by the clerk in the office of the secretary of state, to be retained there for a period of at least thirty days, and, upon application, the secretary of state, at any time after the expiration of said thirty days from said filing, shall grant a certificate stating that such name has not been given to any other municipality in this state if such is the fact. If such name has been adopted by any other municipality, as appears from the records in his office, the secretary of state shall so notify the clerk filing such name in his office, in which event no further proceedings shall be undertaken unless another petition, setting forth a different proposed name, is filed, which such different proposed name shall likewise be filed with the secretary of state. No further proceedings for a change of name shall be commenced until a certificate is received from the secretary of state attesting that the proposed name has not been adopted elsewhere in this state.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-302 as it existed prior to 1975.

31-2-403. Secretary to keep alphabetical list.

The secretary of state shall ascertain the names of all the municipalities within this state and shall arrange such names in alphabetical order for convenient reference. Such list of names shall be kept filed in his office and shall be changed when a change of name is effected under the provisions of this part 4.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-303 as it existed prior to 1975.

31-2-404. Notice of hearing on petition.

At any meeting of the governing body of any city or town after the presentation of the petition, the governing body shall fix the time when the petition shall be considered and order notice of the presentation thereof to be given by publishing such notice once each week for three successive weeks in some newspaper having a general circulation in such city or town. If there is no such newspaper, publication shall be by posting a copy of said notice in three public places within the municipal limits. Such notice shall state that a change of the name of such city or town has been petitioned for and the time when action on said petition will be had, at which time remonstrances, if any, will be heard.

Source: L. 75: Entire title R&RE, p. 1020, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-304 as it existed prior to 1975.

31-2-405. Hearing postponed.

If for any reason at the time fixed in the notice provided for in section 31-2-404 action thereon is not taken, such petition for a change of name shall be heard, with all remonstrances, at any subsequent meeting of the governing body of any such city or town. If said governing body is

satisfied that such change of name is necessary and proper, they shall thereupon make an order changing the name of such city or town and adopting the name petitioned for in the petition.

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-305 as it existed prior to 1975.

31-2-406. Secretary to give notice.

If said change of name is made or if any new city or town is incorporated, the governing body of any such city or town shall cause a copy of the order making such change or fixing the name of such new city or town to be filed in the office of the secretary of state, who shall thereupon make known such facts by publication in some newspaper of general circulation in the county in which such city or town is situated.

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-306 as it existed prior to 1975.

31-2-407. Change does not affect liability.

Nothing in this part 4 shall affect the rights, privileges, or liabilities of such city or town, or those of any person, as the same existed before such change of name. All proceedings pending in any court or place in favor of or against said city or town may be continued to final consummation under the name in which the same were commenced.

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-307 as it existed prior to 1975.

ARTICLE 3

Discontinuance of Incorporation

PART 1
DISCONTINUANCE - CITIES AND TOWNS

31-3-101. Petition to the district court.

31-3-102. Form of ballots.

31-3-103. Return - canvass - costs.

31-3-104. Discontinuance - when effective - legal indebtedness - tax.

31-3-105. Books deposited - court records.

31-3-106. County clerk and recorder to publish - posting.

PART 2
ABANDONMENT - TOWNS

31-3-201. Procedure for determination of abandonment.

31-3-202. Consequences of determination.

PART 1

DISCONTINUANCE - CITIES AND TOWNS

31-3-101. Petition to the district court.

Proceedings to discontinue the incorporation of any city or town may be commenced by the filing of a petition to discontinue such incorporation, signed by twenty-five percent of the registered electors of the city or town, with the district court of the county wherein such city or town, or any part thereof, is situate. Upon satisfying itself that the petition meets the requirements of this section, the court shall cause a notice to be published once each week for at least four weeks, which notice shall state that the question of discontinuing the incorporation of such city or town shall be submitted to a vote of the registered electors thereof at its next regular election.

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1. **L. 87:** Entire section amended, p. 326, § 78, effective July 1.

Editor's note: This section is similar to former § 31-9-101 as it existed prior to 1975.

31-3-102. Form of ballots.

The form of ballots shall be "For the incorporation" and "Against the incorporation".

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-102 as it existed prior to 1975.

31-3-103. Return - canvass - costs.

The vote for this purpose shall be taken, canvassed, and returned in the same manner as in other municipal elections. All expenses of the same shall be paid by the city or town when the result of the vote is "Against the incorporation" but by the petitioners when the result is "For incorporation".

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-104 as it existed prior to 1975.

Cross references: For municipal elections, see article 10 of this title.

31-3-104. Discontinuance - when effective - legal indebtedness - tax.

If two-thirds of the total votes cast upon such question are cast "Against incorporation", the incorporation of the city or town shall be discontinued; except that no such discontinuance shall be effective until such time as the governing body of the city or town has made proper provisions for the payment of all of its indebtedness and for the faithful performance of all its contractual and other obligations, levied the requisite taxes, and appropriated the requisite funds therefor and until two certified copies of notice of such action with a legal description accompanied by a map of the area concerned are filed by the city or town with the county clerk and recorder of the county in which such action has taken place. The county clerk and recorder shall file the second certified copy of such notice with the division of local government of the department of local affairs as provided by section 24-32-109, C.R.S. For the payment of its indebtedness, the city or town shall issue warrants in cases where there is no money in the treasury. The county treasurer shall collect the tax which is levied to pay such indebtedness as he collects other taxes and shall

pay the warrants. Any surplus of this fund shall be transmitted to the school fund of the district where the same is levied.

Source: L. 75: Entire title R&RE, p. 1021, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-9-103 and 31-9-107 as they existed prior to 1975.

31-3-105. Books deposited - court records.

The books, documents, records, papers, and corporate seal of any city or town so discontinued shall be deposited with the county clerk and recorder of the county with which the petition was filed, for safekeeping and reference in the future.

Source: L. 75: Entire title R&RE, p. 1022, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-105 as it existed prior to 1975.

31-3-106. County clerk and recorder to publish - posting.

When the incorporation of any city or town has been discontinued in accordance with the provisions of this part 1, the county clerk and recorder of each county in which the city or town, or any part thereof, was situate shall publish notice of such discontinuance of incorporation once each week for at least four weeks in some newspaper published within the county, or, if no newspaper is published within the county, said county clerk and recorder shall post notice thereof in three public places within the county for a period of not less than thirty calendar days. Said county clerk and recorder shall also certify the fact of discontinuance of incorporation to the secretary of state.

Source: L. 75: Entire title R&RE, p. 1022, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-106 as it existed prior to 1975.

PART 2

ABANDONMENT - TOWNS

31-3-201. Procedure for determination of abandonment.

(1) A town may be determined to be abandoned:

(a) When any town has failed, for a period of five years or longer immediately prior to the filing of the application under this section, to hold any regular or special election or to elect officers and to maintain any town government; or

(b) When any town does not have a board of trustees or town clerk, is unable to hold an election, and owns or operates water infrastructure critical for the treatment or delivery of water to residents. If a town is abandoned pursuant to this subsection (1)(b):

(I) The county is not liable for the debt or other obligations or other requirements of the town related to the water system; and

(II) Upon abandonment of the town, the county shall transfer all real and personal property comprising the water system from the county to an entity that has the primary purpose of water treatment or delivery, unless otherwise determined by the county.

(2) The procedure to determine that a town is abandoned is as follows:

(a) The county attorney of the county in which the town is located, any owner of land in the town, or any registered elector of the town may make application to the secretary of state to determine that the town is abandoned.

(b) The secretary of state shall forthwith cause notice of the filing of such application to be published on the secretary of state's website and in at least two conspicuous locations within the town. The notice shall specify the date, time, and place where the application will be heard, which date shall be not less than twenty days after the date of such publication.

(c) The secretary of state shall hear the application and, after receiving evidence thereon, shall determine whether or not the town has been abandoned. If the secretary determines that the town is abandoned, the secretary shall file a copy of the determination with the county clerk and recorder of the county in which the town was located. Thereupon, the town shall cease to exist.

(d) The books, documents, records, papers, and corporate seal of any town abandoned pursuant to this section shall be deposited with the county clerk and recorder of the county within which the town or any part thereof is located, for safekeeping and reference in the future.

Source: L. 75: Entire title R&RE, p. 1022, § 1, effective July 1. **L. 2026:** Entire section amended, (SB 26-157), ch. 147, p. 824, § 1, effective May 26.

Editor's note: This section is similar to former § 31-9-201 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-3-201 is similar to former § 31-9-201 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

No election is provided whereby the electorate, by vote, can determine whether a town and its government has ceased to exist. Evans v. District Court, 182 Colo. 93, 511 P.2d 471 (1973).

31-3-202. Consequences of determination.

(1) After such determination, all existing streets, avenues, and alleys previously located within an abandoned town shall be vested in the board of county commissioners of the county in which said town was located. The board of county commissioners may thereafter vacate any such streets, avenues, or alleys pursuant to part 3 of article 2 of title 43, C.R.S.

(2) Notwithstanding the provisions of section 31-3-201, any debt or other obligations of such town outstanding at the time of such determination of abandonment shall not be abrogated, nor shall any requirement be abrogated or avoided that has been imposed upon such town by the environmental protection agency, by any court, or by any other instrumentality of the state or federal government. The town shall continue in existence solely for the purpose of satisfying such outstanding debt or other obligations or other requirements, and the powers and duties of the governing body of the town and its officers shall be performed by the board of county commissioners and the county officers in such levy and collection of taxes or the imposition and collection of such fees, rates, and charges as may be required to satisfy the outstanding debt or other obligations or other requirements in accordance with their terms.

(3) Except as to streets, avenues, alleys, or reversionary interests, the right, title, and interest to all real property and the improvements thereon owned by any such town shall be vested in the county in which such property is situate, subject to any easements or rights-of-way then in use.

Source: L. 75: Entire title R&RE, p. 1023, § 1, effective July 1.

Editor's note: This section is similar to former § 31-9-202 as it existed prior to 1975.

ARTICLE 4

Organizational Structure and Officers

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PART 1

ORGANIZATIONAL STRUCTURE AND OFFICERS OF STATUTORY CITIES

31-4-101. Corporate authority vested.

(1) The corporate and municipal authority of cities shall be vested in a governing body, to be denominated the city council, together with such officers as may be created under the authority of this title.

(2) The city council shall possess all the legislative powers granted to cities by law and other corporate powers of the city not conferred by law or by some ordinance of city council on some officer or agency of the city. The members of the city council shall have the management and control of the finances and all the property, real and personal, belonging to the corporation, and they shall determine the times and places of holding their meetings, which shall at all times be open to the public. The mayor and any three members may call special meetings by notice to each of the members of the city council personally served or left at his usual place of residence. The city council shall provide by ordinance for the appointment or for the election of such city officers, whose election or appointment has not been provided for by law, as are necessary for the good government of the city and for the due exercise of its municipal powers. All city officers whose terms of office are not prescribed in this title and whose powers and duties are not otherwise defined by law shall perform such duties, exercise such powers, and continue in office for such period, until their successors are appointed and qualified, as shall be prescribed by ordinance. All officers to be elected shall be elected at the regular election. The officers of cities shall receive such compensation and fees for their services as the city council shall by ordinance prescribe.

Source: L. 75: Entire title R&RE, p. 1023, § 1, effective July 1. **L. 81:** (1) amended, p. 1493, § 2, effective May 28.

Editor's note: This section is similar to former §§ 31-5-101 and 31-5-106 as they existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-4-101 is similar to former § 31-5-106 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Special meeting presumed legal and regularly called. Under this section when the record of a special meeting kept by the clerk shows that the meeting was called for the purpose of transacting the very business which was transacted, and that every member of the council was present and participated in the proceedings, the presumption is, in the absence of evidence to the contrary, that the meeting was a legal meeting duly and regularly called. City of Greeley v. Hamman, 17 Colo. 30, 28 P. 460 (1891).

It is not required, under this section, that notice to the members or the record of service shall be preserved in any particular manner. Hence, when the record shows that a special meeting was called and held, it is to be presumed that the call was regular and that the service of notice was duly made as required by the statute, at least, until the contrary is proved. City of Greeley v. Hamman, 17 Colo. 30, 28 P. 460 (1891).

Applied in Pikes Peak Power Co. v. City of Colo. Springs, 105 F. 1 (8th Cir. 1900).

31-4-102. Mayor - qualifications and duties.

(1) The mayor shall be elected at the regular election in the city. He or she shall be a registered elector who has resided within the limits of the city for a period of at least twelve consecutive months immediately preceding the date of the election; except that, in the case of annexation, any person who has resided within the annexed territory for the time prescribed in this subsection (1) shall be deemed to have met the residence requirements for the city to which the territory was annexed. The mayor shall hold the office for the term for which he or she has been elected or qualified. The mayor shall keep an office at some convenient place in the city, to be provided by the city council, and shall sign all documents which by statute or ordinance may require his or her signature.

(2) The mayor of the city shall be its chief executive officer and conservator of the peace, and it is his special duty to cause the ordinances and the regulations of the city to be faithfully and constantly obeyed. He shall supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against any of them, and cause any violations or neglect of duty to be promptly corrected or reported to the proper tribunal for punishment and correction. The mayor has and shall exercise, within the city limits, the powers conferred upon the sheriffs of counties to suppress disorders and keep the peace. He shall also perform such other duties compatible with the nature of his office as the city council may from time to time require.

(3) The mayor shall be the presiding officer of the city council and shall have the same voting powers as any member of said council. The mayor shall be considered a member of the

governing body and the city council. However, a city may provide by ordinance that the mayor shall not be entitled to vote on any matter before the council, except in the case of a tie vote. If such an ordinance is adopted, it shall also provide that any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract shall be subject to disapproval by the mayor as provided in section 31-16-104. Such an ordinance may provide or may be amended to provide that the mayor shall not be counted for purposes of determining a quorum or the requisite majority on any matter to be voted on by the council. Any such ordinance may be adopted, amended, or repealed only within the sixty days preceding the election of any mayor, to take effect upon such mayor's assumption of office.

Source: L. 75: Entire title R&RE, p. 1024, § 1, effective July 1. **L. 81:** (3) amended, p. 1493, § 3, effective May 28. **L. 83:** (1) amended, p. 1253, § 1, effective July 1. **L. 89:** (3) amended, p. 1287, § 3, effective April 6. **L. 2008:** (1) amended, p. 1252, § 3, effective August 5.

Editor's note: This section is similar to former §§ 31-5-102 and 31-5-103 as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-4-103. Mayor - vacancy - appointment - mayor pro tem.

(1) Within thirty days of the mayor's death, disability, resignation, or other vacation of the mayor's office, the city council shall appoint a person possessed of all statutory qualifications or order a special election as soon as practicable to fill the vacancy until the term of office of a successor elected at the next regular election has commenced, as provided in section 31-4-105, and the city council may appoint a registered elector to act as mayor until the special election. The special election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965". If the council lacks a sufficient number of members in office to establish a quorum to choose a successor or order an election, the vacancy shall be filled in the manner provided by section 31-4-108 (3).

(2) The city council may appoint one of their own number acting mayor or mayor pro tem who is entitled to act as mayor in case the mayor is absent from the city or is for any reason temporarily unable to perform the duties of his office.

Source: L. 75: Entire title R&RE, p. 1024, § 1, effective July 1. **L. 79:** (1) amended, p. 1172, § 3, effective July 1. **L. 81:** (2) amended, p. 1494, § 4, effective May 28. **L. 2023:** (1) amended, (HB 23-1185), ch. 87, p. 307, § 1, effective August 7.

Editor's note: This section is similar to former §§ 31-5-103 and 31-5-106 as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Annotator's note. Since § 31-4-103 is similar to former § 31-5-103 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A tie vote between candidates for the office of mayor did not create a vacancy in such office as to permit the city council to fill the vacancy under this section. People ex rel. Dick v. Mosco, 114 Colo. 464, 167 P.2d 949 (1946).

Lack of funds does not preclude special election. Where a vacancy occurs in the office of mayor of a city, the fact that the last annual appropriation for election expenses was exhausted by the general election which followed it is no valid reason for the city council refusing to order a special election to fill the vacancy. Rizer v. People, 18 Colo. App. 40, 69 P. 315 (1902).

Mandamus lies. Under this section it is the duty of the city council to order such special election at its first regular session after a vacancy occurs, and in case of a failure or refusal to do so mandamus will lie to compel them to order such election. Rizer v. People, 18 Colo. App. 40, 69 P. 315 (1902).

31-4-104. Wards.

Every city shall be divided by the city council into wards, and such wards shall be numbered consecutively beginning with the number one. The boundaries of said wards shall not be changed more often than once in six years, unless change is necessary to conform to constitutional apportionment requirements. Territory added to the city shall become a part of such ward or wards as may be determined by ordinance; but this shall not prevent apportionment to conform to constitutional requirements. The boundaries and number of wards shall be changed only by majority vote of all members elected to the governing body.

Source: L. 75: Entire title R&RE, p. 1025, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-104 as it existed prior to 1975.

31-4-105. Election of officers - terms.

The registered electors of each city shall elect, at the regular election, a mayor, a clerk, and a city treasurer from the city at large. At the same election, the registered electors of each ward of the city shall elect two members of the city council. The election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965". The officers shall hold their respective offices for terms of two years, commencing at the first meeting of the governing body following the survey of election returns, unless the governing body provides by ordinance or resolution that terms shall commence on the first Monday after the first Tuesday in January following their election.

Source: L. 75: Entire title R&RE, p. 1025, § 1, effective July 1. **L. 94:** Entire section amended, p. 1191, § 90, effective July 1.

Editor's note: This section is similar to former § 31-3-101 (1) as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Annotator's note. Since § 31-4-105 is similar to former § 31-3-101 (1) prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Previous council continues in effect till official date. When the individuals elected to membership in the city council on November 3, assumed to act as council members on November 12, they were not qualified to act officially, their term of office did not begin until the first Monday after the first Tuesday in January, and the only city council authorized to act prior to that date was the city council as it was constituted at the time the ordinance was introduced and passed upon first reading. Marshall v. City of Golden, 147 Colo. 521, 363 P.2d 650 (1961).

31-4-106. Councilman - residence - vacancies.

Each councilman shall have resided in the ward in which he is a candidate for a period of at least twelve consecutive months immediately preceding the date of the election and shall be a registered elector therein; except that, in case the boundaries of the ward are changed pursuant to section 31-2-104 or 31-4-104 or as a result of annexation, any person who has resided within territory added to the ward for the time prescribed in this section shall be deemed to have met the residence requirements for the ward to which the territory was added. If any councilman, during the term of his office, removes from or becomes a nonresident of the ward in which he was elected, he shall be deemed thereby to vacate his office, effective upon the adoption by the city council of a resolution declaring such vacancy to exist. If any vacancy occurs in the office of councilman because of death, resignation, or removal or for any other reason, the same shall be filled by appointment by a majority vote of the city council or by election as provided in section 31-4-108 (2)(b). A successor to the person so appointed or elected shall be elected at the next regular election.

Source: L. 75: Entire title R&RE, p. 1025, § 1, effective July 1. **L. 79:** Entire section amended, p. 1172, § 4, effective July 1. **L. 83:** Entire section amended, p. 1253, § 2, effective July 1.

Editor's note: This section is similar to former § 31-3-104 as it existed prior to 1975.

31-4-107. Appointment of officers - terms.

(1) The members of the city council elected for each city at the meeting at which their terms commence, as provided in section 31-4-105, shall organize the city council. A majority of the total number of members is necessary to constitute a quorum for the transaction of business. They shall be judges of the election returns and qualification of their own members, and they shall determine the rules of their own proceedings. The city clerk shall keep a record of the proceedings, in such form as determined by the city council, which shall be open to the inspection and examination of any citizen. The councilmen may compel the attendance of absent members in such manner and under such penalties as they think fit to prescribe and shall elect from their own body a temporary president.

(2) (a) Upon taking office, or at such other time as may be provided by ordinance or resolution, the city council shall appoint a city attorney and shall appoint or provide for the appointment of such other officers as may be required by statute or ordinance and may appoint such other officers, including a city administrator, as may be necessary or desirable. One or more municipal judges shall be appointed in accordance with section 13-10-105 (1), C.R.S.

(b) One person may hold two or more appointive offices if provided by ordinance and if compatible with the interest of the city government as determined by the council. All officers of the city are subject to the control and direction of the mayor and may be removed by a vote of a majority of all members elected to the city council if appointed to serve at the pleasure of the city council or by such a vote on charges of incompetence, unfitness, neglect of duty, or insubordination, duly made and sustained, if appointed to serve for a term prescribed by ordinance; except that a municipal judge may be removed during his term of office only for cause, as set forth in section 13-10-105 (2), C.R.S. The council may provide by ordinance for the removal or suspension of any officer or employee, except the mayor, councilmen, clerk, treasurer, city administrator, city attorney, and municipal judge, by administrative proceeding presided over by a city officer or employee.

(3) The city council may provide by ordinance for four-year overlapping terms of office for council members. The ordinance may also provide for four-year terms for the mayor and other elective officers. The city council may reinstate the two-year terms provided in this section by ordinance. Any ordinance passed pursuant to this subsection (3) shall be enacted at least one hundred eighty days before the next regular election and shall be subject, notwithstanding an emergency declaration, to referendum if the referendum is brought pursuant to section 31-11-105 or pursuant to an applicable municipal ordinance enacted in accordance with section 1 of article V of the state constitution. No ordinance enacted pursuant to this subsection (3) shall extend or reduce the term for which any person was elected. If any vacancy occurs in an office for which a four-year term is in effect pursuant to this subsection (3), such vacancy shall be filled as provided in sections 31-4-106 and 31-4-108 (2)(b). If the office in which the vacancy occurs is not an office for which a successor would otherwise have been elected at the next regular election, the term of office of the successor elected at that regular election shall be shortened so that the following regular election for said office is held at the time at which it would have been held if no vacancy had occurred.

(4) (a) The city council may submit, by ordinance or resolution, for the approval of the registered electors at a regular or special election a proposal that the position of city clerk or city treasurer, or both such positions, be made appointive rather than elective, the appointments to be made by the city council. Such measure shall be made to take effect in such manner as to avoid shortening or extending the terms of any persons elected to such offices. If approved, appointments to either of such offices shall be in the manner provided for other appointive offices.

(b) The city council may also, by ordinance or resolution, submit for the approval of the registered electors a proposal for returning the office of clerk or treasurer, or both, from appointive to elective status. No such proposal, if approved, shall extend or reduce the term for which any person holds office.

Source: L. 75: Entire title R&RE, p. 1025, § 1, effective July 1. **L. 77:** (2)(b) amended, p. 794, § 5, effective May 28. **L. 79:** (3) amended, p. 1173, § 5, effective July 1. **L. 81:** (2)(b) amended, p. 1494, § 5, effective May 28. **L. 83:** (3) amended, p. 1254, § 3, effective July 1. **L. 93:** (3) amended, p. 698, § 5, effective May 4. **L. 94:** (1) and (2)(a) amended, p. 1192, § 91, effective July 1. **L. 95:** (3) amended, p. 440, § 26, effective May 8.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located at the back of the index.

ANNOTATION

Annotator's note. Since § 31-4-107 is similar to former §§ 31-3-101 and 31-5-105 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Council intended as election tribunal. The general assembly intended, by the language used in this section, to designate the council in cities as the tribunal to try election contests between its members. Booth v. County Court, 18 Colo. 561, 33 P. 581 (1893).

Number of council votes required. Since this section contains no provision concerning the number of council votes required to elect city officials, a vote of a majority of the members present, there being a quorum, is sufficient to elect, and the weight of authority is to the effect that a majority vote need not be a majority of those voting and a quorum is in fact present. People ex rel. Sanders v. Hendrick, 93 Colo. 512, 27 P.2d 493 (1933).

Mayor's election cognizable. Since the power to try election contests between its members is by this section plainly lodged with the common council, and since the mayor, by the express terms of § 31-4-102, is designated a member thereof, the contest of his election is expressly made cognizable by that body. Booth v. County Court, 18 Colo. 561, 33 P. 581 (1893).

Concurrent judicial jurisdiction. Where the statute provides that the city council shall be the judge of the qualifications, election, and returns of its own members, the power given is declared to be simply cumulative, and the concurrent jurisdiction of the courts is maintained. Wells v. People ex rel. Dolan, 78 Colo. 77, 239 P. 726 (1925).

Suspension of rules by unanimous consent. Such rules as the council itself may adopt, and which it is authorized to adopt to govern its own proceedings, may properly be suspended by unanimous consent. City of Greeley v. Hamman, 17 Colo. 30, 28 P. 460 (1891).

Additional duties may be imposed on clerk. Under this section the council may, if they see fit so to do, impose upon the clerk, as clerk, in addition to those specified by statute, such other duties as, in their judgment, may be deemed appropriate. Orman v. City of Pueblo, 8 Colo. 292, 6 P. 931 (1885).

Such as receipt of license moneys. There is nothing in the statute directly imposing upon the city clerk the duty of receiving moneys paid for licenses authorized to be issued, but under this section the council are clearly empowered thereby to require of him the performance of such duty. Orman v. City of Pueblo, 8 Colo. 292, 6 P. 931 (1885).

For a case discussing the qualifications of members of the city council as to their right to vote for the officers elected by the city council, see People ex rel. Ralston v. Herring, 30 Colo. 445, 71 P. 413 (1902).

For a case, under the former law, discussing the question of voting for aldermen by voters of their own wards or by voters of the entire city, see Dunton v. People ex rel. Akin, 36 Colo. 128, 87 P. 540 (1906).

31-4-108. Expulsion from city council - vacancies in other offices.

(1) Any member of the city council may be expelled or removed from office, for good cause shown, by a vote of two-thirds of all the members elected to the city council, but he may not be removed a second time for the same offense.

(2) (a) In case any office of an appointive officer becomes vacant before the regular expiration of the term thereof, the vacancy shall be filled by the city council by appointment.

(b) Within sixty days after a vacancy occurs in any elective office before the regular expiration of the term thereof, the city council shall:

(I) Appoint a person possessed of all statutory qualifications to fill the vacancy until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-105; or

(II) Order a special election to be held as soon as practicable to fill the vacancy until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-105.

(3) If the city council, at the time the vacancy occurs or within sixty days thereafter, lacks a sufficient number of members to establish a quorum to fill the vacancy as provided in subsection (2)(b) of this section, the city clerk, without further action by the city council, shall call a special election to be held as soon as practicable to fill any vacancy in any elective office until the term of office of a successor elected at the next regular election as provided in section 31-4-105. The city council may cancel the special election if it is able to fill the vacancy before the date of the special election.

Source: L. 75: Entire title R&RE, p. 1026, § 1, effective July 1. **L. 83:** Entire section amended, p. 1254, § 4, effective July 1. **L. 88:** (2)(b) amended, p. 1125, § 4, effective April 4. **L. 2023:** (2)(b) amended and (3) added, (HB 23-1185), ch. 87, p. 307, § 2, effective August 7.

Editor's note: This section is similar to former § 31-5-108 as it existed prior to 1975.

31-4-109. Compensation and fees of officers.

The mayor shall receive such compensation for his services as the city council, prior to his election, may fix as provided in this section. The city council, at least as early as the last monthly meeting before such regular municipal election, shall fix by ordinance the compensation and fees of members of the city council, including the compensation of the mayor and councilmen, for the period for which they will be elected or appointed if any change in said compensation is desirable. The city council shall neither increase nor diminish the compensation of any councilman or mayor during his term of office. Each person appointed to fill a vacancy in the office of mayor or councilman shall receive the same compensation as was established for the office when the vacancy occurred. All other officers of the city, together with all other employees of the city, shall receive such compensation as the city council may fix from time to time by ordinance or as may be established in a pay plan adopted by ordinance. The city council may from time to time contract for professional services and for such services pay such fees and charges as may be agreed upon.

Source: L. 75: Entire title R&RE, p. 1026, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-102 as it existed prior to 1975.

31-4-110. City clerk - duties - city seal.

(1) The city clerk shall have the custody of all the laws and ordinances of the city council, shall keep a regular record of the proceedings of the city council, in such form as determined by the council, and shall perform such other duties as may be required by statute or by the ordinances of the city. The clerk shall continue in office until a successor is appointed or elected and has complied with section 31-4-401.

(2) Each city council shall provide for the clerk's office a seal, which shall be the seal of the city, in the center of which shall be the word "Seal" and such other device as may be directed by ordinance and around the margin the name of the city and the state. Said seal shall be affixed to all transcripts, orders, or certificates which may be necessary or proper to authenticate under law or any ordinance of the city. For all attested certificates and transcripts other than those ordered by the city council, the same fees shall be paid to the clerk as are allowed to county officers for similar services.

Source: L. 75: Entire title R&RE, p. 1027, § 1, effective July 1. **L. 83:** (1) amended, p. 1255, § 5, effective July 1.

Editor's note: This section is similar to former §§ 31-5-105 and 31-5-107 as they existed prior to 1975. For a detailed comparison, see the comparative tables in the back of the index.

31-4-111. City treasurer - powers and duties.

The city treasurer has such powers and shall perform such duties as are prescribed by the statutes of this state and by the ordinances of the city council not inconsistent therewith.

Source: L. 75: Entire title R&RE, p. 1027, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-103 as it existed prior to 1975.

31-4-112. Marshal or chief of police - duties.

The marshal or chief of police shall execute and return, by himself or herself or by any member of the police force, all writs and processes directed to him or her by the municipal judge in any case arising under a city ordinance. In criminal cases, quasi-criminal cases, or cases in violation of city ordinances, he or she may serve the same in any part of the county in which such city is situate. The marshal, chief of police, or any member of the police force shall suppress all riots, disturbances, and breaches of the peace, shall apprehend all disorderly persons in the city, and shall pursue and arrest any person fleeing from justice in any part of the state. He or she shall apprehend any person in the act of committing any offense against the laws of the state or ordinances of the city and, forthwith and without any warrant, bring such person before a municipal judge, county judge, or other competent authority for examination and trial pursuant to

law. He or she has, in the discharge of his or her proper duties, powers and responsibilities similar to those that sheriffs have in like cases. The marshal or chief of police may employ certified peace officers to enforce all laws of the state of Colorado notwithstanding section 16-2.5-201.

Source: L. 75: Entire title R&RE, p. 1027, § 1, effective July 1. **L. 2017:** Entire section amended, SB 17-066, ch. 105, p. 385, § 1, effective April 4.

Editor's note: (1) This section is similar to former § 31-3-105 as it existed prior to 1975.

(2) Section 4 of chapter 105 (SB 17-066), Session Laws of Colorado 2017, provides that the act changing this section applies before, on, and after April 4, 2017.

31-4-112.1. Chief of police - permits for concealed weapons. (Repealed)

Source: L. 81: Entire section added, p. 1437, § 2, effective June 8. **L. 2003:** Entire section repealed, p. 650, § 9, effective May 17.

31-4-113. Terms of officers end upon adoption of charter.

If any city adopts a charter pursuant to the provisions of article XX of the state constitution, the term of office of every officer of such city who has been elected or appointed pursuant to the general laws of this state or under the ordinances of such city shall terminate immediately upon the election and qualification of the elective officers provided for by such charter.

Source: L. 75: Entire title R&RE, p. 1027, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-109 as it existed prior to 1975.

PART 2

ORGANIZATIONAL STRUCTURE - CITIES - CITY MANAGER FORM

31-4-201. Authority to reorganize - rights and powers.

Any city may reorganize into a city council-city manager form of municipal government in accordance with the provisions of this part 2. However, no such city shall have conferred upon it by such reorganization any rights and powers except those rights and powers conferred upon cities by the general laws of this state.

Source: L. 75: Entire title R&RE, p. 1028, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-201 as it existed prior to 1975.

31-4-202. Petition - election.

(1) When a petition, signed by five percent of the registered electors of the municipality, requesting an election on the question of adopting the city council-city manager form of government is presented to the city council, the city council shall adopt an ordinance calling for an election upon such question to be held within four calendar months from the date of the presentation of such petition. The petition shall state whether the mayor under such form of government shall be elected by and from among the members of the city council or from the city at large by the registered electors of the city at the regular election. The question of adopting such form of government shall be submitted to the registered electors of the city at a special or regular election to be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

(2) The mayor or, in case of the disability of the mayor, the mayor pro tem, immediately following the effective date of such ordinance, shall cause notice to be given of such election, which notice shall be given in the manner prescribed by the "Colorado Municipal Election Code of 1965".

(3) (a) If the petition requests that the mayor be elected by and from among the members of the city council, the question to be submitted at such election shall be: "Shall the City of __(name of city)__ reorganize by adopting the City Council-City Manager form of government as provided in part 2 of article 4 of title 31, Colorado Revised Statutes, with the mayor to be elected by and from among the members of the city council?". The form of ballot or voting machine tabs shall be: "For City Council-City Manager Form - Mayor elected by Council" and "Against City Council-City Manager Form - Mayor elected by Council".

(b) If the petition requests that the mayor be elected from the city at large by the registered electors of the city at the regular election, the question to be submitted at such election shall be: "Shall the city of __(name of city)__ reorganize by adopting the City Council-City Manager form of government, as provided in part 2 of article 4 of title 31, Colorado Revised Statutes, with the mayor to be elected by the registered electors of the city at the regular election?". The form of ballot or voting machine tabs shall be: "For City Council-City Manager Form - Mayor elected by Popular Vote" and "Against City Council-City Manager Form - Mayor elected by Popular Vote".

(4) The registered electors of any city which has previously reorganized into the city council-city manager form of government under this part 2 may, at any time, petition in the manner set forth in subsection (1) of this section for an election on:

(a) Returning to the original mayor-council form of government;

(b) Retaining the city council-city manager form of government but with the mayor to be elected by the registered electors of the city at the regular election rather than elected by and from among the members of the city council; or

(c) Retaining the city council-city manager form of government but with the mayor to be elected by and from among the members of the city council.

Source: L. 75: Entire title R&RE, p. 1028, § 1, effective July 1. **L. 87:** (1) amended, p. 327, § 79, effective July 1. **L. 89:** (1) and (3) amended and (4) added, p. 1288, § 4, effective April 6. **L. 2021:** (1), (3)(b), and (4)(b) amended, (HB 21-1071), ch. 367, p. 2422, § 17, effective July 1, 2022.

Editor's note: This section is similar to former § 31-3-202 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-4-203. Majority vote carries - when effective.

(1) If a majority of the votes cast are for the proposition, it shall be carried. The form of government existing in such city at the time of such election shall continue unchanged until the next regular election. Except as provided in subsection (2) of this section, the next regular election shall be held for the purpose of electing the officers required by that form of government. Upon the taking of office and compliance with section 31-4-401 by the new

officers, the terms of office of existing officers shall terminate, the prior form of government shall cease, and the new form of government shall commence.

(2) If the proposition carried is to return to the original mayor-council form of government, the offices of mayor and other elected offices other than city council members shall be filled at a special election to be held according to the provisions of section 31-4-103; except that such offices shall be filled at the next regular election if such regular election is held less than four months following the adoption of the proposition. Upon the taking of office and compliance with section 31-4-401 by the mayor and other elected officers, the terms of office of existing officers shall terminate, the prior form of government shall cease, and the new form of government shall commence.

Source: L. 75: Entire title R&RE, p. 1028, § 1, effective July 1. **L. 89:** Entire section amended, p. 1289, § 5, effective April 6. **L. 93:** Entire section amended, p. 1438, § 138, effective July 1.

Editor's note: This section is similar to former § 31-3-203 as it existed prior to 1975.

31-4-204. Prior laws applicable - rights and liabilities continue.

(1) All laws of the state applicable to the city before the adoption of the city council-city manager form of government and not inconsistent with the provisions of this part 2 shall apply to and govern such reorganized city.

(2) Any bylaw, ordinance, or resolution lawfully passed and in force in such city at the time of its reorganization shall remain in force and continue to be in effect until duly amended or repealed.

(3) The territorial limits of such city shall remain the same as under its former organization.

(4) All rights of whatever description which were vested in such city under its former organization shall be vested in the city after reorganization.

(5) No valid and legally subsisting right or liability either in favor of or against the city and no judicial proceedings, civil or criminal, shall be affected by such change of government unless otherwise provided in this part 2.

(6) No change in the form of government as provided in this part 2, either by adopting or abandoning the form of government as provided in this part 2, shall release or affect any debts, bonds, warrants, or other obligations, however evidenced, which shall continue as valid obligations of the city under the succeeding form of government.

Source: L. 75: Entire title R&RE, p. 1028, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-3-204 and 31-3-222 as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-4-205. Council members - vacancies.

(1) The legislative and corporate authority of cities organized under this part 2 shall be vested in the city council members nominated and elected, two from each ward and one from the city at large, for a term of two years. Members of the city council shall be registered electors of the city who have resided in their respective wards for a period of at least twelve consecutive months immediately preceding the election; except that, in case the boundaries of the ward are changed pursuant to section 31-2-104 or 31-4-104 or as a result of annexation, any person who has resided within territory added to the ward for the time prescribed in this subsection (1) shall be deemed to have met the residence requirements for the ward to which the territory was added.

(2) Within sixty days after a vacancy occurs in the city council, the council shall:

(a) Appoint a person possessed of all statutory qualifications to fill the vacancy until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-105; or

(b) Order a special election to be held as soon as practicable to fill the vacancy until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-105.

(3) The city council may provide by ordinance for four-year overlapping terms of office for its members. The city council may reinstate the two-year terms provided in this section by ordinance. Any ordinance passed pursuant to this subsection (3) shall be enacted at least one hundred eighty days before the next regular election and shall be subject, notwithstanding any emergency declaration, to referendum if such is brought pursuant to section 31-11-105 or pursuant to an applicable municipal ordinance enacted in accordance with section 1 of article V of the state constitution. No ordinance enacted pursuant to this subsection (3) shall extend or reduce the term for which any person was elected. Where four-year terms have been provided for council members pursuant to section 31-4-107 (3), council members shall continue to serve four-year terms unless two-year terms are reinstated pursuant to this subsection (3). If any vacancy occurs in the office of council member for which a four-year term is in effect pursuant to this subsection (3), the vacancy shall be filled as provided in subsection (2) of this section. If the office in which the vacancy occurs is not an office for which a successor would otherwise have

been elected at the next regular election, the term of office of the successor elected at that regular election shall be shortened so that the following regular election for the office is held at the time at which it would have been held if no vacancy had occurred.

(4) If the city council, at the time a vacancy occurs or within sixty days thereafter, lacks a sufficient number of members to establish a quorum to fill the vacancy as provided in subsection (2) of this section, the city clerk, without further action by the city council, shall call a special election to be held as soon as practicable to fill the vacancy until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-105. The council may cancel the special election if it is able to fill the vacancy before the date of the special election.

Source: L. 75: Entire title R&RE, p. 1029, § 1, effective July 1. **L. 79:** (2) and (3) amended, p. 1173, § 6, effective July 1. **L. 83:** (1) and (3) amended and (2) R&RE, pp. 1255, 1256, §§ 6, 7, effective July 1. **L. 88:** IP(2) amended, p. 1125, § 5, effective April 4. **L. 93:** (3) amended, p. 698, § 6, effective May 4. **L. 95:** (3) amended, p. 441, § 27, effective May 8. **L. 2023:** (2)(b) amended and (4) added, (HB 23-1185), ch. 87, p. 308, § 3, effective August 7.

Editor's note: This section is similar to former § 31-3-205 as it existed prior to 1975.

31-4-206. Council members - nomination - election - compensation.

(1) The nomination and election of candidates for the city council provided for by this part 2 shall be in accordance with the "Colorado Municipal Election Code of 1965".

(2) The members of the city council shall receive such compensation as may be fixed by ordinance.

Source: L. 75: Entire title R&RE, p. 1029, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-206 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Annotator's note. Since § 31-4-206 is similar to former § 31-3-206 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

This section applies exclusively to that municipal election at which the question of the adoption of a new form of city government is submitted, because it was the intention of the general assembly to provide for the reorganization of the city government immediately following the election at which the change was authorized. Marshall v. City of Golden, 147 Colo. 521, 363 P.2d 650 (1961).

31-4-207. Mayor - selection.

(1) Except as otherwise provided in subsection (3) of this section, if the mayor is to be elected by and from among the members of the city council, then at the meeting of the city council at which their terms commence, as provided in section 31-4-105, the city council shall choose, by a majority vote, for a term of two years, one of its members as chairperson, who shall have the title of mayor, and shall also choose, by a majority vote, for a term of two years, one of its members as vice-chairperson, who shall act as mayor pro tem. In case of a vacancy in the office of the mayor, the city council shall choose a successor for the unexpired term.

(2) If the mayor is to be elected from the city at large, the mayor must be elected by the registered electors of the city at the regular election in the city. The mayor must be a registered elector who has resided within the limits of the city for a period of at least twelve consecutive months immediately preceding the date of the election; except that, in the case of annexation, any person who has resided within the annexed territory for the time prescribed in this subsection (2) shall be deemed to have met the residence requirements for the city to which the territory was annexed. The mayor shall assume office at the next regularly scheduled meeting of the city council following the mayor's election or upon such earlier date as the council may specify. Except as otherwise provided in subsection (3) of this section, the mayor holds office for a term of two years. At the same meeting of the city council, the city council shall choose, by a majority vote, one of its members to act as mayor pro tem in the temporary absence of the mayor. The city council may appoint one of its members acting mayor if both the mayor and the mayor pro tem are temporarily absent from the city or unable to perform the duties of the mayor. In case of a vacancy in the office of the mayor, the city council shall choose the mayor's successor for the unexpired term in the manner provided in section 31-4-205 for filling a vacancy in the office of council member.

(3) The city council may provide, by ordinance, four-year terms for the office of the mayor. The city council may reinstate two-year terms provided in this section by ordinance. Any ordinance passed pursuant to this subsection (3) shall be enacted at least one hundred eighty days

before the next regular election and shall be subject, notwithstanding any emergency declaration, to referendum brought pursuant to section 31-11-105 or pursuant to an applicable ordinance enacted in accordance with section 1 of article V of the state constitution. No ordinance enacted pursuant to this subsection (3) shall extend or reduce the term for which any person was elected. If a vacancy occurs in the office of the mayor for which a four-year term is in effect pursuant to this subsection (3), the vacancy shall be filled as provided in subsections (1) and (2) of this section.

Source: L. 75: Entire title R&RE, p. 1030, § 1, effective July 1. **L. 83:** Entire section amended, p. 1256, § 8, effective July 1. **L. 89:** Entire section amended, p. 1289, § 6, effective April 6. **L. 91:** (2) amended, p. 745, § 12, effective April 4. **L. 94:** (1) amended, p. 1192, § 92, effective July 1. **L. 98:** Entire section amended, p. 308, § 1, effective August 5. **L. 2021:** (2) amended, (HB 21-1071), ch. 367, p. 2423, § 18, effective July 1, 2022. **L. 2023:** (2) amended, (HB 23-1185), ch. 87, p. 308, § 4, effective August 7.

Editor's note: This section is similar to former § 31-3-207 as it existed prior to 1975.

31-4-207.5. Mayor - powers and duties.

The mayor shall be the presiding officer of the city council and shall have the same voting powers as any member of said council. The mayor shall be considered a member of the governing body and the city council and shall be recognized as the head of the city government for all ceremonial purposes, by the courts for serving civil processes, and by the government for purposes of military law. In addition, the mayor shall exercise such other powers and perform such other duties as are conferred and imposed upon him by this part 2 or the ordinances of the city.

Source: L. 89: Entire section added, p. 1290, § 7, effective April 6.

31-4-208. City attorney - municipal judge.

The city council shall appoint a city attorney, who, upon taking office, shall be an attorney-at-law licensed to practice in the state of Colorado. The city council shall also appoint a municipal judge in accordance with section 13-10-105 (1), C.R.S. The city attorney shall serve at the pleasure of the city council. A municipal judge may be removed during his term of office only for cause, as provided in section 13-10-105 (2), C.R.S.

Source: L. 75: Entire title R&RE, p. 1030, § 1, effective July 1. **L. 77:** Entire section amended, p. 794, § 6, effective June 3.

Editor's note: This section is similar to former § 31-3-208 as it existed prior to 1975.

ANNOTATION

There was no violation of due process clause in trial before nontenured judge. See People ex rel. People of City of Thornton v. Horan, 192 Colo. 144, 556 P.2d 1217 (1976).

31-4-209. Rules - business - journal.

The city council shall determine its own rules, procedure, and order of business and shall keep a journal of its proceedings. It may compel attendance of members and may punish members for misconduct.

Source: L. 75: Entire title R&RE, p. 1030, § 1, effective July 1. **L. 79:** Entire section amended, p. 1174, § 7, effective July 1.

Editor's note: This section is similar to former § 31-3-209 as it existed prior to 1975.

31-4-210. City manager - qualifications - removal.

The city council shall appoint a city manager who shall be the chief administrative officer of the city. The city manager shall be chosen solely on the basis of his executive and administrative qualifications and need not, when appointed, be a resident of the city or of the state. No member of the city council shall be chosen as city manager during his term of office. The city manager shall be appointed for an indefinite term, but he may be removed at the pleasure of the city council for cause. Before the city manager may be removed, he shall be given, if he so demands, a written statement of the reasons alleged for his removal and he has the right to be heard thereon at a public meeting of the council prior to the final vote on the question of his removal. Pending and during such hearing, the city council may suspend him from office. The action of the city council in suspending or removing the city manager shall be final. It is the intent of this part 2 to vest all authority and to fix all responsibility for such suspension or removal in the city council.

In case of the absence or disability of the city manager, the city council may designate some qualified person to perform the duties of the office during such absence or disability.

Source: L. 75: Entire title R&RE, p. 1030, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-210 as it existed prior to 1975.

31-4-211. City manager - powers and responsibility.

(1) The city manager is responsible to the city council for the proper administration of all affairs of the city placed in his charge and, to that end and except as otherwise provided in this part 2, he shall have the power to appoint and remove all officers and employees in the administrative service of the city except the city attorney and the municipal judge. Appointments made by the city manager shall be on the basis of executive and administrative ability, training, and experience of such appointees in the work which they are to perform. All such appointments shall be without definite term.

(2) Officers and employees appointed by the city manager may be removed by him at any time for cause. The decision of the city manager in any such case shall be final.

Source: L. 75: Entire title R&RE, p. 1030, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-211 as it existed prior to 1975.

ANNOTATION

Denial of hearing not violation of due process. This section does not give rise to the type of expectancy to continued employment that serves as a ground for the existence of a property right protected by the fourteenth amendment. Therefore, no due process violation occurs in denying an employee a hearing on the city manager's decision to suspend or dismiss him. This is true regardless of whether the employee was gratuitously afforded an administrative hearing by the city manager, the procedural aspects of which were objected to by the employee. DeBono v. Vizas, 427 F. Supp. 905 (D. Colo. 1977).

This section clearly indicates that an employee holds his position subject to the final decision of the city manager. The general assembly thereby specifically

excluded the necessity of providing any procedure for an administrative hearing either before or after the city manager's decision. DeBono v. Vizas, 427 F. Supp. 905 (D. Colo. 1977).

This section does not restrict the city manager's power to remove employees for particular causes. DeBono v. Vizas, 427 F. Supp. 905 (D. Colo. 1977).

The addition of the words "for cause" does not automatically create a constitutionally protected property right. The entire statutory purpose must be considered in making such a determination. DeBono v. Vizas, 427 F. Supp. 905 (D. Colo. 1977).

And public employment is generally not such right. Except in certain situations, as where an employee has formal tenure rights, public employment is generally not a constitutionally protected property interest. DeBono v. Vizas, 427 F. Supp. 905 (D. Colo. 1977).

An allegation that the city and city manager infringed a constitutionally protected liberty interest when they terminated plaintiff's employment for reasons that affected his reputation and ability to obtain other employment opportunities was prima facie insufficient to state a claim that defendants violated a liberty interest protected by the fourteenth amendment since every suspension or dismissal will necessarily affect one's community reputation and will make it more difficult to obtain future employment. DeBono v. Vizas, 427 F. Supp. 905 (D. Colo. 1977).

The "for cause" language in this section requires only that the city manager's decision not be arbitrary. DeBono v. Vizas, 427 F. Supp. 905 (D. Colo. 1977).

The power to remove employees included the power to suspend employees. DeBono v. Vizas, 427 F. Supp. 905 (D. Colo. 1977).

It is unclear whether the general assembly intended subsection (2) to confer on employees a protected property interest in continued employment. The statute's title and its language suggest that the legislature did not intend this particular statute to confer upon city employees an interest in their jobs. Rather, the legislature may have intended to clarify the powers of the city manager. Derda v. Brighton, Colo., City of, 53 F.3d 1162 (10th Cir. 1995).

Applied in Clouser v. City of Thornton, 676 F. Supp. 228 (D. Colo. 1987).

31-4-212. Council not to interfere.

Except as otherwise provided in this part 2, neither the city council nor any of its committees or members shall direct or request the appointment of any person to or his removal from office by the city manager or in any other manner take part in the appointment or removal of officers and employees in the administrative service of the city. The city council and its members shall deal with that portion of the administrative service for which the city manager is responsible

solely through the city manager, and neither the city council nor any member thereof shall give orders to any subordinate of the city, either publicly or privately. Any violation of the provisions of this section by a member of the city council constitutes misconduct and is punishable in such manner as may be determined by the other members of the city council.

Source: L. 75: Entire title R&RE, p. 1031, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-212 as it existed prior to 1975.

31-4-213. Duties of city manager.

It is the duty of the city manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city; to see that the ordinances of the city and the applicable laws of the state are enforced; to make such recommendations to the city council concerning the affairs of the city as seem desirable to him; to keep the city council advised of the financial conditions and future needs of the city; to prepare and submit to the city council the annual budget estimate; to prepare and submit to the city council such reports as are required by that body; to prepare and submit each month to the city council a detailed report covering all activities of the city, including a summary statement of revenues and expenditures for the preceding month, detailed as to appropriations and funds in such a manner as to show the exact financial condition of the city and of each department and division thereof as of the last day of the previous month; and to perform such other duties as may be prescribed by this part 2 or required of him by ordinance or resolution of the city council.

Source: L. 75: Entire title R&RE, p. 1031, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-213 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-4-213 is similar to former § 31-3-213 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

In a council-manager form of government, the manager was responsible to council for the administration of all

affairs of the city, and his duties required him to supervise the carrying out of policies previously set by the council. Franks v. City of Aurora, 147 Colo. 25, 362 P.2d 561 (1961).

Detrimental reliance and estoppel applicable. Where the conduct of the city in allowing its manager and engineer to exercise authority with respect to the carrying out of the project was such as to lead the defendants as reasonable men to believe that the officials were acting within the scope of the power granted to them, and the defendants relied, to their detriment, on the appearance thus created, it would be unjust to allow the city to renege; thus, the principles of estoppel relieve the defendants. Franks v. City of Aurora, 147 Colo. 25, 362 P.2d 561 (1961).

31-4-214. City manager sits in council - no vote.

The city manager is entitled to a seat in the city council but shall have no vote therein. The city manager has the right to take part in the discussion of all matters coming before the city council.

Source: L. 75: Entire title R&RE, p. 1031, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-214 as it existed prior to 1975.

31-4-215. Administrative plan.

(1) The city council, upon the report and recommendation of the city manager, has the power to create and establish by ordinance administrative departments of city administration. It is the duty of the city manager to propose a plan of administrative organization to the city council within sixty days after his appointment which, if approved by the city council, shall be adopted by ordinance. The administrative plan shall provide for the establishment of the office of city clerk. The city clerk shall be ex officio city treasurer and clerk of the city council. Subject to the supervision and control of the city manager in all matters, the city clerk shall keep and supervise all accounts and have custody of all public moneys of the city; apportion and collect special assessments; issue licenses; collect license fees; make and keep a journal of proceedings of the city council; have custody of all public records of the city not specifically entrusted to any other office; and perform such other duties pertaining to such offices as are by ordinance required or assigned to him by the city manager. The administrative plan shall also provide for a chief of police, a fire chief, a health officer, and such other officers as are deemed necessary for the efficient administration of the city, and such plan may or may not include, in the discretion of the city council, all of the officers named in sections 31-4-105 and 31-4-107. All such officers shall be appointed by the city manager as provided in section 31-4-211. This plan of the city manager

shall be placed on file and shall be a matter of public record open to the examination and inspection of the public at all reasonable times. The city council, upon recommendation of the city manager, may change or abolish, by ordinance, any department or office established by ordinance, prescribe, distribute, or discontinue the functions and duties of departments and offices so established, or assign additional functions and duties to departments and offices.

(2) All administrative boards, departments, or offices existing in any city prior to its reorganization shall continue to exist after its reorganization under this part 2 until abolished, altered, or reorganized by ordinance of the city council.

Source: L. 75: Entire title R&RE, p. 1031, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-215 as it existed prior to 1975.

31-4-216. Accounts of utilities.

Accounts shall be kept for each public utility owned or operated by the city, distinct from other city accounts, and in such manner as to show the true and complete financial result of such city ownership and operation including all assets, liabilities, revenues, and expenses, and in accordance with the uniform classification of accounts as may be prescribed by the public utilities commission of this state.

Source: L. 75: Entire title R&RE, p. 1032, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-216 as it existed prior to 1975.

31-4-217. Publicity of records.

Records of the city shall be open to inspection at reasonable times and under reasonable regulations established by the city as provided by article 72 of title 24, C.R.S.

Source: L. 75: Entire title R&RE, p. 1032, § 1, effective July 1. **L. 91:** Entire section amended, p. 745, § 13, effective April 4.

Editor's note: This section is similar to former § 31-3-217 as it existed prior to 1975.

31-4-218. Pay of officers and employees.

The salary or compensation of officers and employees shall be established by ordinance, which shall provide uniform compensation for like services. Such schedules of compensation may fix the minimum and maximum for any grade. An increase in compensation, within the limits provided for the grade, may be granted at any time by the city manager or other appointing authority upon the basis of efficiency and seniority.

Source: L. 75: Entire title R&RE, p. 1032, § 1, effective July 1.

Editor's note: This section is similar to former § 31-3-218 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "The Fair Labor Standards Act: Criminal and Civil Liability", see 14 Colo. Law. 1802 (1985).

31-4-219. Official bonds - waiver.

The city manager, the city clerk, and such other officers and employees as the city council may require so to do shall give bonds in such amounts and with such sureties as may be approved by the city council. The premiums on such bonds shall be paid by the city. The city council may waive the requirement of such bonds.

Source: L. 75: Entire title R&RE, p. 1032, § 1, effective July 1. **L. 89:** Entire section amended, p. 1290, § 8, effective April 6.

Editor's note: This section is similar to former § 31-3-219 as it existed prior to 1975.

31-4-220. Abandonment of form of government. (Repealed)

Source: L. 75: Entire title R&RE, p. 1032, § 1, effective July 1. **L. 87:** (1) amended, p. 327, § 80, effective July 1. **L. 89:** Entire section repealed, p. 1293, § 18, effective April 6.

Editor's note: Before its repeal, this section was similar to former § 31-3-220 as it existed prior to 1975.

31-4-221. Effective date of change. (Repealed)

Source: L. 75: Entire title R&RE, p. 1033, § 1, effective July 1. **L. 83:** Entire section amended, p. 1256, § 9, effective July 1. **L. 89:** Entire section repealed, p. 1293, § 18, effective April 6.

Editor's note: Before its repeal, this section was similar to former § 31-3-221 as it existed prior to 1975.

PART 3

ORGANIZATIONAL STRUCTURE AND OFFICERS OF STATUTORY TOWNS

31-4-301. Mayor - board of trustees - election - compensation.

(1) The legislative and corporate authority of towns shall be vested in a board of trustees, consisting of one mayor and six trustees, who shall be registered electors who have resided within the limits of the town for a period of at least twelve consecutive months immediately preceding the date of the election; except that, in case of annexation, any person who has resided within the annexed territory for the time prescribed in this subsection (1) shall be deemed to have met the residence requirements for the town to which the territory was annexed.

(2) At the regular election, there shall be elected a mayor for a term of two years and six trustees for terms of two years. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

(3) All officers elected under this section shall hold their offices until their successors are elected and have complied with section 31-4-401, and four members of said board of trustees shall constitute a quorum for the transaction of business.

(4) The mayor and members of the board of trustees shall receive such compensation as fixed by ordinance.

(5) The board of trustees may provide by ordinance for four-year overlapping terms of office for trustees. The ordinance may also provide for four-year terms for the mayor and any officers elected pursuant to section 31-4-304. The board of trustees may reinstate the two-year terms provided for in subsection (2) of this section by ordinance. Any ordinance passed pursuant to this subsection (5) shall be enacted at least one hundred eighty days before the next regular election and is subject, notwithstanding an emergency declaration, to referendum if the referendum is brought pursuant to section 31-11-105 or pursuant to an applicable municipal ordinance enacted in accordance with section 1 of article V of the state constitution. No ordinance enacted pursuant to this subsection (5) shall extend or reduce the term for which any person was elected. If any vacancy occurs in an office for which a four-year term is in effect pursuant to this subsection (5), the board of trustees shall fill such vacancy, as provided in section 31-4-303. If the office in which the vacancy occurs is not an office for which a successor would otherwise have been elected at the next regular election, the term of office of the successor elected at that regular election shall be shortened so that the following regular election for the office is held at the time at which it would have been held if no vacancy had occurred.

Source: L. 75: Entire title R&RE, p. 1033, § 1, effective July 1. **L. 77:** (3) amended, p. 286, § 58, effective June 29. **L. 79:** (5) amended, p. 1174, § 8, effective July 1. **L. 83:** (1), (3), and (5) amended, p. 1257, § 10, effective July 1. **L. 93:** (5) amended, p. 699, § 7, effective May 4. **L. 95:** (5) amended, p. 441, § 28, effective May 8.

Editor's note: This section is similar to former § 31-3-301 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Applied in City of Denver v. Webber, 15 Colo. App. 511, 63 P. 804 (1900); Goerke v. Bd. of Trustees, 89 Colo. 510, 4 P.2d 909 (1931).

31-4-301.5. Change in number of trustees.

(1) The trustees of any statutory town may be reduced in number from six to four or again increased from four to six in the manner provided in this section.

(2) When a petition signed by five percent of the registered electors of the town requesting an election for the purpose of reducing the number of trustees from six to four is presented to the board of trustees of the town or when the board determines by majority vote of the entire board that such a reduction in the size of the board would be in the interest of the town, the board shall adopt an ordinance calling for such an election, to be held within four calendar months from the date of presentation of the petition.

(3) Such election may be held in connection with any regular or special election. In the event that the issue is approved at the election, three members of the board of trustees shall constitute a quorum for the transaction of business, and the legislative and corporate authority of the town shall be vested in the board of trustees consisting of one mayor and four trustees. The approval of a change reducing the number of trustees from six to four shall not have the effect of reducing the term for which any member of the board of trustees was previously elected.

(4) Where the number of trustees has been reduced from six to four, an election on the issue of increasing the number of trustees from four to six may be held at any time subsequent to two years following the election reducing the number of trustees from six to four. No new petition requesting an election to reduce or increase the number of trustees on the board of trustees may be filed or accepted by the board, nor may the board refer any such issue to the voters, for a period of two years following an election for the purpose of increasing or reducing the number of trustees.

Source: L. 89: Entire section added, p. 1290, § 9, effective April 6.

31-4-302. Mayor - powers.

The mayor or, in his absence, one of the trustees, who may be elected mayor pro tem, shall preside at all meetings of the board of trustees and shall have the same voting powers as any member of said board. The mayor shall be considered a member of the governing body and the board of trustees. However, a town may provide by ordinance that the mayor shall not be entitled to vote on any matter before the board, except in the case of a tie vote. If such an ordinance is adopted, it shall also provide that any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract shall be subject to disapproval by the mayor as provided in section 31-16-104. Such an ordinance may provide or may be amended to

provide that the mayor shall not be counted for purposes of determining a quorum or for the requisite majority on any matter to be voted on by the board of trustees. Any such ordinance may be adopted, amended, or repealed only within the sixty days preceding any election of a mayor, to take effect upon such mayor's assumption of office.

Source: L. 75: Entire title R&RE, p. 1034, § 1, effective July 1. **L. 81:** Entire section amended, p. 1494, § 6, effective June 8. **L. 89:** Entire section amended, p. 1291, § 10, effective April 6.

Editor's note: This section is similar to former § 31-3-302 as it existed prior to 1975.

ANNOTATION

Applied in Hayden v. Town of Aurora, 57 Colo. 389, 142 P. 183 (1914).

31-4-303. Trustees to fill vacancy - mayor pro tem - clerk pro tem.

(1) The board of trustees has the power, by appointment, to fill all vacancies in the board or any other office, and the person so appointed shall hold office until the next regular election and until a successor is elected and has complied with section 31-4-401. The board also has the power to fill a vacancy in the board or in any other elective office of the town by ordering an election to fill the vacancy until the next regular election and until a successor has been elected and has complied with section 31-4-401.

(2) If the board, at the time a vacancy occurs or within sixty days thereafter, lacks a sufficient number of members to establish a quorum to fill the vacancy as provided in subsection (1) of this section, the town clerk shall, without further action by the town board, call a special election to be held as soon as practicable to fill the vacancy until the term of office of a successor elected at the next regular election has commenced as provided in section 31-4-301. The board may cancel such election if the board is able to fill the vacancy prior to the date of the special election.

(3) At the first meeting, the board shall choose one of the trustees as mayor pro tem who, in the absence of the mayor from any meeting of the board or during the mayor's absence from the town or the mayor's inability to act, shall perform the mayor's duties. The board may elect a clerk pro tem to perform the duties of the clerk during the clerk's absence or inability to act.

Source: L. 75: Entire title R&RE, p. 1034, § 1, effective July 1. **L. 81:** Entire section amended, p. 1495, § 7, effective June 8. **L. 83:** Entire section amended, p. 1257, § 11, effective July 1. **L. 88:** Entire section amended, p. 1125, § 6, effective April 4. **L. 2023:** Entire section amended, (HB 23-1185), ch. 87, p. 309, § 5, effective August 7.

Editor's note: This section is similar to former § 31-3-303 as it existed prior to 1975.

31-4-304. Appointment of officers - compensation.

The board of trustees shall appoint a clerk, treasurer, and town attorney, or shall provide by ordinance for the election of such officers, and may appoint such other officers, including a town administrator, as it deems necessary for the good government of the corporation, and it shall prescribe by ordinance their duties when the same are not defined by law and the compensation or fees they are entitled to receive for their services. The board of trustees may require officers to take an oath or affirmation in accordance with section 24-12-101. The election of officers shall be at the regular election, and no appointment of any officer shall continue beyond thirty days after compliance with section 31-4-401 by the members of the succeeding board of trustees.

Source: L. 75: Entire title R&RE, p. 1034, § 1, effective July 1. **L. 83:** Entire section amended, p. 1258, § 12, effective July 1. **L. 91:** Entire section amended, p. 745, § 14, effective April 4. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 698, § 29, effective August 8; entire section amended, (HB 18-1140), ch. 41, p. 464, § 7, effective August 8.

Editor's note: (1) This section is similar to former § 31-3-304 as it existed prior to 1975.

(2) Amendments to this section by HB 18-1138 and HB 18-1140 were harmonized.

Cross references: (1) For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

(2) For the legislative declaration in HB 18-1140, see section 1 of chapter 41, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For note, "Rights of a Holdover Trustee Under Colorado Law of 1929", see 2 Rocky Mt. L. Rev. 254 (1930).

Annotator's note. Since § 31-4-304 is similar to former § 31-3-304 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Duties of town attorney left to board. There is no statute defining the duties of town attorneys of incorporated towns, but under the provisions of this section, it is left to the board of trustees of such a municipality to fix and determine the character of services to be rendered and compensation to be paid to its attorneys. Kinzie v. Haxtun, 97 Colo. 456, 50 P.2d 545 (1935).

Decisions by town attorney and manager are discretionary as a matter of law and entitled to official immunity if such decisions are of a judgmental, planning, or policy nature and the officials are acting in their official capacities and not outside the scope of their offices. Troxel v. Town of Basalt, 682 P.2d 501 (Colo. App. 1984).

31-4-305. Clerk - duties.

The clerk shall attend all meetings of the board of trustees and make a true and accurate record of all the proceedings, rules, and ordinances made and passed by the board of trustees. Records of the town shall be open to inspection at all reasonable times and under reasonable regulations established by the town as provided by article 72 of title 24, C.R.S.

Source: L. 75: Entire title R&RE, p. 1034, § 1, effective July 1. **L. 91:** Entire section amended, p. 746, § 15, effective April 4.

Editor's note: This section is similar to former § 31-3-302 as it existed prior to 1975.

31-4-306. Marshal or chief of police - powers and duties.

The marshal or chief of police has the same power that sheriffs have by law, coextensive with the county in cases of violation of town ordinances, for offenses committed within the limits of the town. He or she shall execute all writs and processes directed to him or her by the municipal judge in any case arising under a town ordinance and receive the same fees for his or her services that sheriffs are allowed in similar cases. The marshal or chief of police may employ certified peace officers to enforce all laws of the state of Colorado notwithstanding section 16-2.5-201.

Source: L. 75: Entire title R&RE, p. 1034, § 1, effective July 1. **L. 77:** Entire section amended, p. 795, § 7, effective June 3. **L. 91:** Entire section amended, p. 746, § 16, effective April 4. **L. 2017:** Entire section amended, (SB 17-066), ch. 105, p. 385, § 2, effective April 4.

Editor's note: (1) This section is similar to former § 31-3-305 as it existed prior to 1975.

(2) Section 4 of chapter 105 (SB 17-066), Session Laws of Colorado 2017, provides that the act changing this section applies before, on, and after April 4, 2017.

31-4-307. Removal of officers - causes - notice.

By a majority vote of all members of the board of trustees, the mayor, the clerk, the treasurer, any member of the board, or any other officer of the town may be removed from office. No such removal shall be made without a charge in writing and an opportunity of hearing being given unless the officer against whom the charge is made has moved out of the limits of the town. When any officer ceases to reside within the limits of the town, he may be removed from office pursuant to this section. A municipal judge may be removed during his term of office only for cause, as set forth in section 13-10-105 (2), C.R.S.

Source: L. 75: Entire title R&RE, p. 1034, § 1, effective July 1. **L. 77:** Entire section amended, p. 795, § 8, effective June 3. **L. 81:** Entire section amended, p. 1495, § 8, effective June 8. **L. 91:** Entire section amended, p. 746, § 17, effective April 4.

Editor's note: This section is similar to former § 31-3-306 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-4-307 is similar to former § 31-3-306 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Constitutional grounds for removal. Under this section the holder of an elective office, duly elected by the people, should not be removed except for official misconduct, such misconduct as affects the performance of his duties as an officer, and for offenses against the corporation of a character directly affecting its rights and interests, and this conclusion is clearly sustainable on constitutional grounds. Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

The power of removal must be exercised under the same limitations, precautions, and sanctions as in other judicial proceedings, and the regularity of the proceedings and the legality of the removal must always be open to review in the courts. Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

Mere recital in board minutes insufficient. Upon proceedings in mandamus, to contest the right of removal, it is incumbent upon the person or persons attempting to remove respondent to show that such charges were preferred, and that they were sustained by legal evidence, and the mere recital in the minutes of the board that there was evidence offered, and that the board found the accused guilty is not sufficient. Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

Officer not within section. When no ordinance had ever been adopted by a town creating an office of deputy marshal and a plaintiff had never been hired or appointed other than as a deputy marshal, then he is not one of those town officers who is entitled to the protection of the removal provisions of the statute, and therefore he can be summarily discharged. Mitchell v. Town of Eaton, 176 Colo. 473, 491 P.2d 587 (1971).

Implicit right to discharge. Unless otherwise limited or restricted by statute or ordinance, implicit in the power of a city or town to hire is the power to discharge at any time without notice and without necessity of written charges and hearing thereon. Mitchell v. Town of Eaton, 176 Colo. 473, 491 P.2d 587 (1971).

PART 4

REQUIREMENTS AND COMPENSATION OF OFFICERS

31-4-401. Oath or affirmation of officers - bonds - waiver - declaring office vacant.

(1) All officers elected or appointed in any municipality shall take an oath or affirmation in accordance with section 24-12-101.

(2) The governing body has the power to declare vacant the office of a person appointed or elected to an office who fails to take an oath or affirmation in accordance with section 24-12-101 when required within ten days after the person has been notified of the person's appointment or election, and the governing body shall proceed to appoint the person's successor as in other cases of vacancy.

Source: L. 75: Entire title R&RE, p. 1035, § 1, effective July 1. **L. 89:** (2) amended, p. 1291, § 11, effective April 6. **L. 91:** (2) amended, p. 746, § 18, effective April 4. **L. 2018:** Entire

section amended, (HB 18-1138), ch. 88, p. 699, § 30, effective August 8; (2) amended, (HB 18-1140), ch. 41, p. 465, § 8, effective August 8.

Editor's note: (1) This section is similar to former § 31-5-301 as it existed prior to 1975.

(2) Amendments to subsection (2) by HB 18-1138 and HB 18-1140 were harmonized.

Cross references: (1) For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

(2) For the legislative declaration in HB 18-1140, see section 1 of chapter 8, Session Laws of Colorado 2018.

ANNOTATION

Annotator's note. Since § 31-4-401 is similar to § 31-5-301 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Officers subject to bond requirement. The treasurer is not the only officer who may be expected to collect or have in his hands corporation funds, because this section expressly provides for the council's requiring a bond, with sureties, from such other officers as may have the care or disposition of such funds. Orman v. City of Pueblo, 8 Colo. 292, 6 P. 931 (1885).

31-4-402. New bond.

In the event that the official bond of any officer of a city or town, after the taking and approval thereof, becomes insufficient by reason of the death or insolvency of any of the sureties thereon, the governing body of such city or town may require such officer to procure additional sureties or to give a new bond and may designate the time when such additional sureties or new bond shall be furnished, which shall not be less than ten days, or may waive the requirement for such sureties or new bond. In the event that the additional sureties or new bond is not furnished within the time so designated and the requirement for such sureties or new bond is not waived, the office shall be declared vacant, and the vacancy shall be filled by election or appointment as provided by law.

Source: L. 75: Entire title R&RE, p. 1035, § 1, effective July 1. **L. 89:** Entire section amended, p. 1292, § 12, effective April 6.

Editor's note: This section is similar to former § 31-5-302 as it existed prior to 1975.

31-4-403. Lawful pay only for governing bodies.

No member of the governing body of any city or town shall receive any compensation for his services as such member except as provided by law.

Source: L. 75: Entire title R&RE, p. 1035, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-303 as it existed prior to 1975.

31-4-404. Not to be appointed to office.

(1) During the time for which he has been elected or for one year thereafter, no member of the governing body of any city or town shall be appointed to any municipal office which is created or the emoluments of which are increased during the term for which he has been elected except in the cases provided in this title.

(2) Any member of the governing body of any city or town who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body, shall not vote thereon, and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(3) A member of the governing body of any city or town may vote notwithstanding subsection (2) of this section if his participation is necessary to obtain a quorum or otherwise enable the body to act and if he complies with the voluntary disclosure provisions of section 24-18-110, C.R.S.

Source: L. 75: Entire title R&RE, p. 1035, § 1, effective July 1. **L. 88:** Entire section amended, p. 1127, § 1, effective March 18; entire section amended, p. 907, § 2, effective July 1.

Editor's note: This section is similar to former § 31-5-304 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Conflicts of Interest in Government", see 18 Colo. Law. 595 (1989).

31-4-405. Emoluments not to be increased.

The emoluments of any member of the governing body, including the mayor, trustees, and councilmen, shall not be increased or diminished during the term for which he has been elected or appointed except in the case of abolition of an office, in which case the emoluments of the office shall cease at the time of such abolishment. Any member of the governing body, including the mayor, trustees, and councilmen, who has resigned or vacated an office prior to the end of his elective or appointive term shall not be eligible to reelection or reappointment to the same during such term if during such term the emoluments have been increased.

Source: L. 75: Entire title R&RE, p. 1035, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-305 as it existed prior to 1975.

31-4-406. Territorial corporations - compensation fixed by electors.

In cities and towns of not more than five thousand inhabitants incorporated prior to July 3, 1877, the mayor and members of the governing body shall not receive any compensation for services rendered by them as such mayor or members unless the question of paying such mayor or members for their services is first submitted to the registered electors of such city or town and unless a majority of those voting thereon vote in favor thereof. All ordinances, resolutions, and other acts of the governing body of any such city or town authorizing or directing the payment of any compensation to any such officer shall be and remain void. Nothing in this section shall apply to any municipal judge who acts or officiates as president of any governing body.

Source: L. 75: Entire title R&RE, p. 1036, § 1, effective July 1. **L. 87:** Entire section amended, p. 327, § 81, effective July 1.

Editor's note: This section is similar to former § 31-5-306 as it existed prior to 1975.

31-4-407. Penalty for receiving illegal compensation.

Any mayor or member of the governing body of any city or town who takes or receives payment for any services rendered by him contrary to the provisions of section 31-4-406 commits a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. Said fines, when collected, shall be paid into the general fund of said city or town.

Source: L. 75: Entire title R&RE, p. 1036, § 1, effective July 1.

Editor's note: This section is similar to former § 31-5-307 as it existed prior to 1975.

PART 5

OFFICERS' RECALL

31-4-501. Officers subject to recall.

Every elected or appointed officer of any municipality of the state of Colorado may be recalled from office at any time by the registered electors of the municipality in the manner provided in section 4 of article XXI of the state constitution. The provisions of this part 5 apply to all municipalities except to the extent that a municipality has adopted provisions pursuant to article XX or XXI of the state constitution inconsistent with this part 5.

Source: L. 75: Entire title R&RE, p. 1036, § 1, effective July 1. **L. 85:** Entire section amended, p. 1349, § 20, effective April 30. **L. 2021:** Entire section amended, (SB 21-250), ch. 282, p. 1670, § 76, effective June 21.

Editor's note: This section is similar to former § 31-5-201 as it existed prior to 1975.

31-4-502. Procedure - petition - signatures.

(1) The procedure to effect the recall of an elective officer of a municipality shall be as follows:

(a) (I) A petition containing the requisite number of signatures under subsection (1)(d) of this section must be filed in the office of the municipal clerk, demanding an election of a successor to the officer named in the petition. Each petition must designate by name and address not less than three nor more than five persons, referred to in this section as the "committee", who shall represent the signers thereof in all matters affecting the petition. The person designated as a member of the committee must be a registered elector of the municipality. The petition shall clearly indicate the name of the municipality and the name of the officer sought to be recalled. The petition must include the name of only one person to be recalled. The petition must contain a general statement, of not more than two hundred words, of the grounds on which the recall is sought, which statement is intended for the information of the electors of the municipality. The electors are the sole and exclusive judges of the legality, reasonableness, and sufficiency of the grounds assigned for recall, and the grounds are not open to review.

(II) The signatures to a recall petition need not all be on one sheet of paper. At the top of each page shall be printed, in bold-faced type, the following:

WARNING:

IT IS AGAINST THE LAW:

For anyone to sign this petition with any name other than one's own or to knowingly sign one's name more than once for the same measure or to sign such petition when not a registered elector.

Do not sign this petition unless you are a registered elector. To be a registered elector, you must be a citizen of Colorado and registered to vote in (name of municipality).

Do not sign this petition unless you have read or have had read to you the proposed measure in its entirety and understand its meaning.

(b) Directly following the warning in paragraph (a) of this subsection (1) shall be printed in bold-faced type the following:

Petition to recall (name of person sought to be recalled) from the office of (title of office).

(c) A recall petition shall not be circulated until it has been approved as meeting the requirements of this section as to form. The clerk shall approve or disapprove a petition as to form no later than the close of the second business day following submission of the proposed petition. The clerk shall mail or transmit electronically written notice of the clerk's action to the officer sought to be recalled on the day that any such petition is approved.

(d) A recall petition must be signed by registered electors entitled to vote for a successor of the incumbent sought to be recalled equal in number to twenty-five percent of the entire vote cast for all candidates for that particular office at the last preceding regular election held in the municipality. If the person sought to be recalled holds an office that more than one person is required by law to fill, then the recall petition shall be signed by registered electors entitled to vote for a successor to the incumbent sought to be recalled equal in number to twenty-five percent of the entire vote cast at the last preceding regular election held in the municipality for all candidates for the office, divided by the number of all officers elected to such office at the last preceding regular election held in the municipality even if the person sought to be recalled was elected at a different election.

Source: L. 75: Entire title R&RE, p. 1036, § 1, effective July 1. **L. 81:** (1)(a) amended, p. 1509, § 37, effective July 1. **L. 85:** (1)(a) to (1)(c) amended, p. 1349, § 21, effective April 30. **L. 91:** Entire section amended, p. 747, § 19, effective April 4. **L. 2023:** (1)(a)(I), (1)(c), and (1)(d) amended, (HB 23-1185), ch. 87, p. 310, § 6, effective August 7.

Editor's note: This section is similar to former § 31-5-202 as it existed prior to 1975.

ANNOTATION

The plain meaning of the provision of this section requiring that a warning appear "at the top of each page" of a recall petition is that the warning language must be printed at the top of each page upon which a person might sign his or her name. Mirandette v. Pugh, 934 P.2d 883 (Colo. App. 1997).

Requirement of subsection (1)(a)(I) that recall petition contain a demand for the election of a successor to the officer to be recalled applicable to recall petitions in municipality at issue under express terms of city charter incorporating this statutory provision. Accordingly, trial court erred when it concluded that this requirement not applicable to recall petition affecting municipal official. Combs v. Nowak, 43 P.3d 743 (Colo. App. 2002).

31-4-503. Petition in sections - signing - affidavit - review - tampering with petition.

(1) A recall petition may be circulated and signed in sections, but each section must contain a full and accurate copy of the title and text of the petition.

(2) (a) Signatures for a recall petition need not all be on one sheet of paper. All recall petitions must be filed in the office of the municipal clerk within sixty days from the date on which the municipal clerk approves the petition as to form.

(b) A recall petition must be signed only by registered electors using their own signatures, after which each such elector shall print or, if the elector is unable to do so, shall cause to be printed the elector's legal name; the residence address of such person, including the street and number, if any, the municipality, and the county; and the date of signing the petition.

(c) To each such petition or section thereof shall be attached an affidavit of the person who circulated the petition stating the affiant's address, that the affiant is eighteen years of age or older, that the affiant circulated the said petition, that the affiant made no misrepresentation of the purpose of such petition to any signer of the petition, that each signature on the petition was affixed in the affiant's presence, that each signature on the petition is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each of the persons signing said petition was at the time of signing a registered elector, and that the affiant neither has paid nor shall pay and that the affiant believes that no other person has so paid or shall pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to sign such petition.

(d) Any disassembly of an entire petition renders the petition invalid and of no force and effect. Any disassembly of a petition section renders that petition section invalid and of no force and effect.

(3) (a) The municipal clerk shall issue a written initial determination that a recall petition is sufficient or not sufficient by the close of business on the fifth business day after the petition is filed or, if that day is not a regular business day, on the first regular business day thereafter, unless a protest has been filed prior to that day. The clerk shall forthwith mail a copy of the written initial determination to the officer sought to be recalled and to the committee. The clerk shall initially deem a petition sufficient if the clerk determines that the petition was timely filed, has attached to it the required affidavits, and was signed by the requisite number of registered

electors of the municipality within sixty days following the date upon which the clerk approved the form of the petition. The clerk shall not remove the signature of an elector from a petition after the petition is filed. If a petition is initially determined by the clerk to be not sufficient, the clerk shall identify those portions of the petition that are not sufficient and the reasons for the insufficiency. The clerk's written initial determination is final if no protest is filed as provided in subsection (3)(b) of this section.

(b) A protest in writing under oath may be filed in the office of the municipal clerk by a registered elector of the municipality within fifteen days after the petition is filed setting forth specifically the grounds of the protest. Grounds for protest may include, but are not limited to, the failure of any portion of a petition, circulator affidavit, or petition circulator to meet the requirements of this section. The municipal clerk shall mail a copy of a protest to the officer named in the petition, to the committee named in the petition as representing the signers of the petition, and to the county clerk and recorder, together with a notice fixing a time for hearing the protest that is not less than five nor more than ten days after the notice is mailed. Every hearing must be before the municipal clerk with whom a protest is filed, who shall serve as hearing officer unless some other person is designated by the governing body as the hearing officer, and the testimony in every hearing must be under oath. The hearing officer has the power to issue subpoenas and compel the attendance of witnesses. A hearing is summary and not subject to delay and shall be concluded within thirty days after a petition is filed. No later than five days after the conclusion of a hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient. If the hearing officer determines that a petition is not sufficient, the hearing officer shall identify in the written determination those portions of the petition that are not sufficient and the reasons for the insufficiency. The result of a hearing must be forthwith certified to the committee and the officer sought to be recalled.

(c) If a recall petition is determined not sufficient in the clerk's written initial determination or the hearing officer's written determination, the petition may be withdrawn by a majority of the committee and, within fifteen days after a determination that the petition is not sufficient, may be amended by the addition of any required information relating to the signers of the petition or the attachment of proper circulator affidavits and refiled as an original petition; except that any petition amended and refiled as provided in this subsection (3)(c) may not again be withdrawn and refiled. The municipal clerk shall issue a written initial determination that a refiled petition is sufficient or not sufficient within four business days after the petition is filed. The clerk's written initial determination as to a refiled petition will become final if no protest is filed as provided in this subsection (3)(c). Any protest concerning a refiled petition shall be filed within five business days of the date on which the petition was refiled, and any hearing shall be conducted as provided in subsection (3)(b) of this section.

(d) A municipal hearing officer's finding as to the sufficiency of any petition may be reviewed by the district court for the county in which the municipality or portion of the municipality is located upon application of either the officer sought to be recalled or the officer's

representative or a majority of the committee, and the review shall be had and determined forthwith. The clerk's written determination is not subject to review unless a protest is filed and determined by a hearing officer in accordance with this section. The sufficiency or the determination of the sufficiency of the petition referred to in this section shall not be held or construed to refer to the grounds assigned in such petition for the recall of the incumbent sought to be recalled from the office by the petition.

(4) When a recall petition is determined sufficient and any review pursuant to subsection (3)(d) of this section is concluded, the municipal clerk shall submit the petition, together with a certificate of its sufficiency, to the governing body of the municipality at the first meeting of the governing body following expiration of the period within which a protest may be filed, at the first meeting of the governing body following the determination of a hearing officer that a petition is sufficient, or at the first meeting of the governing body following the conclusion of any review pursuant to subsection (3)(d) of this section, whichever is later. The governing body shall thereupon order and fix a date for the recall election to be held not less than thirty days nor more than ninety days from the date of submission of the petition to the governing body by the municipal clerk and determine whether voting in the recall election is to take place at the polling place or by mail ballot; but, if a regular election is to be held within one hundred eighty days after the date of submission of said petition, the recall election shall be held as a part of the regular election.

(4.5) A recall election pursuant to this part 5 may only be conducted as part of a coordinated election if the content of the recall election ballot is finally determined by the date for certification of the ballot content for the coordinated election to the county clerk pursuant to section 1-5-203 (3), C.R.S.

(5) Any person who willfully destroys, defaces, mutilates, or suppresses any recall petition or who willfully neglects to file or delays the delivery of the recall petition or who conceals or removes any recall petition from the possession of the person authorized by law to have the custody thereof, or who aids, counsels, procures, or assists any person in doing any of said acts commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1037, § 1, effective July 1. **L. 85:** (2) amended, p. 1349, § 22, effective April 30. **L. 88:** (5) added, p. 295, § 10, effective May 29. **L. 91:** (1) to (4) amended, p. 749, § 20, effective April 4. **L. 2000:** (2)(c), (3)(b), and (4) amended and (4.5) added, p. 793, § 9, effective August 2. **L. 2004:** (4) amended, p. 1523, § 3, effective May 28. **L. 2021:** (4) amended, (SB 21-250), ch. 282, p. 1671, § 77, effective June 21; (5) amended, (SB 21-271), ch. 462, p. 3251, § 511, effective March 1, 2022. **L. 2023:** (1), (2)(a), (2)(b), (2)(d), (3), and (4) amended, (HB 23-1185), ch. 87, p. 310, § 7, effective August 7.

Editor's note: This section is similar to former § 31-5-203 as it existed prior to 1975.

31-4-504. Resignation - vacancy filled - election - ballot - nomination.

(1) If any officer resigns by submitting a written letter of resignation to the clerk at any time prior to the recall election, all recall proceedings shall be terminated, and the vacancy caused by such resignation shall be filled as provided by law. If the resignation occurs after the ballots have been prepared or at a time when it would otherwise be impracticable to remove the recall question from the ballot, no votes cast on the recall question shall be counted.

(2) At least ten days before the recall election, the clerk shall give notice of the election in accordance with section 31-10-501. Except as otherwise provided in this part 5, the recall election shall be conducted and returned and the result of such election declared in all respects as in the case of regular elections.

(3) (a) On the official ballot at such elections shall be printed, in not more than two hundred words, the reasons set forth in the petition for demanding his recall, and, in not more than three hundred words, there shall also be printed, if desired by him, the officer's justification of his course in office. Any such reasons or justification shall be submitted to the municipal clerk by the date on which a nominating petition must be filed pursuant to subsection (4) of this section. If such officer resigns at any time subsequent to the calling of the recall election, the recall election shall be held, notwithstanding such resignation.

(b) The official ballot must include, as to every officer whose recall is to be voted on, the words, "Shall (name of person against whom recall petition is filed) be recalled from the office of (title of office)?". The words "yes" and "no" must follow each question on separate lines with a blank space at the right of each in which the voter shall indicate the voter's vote for or against the recall.

(c) (I) On ballots following all questions of recall for a particular office, there must be printed the names of those persons who have been nominated as candidates for the office from which a person is sought to be recalled. The names must be printed in the same manner as candidates for the office would be printed on the ballot at a regular election. The name of the person against whom a petition is filed shall not appear on the ballot as a candidate for the office.

(II) The ballots must be printed to give each voter a clear opportunity to indicate the voter's choice of candidates for the office. The ballot may include any other words that will aid the voter.

(4) (a) Candidates for the office at a recall election may be nominated by petition as provided in section 31-10-302; except that nominating petitions may be circulated beginning on the first business day after the governing body sets the date for the recall election and shall be filed no later than twenty days after the date the recall election is set.

(b) (Deleted by amendment, L. 2023.)

(5) (a) Applications for absentee ballots shall be made available by the municipal clerk no later than twenty-four hours after the governing body fixes the date for the holding of the recall election through the close of business on the fifth day before the recall election.

(b) and (c) Repealed.

(6) If a majority of those voting on a question of the recall of any incumbent from office vote "no", the incumbent continues in the office. If the incumbent continues in office, the votes for the incumbent's successor shall not be recorded and any counts or unofficial results of the votes shall not be publicly disclosed. If a majority vote "yes", the incumbent shall be removed from such office upon compliance with section 31-4-401 by the incumbent's successor or upon the office being deemed vacant pursuant to subsection (7)(c) of this section.

(7) (a) If the vote in a recall election recalls the officer, the candidate who has received the highest number of votes for the office thereby vacated is elected for the remainder of the term, and a certificate of election shall be forthwith issued to the candidate by the canvassing board.

(b) If a recall election recalls more than one officer from an office to which more than one person may be elected, candidates equal in number to the number of persons recalled from office who received the highest number of votes for the office are elected for the remainder of the term of each of the offices vacated. The candidate receiving the highest number of votes is elected for the longest remaining term.

(c) If a person elected to an office vacated pursuant to this section fails to comply with section 31-4-401 within fifteen days after the issuance of a certificate of election, or if an office vacated pursuant to this section and no person sought election, the office is deemed vacant and shall be filled according to law.

(8) Mandatory or optional recounts of ballots cast in a recall election shall be conducted in accordance with section 31-10-1207.

Source: L. 75: Entire title R&RE, p. 1037, § 1, effective July 1. **L. 83:** (1), (5), and (6) amended, p. 1258, § 13, effective July 1. **L. 91:** Entire section amended, p. 752, § 21, effective April 4. **L. 96:** (3)(a) and (4) amended, p. 1768, § 63, effective July 1. **L. 2000:** (1), (2), and (5)(c) amended and (8) added, pp. 794, 795, §§ 10, 11, effective August 2. **L. 2004:** (4) amended, p. 1523, § 4, effective May 28. **L. 2021:** (3)(c) amended, (SB 21-250), ch. 282, p. 1671, § 78, effective June 21. **L. 2023:** (3)(b), (3)(c), (4), (6), and (7) amended and (5)(b) and (5)(c) repealed, (HB 23-1185), ch. 87, p. 313, § 8, effective August 7.

Editor's note: This section is similar to former § 31-5-204 as it existed prior to 1975.

31-4-504.5. Incumbent not recalled - reimbursement.

(1) If at any recall election the incumbent whose recall is sought is not recalled, or in the event of a protest, the hearing officer determines that the petitions are not sufficient based upon the conduct on the part of petition circulators, the municipality may repay the incumbent for any money actually expended as expenses of such election when such expenses are authorized by this section.

(2) (a) Authorized expenses shall include, but are not limited to, moneys spent in challenging the sufficiency of the recall petition and in presenting to the voters the official position of the incumbent, to include campaign literature and advertising and the maintaining of a campaign headquarters.

(b) Unauthorized expenses shall include, but are not limited to, moneys spent on challenges and court actions not pertaining to the sufficiency of the recall petition; personal expenses for meals, lodging, and mileage for the incumbent; costs of maintaining a campaign staff; reimbursement for expenses incurred by a campaign committee which has solicited contributions; reimbursement of any kind for employees in the incumbent's office; and all expenses incurred prior to the filing of the recall petition.

(3) The incumbent shall file a complete and detailed request for reimbursement with the governing body of the municipality holding the recall election or protest hearing, which shall then review the reimbursement request for appropriateness under subsection (2) of this section, and, in the event the municipality has determined by ordinance to repay such expenses, such municipality shall repay such expenses within forty-five days of receipt of the request.

(4) (Deleted by amendment, L. 91, p. 754, § 22, effective April 4, 1991.)

Source: L. 75: Entire title R&RE, p. 1175, § 1, effective July 1. **L. 84:** (3) amended, p. 837, § 1, effective July 1. **L. 91:** (1), (3), and (4) amended, p. 754, § 22, effective April 4.

ANNOTATION

Financial limitation on reimbursement unconstitutional. Statute which places a ten cent per voter limitation on reimbursement of expenses to an incumbent who prevails in a recall election violates § 4 of article XXI, Colo. Const. Passarelli v. Schoettler, 742 P.2d 867 (Colo. 1987) (decided prior to deletion of subsection (4) in 1991).

31-4-505. Recall after six months - second petition.

(1) A recall petition shall not be circulated or filed and no pending recall proceedings may be continued against any officer until the officer has actually held the office for at least six months following the officer's election or reelection, or six months following the assumption of office by an appointed official.

(2) After one recall petition and election, no further petition shall be filed against the same officer during the term for which he or she was elected or appointed unless the petitioners signing said petition equal fifty percent of all ballots cast for that office at the last preceding regular election.

(3) A recall petition may not be circulated or filed against an elected officer whose office is up for election within six months.

Source: L. 75: Entire title R&RE, p. 1038, § 1, effective July 1. **L. 2000:** (1) amended, p. 795, § 12, effective August 2. **L. 2021:** Entire section amended, (SB 21-250), ch. 282, p. 1671, § 79, effective June 21.

Editor's note: This section is similar to former § 31-5-205 as it existed prior to 1975.

31-4-506. Disclosure of contributions, contributions in kind, and expenditures. (Repealed)

Source: L. 2000: Entire section added, p. 795, § 13, effective August 2. **L. 2002:** Entire section repealed, p. 199, § 3, effective April 3.

31-4-507. Powers of clerk and deputy.

(1) Except as otherwise provided in this article, the clerk shall render all interpretations and shall make all initial decisions as to controversies or other matters arising in the operation of this article.

(2) All powers and authority granted to the clerk by this article may be exercised by a deputy clerk in the absence of the clerk or in the event the clerk for any reason is unable to perform the duties of the clerk's office.

Source: L. 2000: Entire section added, p. 795, § 14, effective August 2.

MUNICIPAL ELECTIONS

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Municipal Election Code

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PART 1

DEFINITIONS AND GENERAL PROVISIONS

31-10-101. Short title.

This article shall be known and may be cited as the "Colorado Municipal Election Code of 1965".

Source: L. 75: Entire title R&RE, p. 1039, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-101 as it existed prior to 1975.

31-10-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Clerk" means the clerk of the municipality who is the custodian of the official records of the municipality or any person delegated by the clerk to exercise any of his powers, duties, or functions.

(2) "Election official" means any clerk, election commission, judge of election, or municipal governing body engaged in the performance of election duties as required by this article.

(3) "Electronic voting system" means any ballot card electronic voting system meeting the requirements set forth in section 1-5-615, C.R.S.

(3.5) "Permanent absentee voter" means an eligible elector who applies to receive a ballot by mail for every polling place election and whose name is placed on the list pursuant to section 31-10-1002.

(4) "Pollbook" means the list of voters to whom ballots are delivered or who are permitted to enter a voting machine booth for the purpose of casting their votes at a municipal election. Names shall be entered in the pollbook in the order in which the ballots are delivered at the polls or in the order in which voters are permitted to enter a voting machine booth for the purpose of casting their votes.

(5) "Population" means population as determined by the latest federal census.

(6) "Registration book" means all of the registration records for each general election precinct arranged alphabetically according to surnames and bound together in book form.

(7) "Registration list" means the list of registered electors of each municipal election precinct prepared by the county clerk and recorder from the county registration books in accordance with section 31-10-205.

(8) "Registration record" means the record on which is entered the official registration and identification of an individual elector and a list of the elections at which he has voted since the date of registration.

(8.5) "Residence" means the principal or primary home or place of abode of a person as set forth in section 31-10-201 (3).

(9) "Voter" means a registered elector who has presented himself at a polling place to vote in any regular or special election.

(10) "Voting machine" means any device fulfilling the requirements for voting machines set forth in part 4 of article 7 of title 1, C.R.S., regarding its use, construction, procurement, and trial.

(11) "Watcher" means a registered elector of the municipality whose name has been submitted to the clerk and then certified by the clerk to the appropriate election judges to serve at the polling place with the right to remain inside the polling place from at least fifteen minutes

prior to the opening of the polls until after the completion of the count of votes cast at the election and the certification of the count by the judges. Each watcher has the right to maintain a list of voters as the names are announced by the judges and to witness each step in the conduct of the election.

Source: L. 75: Entire title R&RE, p. 1039, § 1, effective July 1. **L. 79:** (8.5) amended, p. 279, § 4, effective June 7. **L. 80:** (3) and (10) amended, p. 414, § 21, effective January 1, 1981. **L. 81:** (2) amended, p. 1498, § 1, effective July 1. **L. 91:** (6) and (8) amended, p. 640, § 83, effective May 1. **L. 95:** (3) amended, p. 856, § 97, effective July 1. **L. 2009:** (3) amended, (SB 09-292), ch. 369, p. 1978, § 107, effective August 5. **L. 2014:** (3.5) added, (HB 14-1164), ch. 2, p. 59, § 13, effective February 18.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

ANNOTATION

Voting rights preserved by expressing intent to return. Elector, who had moved outside city and into a rental home while he awaited building of new home within the city, preserved his right to vote in the city by expressing an intent to retain the city as his official place of residence. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

But mere intention alone may not fulfill legal residence requirements. The mere intention to return to a former abode at some more or less indefinite time, with no other indicia of a home or domicile, may not fulfill the usual requirements of legal "residence" for voting purposes. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Test for legal residence. This section requires an objective or "principal-or-primary-home" test for legal residence. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Inquiry to be undertaken where nonresident elector wishes to retain former voting rights. The following inquiry is required to be undertaken if an elector has moved outside the boundaries of his voting precinct and wishes to retain his right to vote there: (1) Had the party established his principal or primary home or place of abode

within the election precinct? and (2) was the individual's departure taken or does his absence continue with a present intention of returning to the precinct in the future? Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

31-10-102.5. Acts and elections conducted pursuant to provisions which refer to qualified electors.

Any elections, and any acts relating thereto, carried out under this article, which were conducted prior to July 1, 1987, pursuant to provisions which refer to a qualified elector rather than registered elector and which were valid when conducted, shall be deemed and held to be legal and valid in all respects.

Source: L. 87: Entire section added, p. 328, § 82, effective July 1.

31-10-102.7. Applicability of the "Uniform Election Code of 1992".

Any municipality may provide by ordinance or resolution that it will utilize the requirements and procedures of the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S., in lieu of this article, with respect to any election.

Source: L. 92: Entire section added, p. 874, § 104, effective January 1, 1993. **L. 93:** Entire section amended, p. 1707, § 1, effective July 1.

31-10-102.8. Active military or overseas voters - timely mailing, casting, and receipt of ballot - definition.

(1) As used in this section, "ballot materials" means the standardized absentee-voting materials developed pursuant to section 1-8.3-104 (4)(a).

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), the clerk shall mail a ballot and ballot materials to any person designated as an active military or overseas voter in the computerized statewide voter registration list no later than forty-five days before an election conducted in accordance with this article; except that, if the clerk receives a certificate of new registration, notification of change of address, or notification of other change in status from an active military or overseas voter after the forty-fifth day before the election, the clerk shall mail a ballot and ballot materials to the voter as soon as practicable.

(b) In a recall election conducted in accordance with part 5 of article 4 of this title, the clerk shall mail a ballot and ballot materials to any person designated as an active military or overseas voter in the computerized statewide voter registration list as soon as practicable after ballot certification.

(3) To be valid, an active military or overseas voter must submit the ballot via postal mail and complete the signed affirmation, as specified in section 1-8.3-114, not later than 7 p.m. mountain time on the date of the election. Such affirmation shall state the following:

> I swear or affirm, under penalty of perjury, that: The information on this form is true, accurate, and complete to the best of my knowledge; I understand that a material misstatement of fact in completion of this document may constitute grounds for conviction of perjury; I am a United States citizen, at least 18 years of age (or will be by the day of election), eligible to vote in the requested jurisdiction; I am not incarcerated due to a felony conviction; I am not registering, requesting a ballot, or voting in any jurisdiction in the United States, except the jurisdiction cited in this voting form; In voting, I have marked and sealed this ballot in private and have not allowed any person to observe the marking of this ballot, except those authorized to assist voters under state law.

(3.5) The vote of any active military or overseas voter who votes as authorized by this section may be challenged in the manner specified in section 31-10-1008.

(4) The designated election official must count a valid ballot received in accordance with subsection (3) of this section if the ballot is received by the close of business on the eighth day after the election.

(5) No later than sixty days before the election, the county clerk and recorder of the county in which the municipality is located must forward to the municipal clerk a complete list of voters in the municipality who are marked as active military or overseas voters in the computerized statewide voter registration list.

(6) Any eligible elector who is designated as an active military or overseas voter in the computerized statewide voter registration list may use a federal write-in absentee ballot to vote for all offices and ballot measures in any election conducted under this article or article 4 of this title. Such ballots shall be processed in accordance with subsections (3) and (4) of this section.

Source: L. 2015: Entire section added, (HB 15-1130), ch. 230, p. 855, § 6, effective August 5. **L. 2020:** (1) and (3) amended and (3.5) added, (HB 20-1156), ch. 51, p. 176, § 1, effective September 14.

Cross references: For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

31-10-103. Computation of time.

Calendar days shall be used in all computations of time made under this article 10. In computing time for any act to be done before any municipal election, the first day shall be included, and the last, or election, day shall be excluded. Saturdays, Sundays, and legal holidays shall be included, but, if the time for any act to be done or the last day of any period is a Saturday, Sunday, or a legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday. If the time for ending the circulation of and filing nomination petitions provided by section 31-10-302, the time for withdrawing from nomination provided by section 31-10-303 (1), or the time for filing amended or new petitions to remedy objections as provided by section 31-10-305 falls on Saturday, Sunday, or a legal holiday, such act shall be done upon the preceding day which is not a Saturday, Sunday, or legal holiday.

Source: L. 75: Entire title R&RE, p. 1039, § 1, effective July 1. **L. 79:** Entire section amended, p. 1175, § 10, effective July 1. **L. 96:** Entire section amended, p. 1769, § 64, effective July 1. **L. 2018:** Entire section amended, (SB 18-107), ch. 104, p. 788, § 2, effective August 8.

Editor's note: This section is similar to former § 31-10-104 as it existed prior to 1975.

Cross references: (1) For computation of time under the "Uniform Election Code of 1992", see § 1-1-106; for computation of time under the statutes generally, see § 2-4-108.

(2) For the legislative declaration in SB 18-107, see section 1 of chapter 104, Session Laws of Colorado 2018.

31-10-104. Powers of clerk and deputy.

(1) Except where otherwise provided in this article, the clerk shall render all interpretations and shall make all initial decisions as to controversies or other matters arising in the operation of this article.

(2) All powers and authority granted to the clerk by this article may be exercised by a deputy clerk in the absence of the clerk or in the event the clerk for any reason is unable to perform his duties.

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-105 as it existed prior to 1975.

31-10-105. Election commission.

The election commission in municipalities having such commission has all the powers and jurisdiction and shall perform all the duties provided by this article with respect to clerks and governing bodies, but the election commission does not have the authority to call a special election.

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-106 as it existed prior to 1975.

31-10-106. Copies of election laws and manual provided.

At least sixty days before any regular election, the secretary of state shall provide each municipal clerk a copy of the municipal election laws of the state.

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1. **L. 93:** Entire section amended, pp. 1707, 1438, §§ 2, 132, effective July 1. **L. 95:** Entire section amended, p. 856, § 98, effective July 1.

Editor's note: This section is similar to former § 31-10-107 as it existed prior to 1975.

31-10-107. Forms prescribed. (Repealed)

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1. **L. 96:** Entire section repealed, p. 1769, § 65, effective July 1.

Editor's note: Before its repeal, this section was similar to former § 31-10-108 as it existed prior to 1975.

31-10-108. Special elections.

Special elections shall be held on any Tuesday designated by ordinance or resolution of the governing body. No special election shall be held within the ninety days preceding a regular election. No special election shall be called within sixty days before the date thereof, nor shall any special election be held within the thirty-two days before or after the date of a primary, general, or congressional vacancy election. A special election may be held at the same time and place as a primary, congressional vacancy, or general election as a coordinated election pursuant to section 1-7-116, C.R.S., or may be conducted at the same time as a mail ballot election pursuant to article 7.5 of title 1, C.R.S. Special elections shall be conducted as nearly as practicable in the same manner as regular elections.

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1. **L. 81:** Entire section amended, p. 296, § 18, effective June 19. **L. 95:** Entire section amended, p. 856, § 99, effective July 1. **L. 2000:** Entire section amended, p. 796, § 15, effective August 2. **L. 2005:** Entire section amended, p. 774, § 58, effective June 1. **L. 2015:** Entire section amended, (HB 15-1130), ch. 230, p. 856, § 7, effective August 5.

Editor's note: This section is similar to former § 31-10-109 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

31-10-109. Submission of question on regular election date for municipalities.

(1) (a) Pursuant to section 31-11-111 (2), the governing body of each municipality, in consultation with the clerk and recorder of the county in which the municipality is located, may submit to a vote of the registered electors of the municipality for placement on the ballot the question of whether the regular election date of such municipality shall be changed to either the Tuesday succeeding the first Monday of November in each odd-numbered year or the Tuesday succeeding the first Monday of November in each even-numbered year.

(b) Where a majority of the registered electors voting on the question submitted in accordance with the requirements of paragraph (a) of this subsection (1) approve a change in the regular election date of the municipality, the governing body of the municipality shall by ordinance establish its new regular election date in accordance with the vote of the registered electors and may include in the ordinance any alteration in the terms of office of officials that may be necessary to accomplish the change in election dates in an orderly manner. In no event shall the ordinance shorten the term of any elected official in office at the time of its adoption.

(2) Procedures for submitting the question described in paragraph (a) of subsection (1) of this section to the registered electors of the municipality shall follow the procedures set forth in article 11 of this title pertaining to municipal initiatives.

(3) Any municipality that has changed its regular election date in accordance with the requirements of this section may change its regular election date pursuant to the procedures specified in subsection (1) of this section for the sole purpose of making the regular election date of the municipality the regular election date in effect prior to the change in such date commenced under this section.

Source: L. 2004: Entire section added, p. 809, § 4, effective July 1.

PART 2

QUALIFICATIONS AND REGISTRATION OF ELECTORS

31-10-201. Qualifications of municipal electors.

(1) Every person who has attained the age of eighteen years possessing the following qualifications is entitled to register to vote at all municipal elections:

(a) He is a citizen of the United States.

(b) The person is a resident of the municipal precinct and has resided in this state for twenty-two days immediately preceding the election at which the person offers to vote. In order to vote

in a municipal election conducted under this article, a person must be a registered elector. An otherwise qualified and registered elector who moves from the municipal election precinct where registered to another precinct within the same municipality is permitted to cast a ballot for an election at the polling place in the precinct where registered.

(2) No person confined in any public prison is entitled to register or to vote at any regular or special election. Every person who was a qualified elector prior to such imprisonment and who is released by pardon or by having served his full term of imprisonment shall be vested with all the rights of citizenship except as otherwise provided in the state constitution.

(3) The judges of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

(a) The residence of a person is the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence. In determining what is a principal or primary place of abode of a person, the following circumstances relating to such person may be taken into account: Business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, and motor vehicle registration.

(b) A person shall not be considered to have lost his residence if he leaves his home and goes into another state or territory or another county or municipality of this state merely for temporary purposes with an intention of returning.

(c) A person shall not be considered to have gained a residence in this state or in any municipality in this state while retaining his home or domicile elsewhere.

(d) If a person moves to any other state or territory with the intention of making it his permanent residence, he shall be considered to have lost his residence in the municipality from which he moved.

(e) If a person moves from one municipality in this state to any other municipality in this state with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the municipality from which he moved.

(f) If the residence of a person is destroyed or becomes uninhabitable, due to a natural disaster or for any other reason, and the person has the present intention of returning to the residence once it is habitable or returning to a newly constructed residence at the same address, the person may continue to use the address of the destroyed or uninhabitable residence as the person's residence for purposes of this section. The residence given for motor vehicle registration and for state income tax purposes may be different from the address given for voting purposes pursuant to this subsection (3)(f).

(4) (a) For the purpose of voting and eligibility to office, no person is deemed to have gained a residence by reason of his presence or lost it by reason of his absence while in the civil or military service of this state or of the United States, nor while a student at any institution of higher education, nor while kept at public expense in any public prison or state institution unless the person is an employee or a member of the household of an employee of such prison or institution.

(b) The provisions of paragraph (a) of this subsection (4) notwithstanding, no person otherwise qualified under the provisions of this article shall be denied the right to vote at any municipal election solely because he is a student at an institution of higher education if such student, at any time when registration is provided for by law, files with the county clerk and recorder a written affidavit under oath, in such form as may be prescribed, that he has established a domicile in this state, that he has abandoned his parental or former home as a domicile, and that he is not registered as an elector in any other municipality of this state or of any other state. The fact that such affidavit has been filed shall be noted in the registration book.

(c) No provisions of this subsection (4) shall apply to the determination of residence or nonresidence status of students for any college or university purpose.

Source: L. 75: Entire title R&RE, p. 1040, § 1, effective July 1. **L. 79:** (3)(a) R&RE, p. 279, § 5, effective June 7. **L. 81:** (3)(d) and (3)(e) amended, p. 1498, § 2, effective July 1. **L. 92:** (1)(b) amended, p. 2178, § 39, effective June 2. **L. 94:** (1)(b) amended, p. 1773, § 38, effective January 1, 1995. **L. 2014:** (1)(b) amended, (HB 14-1164), ch. 2, p. 60, § 14, effective February 18. **L. 2022:** (3)(f) added, (SB 22-152), ch. 100, p. 477, § 3, effective April 13.

Editor's note: This section is similar to former § 31-10-201 as it existed prior to 1975.

Cross references: (1) For the classification of students for tuition purposes, see article 7 of title 23.

(2) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

ANNOTATION

One does not lose voting rights by reason of departure or absence from primary home, once it has been established. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Voting rights preserved by expressing intent to return. Elector, who had moved outside city and into a rental home while he awaited building of new home within the city, preserved his right to vote in the city by expressing an intent to retain the city as his "official place of residence". Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

But mere intention alone may not fulfill legal residence requirements. The mere intention to return to a former abode at some more or less indefinite time, with no other indicia of a home or domicile, may not fulfill the usual requirements of "legal residence" for voting purposes. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Test for legal residence. This section requires an objective or "principal-or-primary-home" test for legal residence. Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Inquiry to be undertaken where nonresident elector wishes to retain former voting rights. The following inquiry must be undertaken if an elector has moved outside the boundaries of his voting precinct and wishes to retain his right to vote there: (1) Had the party established his principal or primary home or place of abode within the election precinct? and (2) was the individual's departure taken or does his absence continue with a "present intention of returning" to the precinct in the future? Gordon v. Blackburn, 618 P.2d 668 (Colo. 1980).

Because they have sufficient evidentiary support, trial court's findings that defendant had satisfied residency requirements necessary to hold office in Telluride, Colorado, and had not abandoned her principal or primary home in Colorado will not be disturbed. Trial court found defendant became a resident of Colorado in May of 1998. Defendant's return to New York was intended to be temporary and she did not lose her residency by her return to New York. Although defendant's voting and tax returns suggested New York residency, those acts were not sufficient to abandon her residency in Colorado. Circumstances justified trial court's conclusion that Telluride was defendant's principal or primary home. Zivian v. Brooke-Hitching, 28 P.3d 970 (Colo. App. 2001).

31-10-202. Submission of question to qualified taxpaying electors - oath.

(1) On any question which is required by law to be submitted to qualified taxpaying electors only, if the question is submitted on paper ballots, such ballots shall be deposited in a separate ballot box reserved for that purpose. If the question is submitted on voting machines, provision shall be made to assure that only registered taxpaying electors are permitted to vote on such question. If the question is to be submitted in precincts using an electronic voting system, provision shall be made to assure that only registered taxpaying electors are permitted to vote on such question.

(2) The governing body, in its discretion, may require each registered taxpaying elector desiring to vote on a question which is submitted to qualified taxpaying electors only to sign a written oath that he has, during the twelve months next preceding the election, paid an ad valorem tax upon property situated within the municipality and owned by said person. If said elector is unable to write, he may request assistance from one of the judges of election, and such judge shall sign and witness said elector's mark.

Source: L. 75: Entire title R&RE, p. 1042, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-202 as it existed prior to 1975.

31-10-203. Registration required.

(1) Except where a statute specifically provides otherwise, no person shall be permitted to vote at any municipal election without first having registered within the time and in the manner required by this section and sections 31-10-204 and 31-10-205.

(2) Registration requirements for municipal elections shall be the same as those governing general elections. Registration with the county clerk and recorder shall constitute registration for municipal elections.

(3) Where a statute specifically allows persons who have qualifications different from registered electors to vote on a particular measure, the governing body may require that each such person desiring to vote sign a written oath before voting that he meets each qualification required to vote on the measure.

Source: L. 75: Entire title R&RE, p. 1042, § 1, effective July 1. **L. 81:** (1) amended and (3) added, p. 1498, § 3, effective July 1.

Editor's note: This section is similar to former § 31-10-203 as it existed prior to 1975.

Cross references: For general election registration requirements, see part 2 of article 2 of title 1.

31-10-204. Municipal clerk as deputy county clerk and recorder.

Each clerk shall serve as a deputy county clerk and recorder for purposes of registration only in the county in which the clerk's municipality is located. The clerk shall register any qualified elector residing in any precinct in such county who appears in person at the clerk's office at any time during which registration is permitted in the office of the county clerk and recorder. The clerk shall promptly deliver the new registration records to the office of the county clerk and recorder.

Source: L. 75: Entire title R&RE, p. 1042, § 1, effective July 1. **L. 80:** Entire section amended, p. 796, § 58, effective June 5. **L. 87:** Entire section amended, p. 328, § 83, effective July 1. **L. 91:** Entire section amended, p. 640, § 84, effective May 1. **L. 94:** Entire section amended, p. 1773, § 39, effective January 1, 1995. **L. 95:** Entire section amended, p. 857, § 100, effective July 1. **L. 97:** Entire section amended, p. 477, § 22, effective July 1. **L. 2014:** Entire section amended, (HB 14-1164), ch. 2, p. 60, § 15, effective February 18.

Editor's note: This section is similar to former § 31-10-204 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-205. Registration lists.

The county clerk and recorder of each county, no later than the fifth day preceding any municipal election in his or her county or upon receipt of the notice made pursuant to section 31-4-503 (3)(b), shall prepare a complete copy of the list of the registered electors of each municipal election precinct which is located within his or her county and is involved in such municipal election; but, in any municipal election precinct consisting of one or more whole general election precincts, the county registration books for such precinct may be used in lieu of a separate registration list. The registration list for each municipal election precinct shall contain, in alphabetical order, the names and addresses of all registered electors residing within the municipal election precinct whose names appeared on the county registration records at the close of business on the sixth day preceding the municipal election or, when notice is received pursuant to section 31-4-503 (3)(b), at the close of business on the date preceding receipt of such notice. The county clerk and recorder shall certify and deliver such registration lists or registration books to the respective clerks on or before the fifth day preceding the election.

Source: L. 75: Entire title R&RE, p. 1042, § 1, effective July 1. **L. 87:** Entire section amended, p. 328, § 84, effective July 1. **L. 91:** Entire section amended, p. 754, § 23, effective April 4. **L. 94:** Entire section amended, p. 1773, § 40, effective January 1, 1995. **L. 95:** Entire section amended, p. 857, § 101, effective July 1. **L. 2014:** Entire section amended, (HB 14-1164), ch. 2, p. 60, § 16, effective February 18.

Editor's note: This section is similar to former § 31-10-205 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-206. Delivery and custody of registration book or list.

(1) Prior to the delivery of the registration books or registration lists to the judges of election for use on election day, the clerk shall attach to each book or list his certificate stating that such book or list contains the registration records or names of all registered electors residing in the municipal election precinct and stating the total number of registration records or names contained therein.

(2) At such time as may be set by the clerk, but at least one day prior to the election, one of the judges of election from each precinct may call in person at the office of the clerk for the purpose of receiving the registration book or list and election supplies, or the clerk may deliver the same to one of said judges. The registration book or list shall be delivered to said judge in a sealed envelope or container. Said judge shall have custody of the registration book or list and shall give his receipt therefor. After the closing of the polls on the day of election, he shall seal the registration book or list and deliver it to the election judge selected to deliver the election returns, registration book or list, ballot boxes, if any, and other election papers and supplies to the office of the clerk or to such other place as the clerk may designate as the counting center.

Source: L. 75: Entire title R&RE, p. 1043, § 1, effective July 1. **L. 79:** (2) amended, p. 1176, § 11, effective July 1. **L. 91:** (1) amended, p. 640, § 85, effective May 1.

Editor's note: This section is similar to former § 31-10-506 as it existed prior to 1975.

31-10-207. Questions answered by elector.

It is the duty of the clerk to ask each person making application for registration, and the person shall answer correctly, the matters contained in section 1-2-204, C.R.S.

Source: L. 75: Entire title R&RE, p. 1043, § 1, effective July 1. **L. 80:** Entire section amended, p. 414, § 22, effective January 1, 1981. **L. 95:** Entire section amended, p. 857, § 102, effective July 1.

Editor's note: This section is similar to former § 31-10-206 as it existed prior to 1975.

31-10-208. Change of address.

For the twenty-two days before and on the day of any municipal election, any registered elector, by appearing in person at the office of the county clerk and recorder, may complete a sworn affidavit for change of address within the county in which the elector is registered, stating that, on the date of the election, the elector is living at the new address in the new precinct within the municipality. Upon the receipt of the request, the county clerk and recorder shall verify the registration of the elector and shall, upon verification, issue or authorize a certificate of registration, showing the information required in section 1-2-216, C.R.S., plus the change of address. The judges shall allow the registered elector to vote in the precinct where the new address is located. The judges of election shall use the certificate of registration as a substitute registration page, entering the date of the election and pollbook ballot number on the certificate and including it with the registration book when it is returned to the clerk following the election.

Source: L. 83: Entire section added, p. 358, § 32, effective July 1. **L. 87:** Entire section amended, p. 328, § 85, effective July 1. **L. 92:** Entire section amended, p. 2178, § 40, effective June 2. **L. 93:** Entire section amended, p. 1708, § 3, effective July 1. **L. 94:** Entire section amended, p. 1774, § 41, effective January 1, 1995. **L. 95:** Entire section amended, p. 857, § 103, effective July 1. **L. 2014:** Entire section amended, (HB 14-1164), ch. 2, p. 61, § 17, effective February 18.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

PART 3

NOMINATIONS

31-10-301. Electors eligible to hold municipal office.

Every registered elector eighteen years of age or older on the date of the election may circulate a nominating petition and hold office in any municipality, unless another age is required by local charter or ordinance, if he or she has resided in the municipality or municipality and ward, as the case may be, from which he or she is to be elected for a period of at least twelve consecutive months immediately preceding the date of the election. In case of an annexation, any person who has resided within the territory annexed for the prescribed time shall be deemed to have met the residence requirements for the municipality and precinct to which the territory was annexed. No person may be a candidate for two municipal offices at the same election nor hold two elective municipal offices simultaneously; except that, in statutory cities, the offices of clerk and treasurer may be sought and held by the same person.

Source: L. 75: Entire title R&RE, p. 1043, § 1, effective July 1. **L. 83:** Entire section amended, p. 1259, § 14, effective July 1. **L. 89:** Entire section amended, p. 1292, § 13, effective April 6. **L. 2014:** Entire section amended, (HB 14-1164), ch. 2, p. 61, § 18, effective February 18.

Editor's note: This section is similar to former § 31-10-301 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

ANNOTATION

Annotator's note. Since § 31-10-301 is similar to former § 31-10-301 prior to the 1975 repeal and reenactment of this title, a relevant case construing that provision has been included in the annotations to this section.

Three-year durational residency requirement unconstitutional. The three-year durational residency requirement for candidates for the office of mayor and councilman of Aspen as set forth in article III, § 3.5 of Aspen's home-rule charter is unconstitutional as a violation of the equal protection clause of the fourteenth amendment of the United States constitution. Cowan v. City of Aspen, 181 Colo. 343, 509 P.2d 1269 (1973).

Qualification to have reasonable relation to object sought. Any prescribed qualification for the holding of a public office must have a reasonable relation to the object sought to be accomplished by the imposition of the qualification. Cowan v. City of Aspen, 181 Colo. 343, 509 P.2d 1269 (1973).

There must be a present and compelling governmental interest to justify durational residency requirement because the right to hold public office, by either appointment or election, is one of the valuable and fundamental rights of citizenship, and this right may not be infringed upon by invidious discriminatory disqualifications. Cowan v. City of Aspen, 181 Colo. 343, 509 P.2d 1269 (1973).

31-10-302. Nomination of municipal officers.

(1) Candidates for municipal offices shall be nominated, without regard to affiliation, by petition on forms supplied by the clerk. A petition of nomination may consist of one or more sheets, but it shall contain the name and address of only one candidate and shall indicate the office to which the candidate is seeking election.

(2) Nomination petitions may be circulated and signed beginning on the ninety-first day and ending on the seventy-first day prior to the day of election. Each petition must be signed by registered electors in the following numbers:

(a) For a candidate in a city, at least twenty-five registered electors residing within the city;

(b) For a candidate from a ward within a city, at least twenty-five registered electors residing in the candidate's ward;

(c) For a candidate in a town, at least ten registered electors residing within the town; and

(d) For a candidate from a ward within a town, at least ten registered electors residing in the candidate's ward.

(3) Each registered elector signing a petition shall sign such registered elector's own signature and shall print or, if such elector is unable to do so, shall cause to be printed such elector's legal name, the address at which such registered elector resides, including the street name and number, the city or town, the county, and the date of the signing. The registered elector, or the person printing on behalf of the registered elector, may use any abbreviations that reasonably identify the residence of the registered elector, and the date the registered elector signed the petition. The circulator of each nomination petition shall make an affidavit that each signature thereon is the signature of the person whose name it purports to be and that each signer has stated to the circulator that the signer is a registered elector of the municipality or municipality and ward, as the case may be, for which the nomination is made. The signature of

each signer of a petition shall constitute prima facie evidence of his qualifications without the requirement that each signer make an affidavit as to his qualifications.

(4) No petition is valid that does not contain the requisite number of signatures of registered electors. The clerk shall inspect timely filed petitions of nomination to ensure compliance with this section. Such inspection may consist of an examination of the information on the signature lines for patent defects, a comparison of the information on the signature lines with a list of registered electors provided by the county, or any other method of inspection reasonably expected to ensure compliance with this section. Any petition may be amended to correct or replace those signatures that the clerk finds are not in apparent conformity with the requirements of this section at any time prior to sixty-three days before the day of election.

(5) No registered elector shall sign more than one nomination petition for each separate office to be filled in his municipality or municipality and ward, as the case may be. Each office of the governing body that is to be filled by the electorate shall be considered a separate office for the purpose of nomination. In municipalities in which offices of the governing body are filled both by election from wards and election at large, an elector may sign a nomination petition for each office to be filled from his ward and also for each office to be filled by election at large. If a registered elector's signature appears on more than one nomination petition for a particular office, the clerk may utilize the date of signing indicated on the nomination petitions to determine which signature was valid when affixed to the nomination petitions. If the date of signing does not clarify which signature was valid, all signatures of such registered elector shall be rejected.

(6) Each nomination petition shall be filed with the clerk no later than the seventy-first day prior to the day of election. Every petition shall have endorsed thereon or appended thereto the written affidavit of the candidate accepting the nomination and swearing that the candidate satisfies the requirements set forth in section 31-10-301 to be a candidate and hold office in the municipality. The acceptance of nomination shall contain the place of residence of the candidate and the name of the candidate in the form that the candidate wishes it to appear on the ballot. The candidate's name may be a nickname or include a nickname but shall not contain any title or degree designating the business or profession of the candidate.

(7) The clerk shall cause all nomination petitions to be preserved for a period of two years. All such petitions shall be open to public inspection under proper regulation by the clerk with whom they are filed.

(8) Repealed.

Source: L. 75: Entire title R&RE, p. 1043, § 1, effective July 1. **L. 77:** IP(2) and (6) amended, p. 1461, § 1, effective July 1. **L. 81:** (6) amended, p. 1499, § 4, effective July 1. **L. 87:** (4) amended, p. 329, § 86, effective July 1. **L. 91:** (3) and (4) amended, p. 755, § 24, effective April

4. **L. 93:** (1) and (6) amended, p. 1708, § 4, effective July 1. **L. 95:** (8) added, p. 858, § 104, effective July 1. **L. 99:** (1) amended, p. 164, § 24, effective August 4. **L. 2000:** (3), (4), (5), and (8) amended, p. 796, § 16, effective August 2. **L. 2004:** (8) amended, p. 1523, § 5, effective May 28. **L. 2015:** IP(2), (4), and (6) amended and (8) repealed, (HB 15-1130), ch. 230, p. 854, § 2, effective August 5. **L. 2018:** (1) amended, (SB 18-107), ch. 104, p. 789, § 3, effective August 8.

Editor's note: This section is similar to former § 31-10-302 as it existed prior to 1975.

Cross references: (1) For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

(2) For the legislative declaration in SB 18-107 see section 1 of chapter 104, Session Laws of Colorado 2018.

ANNOTATION

Applied in Theobald v. Byrns, 195 Colo. 330, 579 P.2d 609 (1978).

31-10-303. Withdrawal from nominations.

(1) Any person who has been nominated and who has accepted a nomination may cause his or her name to be withdrawn from such nomination at any time prior to sixty-three days before election by a written affidavit withdrawing from such nomination. The affidavit stating withdrawal shall be signed by the candidate and filed with the clerk.

(2) Repealed.

Source: L. 75: Entire title R&RE, p. 1044, § 1, effective July 1. **L. 79:** (1) amended, p. 1176, § 12, effective July 1. **L. 2015:** (1) amended, (HB 15-1130), ch. 230, p. 856, § 8, effective August 5. **L. 2018:** (2) repealed, (SB 18-107), ch. 104, p. 789, § 4, effective August 8.

Editor's note: This section is similar to former § 31-10-303 as it existed prior to 1975.

Cross references: (1) For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

(2) For the legislative declaration in SB 18-107, see section 1 of chapter 104, Session Laws of Colorado 2018.

31-10-304. Vacancies in nominations. (Repealed)

Source: L. 75: Entire title R&RE, p. 1044, § 1, effective July 1. **L. 79:** Entire section amended, p. 1176, § 13, effective July 1. **L. 2018:** Entire section repealed, (SB 18-107), ch. 104, p. 789, § 4, effective August 8.

Editor's note: Before its repeal, this section was similar to former § 31-10-304 as it existed prior to 1975.

Cross references: For the legislative declaration in SB 18-107, see section 1 of chapter 104, Session Laws of Colorado 2018.

31-10-305. Objections to nominations.

All petitions of nomination and affidavits that are in apparent conformity with the provisions of section 31-10-302, as determined by the clerk, are valid unless objection thereto is duly made in writing within three days after the filing of the same. In case objection is made, notice thereof shall be forthwith mailed to any candidate who may be affected thereby. The clerk shall decide objections within at least forty-eight hours after the same are filed, and any objections sustained may be remedied or defect cured upon the original petition, by an amendment thereto, or by filing a new petition within three days after the objection is sustained, but in no event later than the sixty-fourth day before the day of election. The clerk shall pass upon the validity of all objections, whether of form or substance, and the clerk's decisions upon matters of form shall be final. The clerk's decisions upon matters of substance shall be open to review if prompt application is made, as provided in section 31-10-1401, but the remedy in all cases shall be summary, and the decision of the district court shall be final and not subject to review by any other court; except that the supreme court, in the exercise of its discretion, may review any proceeding in a summary way.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. **L. 77:** Entire section amended, p. 286, § 59, effective June 29. **L. 79:** Entire section amended, p. 1176, § 14, effective

July 1. **L. 93:** Entire section amended, p. 1708, § 5, effective July 1. **L. 2015:** Entire section amended, (HB 15-1130), ch. 230, p. 856, § 9, effective August 5.

Editor's note: This section is similar to former § 31-10-305 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

ANNOTATION

Action not brought pursuant to section. Whatever conflict of jurisdiction appears to exist in this section in connection with rulings on "objections to nominating petitions", the action is not brought pursuant to it where from the face of the petition it appears that this is a controversy between the candidate and the "official charged with any duty or function" in the particular election and, also, that the petitioner seeks to correct errors in the publication of the names and descriptions of the candidates. Birkenmayer v. Carter, 165 Colo. 459, 439 P.2d 991 (1968).

Applied in Theobald v. Byrns, 195 Colo. 330, 579 P.2d 609 (1978).

31-10-306. Write-in candidate affidavit.

The governing body of a municipality may provide by ordinance that no write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the clerk by the person whose name is written in prior to sixty-four days before the day of the election indicating that such person desires the office and is qualified to assume the duties of that office if elected.

Source: L. 81: Entire section added, p. 1499, § 5, effective July 1. **L. 91:** Entire section amended, p. 755, § 25, effective April 4. **L. 2016:** Entire section amended, (SB 16-142), ch. 173, p. 591, § 76, effective May 18.

PART 4

JUDGES

31-10-401. Appointment of election judges.

At least fifteen days before each municipal election, the governing body shall appoint the judges of election. Each judge of election shall be an elector registered to vote in Colorado and shall be at least eighteen years of age. The clerk shall make and file in his office a list of all persons so appointed, giving their names, addresses, and precincts. Such list shall be a public record and shall be subject to inspection and examination during office hours by any qualified elector of the municipality with the right to make copies thereof. The governing body may by resolution delegate to the clerk the authority and responsibility to appoint judges of election.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. **L. 81:** Entire section amended, p. 1499, § 6, effective July 1. **L. 87:** Entire section amended, p. 329, § 87, effective July 1. **L. 2000:** Entire section amended, p. 797, § 17, effective August 2.

Editor's note: This section is similar to former § 31-10-401 as it existed prior to 1975.

31-10-402. Number of judges.

The governing body, or the clerk if authorized pursuant to section 31-10-401, shall appoint for each municipal election precinct at least three judges of election and such additional judges as deemed necessary.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. **L. 79:** (1) R&RE, p. 1177, § 15, effective July 1. **L. 81:** Entire section R&RE, p. 1500, § 7, effective July 1.

Editor's note: This section is similar to former § 31-10-402 as it existed prior to 1975.

31-10-403. Certificates of appointment.

Immediately after the appointment of the judges of election, the clerk shall issue certificates under his official seal certifying such appointments in each precinct. He shall mail one certificate to each person appointed.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. **L. 81:** Entire section amended, p. 1500, § 8, effective July 1.

Editor's note: This section is similar to former § 31-10-403 as it existed prior to 1975.

31-10-404. Acceptances.

With each certificate of appointment transmitted by the clerk to the judges of election, there shall be enclosed a form for acceptance of the appointment. Each person appointed as an election judge shall file his acceptance in the office of the clerk within seven days after the mailing by the clerk of the certificate of appointment and the acceptance form. Failure of any person appointed as a judge of election to file an acceptance within said seven days shall result in a vacancy. Such vacancy shall be filled in the same way the original appointment was made.

Source: L. 75: Entire title R&RE, p. 1045, § 1, effective July 1. **L. 81:** Entire section amended, p. 1500, § 9, effective July 1.

Editor's note: This section is similar to former § 31-10-404 as it existed prior to 1975.

31-10-405. Vacancies.

If for any reason any person appointed as a judge of election refuses, fails, or is unable to serve, it is the duty of the person or any other judge of election to immediately notify the clerk. The clerk shall forthwith appoint another qualified person to serve in the place of the person.

Source: L. 75: Entire title R&RE, p. 1046, § 1, effective July 1. **L. 81:** Entire section amended, p. 1500, § 10, effective July 1. **L. 93:** Entire section amended, p. 1709, § 6, effective July 1.

Editor's note: This section is similar to former § 31-10-405 as it existed prior to 1975.

31-10-406. Removal of judges.

Any judge of election who has neglected his duty, or has committed, encouraged, or connived at any fraud in connection therewith, or has violated any of the election laws, or has knowingly permitted others to do so, or has been convicted of any felony, or has violated his oath, or has committed any act which interferes or tends to interfere with a fair and honest election shall be summarily removed by the clerk.

Source: L. 75: Entire title R&RE, p. 1046, § 1, effective July 1. **L. 81:** Entire section amended, p. 1500, § 11, effective July 1.

Editor's note: This section is similar to former § 31-10-406 as it existed prior to 1975.

31-10-407. Oath of judges.

(1) Before any votes are taken at any municipal election, the judges of election shall severally take an oath or affirmation in the following form:

"I, ..., do solemnly swear (or affirm) that I am a citizen of the United States and the state of Colorado; that I am a registered elector in Colorado; that I will perform the duties of judge according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same; that I will not try to ascertain how any elector voted, nor will I disclose how any elector voted if, in the discharge of my duties as judge, such knowledge shall come to me, unless called upon to disclose the same before some court; and that I will not disclose the result of the votes until the polls have closed."

(2) The judges of election may administer the oaths or affirmations to each other. Each judge shall record and sign any such oaths or affirmations administered by him and shall attach the record to the pollbook.

Source: L. 75: Entire title R&RE, p. 1046, § 1, effective July 1. **L. 81:** Entire section amended, p. 1500, § 12, effective July 1. **L. 93:** (1) amended, p. 1709, § 7, effective July 1.

Editor's note: This section is similar to former § 31-10-407 as it existed prior to 1975.

31-10-408. Compensation of judges.

The judges of election at any municipal election shall receive in full compensation for their services as judges of election not less than five dollars and not more than the maximum amount allowed by statute for payment to the judges of the general election of the state of Colorado, as determined by the governing body of the municipality.

Source: L. 75: Entire title R&RE, p. 1046, § 1, effective July 1. **L. 81:** Entire section amended, p. 1501, § 13, effective July 1.

Editor's note: This section is similar to former § 31-10-408 as it existed prior to 1975.

31-10-409. Compensation for delivery of election returns and other election papers.

The judges of election in each precinct shall select one of their number to deliver the election returns, registration book or list, ballot boxes, if any, and other election papers and supplies to the office of the clerk or to such other place as the clerk may designate as the counting center. The judge so selected shall be paid not more than four dollars for the performance of such service.

Source: L. 75: Entire title R&RE, p. 1046, § 1, effective July 1. **L. 79:** Entire section amended, p. 1177, § 16, effective July 1.

Editor's note: This section is similar to former § 31-10-409 as it existed prior to 1975.

PART 5

NOTICE AND PREPARATION FOR ELECTIONS

31-10-501. Clerk to give notice.

(1) The clerk, at least ten days before each municipal election, shall give written or printed notice of the election stating the date of the election and the hours during which the polls will be open, designating the polling place of each precinct, stating the qualifications of persons to vote in the election, naming the officers to be elected and the questions to be voted upon, and listing the names of those candidates whose nominations have been certified to him, which listing shall be as nearly as possible in the form in which such nominations shall appear upon the official

ballot with reference to wards where applicable. A copy of such notice shall be posted until after the election in a conspicuous place in the office of the clerk.

(2) In addition, the notice shall be published in at least one newspaper having general circulation in the municipality. If the clerk finds it impracticable to make the publication on the tenth day before the election day, he shall make the same on the earliest possible day before the tenth day. The publications in any weekly newspaper shall be in the next to last issue thereof before the day of election.

(3) All polling places shall be designated by a sign conspicuously posted at least ten days before each municipal election. Such sign shall be substantially in the following form: "POLLING PLACE FOR PRECINCT NO. ...". In addition, such sign shall state the date of the next election and the hours the polling place will be open.

Source: L. 75: Entire title R&RE, p. 1047, § 1, effective July 1. **L. 81:** Entire section amended, p. 1501, § 14, effective July 1.

Editor's note: This section is similar to former § 31-10-501 as it existed prior to 1975.

ANNOTATION

The purpose of requiring that legal notices be published in newspapers of general circulation is not to benefit the papers but to insure that the public is aware of matters of legal importance. Resident Participation of Denver, Inc. v. Love, 322 F. Supp. 1100 (D. Colo. 1971) (decided under law in effect prior to the 1975 repeal and reenactment).

31-10-501.5. Ballot issue notice.

(1) Any ballot issue notice, as defined in section 1-1-104 (2.5), C.R.S., relating to a municipal ballot issue, as defined in section 1-1-104 (2.3), C.R.S., shall be prepared and distributed in a manner consistent with part 9 of article 7 of title 1, C.R.S.

(2) In addition to the requirements set forth in subsection (1) of this section, a municipality submitting a ballot issue concerning the creation of any debt or other financial obligation at an election in the municipality shall post notice in accordance with the requirements of section 1-7-908, C.R.S.

Source: L. 94: Entire section added, p. 1192, § 93, effective July 1. **L. 2003:** Entire section amended, p. 750, § 6, effective August 6.

31-10-502. Establishing precincts and polling places.

(1) (a) The governing body of each municipality shall divide the municipality into as many election precincts for municipal elections as it deems expedient for the convenience of electors of said municipality and shall designate the location and address for each precinct at which elections are to be held. Municipal election precincts shall consist of one or more whole general election precincts wherever practicable, and clerks and governing bodies shall cooperate with the county clerk and recorder and board of county commissioners of their county to accomplish this purpose. In municipalities having wards, no precinct or part thereof shall be located within more than one ward, and each ward shall contain at least one precinct. The precincts shall be numbered consecutively beginning with the number one. The precincts and polling places established pursuant to this section shall remain until changed by the governing body.

(b) and (c) Repealed.

(2) (a) Changes in the boundaries of election precincts or wards and the creation of new election precincts shall be completed not less than ninety days prior to any municipal election, except in cases of precinct changes resulting from annexations.

(b) All changes in precinct or ward boundaries and in municipal boundaries shall be reported by the clerk to the county clerk and recorder, and a corrected map shall be transmitted to the county clerk and recorder as soon as possible after such changes have been effected.

(3) It is the duty of the governing body to change any polling place upon petition of a majority of the registered electors residing within the precinct.

Source: L. 75: Entire title R&RE, p. 1046, § 1, effective July 1. **L. 79:** (1)(b) and (1)(c) repealed, p. 1182, § 28, effective July 1. **L. 81:** (3) amended, p. 1502, § 15, effective July 1.

Editor's note: This section is similar to former § 31-10-502 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Redistricting: A Municipal Perspective", see 31 Colo. Law. 49 (Feb. 2002).

31-10-503. Judges may change polling places.

(1) When it becomes impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after notifying the clerk and after having assembled at or as near as practicable to such place and before receiving any vote, may move to the nearest convenient place for holding the election and at such newly designated place forthwith proceed with the election.

(2) Upon moving to a new polling place, the judges shall display a proclamation of the change and shall station a police officer or some other proper person at the original polling place to notify all registered electors of the new location for holding the election.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1. **L. 81:** (1) amended, p. 1502, § 16, effective July 1.

Editor's note: This section is similar to former § 31-10-503 as it existed prior to 1975.

31-10-504. Number of voting booths or voting machines.

(1) In municipalities which use paper ballots, the governing body shall provide in each polling place a sufficient number of voting booths. Each voting booth shall be situated so as to permit voters to prepare their ballots screened from observation and shall be furnished with such supplies and conveniences as will enable the voter to prepare his ballot for voting.

(2) In municipalities which use voting machines, the governing body shall supply each precinct with a sufficient number of voting machines.

(3) In municipalities which use an electronic voting system, the governing body shall provide adequate materials and equipment for the orderly conduct of voting.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-504 as it existed prior to 1975.

31-10-505. Arrangement of voting machines or voting booths and ballot boxes.

The voting machines or the voting booths and ballot box shall be situated in the polling place so as to be in plain view of the election officials and watchers. No person other than the election officials and those admitted for the purpose of voting shall be permitted within the immediate voting area, which shall be considered as within six feet of the voting machines or the voting booths and ballot box, except by authority of the judges of election, and then only when necessary to keep order and enforce the law.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-505 as it existed prior to 1975.

31-10-506. Election expenses to be paid by municipality.

The cost of conducting a municipal election, including the cost of printing and supplies, shall be paid by the municipality in which such election is held.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-513 as it existed prior to 1975.

31-10-507. Election may be canceled - when.

In any ordinance adopted by the governing body of the municipality requiring an affidavit of intent for write-in candidates as provided in section 31-10-306, the governing body may also provide that, if the only matter before the voters is the election of persons to office and if, at the close of business on the sixty-fourth day before the election, there are not more candidates than offices to be filled at such election, including candidates filing affidavits of intent, the clerk, if instructed by resolution of the governing body either before or after such date, shall cancel the election and by resolution declare the candidates elected. If so provided by ordinance, upon such declaration the candidates shall be deemed elected. Notice of such cancellation shall be published, if possible, in order to inform the electors of the municipality, and notice of such cancellation shall be posted at each polling place and in not less than one other public place.

Source: L. 81: Entire section added, p. 1502, § 17, effective July 1. **L. 91:** Entire section amended, p. 755, § 26, effective April 4. **L. 2016:** Entire section amended, (SB 16-142), ch. 173, p. 591, § 77, effective May 18.

PART 6

CONDUCT OF ELECTIONS

31-10-601. Hours of voting.

At all elections held under this article, the polls shall be opened at 7 a.m. and remain open until 7 p.m. of the same day. If a full set of judges of election do not attend at the hour of 7 a.m., an alternate election judge shall be appointed as provided in section 31-10-405. The polls shall be opened if a majority of judges are present, even though the alternate judge has not arrived. Every person, otherwise qualified to vote, who is standing in line waiting to vote at 7 p.m. shall be permitted to vote.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1. **L. 81:** Entire section amended, p. 1502, § 18, effective July 1.

Editor's note: This section is similar to former § 31-10-601 as it existed prior to 1975.

31-10-602. Watchers at municipal elections.

Each candidate for office, or interested party in case of an issue, at a municipal election is entitled to appoint some person to act in his behalf in every precinct in which he is a candidate or in which the issue is on the ballot. Such candidate or interested party shall certify the names of the persons so appointed to the clerk on forms provided by the clerk. In case a watcher must leave the polling place, he may designate an alternate to act in his behalf while he is absent, if such alternate is made known to the election judges by an affidavit of the person first named as a watcher.

Source: L. 75: Entire title R&RE, p. 1048, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-602 as it existed prior to 1975.

31-10-603. Employee entitled to vote.

(1) Any registered elector entitled to vote at any municipal election held within this state is entitled to absent himself from any service or employment in which he is then engaged or employed on the day of such election for a period of two hours between the time of opening and time of closing the polls. Any such absence shall not be sufficient reason for the discharge of any such person from such service or employment. Such elector, because of so absenting himself, shall not be liable to any penalty, nor shall any deduction be made from his usual salary or wages on account of such absence. Registered electors who are employed and paid by the hour shall receive their regular hourly wage for the period of such absence, not to exceed two hours. Application shall be made for such leave of absence prior to the day of election. The employer may specify the hours during which such employee may absent himself, but such hours shall be at the beginning or ending of the work shift if the employee so requests.

(2) This section shall not apply to any person whose hours of employment on the day of the election are such that there are three or more hours between the time of opening and the time of closing of the polls during which he is not employed on the job.

Source: L. 75: Entire title R&RE, p. 1049, § 1, effective July 1. **L. 79:** (2) amended, p. 1185, § 1, effective April 25.

Editor's note: This section is similar to former § 31-10-603 as it existed prior to 1975.

31-10-604. Judges open ballot box first.

In precincts which use an electronic voting system or paper ballots, it is the duty of the judges of the election, immediately before the opening of the polls, to open the ballot box in the presence of the people there assembled and turn it upside down so as to empty it of everything that may be in it and then lock it securely. It shall not be reopened until the time for counting the ballots therein.

Source: L. 75: Entire title R&RE, p. 1049, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-604 as it existed prior to 1975.

31-10-605. Judge to keep pollbook.

A judge of election shall keep a pollbook, which shall contain one column headed "names of voters" and one column headed "number on ballot". The name and number on the ballot of each registered elector voting shall be entered in regular succession under the headings in the pollbook.

Source: L. 75: Entire title R&RE, p. 1049, § 1, effective July 1. **L. 81:** Entire section amended, p. 1502, § 19, effective July 1.

Editor's note: This section is similar to former § 31-10-605 as it existed prior to 1975.

31-10-606. Preparing to vote.

(1) Any registered elector desiring to vote shall write his name and address on a form available at the polling place and shall give the form to one of the judges of election, who shall thereupon announce the same clearly and audibly. If said elector is unable to write, he may request assistance from one of the judges of election, and such judge must sign the form and witness the elector's mark. The form to be available shall be in substance: "I, ..., who reside at ...., am a registered elector of this precinct and desire to vote at this .... election. Date .....". If the name is found on the registration book or the registration list by the election judge having charge thereof, he shall likewise repeat the name, and said elector shall be allowed to enter the immediate voting area. If the name is not found on the registration book or the registration list by the election judge, such election judge, if practicable and not unduly disruptive to the election process, shall attempt to contact the county clerk and recorder's office, by telephone or otherwise, to request oral verification of the elector's registration in that precinct; and, if such oral verification is received by such election judge from the county clerk and recorder's office, such election judge shall record such verification on a form to be provided by the clerk and shall likewise repeat the elector's name, and said elector shall be allowed to enter the immediate voting area. After it is determined that the elector is duly registered, the election official in charge of the pollbook shall write upon the pollbook the name of such elector and, in precincts using paper ballots, the number of the ballot given to such elector.

(2) Besides the election officials, not more than four voters in excess of the number of voting booths or voting machines shall be allowed within the immediate voting area at one time.

(3) The completed signature forms shall be returned with other election materials to the clerk. If no challenges have been made, the forms may be destroyed after forty-five days.

(4) If the judges are using the registration book and the registered elector's signature does not appear on his or her registration record, said elector shall show documentation of his or her registration and sign his or her registration record before being allowed to vote. If said elector is unable to write, he or she may request assistance from one of the judges of election, and such judge shall sign the registration record and witness said elector's mark.

(5) In precincts using paper ballots, an election judge shall give the registered elector one, and only one, ballot, which shall be removed from the package of ballots by tearing the same along the perforated line between the stub and duplicate stub. Before delivering such ballot to said elector, the judge of election having charge of the ballots shall endorse his initials on the duplicate stub, and said judge shall enter the date and the number of said ballot on the registration book or registration list opposite the name of said elector.

Source: L. 75: Entire title R&RE, p. 1049, § 1, effective July 1. **L. 79:** (1) amended, p. 1177, § 17, effective July 1. **L. 81:** (1) and (5) amended, p. 1503, § 20, effective July 1. **L. 91:** (4) amended, p. 640, § 86, effective May 1. **L. 2014:** (4) amended, (HB 14-1164), ch. 2, p. 61, § 19, effective February 18.

Editor's note: This section is similar to former § 31-10-606 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-607. Manner of voting in precincts which use paper ballots.

(1) In precincts which use paper ballots, upon receiving his ballot, the registered elector shall immediately retire alone to one of the voting booths provided and shall prepare his ballot by marking or stamping in ink or indelible pencil, in the appropriate margin or place, a cross mark (X) opposite the name of the candidate of his choice for each office to be filled; except that no cross mark (X) shall be required opposite the name of a write-in candidate. In case of a question submitted to a vote of the people, said elector shall mark or stamp, in the appropriate margin or place, a cross mark (X) opposite the answer which he desires to give. Before leaving the voting booth, said elector shall fold his ballot without displaying the marks thereon, so that the contents of the ballot are concealed and the stub can be removed without exposing any of the contents of the ballot, and he shall keep the same so folded until he has deposited his ballot in the ballot box.

(2) Each registered elector who has prepared his ballot and is ready to cast his vote shall then leave the voting booth and approach the judge of election having charge of the ballot box. He

shall give his name to that judge, who shall announce the name of such elector and the number upon the duplicate stub of his ballot, which number must correspond with the stub number previously placed on the registration book or registration list. If the stub number of the ballot corresponds and is identified by the initials of the judge of election placed thereupon, the judge of election shall then remove the duplicate stub from such ballot. Such ballot shall then be returned to the registered elector, who shall thereupon, in full view of the judges of election, cast his vote by depositing the ballot in the ballot box, with the official endorsement on said ballot uppermost.

(3) Each registered elector shall mark and deposit his ballot without undue delay and shall leave the immediate voting area as soon as he has voted. No such elector shall occupy a voting booth already occupied by another, nor remain within the immediate voting area more than ten minutes, nor occupy a voting booth for more than five minutes if all such booths are in use and other voters are waiting to occupy the same. No registered elector whose name has been entered on the pollbook shall be allowed to reenter the immediate voting area during the election except a judge of election.

Source: L. 75: Entire title R&RE, p. 1050, § 1, effective July 1. **L. 79:** (2) amended, p. 1178, § 18, effective July 1. **L. 81:** (2) and (3) amended, p. 1503, § 21, effective July 1.

Editor's note: This section is similar to former § 31-10-607 as it existed prior to 1975.

ANNOTATION

The procedures governing detachable stubs on ballots have long been governed by statute, not article VII, § 8, of the state constitution. Jones v. Samora, 2014 CO 4M, 318 P.3d 462.

31-10-608. Disabled voter - assistance.

(1) If, at any regular or special election, any voter declares under oath to the judges of election of the precinct where he is entitled to vote that, by reason of blindness or other physical disability or inability to read or write, he is unable to prepare his ballot or operate the voting machine without assistance, he is entitled, upon his request, to receive the assistance of any one of the judges of election or, at his option, of any qualified elector of the precinct selected by the disabled voter. No person other than a judge of election in the precinct is permitted to enter the polling booth as an assistant to more than one voter.

(2) A notation shall be made in the pollbook opposite the name of each voter thus assisted stating that the voter has been assisted.

Source: L. 75: Entire title R&RE, p. 1051, § 1, effective July 1. **L. 81:** (1) amended, p. 1504, § 22, effective July 1.

Editor's note: This section is similar to former § 31-10-608 as it existed prior to 1975.

31-10-609. Spoiled ballots.

In precincts which use an electronic voting system or paper ballots, no person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one. The spoiled ballots thus returned shall be immediately canceled and shall be preserved and returned to the clerk along with other election records and supplies.

Source: L. 75: Entire title R&RE, p. 1051, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-609 as it existed prior to 1975.

31-10-610. Counting paper ballots.

(1) In precincts which use paper ballots, as soon as the polls at any election have finally closed, the judges shall immediately open the ballot box and proceed to count the votes polled, and the counting thereof shall be continued until finished before the judges of election adjourn. They shall first count the number of ballots in the box. If the ballots are found to exceed the number of names entered on the pollbook, the judges of election shall then examine the official endorsements upon the outside of the ballots without opening the same, and if, in the unanimous opinion of the judges, any of the ballots in excess of the number on the pollbook do not bear the proper official endorsement, they shall be put into a separate pile by themselves, and a separate record and return of the votes in such ballots shall be made under the head of "excess ballots". When the ballots and the pollbook agree, the judges of election shall proceed to count the votes. Each ballot shall be read and counted separately, and every name separately marked as voted for on such ballot, where there is no conflict to obscure the intention of the voter, shall be read and marked upon the tally sheets before any other ballot is proceeded with. The entire number of

ballots, excepting "excess ballots", shall be read and counted and placed upon the tally sheets in like manner. When all of the ballots, excepting "excess ballots", have been counted, the judges of election shall estimate and publish the votes.

(2) When all the votes have been read and counted, the ballots, together with one of the tally lists, shall be returned to the ballot box, and the opening shall be carefully sealed, and each of the judges shall place his initials on said seal. The cover shall then be locked and the ballot box delivered to the clerk as provided in section 31-10-614.

(3) All persons, except judges of election and watchers, shall be excluded from the place where the counting is being carried on until the count has been completed.

Source: L. 75: Entire title R&RE, p. 1051, § 1, effective July 1. **L. 81:** (1) and (3) amended, p. 1504, § 23, effective July 1.

Editor's note: This section is similar to former § 31-10-610 as it existed prior to 1975.

31-10-611. Tally sheets.

As the judges of election open and read the ballots, the votes each of the candidates have received shall be carefully marked down, upon tally sheets prepared by the clerk for that purpose, by any appropriate election official.

Source: L. 75: Entire title R&RE, p. 1052, § 1, effective July 1. **L. 79:** Entire section R&RE, p. 1178, § 19, effective July 1.

Editor's note: This section is similar to former § 31-10-611 as it existed prior to 1975.

31-10-612. Defective ballots.

If a voter marks in ink or indelible pencil more names than there are persons to be elected to an office or if, for any reason, it is impossible to determine the choice of any voter for any office to be filled, his ballot shall not be counted for such office. A defective or an incomplete cross marked on any ballot in ink in a proper place shall be counted if there is no other mark or cross in ink or indelible pencil on such ballot indicating an intention to vote for some person other than those indicated by the first mentioned defective cross or mark. No ballot without the official

endorsement, except as provided in section 31-10-805, shall be deposited in the ballot box, and none but ballots provided in accordance with the provisions of this article shall be counted. When the judges of election in any precinct discover in the counting of votes that the name of any candidate voted for is misspelled or the initial letters of his given name are transposed or omitted in part or altogether on the ballot, the vote for such candidate shall be counted for him if the intention of the elector to vote for him is apparent. Ballots not counted shall be marked "defective" on the back thereof and shall be preserved for such time as is provided in section 31-10-616 for ballots and destroyed as therein directed.

Source: L. 75: Entire title R&RE, p. 1052, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-612 as it existed prior to 1975.

31-10-613. Judges' certificate.

(1) As soon as all the votes have been read and counted, the judges of election shall make a certificate, stating the name of each candidate, designating the office for which such person received votes, and stating the number of votes he received, the number being expressed in words at full length and in numerical figures, such entry to be made as nearly as circumstances will admit, in the following form:

"At an election held at .... in .... precinct in the municipality of .... and state of Colorado, on the .... day of ...., in the year ...., the following named persons received the number of votes annexed to their respective names for the following described offices: Total number of votes cast were ...., A.B. had seventy-two (72) votes for mayor; C.D. had seventy-one (71) votes for mayor; N.O. had seventy-two (72) votes for councilman or trustee; P.Q. had seventy-one (71) votes for councilman or trustee (and in the same manner for any other persons voted for).

Certified by us:

E.F.	)	Judges
	)	
G.H.	)	of
	)	

I.J.) Election"

(2) In addition, the judges of election shall make a statement in writing showing the number of ballots voted, making a separate statement of the number of unofficial and substitute ballots voted, the number of ballots delivered to voters, the number of spoiled ballots, the number of ballots not delivered to voters, and the number of ballots returned, identifying and specifying the same. All unused ballots, spoiled ballots, and stubs of ballots voted shall be returned with such statement.

Source: L. 75: Entire title R&RE, p. 1052, § 1, effective July 1. **L. 79:** (1) amended, p. 1178, § 20, effective July 1. **L. 81:** (1) amended, p. 1504, § 24, effective July 1.

Editor's note: This section is similar to former § 31-10-613 as it existed prior to 1975.

31-10-614. Delivery of election returns, ballot boxes, and other election papers.

When all the votes have been read and counted, the election officials selected in accordance with section 31-10-409 shall deliver to the clerk the certificate and statement required by section 31-10-613, the ballot boxes and all keys thereto, and the registration list, pollbooks, tally sheets, spoiled ballots, unused ballots, ballot stubs, oaths, affidavits, and other election papers and supplies. Such delivery shall be made at once and with all convenient speed, and informality in such delivery shall not invalidate the vote of any precinct when delivery has been made previous to the completion of the official abstract of the votes by the canvassers. The clerk shall give his receipt for all such papers so delivered.

Source: L. 75: Entire title R&RE, p. 1053, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-614 as it existed prior to 1975.

31-10-615. Judges to post returns.

In addition to all certificates otherwise required to be made of the count of votes polled at any election, the judges of election are hereby required to make out an abstract of the count of votes,

which abstract shall contain the names of the offices, names of the candidates, ballot titles and submission clauses of all initiated, referred, or other measures voted upon, and the number of votes counted for or against each candidate or measure. Said abstract shall be posted in a conspicuous place upon the outside of the polling place immediately upon completion of the count. The abstract may be removed at any time after forty-eight hours following the election. Suitable blanks for the required abstract shall be prepared, printed, and furnished to all judges of election at the same time and in the same manner as other election supplies are furnished.

Source: L. 75: Entire title R&RE, p. 1053, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-615 as it existed prior to 1975.

31-10-616. Preservation of ballots and election records.

(1) The ballots, when not required to be taken from the ballot box for the purpose of election contests, shall remain in the ballot box in the custody of the clerk until six months after the election at which such ballots were cast or until the time has expired for which the ballots would be needed in any contest proceedings, at which time the ballot box shall be opened by the clerk and the ballots destroyed by fire, shredding, or burial, or by any other method approved by the executive director of the department of personnel. If the ballot boxes are needed for a special election before the legal time for commencing any proceedings in the way of contests has elapsed or in case such clerk, at the time of holding such special election, has knowledge of the pendency of any contest in which the ballots would be needed, the clerk shall preserve the ballots in some secure manner and provide for their being kept so that no one can ascertain how any voter may have voted.

(2) The clerk shall preserve all other official election records and forms for at least six months following a regular or special election.

Source: L. 75: Entire title R&RE, p. 1053, § 1, effective July 1. **L. 79:** (1) amended, p. 1179, § 21, effective July 1. **L. 96:** (1) amended, p. 1543, § 135, effective June 1.

Editor's note: This section is similar to former § 31-10-616 as it existed prior to 1975.

ANNOTATION

Paper "ballots" are those paper documents that are to be printed and then possessed by the clerk at least 10 days prior to an election. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

Digital copies of ballots do not meet the criteria for paper ballots. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

When ballots are scanned and the resulting digital image is saved in tagged image file format (TIFF), the TIFF files are not ballots and the TIFF files are therefore open to inspection under the Colorado Open Records Act, provided that the files contain no content that could reveal the identity of the voter. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

Subsection (2) requires "other official election records" to be preserved for six months, but does not specify later destruction of such records or any other requirements beyond such six-month preservation. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

Because digital copies of ballots are not ballots, releasing them for public inspection would not be contrary to this section's ballot storage and destruction provision. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

31-10-617. Ranked voting methods.

(1) Notwithstanding any provision of this article to the contrary, a municipality may use a ranked voting method, as defined in section 1-1-104 (34.4), C.R.S., to conduct a regular election to elect the mayor or members of the governing body of the municipality in accordance with section 1-7-1003, C.R.S., and the rules adopted by the secretary of state pursuant to section 1-7-1004 (1), C.R.S.

(2) A municipality conducting an election using a ranked voting method may adapt the requirements of this article, including requirements concerning the form of the ballot, the method of marking the ballot, the procedure for counting ballots, and the form of the election judges' certificate, as necessary for compatibility with the ranked voting method.

Source: L. 2008: Entire section added, p. 1252, § 4, effective August 5.

PART 7

VOTING MACHINES

31-10-701. Use of voting machines.

Voting machines may be used in any municipal election if the governing body, by resolution, authorizes their use. The adoption and use of voting machines for municipal elections shall be in

accordance with the provisions for the adoption and use of voting machines for general and primary elections insofar as such provisions are applicable to municipal elections.

Source: L. 75: Entire title R&RE, p. 1053, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-701 as it existed prior to 1975.

Cross references: For use of voting machines in general and primary elections, see part 4 of article 7 of title 1.

31-10-702. Judges to inspect machines.

The judges of election of each precinct using voting machines shall meet at the polling place therein at least three-quarters of an hour before the time set for the opening of the polls at each election. Before the polls are open for an election, each judge shall carefully examine each machine used in the precinct and see that no vote has been cast and that every counter, except the protective counter, registers zero.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-702 as it existed prior to 1975.

31-10-703. Sample ballots, ballot labels, and cards of instruction.

(1) Sample ballots shall be printed and in the possession of the clerk ten days before the election and shall be subject to public inspection. The sample ballots shall be arranged in the form of a diagram showing the front of the voting machine as it will appear after the official ballot labels are arranged thereon for voting on election day. Such sample ballots may be either in full or reduced size. The clerk shall provide at least two sample ballots for each election precinct, to be delivered to the judges of election and posted in the polling place on election day.

(2) The clerk shall also prepare and place on each voting machine to be used in election precincts under the clerk's supervision a set of official ballot labels arranged in the manner prescribed for the official election ballot to be used on voting machines. When there is more than one person to be elected to an office, there shall be provided two, and only two, spaces for write-

in purposes for each different office. No cross mark (X) shall be required opposite the name of a write-in candidate. Candidate names shall be arranged by lot as prescribed by the municipal clerk under the designation of the office. The clerk shall deliver the required number of voting machines, equipped with the official ballot, to each election precinct no later than the day prior to the day of election.

(3) Cards of instruction for the guidance of voters in casting their ballots on voting machines shall also be supplied by the clerk as provided in section 31-10-906.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1. **L. 93:** (2) amended, p. 1709, § 8, effective July 1.

Editor's note: This section is similar to former § 31-10-703 as it existed prior to 1975.

31-10-704. Instructions to vote.

In case any voter after entering the voting machine asks for further instructions concerning the manner of voting, a judge shall give such instruction to him; but no judge or other election officer or person assisting such voter shall enter the voting machine, except as provided in section 31-10-608, or in any manner request, suggest, or seek to persuade or induce any such voter to vote for any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instruction, such voter shall vote as in the case of an unassisted voter.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-704 as it existed prior to 1975.

31-10-705. Length of time to vote.

No voter shall remain within the voting machine booth longer than three minutes. If he refuses to leave after a lapse of three minutes, he shall be removed by the judges, but the judges in their discretion may permit a voter to remain longer than three minutes.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-705 as it existed prior to 1975.

31-10-706. Judge to watch voting machines.

The judges shall designate at least one of their number to be stationed beside the entrance to the voting machine during the entire period of the election to see that it is properly closed after a voter has entered to vote. At such intervals as he deems proper or necessary, the judge shall examine the face of the machine to ascertain whether it has been defaced or injured, to detect the wrongdoer, and to repair any injury.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-706 as it existed prior to 1975.

31-10-707. Clerk to supply seals for voting machines.

The clerk shall supply each election precinct with a seal for each voting machine to be used in the precinct for the purpose of sealing the machine after the polls are closed and with an envelope for the return of the keys to the machine along with the election returns.

Source: L. 75: Entire title R&RE, p. 1054, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-707 as it existed prior to 1975.

31-10-708. Close of polls and count of votes.

As soon as the polls are closed, the judges of election shall immediately lock and seal each voting machine against further voting, and it shall so remain for a period of thirty days unless otherwise ordered by the court. Immediately after each machine is locked and sealed, the judges of election shall open the counting compartments thereof and proceed to count the votes thereon. After the total vote for each candidate and upon each question or proposition has been ascertained, the judges of election shall make out a certificate of votes cast, in numerical figures only, and return the same to the clerk as provided in section 31-10-614.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-708 as it existed prior to 1975.

31-10-709. Election laws apply - separate absentee ballots permitted.

All of the provisions of this article not inconsistent with the provisions of sections 31-10-701 to 31-10-708 shall apply to all elections held in precincts where voting machines are used. Nothing in sections 31-10-701 to 31-10-708 shall prohibit the use of a separate paper ballot by absentee voters or for charter amendments where such is required.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-709 as it existed prior to 1975.

PART 8

ELECTRONIC SYSTEM

31-10-801. Use of electronic system.

An electronic voting system may be used in any municipal election if the governing body authorizes its use. The adoption and use of an electronic voting system for municipal elections shall be in accordance with the provisions for the adoption and use of such system for general and primary elections insofar as such provisions are applicable to municipal elections.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

31-10-802. Sample ballots.

Sample ballots shall be printed and in the possession of the clerk ten days before the election and shall be subject to public inspection. Such ballots shall be in the form of the official ballot but shall be printed on paper of a different color from the official ballot. The clerk shall provide

that at least two sample ballots for each election precinct are delivered to the judges of election and posted in the polling place on election day.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

31-10-803. Ballots - electronic voting.

(1) Ballot pages or ballot cards placed upon voting devices shall be, so far as practicable, in the same order of arrangement as provided by section 31-10-902 for paper ballots; except that they shall be of the size and design required by the vote recorder or the electronic vote counting equipment, or both the vote recorder and the electronic vote counting equipment, and may be printed on a number of separate pages which are placed on the voting device or on one or more ballot cards.

(2) If votes are recorded on a ballot card, a separate write-in ballot may be provided, which may be in the form of a paper ballot or envelope on which the voter may write in the titles of the office and the names of persons not on the printed ballot for whom he wishes to vote.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

31-10-804. Preparation for use - electronic voting.

(1) Prior to an election in which an electronic voting system is to be used, the clerk shall have the vote recorders or punching devices, or both the vote recorders and punching devices, prepared for voting and shall inspect and determine that each such recorder or device is in proper working order and shall cause a sufficient number of such recorders or devices to be delivered to each election precinct in which the electronic voting system is to be used.

(2) The clerk shall supply each election precinct in which vote recorders or voting devices are to be used with a sufficient number of ballot cards, sample ballots, ballot boxes, write-in ballots, if required, and other supplies and forms as may be required. Each ballot card shall have a serially numbered stub attached, which shall be removed by a judge of election before the card is deposited in the ballot box.

Source: L. 75: Entire title R&RE, p. 1055, § 1, effective July 1.

31-10-805. Instructions to vote.

In case any voter, after commencing to vote, asks for further instructions concerning the manner of voting, a judge shall give such instructions to him; but no judge or other election officer or person assisting such voter shall request, suggest, or seek to persuade or induce any such voter to vote for any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instructions, such voter shall vote as in the case of an unassisted voter.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1.

31-10-806. Ballots.

The clerk of each municipality using an electronic voting system shall provide sufficient ballots for every municipal election. The official ballots shall be printed and in the possession of the clerk at least ten days before the election.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1.

31-10-807. Distribution of ballots.

In municipalities using an electronic voting system, the clerk shall distribute to the election judges in the respective precincts a sufficient number of ballots. The ballots shall be sent in one or more sealed packages for each precinct with marks on the outside of each stating clearly the precinct and polling place for which it is intended, together with the number of ballots enclosed. Such package shall be delivered to one of the judges of election of such precinct between the close of business on the Friday preceding election day, or during any earlier day in which a judges' school of instruction is held, and 8 p.m. on the Monday before election day. A receipt for the ballots thus delivered shall be given by the election judge who received them. The receipt shall be filed with the clerk, who shall also keep a record of the time when and the manner in which each of said packages was sent and delivered.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1. **L. 81:** Entire section amended, p. 1505, § 25, effective July 1.

31-10-808. Cards of instruction.

(1) The clerk shall furnish to the judges of election of each precinct a sufficient number of instruction cards for the guidance of voters in preparing their ballots. The election judges shall post at least one card in each polling place on the day of election. Such cards shall be printed in large, clear type and shall contain full instructions to the voter as to what should be done:

(a) To obtain a ballot for voting;

(b) To prepare the ballot for deposit in the ballot box;

(c) To obtain a new ballot in the place of one spoiled by accident or mistake; and

(d) To obtain assistance in marking ballots.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1.

31-10-809. Close of polls - count and seals in electronic voting.

After the polls have been closed, the election judges shall secure the vote recorders or the voting devices, or both the vote recorders and the voting devices, against further use and prepare a ballot return in duplicate showing the number of voters as indicated by the pollbook who have voted in the precinct, the number of official ballot cards received, and the number of spoiled and unused ballot cards returned. The original copy of said ballot return shall be deposited in a metal or durable plastic transfer box, along with all voted and spoiled ballots. The transfer box shall then be sealed in such a way as to prevent tampering with the box or its contents. The clerk shall provide such a numbered seal. The duplicate copy of said ballot return shall be mailed at the nearest post office or post box to the clerk by a judge other than the one who delivers the transfer box to the counting center. One judge shall deliver the sealed transfer box to the counting center or other place designated by the clerk.

Source: L. 75: Entire title R&RE, p. 1056, § 1, effective July 1.

31-10-810. Electronic vote counting - test.

(1) The clerk shall have the electronic ballot counting equipment tested in the manner prescribed in this section to ascertain that it will accurately count the votes cast for all offices and all measures. The electronic equipment shall be tested at least three times, once on the day before the election, again just prior to the start of the count on election day, and finally at the conclusion of the counting. The clerk may make any additional tests he deems necessary.

(2) The clerk shall vote and retain at least one hundred test ballots, and shall observe the tabulation of all test ballots by means of the electronic counting equipment, and shall compare such tabulation with the previously retained records of the test vote count. The cause of any discrepancies shall be corrected prior to the actual vote tabulation.

(3) All test materials, when not in use, shall be kept in a metal box, and the clerk shall be the custodian of the box.

(4) After the final conclusion of the counting, all programs, test materials, and ballots shall be sealed and retained as provided for paper ballots.

Source: L. 75: Entire title R&RE, p. 1057, § 1, effective July 1.

31-10-811. Electronic vote counting - procedure.

(1) All proceedings at the counting center shall be under the direction of the clerk and shall be conducted under the observation of watchers, so far as practicable, in accordance with the provisions of part 6 of this article; but no persons except those authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in the processing and counting of the ballots shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. If any ballot is damaged or defective so that it cannot properly be counted by the electronic vote counting equipment, a true duplicate copy shall be made of the damaged ballot in the presence of two witnesses. The duplicate ballot shall be substituted for the damaged ballot. All duplicate ballots shall be clearly labeled as such and shall bear a serial number which shall be recorded on the damaged ballot.

(2) The return printed by the electronic vote tabulating equipment, to which have been added write-in votes, shall constitute, when certified by the clerk, the official return of each precinct. The clerk may from time to time release unofficial returns. Upon completion of the count, the official returns shall be open to the public.

(3) Absentee ballots shall be counted at the counting center in the same manner as precinct ballots. Write-in ballots may be counted in their precincts by the precinct judges of election or at the counting center, but, before any write-in vote is counted, it shall be compared with votes cast for the same office on the ballot card to ascertain whether the write-in vote is valid. If the voter has cast more votes for the office than he is lawfully entitled to vote, the word "void" shall be written across the write-in vote, and it shall not be counted. Votes cast for a nominated candidate whose name appears on the ballot shall not be voided because of an invalid write-in vote for the same office.

(4) If for any reason it becomes impracticable to count all or a part of the ballots with electronic vote tabulating equipment, the clerk may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(5) The receiving, opening, and preservation of the transfer boxes and their contents shall be the responsibility of the clerk, who shall provide adequate personnel and facilities to assure accurate and complete election results. Any indication of tampering with the ballots or ballot cards or other fraudulent action shall be immediately reported to the municipal attorney who shall immediately investigate such action and report in writing within ten days his findings to the clerk and shall prosecute to the full extent of the law any person responsible for such fraudulent action. The conduct of municipal elections when electronic voting systems are used shall follow, as nearly as practicable, the conduct of general and primary elections when such systems are used.

Source: L. 75: Entire title R&RE, p. 1057, § 1, effective July 1.

31-10-812. Election laws apply - separate absentee ballots permitted.

All of the provisions of this article not inconsistent with the provisions of this part 8 shall apply to all elections held in precincts where an electronic voting system is used. Nothing in this part 8 shall prohibit the use of a separate paper ballot by absentee voters or for charter amendments where such is required.

Source: L. 75: Entire title R&RE, p. 1058, § 1, effective July 1.

PART 9

PAPER BALLOTS

31-10-901. Ballot boxes.

The governing body of each municipality using paper ballots shall provide one ballot box for each polling place. Each ballot box shall be strongly constructed so as to prevent tampering, with a small opening at the top thereof and with a lid to be locked. The ballot boxes and keys shall be kept by the clerk and delivered to the judges of election within one day immediately preceding any municipal election, to be returned as provided in section 31-10-614. Nothing in this section shall prevent the governing body from obtaining ballot boxes from the office of the county clerk and recorder.

Source: L. 75: Entire title R&RE, p. 1058, § 1, effective July 1. **L. 81:** Entire section amended, p. 1505, § 26, effective July 1.

Editor's note: This section is similar to former § 31-10-507 as it existed prior to 1975.

31-10-902. Ballots.

(1) The clerk of each municipality using paper ballots shall provide printed ballots for every municipal election. The official ballots shall be printed and in the possession of the clerk at least ten days before the election. In addition, sample ballots shall be printed and in the possession of the clerk ten days before the election and shall be subject to public inspection. The sample ballots shall be printed in the form of the official ballots but upon paper of a different color from the official ballots. Sample ballots shall be delivered to the judges of election and posted with the cards of instruction provided in section 31-10-906.

(2) Every ballot shall contain the names of all duly nominated candidates for offices to be voted for at that election, except those who have died or withdrawn, and the ballot shall contain no other names. The names of the candidates for each office shall be printed upon the ballot without political party designation and without any title or degree designating the business or profession of the candidate. The names shall be arranged by lot as prescribed by the municipal clerk under the designation of the office.

(3) (a) The ballots shall be printed to give each voter a clear opportunity to designate his choice of candidates by a cross mark (X) in the square at the right of the name. On the ballot may be printed such words as will aid the voter, such as "vote for not more than one".

(b) At the end of the list of candidates for each different office shall be as many blank spaces as there are persons to be elected to such office in which the voter may write the name of any eligible person not printed on the ballot for whom he desires to vote as a candidate for such office; but no cross mark (X) shall be required at the right of the name so written in.

(c) When the approval of any question is submitted at a municipal election, such question shall be printed upon the ballot after the lists of candidates for all offices. The ballots shall be printed to give each voter a clear opportunity to designate his answer by a cross mark (X) in the appropriate square at the right of the question.

(4) (a) The extreme top part of each ballot shall be divided by two perforated lines into two spaces, each of which shall be not less than an inch in width, the top portion being known as the stub and the next portion as the duplicate stub. Upon each of said stubs nothing shall be printed except the number of the ballot, and the same number shall be printed upon both stubs. Stubs and

duplicate stubs of ballots shall both be numbered consecutively. The requirements of this subsection (4)(a) do not apply to ballots used in mail ballot elections.

(b) All ballots shall be uniform and of sufficient length and width to allow for the names of candidates and the proposed questions to be printed in clear, plain type with a space of at least one-half inch between the different columns on said ballot. On the back of each ballot shall be printed the endorsement "Official ballot for....", and after the word "for" shall follow the designation of the precinct, ward, and municipality for which the ballot is prepared, the date of the election, and a facsimile of the signature of the clerk who has caused the ballot to be printed. The ballot shall contain no caption or other endorsement or number. Each clerk shall use precisely the same quality and tint of paper, the same kind of type, and the same quality and tint of plain black ink for all ballots furnished by him at one election. When candidates are to be voted for only by the registered electors of a particular ward, the names of such candidates shall not be printed on any other ballots than those provided for use in such ward. The ballots shall be of such form that when folded the whole endorsement is visible and the contents of the ballot are not exposed.

Source: L. 75: Entire title R&RE, p. 1058, § 1, effective July 1. **L. 93:** (2) amended, p. 1710, § 9, effective July 1. **L. 2020:** (4) amended, (HB 20-1156), ch. 51, p. 177, § 2, effective September 14.

Editor's note: This section is similar to former § 31-10-508 as it existed prior to 1975.

31-10-903. Ballots changed if candidate dies or withdraws.

If any person duly nominated dies before the day fixed for the election and the fact of such death becomes known to the clerk or withdraws by filing an affidavit of withdrawal with the clerk before the date fixed for election, the name of the deceased or withdrawn candidate shall not be printed upon the ballots for the election. If the ballots are already printed, the name of the deceased candidate or withdrawn candidate shall be erased or canceled, if possible, before the ballots are delivered to the voters.

Source: L. 75: Entire title R&RE, p. 1059, § 1, effective July 1. **L. 91:** Entire section amended, p. 756, § 27, effective April 4. **L. 92:** Entire section amended, p. 2178, § 41, effective June 2.

Editor's note: This section is similar to former § 31-10-509 as it existed prior to 1975.

31-10-904. Printing and distribution of ballots.

In municipalities using paper ballots, the clerk shall cause to be printed and distributed to the election judges in the respective precincts a sufficient number of ballots. The ballots shall be sent in one or more sealed packages for each precinct with marks on the outside of each clearly stating the precinct and polling place for which it is intended, together with the number of ballots enclosed. Such packages shall be delivered to one of the judges of election of such precinct between the close of business on the Friday preceding election day or during any earlier day in which a judges' school of instruction is held, and 8 p.m. on the Monday before election day. A receipt for the ballots thus delivered shall be given by the election judge who receives them. The receipt shall be filed with the clerk, who shall also keep a record of the time when and the manner in which each of said packages was sent and delivered. The election judge receiving such package shall produce the same, with the seal unbroken, in the proper polling place at the opening of the polls on election day and, in the presence of all election judges for the precinct, shall open the package.

Source: L. 75: Entire title R&RE, p. 1060, § 1, effective July 1. **L. 81:** Entire section amended, p. 1506, § 27, effective July 1.

Editor's note: This section is similar to former § 31-10-510 as it existed prior to 1975.

31-10-905. Substitute ballots.

If the ballots to be furnished to any election judge are not delivered by 8 p.m. on the Monday before election day or if after delivery they are destroyed or stolen, the clerk shall cause other ballots to be prepared, as nearly in the form prescribed as practicable, with the word "substitute" printed in brackets immediately under the facsimile signature of the clerk. Upon receipt of ballots thus prepared, accompanied by a written and sworn statement of the clerk that the same have been so prepared and furnished by him and that the original ballots have so failed to be received or have been destroyed or stolen, the election judges shall cause the ballots so substituted to be used at the election. If from any cause none of the official ballots or substitute ballots prepared by the clerk are ready for distribution at any polling place or if the supply of ballots is exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as possible in the form of the official ballots, may be used until substitutes prepared by the clerk are printed and delivered.

Source: L. 75: Entire title R&RE, p. 1060, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-511 as it existed prior to 1975.

31-10-906. Cards of instruction.

(1) The clerk shall furnish to the judges of election of each precinct a sufficient number of instruction cards for the guidance of voters in preparing their ballots. The election judges shall post at least one card in each polling place upon the day of the election. Such cards shall be printed in large, clear type and shall contain full instructions to the voter as to what should be done:

(a) To obtain ballots for voting;

(b) To prepare the ballot for deposit in the ballot box;

(c) To obtain a new ballot in the place of one spoiled by accident or mistake; and

(d) To obtain assistance in marking ballots.

Source: L. 75: Entire title R&RE, p. 1060, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-512 as it existed prior to 1975.

31-10-907. Definitions.

As used in sections 31-10-908 to 31-10-913, unless the context otherwise requires:

(1) "Eligible elector" means a person who is a registered elector, as defined in section 31-1-101 (9).

(2) "Mail ballot election" means an election for which eligible electors may cast ballots by mail and in accordance with this part 9.

(3) "Mail ballot packet" means the packet of information provided by the clerk to eligible electors in a mail ballot election. The packet includes the ballot, instructions for completing the ballot, a secrecy envelope, and a return envelope.

(4) "Return envelope" means an envelope that is printed with spaces for the name and address of, and a self-affirmation to be signed by, an eligible elector voting in a mail ballot election, that contains a secrecy envelope and ballot, and that is designed to allow election officials, upon examining the signature, name, and address on the outside of the envelope, to determine whether the enclosed ballot is being submitted by an eligible elector who has not previously voted in that particular election.

(5) "Secrecy envelope" means the envelope or sleeve used for a mail ballot election that contains the eligible elector's ballot for the election and that is designed to conceal and maintain the confidentiality of the elector's vote until the counting of votes for that particular election.

Source: L. 2014: Entire section added, (HB 14-1164), ch. 2, p. 61, § 20, effective February 18.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-908. Mail ballot elections - preelection process.

(1) If the governing body of a municipality determines that an election is to be conducted by mail ballot, the clerk shall supervise the distributing, handling, counting of ballots, and the survey of returns and shall take all necessary steps to protect the confidentiality of the ballots cast and the integrity of the election.

(2) Official ballots must be prepared and all other preelection procedures followed as otherwise provided by this article; except that mail ballot packets must be prepared in accordance with this part 9.

Source: L. 2014: Entire section added, (HB 14-1164), ch. 2, p. 62, § 20, effective February 18.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-909. Nomination of candidates in mail ballot elections.

(1) Any person who desires to be a candidate for a municipal office in a mail ballot election conducted pursuant to this part 9 after May 1, 2014, shall comply with the nominating procedures set forth in this article 10; except that:

(a) Any nominating petition in a mail ballot election may be circulated and signed beginning on the ninety-first day prior to the election and must be filed with the municipal clerk no later than the close of business on the seventy-first day prior to the election. The petition may be amended to correct or replace signatures that the clerk finds are not in apparent conformity with the requirements of this article 10 by filing such changes anytime prior to sixty-three days before the day of the election.

(b) Any person who has been nominated and who has accepted a nomination may cause his or her name to be withdrawn from such nomination at any time prior to sixty-three days before the election by a written affidavit withdrawing from such nomination. The affidavit stating withdrawal shall be signed by the candidate and filed with the clerk.

(c) Repealed.

Source: L. 2014: Entire section added, (HB 14-1164), ch. 2, p. 62, § 20, effective February 18. **L. 2018:** (1)(c) repealed, (SB 18-107), ch. 104, p. 789, § 4, effective August 8. **L. 2020:** IP(1), (1)(a), and (1)(b) amended, (HB 20-1156), ch. 51, p. 177, § 3, effective September 14.

Cross references: (1) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

(2) For the legislative declaration in SB 18-107, see section 1 of chapter 104, Session Laws of Colorado 2018.

31-10-910. Procedures for conducting mail ballot election.

(1) (a) No later than thirty days prior to election day, the county clerk and recorder shall submit to the clerk conducting the mail ballot election a complete preliminary list of registered electors.

(b) No later than twenty days prior to election day, the county clerk and recorder shall submit to the clerk a supplemental list of the names of eligible electors who registered to vote on or before twenty-two days before the election whose names were not included on the preliminary list.

(c) All lists of registered electors provided to a clerk under this section must include the last mailing address of each elector.

(2) (a) Not sooner than twenty-two days before an election, and no later than fifteen days before an election, the clerk shall mail to each active eligible elector, at the last mailing address appearing in the registration records and in accordance with United States postal service regulations, a mail ballot packet marked "Do not forward. Address correction requested.", or any other similar statement that is in accordance with United States postal service regulations.

(b) A ballot or ballot label must contain the following warning:

WARNING:

Any person who, by use of force or other means, unduly influences an eligible elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with a ballot is subject, upon conviction, to imprisonment, or to a fine, or both.

(c) (I) A return envelope must have printed on it a self-affirmation substantially in the following form:

State of .... Municipality of ...., County of ....

I, ..., affirm and say that I am a qualified and registered elector in the municipality of .... and state of Colorado; that my residence and post office address is ....; and that I herein enclose my ballot in accordance with the provisions of the "Colorado Municipal Election Code of 1965". I realize that if any false statements are contained herein that I shall be subject to prosecution for criminal action.

....

Date Signature of voter

(II) The signing of the self-affirmation on the return envelope described in subparagraph (I) of this paragraph (c) constitutes an affirmation by the eligible elector, under penalty of perjury, that the facts stated in the self-affirmation are true. If the eligible elector is unable to sign, the eligible elector may affirm by making a mark on the self-affirmation, with or without assistance, witnessed by another person.

(III) A return envelope is not required to have a flap covering the signature.

(d) No sooner than twenty-two days prior to election day, and until 7 p.m. on election day, mail ballots must be made available at the clerk's office for eligible electors who request a ballot.

(e) (I) An eligible elector may obtain a replacement ballot if the ballot was destroyed, spoiled, lost, or for some other reason not received by the eligible elector. An eligible elector may obtain a ballot if a mail ballot packet was not sent to the elector because the eligibility of the elector could not be determined at the time the mail ballot packets were mailed. In order to obtain a ballot in such cases, the eligible elector must sign a sworn statement specifying the reason for requesting the ballot. The statement must be presented to the clerk no later than 7 p.m. on election day. The clerk shall keep a record of each ballot issued in accordance with this paragraph (e) together with a list of each ballot obtained pursuant to paragraph (d) of this subsection (2).

(II) The clerk shall not transmit a mail ballot packet under this paragraph (e) unless a sworn statement requesting the ballot is received on or before election day. A ballot may be transmitted directly to the eligible elector requesting the ballot at the clerk's office or may be mailed to the eligible elector at the address provided in the sworn statement. Ballots may be cast no later than 7 p.m. on election day.

(3) (a) Upon receipt of a ballot, the eligible elector shall mark the ballot, sign and complete the self-affirmation on the return envelope, and comply with the instructions provided with the ballot.

(b) The eligible elector may return the marked ballot to the clerk by United States mail or by depositing the ballot at the office of the clerk or any place designated as a depository by the clerk. The ballot must be returned in the return envelope. If an eligible elector returns the ballot by mail, the elector must provide postage. The ballot must be received at the clerk's office or a designated depository, which must remain open until 7 p.m. on election day. The depository must be designated by the clerk and located in a secure place under the supervision of the clerk, an election judge, or another person designated by the clerk.

(4) Once the ballot is returned, an election judge shall first qualify the submitted ballot by comparing the information on the return envelope with the registration records to determine whether the ballot was submitted by an eligible elector who has not previously voted in the election. If the ballot so qualifies and is otherwise valid, the election judge shall indicate in the pollbook that the eligible elector cast a ballot and deposit the ballot in an official ballot box.

(4.5) The signature of the eligible elector on the self-affirmation on the return envelope must be compared with the signature of the eligible elector on file in the statewide voter registration system, created in section 1-2-301, C.R.S., in accordance with section 31-10-910.3.

(5) All deposited ballots must be counted as provided in this article. A mail ballot is valid and counted only if it is returned in the return envelope, the self-affirmation on the return envelope is signed and completed by the eligible elector to whom the ballot was issued, and the information on the return envelope is verified in accordance with subsection (4) of this section. Mail ballots must be counted in the same manner provided by section 31-10-610 for counting paper ballots or section 31-10-811 for counting electronic ballots. If the election official determines that an eligible elector to whom a replacement ballot has been issued has voted more than once, the first ballot returned by the elector is considered the elector's official ballot. Rejected ballots are handled in the same manner as provided in section 31-10-612.

Source: L. 2014: Entire section added, (HB 14-1164), ch. 2, p. 63, § 20, effective February 18. **L. 2016:** (4.5) added, (HB 16-1070), ch. 130, p. 373, § 3, effective August 10. **L. 2020:** (2)(c)(I) amended, (HB 20-1156), ch. 51, p. 178, § 4, effective September 14.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-910.3. Verification of signatures - signature verification devices - procedures - training - definitions.

(1) (a) In every mail ballot election conducted after March 30, 2018, an election judge shall, except as provided in paragraph (b) of this subsection (1), compare the signature on the self-affirmation on each return envelope with the signature of the eligible elector stored in the statewide voter registration system in accordance with this section.

(b) A clerk may allow an election judge to use a signature verification device to compare the signature on the self-affirmation on a return envelope of an eligible elector's ballot with the signature of the elector stored in the statewide voter registration system in accordance with this section.

(2) (a) The election judges must compare the signature on the self-affirmation on each return envelope with the signature provided by the secretary of state pursuant to section 1-2-301, C.R.S. The election judges must research the signature further if there is:

(I) An obvious change in the signature's slant;

(II) A printed signature on one document and a cursive signature on the other document;

(III) A difference in the signature's size or scale;

(IV) A difference in the signature's individual characteristics, such as how the "t's" are crossed, "i's" are dotted, or loops are made on "y's" or "j's";

(V) A difference in the elector's signature style, such as how the letters are connected at the top and bottom;

(VI) Evidence that ballots or envelopes from the same household have been switched; or

(VII) Any other noticeable discrepancy such as misspelled names.

(b) (I) If an election judge must conduct further research on an elector's signature, he or she must check the additional signatures provided by the secretary of state pursuant to section 1-2-301, C.R.S., if available.

(II) An election judge may compare additional information written by the elector on the return envelope, such as the elector's address and date of signing. Any similarities noted when comparing other information may be used as part of the signature verification decision process.

(III) If an election judge determines that an elector inadvertently returned his or her ballot in another household member's ballot return envelope, the election judge must process and prepare the ballot of the elector who signed the self-affirmation for counting if it is otherwise valid. The election judge need not send a signature verification discrepancy letter to the elector.

(c) If the election judges dispute the signature, they must document the discrepancy and the research steps taken in a log that identifies the elector only by name and elector identification number, does not contain the elector's signature, notes the final resolution and ballot disposition, and identifies the election judges responsible for the final resolution and ballot disposition.

(3) (a) If the election judge determines that the signature of an eligible elector on the self-affirmation matches the elector's signature stored in the statewide voter registration system, the election judge shall follow the procedures specified in section 31-10-910 (5) concerning the qualification and counting of mail ballots.

(b) If a signature verification device used pursuant to paragraph (b) of subsection (1) of this section determines that the signature on the self-affirmation on a return envelope of an eligible elector's ballot matches the signature of the elector stored in the statewide voter registration system, the signature on the self-affirmation is deemed verified, and the election judge shall follow the procedures specified in section 31-10-910 (5) concerning the qualification and counting of mail ballots.

(4) If, upon comparing the signature of an eligible elector on the self-affirmation on the return envelope with the signature of the eligible elector stored in the statewide voter registration

system, the election judge determines that the signatures do not match, or if a signature verification device used pursuant to paragraph (b) of subsection (1) of this section is unable to determine that the signatures match, two other election judges shall simultaneously compare the signatures and proceed according to subsection (5) of this section.

(5) (a) If the two other election judges specified in subsection (4) of this section agree that the signature of an eligible elector on the self-affirmation matches the elector's signature stored in the statewide voter registration system, the initial election judge shall follow the procedures specified in section 31-10-910 (5) concerning the qualification and counting of mail ballots.

(b) In the case of a disagreement between the two other election judges as to whether the signature of an eligible elector on the self-affirmation on the return envelope matches the signature of the eligible elector stored in the statewide voter registration system pursuant to the procedures specified in subsection (4) of this section, the signatures are deemed to match, and the initial election judge shall follow the procedures specified in section 31-10-910 (5) concerning the qualification and counting of mail ballots.

(c) (I) If both other election judges agree that the signatures do not match, the clerk shall, within three days after the signature deficiency has been confirmed, but in no event later than two days after election day, send to the eligible elector at the address indicated in the registration records a letter explaining the discrepancy in signatures and a form for the eligible elector to confirm that the elector returned a ballot to the clerk.

(II) (A) If the clerk receives the form within eight days after election day confirming that the elector returned a ballot to the clerk, and if the ballot is otherwise valid, the ballot must be counted.

(B) If the eligible elector returns the form indicating that the elector did not return a ballot to the clerk, or if the eligible elector does not return the form within eight days after election day, the self-affirmation on the return envelope must be categorized as incorrect, and the ballot shall not be counted. An original return envelope with an enclosed secrecy envelope containing a voted ballot that is not counted in accordance with this sub-subparagraph (B) must be stored in the office of the clerk in a secure location separate from valid return envelopes and may be removed only by order of a court having jurisdiction.

(6) An election judge shall not determine that the signature of an eligible elector on the self-affirmation does not match the signature of that eligible elector stored in the statewide voter registration system solely on the basis of substitution of initials or use of a common nickname.

(7) The clerk shall provide training in the techniques and standards of signature comparison to election judges who compare signatures pursuant to this section.

(8) As used in this section, "statewide voter registration system" means the statewide voter registration system created pursuant to section 1-2-301, C.R.S.

Source: L. 2016: Entire section added, (HB 16-1070), ch. 130, p. 370, § 1, effective August 10.

31-10-911. Counting mail ballots.

The election officials at the mail ballot counting center may receive and prepare mail ballots delivered and turned over to them by the clerk for counting. Counting of the mail ballots may begin fifteen days prior to the election and continue until counting is completed. The election official in charge of the mail ballot counting center shall take all precautions necessary to ensure the secrecy of the counting procedures, and the election officials or watchers shall not release any information concerning the count until after 7 p.m. on election day.

Source: L. 2014: Entire section added, (HB 14-1164), ch. 2, p. 65, § 20, effective February 18.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-912. Write-in candidate affidavit in mail ballot elections.

No write-in vote for any office shall be counted unless an affidavit of intent to be a write-in candidate has been filed with the clerk by the person wishing to be a write-in candidate not later than sixty-four days before the day of the election. The affidavit of intent must indicate the office to which the affiant desires election and that the affiant is qualified to assume the office if elected.

Source: L. 2014: Entire section added, (HB 14-1164), ch. 2, p. 65, § 20, effective February 18.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-913. Challenges.

Any mail ballot election held pursuant to this part 9 shall not be invalidated on the grounds that an eligible elector did not receive a ballot so long as the clerk acted in good faith in complying with the provisions of this part 9.

Source: L. 2014: Entire section added, (HB 14-1164), ch. 2, p. 65, § 20, effective February 18.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

PART 10

ABSENTEE VOTING

31-10-1001. When absent electors may vote.

Any registered elector of a municipality may cast a ballot at the election in the manner provided in sections 31-10-1001 to 31-10-1007.

Source: L. 75: Entire title R&RE, p. 1060, § 1, effective July 1. **L. 87:** Entire section amended, p. 329, § 88, effective July 1. **L. 93:** Entire section amended, p. 1669, § 85, effective July 1; entire section amended, p. 1710, § 10, effective July 1.

Editor's note: (1) This section is similar to former § 31-10-801 as it existed prior to 1975.

(2) This section was amended in Senate Bill 93-242. Those amendments were superseded by the amendment of the section in House Bill 93-1063.

ANNOTATION

Annotator's note. Since § 31-10-1001 is similar to former § 31-10-801 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Strict construction. The general rule is that absentee voter statutes should be strictly construed, and that the voter who wishes to cast an absentee ballot must comply with all the statutory requirements. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

Absentee ballot authorized in annexation election. Since the general assembly intended to make the municipal election code, which expressly provides for absentee ballots, applicable generally to municipal elections, and since the municipal election code provides that the municipal election code should be construed liberally so that all legally qualified electors may be permitted to vote, we hold that the municipal election code by its terms authorized the absentee ballots in an annexation election. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

31-10-1002. Application for absentee voter's ballot - permanent absentee voter status - ballot delivery - list of absentee voters.

(1) Requests for an application for an absentee voter's ballot may be made orally or in writing. Applications for absentee voters' ballots shall be filed in writing and personally signed by the applicant or a family member related by blood, marriage, civil union, or adoption to the applicant. If the applicant is unable to sign the application, the applicant shall make such applicant's mark on the application, which shall be witnessed by another person. The application shall be filed with the clerk not earlier than ninety days before and not later than the close of business on the Friday immediately preceding such regular or special election. The application may be in the form of a letter.

(2) Upon receipt of an application for an absentee voter's ballot within the proper time, the clerk receiving it shall examine the records of the county clerk and recorder to ascertain whether or not the applicant is registered and lawfully entitled to vote as requested, and, if found to be so, the clerk shall deliver, as soon as practicable, but not more than seventy-two hours after the ballots have been received, to the applicant personally in the clerk's office or by mail to the mailing address given in the application for an official absentee voter's ballot, an identification return envelope with the affidavit thereon properly filled in as to precinct and residence address as shown by the records of the county clerk and recorder, and an instruction card.

(2.3) The clerk shall keep a list of names of eligible electors who have applied for absentee ballots and, if applicable, of permanent absentee voters pursuant to subsection (2.5) of this section, with the date on which each application was made, the date on which the absentee voter's ballot was sent, and the date on which each absentee voter's ballot was returned. If an absentee voter's ballot is not returned, or if it is rejected and not counted, that fact will be noted on the list. The list is open to public inspection under proper regulations.

(2.5) (a) The clerk may permit an eligible elector to request permanent absentee voter status.

(b) Upon receipt of an application for permanent absentee voter status, the clerk shall process the application in the same manner as an application for an absentee voter's ballot. If the clerk determines that the applicant is an eligible elector, the clerk shall place the eligible elector's name on the list maintained by the municipality pursuant to subsection (2.3) of this section of those

eligible electors to whom an absentee voter's ballot is mailed every time there is a polling place election conducted by the municipality from which the eligible elector has requested permanent absentee voter status.

(c) (I) An eligible elector whose name appears on the list maintained pursuant to subsection (2.3) of this section as a permanent absentee voter must remain on the list and must be mailed an absentee voter's ballot for each polling place election conducted by the municipality.

(II) An eligible elector must be deleted from the permanent absentee voter list if:

(A) The eligible elector notifies the clerk that he or she no longer wishes to vote by absentee voter's ballot; or

(B) The absentee voter's ballot sent to the eligible elector is returned to the clerk as undeliverable; or

(C) The person is no longer eligible to vote in the political subdivision.

(3) Before any absentee voter's ballot is delivered or mailed or before any registered elector is permitted to cast his or her vote on a voting machine, the clerk shall record such elector's name, the precinct number, and the number appearing on the stub of the ballot, together with the date the ballot is delivered or mailed. This information must be recorded on the registration record or registration list before the registration book or list is delivered to the judges of election. A separate list of the registered electors who have received absentee voters' ballots must be delivered to the judges of election in the precinct designated for counting absentee voters' ballots, or, if the clerk elects to deliver absentee voters' envelopes received from electors of each precinct to the judges of election of such precinct, as provided by section 31-10-1006, a separate list of the registered electors of each precinct who have received absentee voters' ballots must be delivered to the judges of election of each such precinct.

(4) (Deleted by amendment, L. 91, p. 640, § 87, effective May 1, 1991.)

Source: L. 75: Entire title R&RE, p. 1061, § 1, effective July 1. **L. 77:** (1) amended, p. 233, § 7, effective June 19. **L. 79:** (2) and (3) amended, p. 1179, § 22, effective July 1. **L. 87:** (1) amended and (4) added, p. 329, § 89, effective July 1. **L. 91:** (3) and (4) amended, p. 640, § 87, effective May 1. **L. 93:** (1) amended, p. 1670, § 86, effective July 1; (1) and (2) amended, p. 1710, § 11, effective July 1. **L. 2000:** (1) amended, p. 797, § 18, effective August 2. **L. 2009:** (2.5) added, (HB 09-1216), ch. 165, p. 730, § 8, effective August 5. **L. 2014:** Entire section amended, (HB 14-1164), ch. 2, p. 65, § 21, effective February 18.

Editor's note: (1) This section is similar to former § 31-10-802 as it existed prior to 1975.

(2) Subsection (1) was amended in Senate Bill 93-242. Those amendments were superseded by the amendment of the section in House Bill 93-1063.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-1003. Self-affirmation on return envelope.

(1) The return envelope shall have printed on its face a self-affirmation substantially in the following form:

"State of .... Municipality of ...., County of ....

I, ..., affirm and say that I am a qualified and registered elector in the municipality of .... and state of Colorado; that my residence and post-office address is ....; and that I herein enclose my ballot in accordance with the provisions of the "Colorado Municipal Election Code of 1965". I realize that if any false statements are contained herein that I shall be subject to prosecution for criminal action.

.....

Signature of voter"

(2) (Deleted by amendment, L. 91, p. 641, § 88, effective May 1, 1991.)

Source: L. 75: Entire title R&RE, p. 1061, § 1, effective July 1. **L. 87:** Entire section amended, p. 330, § 90, effective July 1. **L. 91:** Entire section amended, p. 641, § 88, effective May 1. **L. 2014:** (1) amended, (HB 14-1164), ch. 2, p. 67, § 22, effective February 18.

Editor's note: This section is similar to former § 31-10-803 as it existed prior to 1975.

Cross references: (1) For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

(2) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-1004. Manner of absentee voting by paper ballot.

(1) Any registered elector applying for and receiving an absent voter's ballot, in casting the ballot, shall make and subscribe to the self-affirmation on the return identification envelope. The voter shall then mark the ballot. The voter shall fold the ballot so as to conceal the marking, deposit it in the return envelope, and seal the envelope securely. The envelope may be delivered personally or mailed by the voter to the clerk issuing the ballot. It is permissible for a voter to deliver the ballot to any person of the voter's own choice or to any duly authorized agent of the clerk for mailing or personal delivery to the clerk. All envelopes containing absent voters' ballots shall be in the hands of the clerk not later than the hour of 7 p.m. on the day of election.

(1.5) (Deleted by amendment, L. 91, p. 641, § 89, effective May 1, 1991.)

(2) Upon receipt of an absent voter's ballot, the clerk shall write or stamp upon the envelope containing the same the date and hour such envelope was received in his office and, if the ballot was delivered in person, the name and address of the person delivering the same. He shall safely keep and preserve all absent voters' ballots unopened until the time prescribed for delivery to the judges, as provided in section 31-10-1006.

Source: L. 75: Entire title R&RE, p. 1062, § 1, effective July 1. **L. 79:** (2) amended, p. 1180, § 23, effective July 1. **L. 87:** (1) amended and (1.5) added, p. 330, § 91, effective July 1. **L. 91:** (1) and (1.5) amended, p. 641, § 89, effective May 1. **L. 93:** (1) amended, p. 1711, § 12, effective July 1.

Editor's note: This section is similar to former § 31-10-804 as it existed prior to 1975.

31-10-1005. Absent voters' voting machines - electronic voting systems.

(1) Any municipality using voting machines may provide one or more voting machines in the clerk's office for the use of qualified applicants for absent voters' ballots. If such machines are provided, they shall be available from twelve days prior to the election until the closing of business on the Friday immediately preceding the election. Votes on such machines shall be cast and counted in the same manner as votes would be cast and counted on a voting machine in a precinct polling place on election day. The clerk shall supervise the casting and counting of

absent voters' ballots on the machines. The machines shall remain locked and the tabulation of the votes cast shall remain unknown until the day of the election.

(2) Any municipality using an electronic voting system may provide such system for the use of qualified applicants for absent voters' ballots. Such system shall be available from twelve days prior to the election until the closing day of business on the Friday immediately preceding the election. Votes cast using such system shall be cast in the same manner as votes would be cast in a precinct polling place on election day. The clerk shall supervise the casting and counting of absent voters' ballots using such system.

Source: L. 75: Entire title R&RE, p. 1062, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-805 as it existed prior to 1975.

31-10-1006. Delivery to judges.

Not later than 8:30 a.m. on the day of any municipal election, the clerk shall deliver to the judges of one of the precincts of the municipality, which precinct shall be selected by the clerk, all the absent voters' envelopes received up to that time, in sealed packages, taking a receipt for the packages, together with the list of absent voters, or, in the clerk's discretion, the clerk may elect to deliver the absent voters' envelopes received from electors of each precinct and the list of absent voters for each precinct to the judges of the precinct. The clerk shall continue to deliver any envelopes which may be received thereafter during said day up to and including 7 p.m. On the sealed packages shall be printed or written, "This package contains ....(number) absent voters' ballots." With the envelopes the clerk shall deliver to one of the election judges written instructions, which shall be followed by the judges of election in casting and counting the ballots, and all the books, records, and supplies as are needed for tabulating, recording, and certifying said absent voters' ballots.

Source: L. 75: Entire title R&RE, p. 1062, § 1, effective July 1. **L. 79:** Entire section amended, p. 1180, § 24, effective July 1. **L. 93:** Entire section amended, p. 1711, § 13, effective July 1.

Editor's note: This section is similar to former § 31-10-806 as it existed prior to 1975.

31-10-1007. Casting and counting absentee ballots.

(1) If the self-affirmation on the envelope containing the absentee voter's ballot is properly sworn to, one of the judges shall open such voter's identification envelope in the presence of a majority of the judges, and, after announcing in an audible voice the name of such absentee voter, he or she shall tear open such envelope without defacing the self-affirmation printed thereon or mutilating the enclosed ballot. Such ballot must then be cast and counted in the same manner as if such absentee voter had been present in person; except that one of the judges shall deposit the ballot in the ballot box without unfolding it. If the absentee voters' ballots are delivered to the judges of one precinct selected by the clerk as provided by section 31-10-1006, the absentee vote must be certified separately from the vote of the precinct where it is counted.

(2) (Deleted by amendment, L. 91, p. 642, § 90, effective May 1, 1991.)

Source: L. 75: Entire title R&RE, p. 1063, § 1, effective July 1. **L. 79:** Entire section amended, p. 1180, § 25, effective July 1. **L. 87:** Entire section amended, p. 331, § 92, effective July 1. **L. 91:** Entire section amended, p. 642, § 90, effective May 1. **L. 2014:** (1) amended, (HB 14-1164), ch. 2, p. 67, § 23, effective February 18.

Editor's note: This section is similar to former § 31-10-807 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

ANNOTATION

The procedures governing detachable stubs on ballots have long been governed by statute, not article VII, § 8, of the state constitution. Jones v. Samora, 2014 CO 4M, 318 P.3d 462.

31-10-1008. Challenge of absentee ballots - rejection - record.

(1) The vote of any absentee voter may be challenged in the same manner as other votes are challenged, and the judges of election shall have power to determine the legality of such ballot. If the challenge is sustained or if the judges determine that the self-affirmation accompanying the absentee voter's ballot is insufficient or that the voter is not a registered elector, the envelope containing the ballot of such voter shall not be opened, and the judges shall endorse on the back of the envelope the reason therefor. When it is made to appear to the judges of election by

sufficient proof that any absentee voter who has marked and forwarded his or her ballot has died, the envelope containing the ballot of such deceased voter shall not be opened, and the judges shall make proper notation on the back of such envelope. If an absentee voter's envelope contains more than one marked ballot of any one kind, none of such ballots shall be counted, and the judges shall make notation on the back of the ballots the reason therefor. Judges of election shall certify in their returns the number of absentee voters' ballots cast and counted and the number of such ballots rejected.

(2) All absentee voters' identification envelopes, ballot stubs, and absentee voters' ballots rejected by the judges of election in accordance with the provisions of this section shall be returned to the clerk. All absentee voters' ballots received by the clerk after 7 p.m. the day of the election, together with those rejected and returned by the judges of election, as provided in this section, shall remain in the sealed identification envelopes and be destroyed later, as provided in section 31-10-616.

(3) If an absentee voter's ballot is not returned or if it is rejected and not counted, such fact shall be noted on the record kept by the clerk. Such record shall be open to public inspection under proper regulations.

Source: L. 75: Entire title R&RE, p. 1063, § 1, effective July 1. **L. 91:** (1) amended, p. 642, § 91, effective May 1. **L. 93:** (2) amended, p. 1711, § 14, effective July 1. **L. 2014:** Entire section amended, (HB 14-1164), ch. 2, p. 68, § 24, effective February 18.

Editor's note: This section is similar to former § 31-10-808 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-1009. Oaths for absentee ballots. (Repealed)

Source: L. 75: Entire title R&RE, p. 1063, § 1, effective July 1. **L. 87:** Entire section amended, p. 331, § 93, effective July 1. **L. 91:** Entire section repealed, p. 642, § 92, effective May 1.

Editor's note: Before its repeal, this section was similar to former § 31-10-809 as it existed prior to 1975.

31-10-1010. Emergency absentee voting - definition.

(1) (a) If the voter is confined in a hospital or his or her place of residence on election day because of conditions arising after the closing day for absent voters' ballot applications, the voter may request in a written statement, signed by him or her, that the clerk send him or her an absent voter's ballot with the word "EMERGENCY" stamped on the stubs thereof. The clerk shall deliver the emergency absent voter's ballot at his or her office, during the regular hours of business, to any authorized representative of the voter possessing a written statement from the voter's physician, physician assistant authorized under section 12-240-107 (6), advanced practice registered nurse, or practitioner that the voter will be confined in a hospital or his or her place of residence on election day. For the purposes of this subsection (1)(a), "authorized representative" means a person possessing a written statement from the voter containing the voter's signature, name, and address and requesting that the emergency absent voter's ballot be given to the authorized person as identified by name and address. The authorized person shall acknowledge receipt of the emergency ballot with his or her signature, name, and address.

(b) A request for an emergency absent voter's ballot under this section shall be made before, and the ballot shall be returned to the clerk's office no later than, 7 p.m. on election day.

(2) Any voter unable to go to the polls because of conditions arising after the closing day for absent voters' ballot applications which will result in his absence from the precinct on election day may apply at the office of the clerk for an emergency absent voter's ballot. Upon receipt of an affidavit signed by the voter on a form provided by the clerk and attesting to the fact that the voter will be compelled to be absent from his precinct on election day because of conditions arising after the closing day for absent voters' ballot applications, the clerk shall provide the voter with an absent voter's ballot, with the word "EMERGENCY" stamped on the stubs thereof.

(3) After marking his ballot, the voter shall place it in a return envelope provided by the clerk. He shall then fill out and sign the self-affirmation on the envelope, as provided in section 31-10-1003, on or before election day and return it to the office of the clerk. Upon receipt of the envelope, the clerk shall verify the voter's name on the return envelope with that which appears on his office precinct record and, if they compare, shall deliver the envelope to the election judges, as provided in section 31-10-1006.

Source: L. 79: Entire section added, p. 1181, § 26, effective July 1. **L. 81:** (1)(b) and (2) amended, p. 1506, § 28, effective July 1. **L. 91:** (3) amended, p. 643, § 93, effective May 1. **L. 93:** (1)(b) amended, p. 1712, § 15, effective July 1. **L. 2008:** (1)(a) amended, p. 135, § 28,

effective January 1, 2009. **L. 2016:** (1)(a) amended, (SB 16-158), ch. 204, p. 729, § 23, effective August 10. **L. 2019:** (1)(a) amended, (HB 19-1172), ch. 136, p. 1719, § 217, effective October 1.

Cross references: For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016.

PART 11

CHALLENGE OF VOTERS

31-10-1101. No voting unless registered.

Unless otherwise permitted pursuant to section 31-10-203, no person shall be permitted to vote at any regular or special election unless his or her name is found on the registration list or official registration book or unless registration in that precinct is confirmed as provided by section 31-10-606 (1).

Source: L. 75: Entire title R&RE, p. 1064, § 1, effective July 1. **L. 79:** Entire section amended, p. 1181, § 27, effective July 1. **L. 81:** Entire section amended, p. 1506, § 29, effective July 1. **L. 2014:** Entire section amended, (HB 14-1164), ch. 2, p. 68, § 25, effective February 18.

Editor's note: This section is similar to former § 31-10-901 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-1102. Right to vote may be challenged.

(1) When any person whose name appears on the registration list or in the registration book makes application for a ballot, his right to vote at that poll and election may be challenged. If the person so applying is not entitled to vote, no ballot shall be delivered to him. Any person may also be challenged when he offers his ballot for deposit in the ballot box.

(2) It is the duty of any judge of election to challenge any person offering to vote who he believes is not a registered elector. In addition, challenges may be made by watchers or any registered elector of the precinct who is present.

Source: L. 75: Entire title R&RE, p. 1064, § 1, effective July 1. **L. 81:** (2) amended, p. 1506, § 30, effective July 1.

Editor's note: This section is similar to former § 31-10-902 as it existed prior to 1975.

31-10-1103. Challenge to be made by written oath.

Each challenge shall be made by written oath, signed by the challenger under penalty of perjury, setting forth the name of the person challenged and the basis for the challenge. The judges of election shall deliver all challenges and oaths to the clerk at the time the other election papers are returned. The clerk shall forthwith deliver all challenges and oaths to the district attorney for investigation and appropriate action.

Source: L. 75: Entire title R&RE, p. 1064, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-903 as it existed prior to 1975.

Cross references: For penalty for perjury under this article, see § 31-10-1506.

31-10-1104. Challenge questions asked voter.

(1) If a person offering to vote is challenged as unqualified, one of the judges shall tender to him the following written oath or affirmation: "You do solemnly swear or affirm that you will fully and truly answer all such questions as are put to you touching your place of residence and qualifications as a registered elector at this election."

(2) If the person is challenged as unqualified on the ground that he is not a citizen and will not exhibit his papers pertaining to his naturalization, the judges, or one of them, shall put the following questions:

(a) "Are you a citizen of the United States?"

(b) "Are you a native or naturalized citizen?"

(c) and (d) Repealed.

(3) Repealed.

(4) If the person is challenged as unqualified on the ground that he or she has not resided in this state for twenty-two days immediately preceding the election, the judges, or one of them, shall put the following questions:

(a) "Have you resided in this state for twenty-two days immediately preceding this election?"

(b) "Have you been absent from this state within the twenty-two days immediately preceding this election, and during that time have you maintained a home or domicile elsewhere?"

(c) "If so, when you left, was it for a temporary purpose with the design of returning, or did you intend to remain away?"

(d) "Did you, while absent, look upon and regard this state as your home?"

(e) "Did you, while absent, vote in any state or territory?"

(5) If the person is challenged on the ground that he or she has not resided in the municipality, one of the judges shall question the person as to his or her residence in a manner similar to the method of questioning a person as to his or her residence in this state.

(6) If the person is challenged as unqualified on the ground that he is not eighteen years of age, the judges, or one of them, shall ask the following question: "Are you eighteen years of age or over to the best of your knowledge and belief?"

(7) If the person challenged answers satisfactorily all of the questions put to him, he shall sign his name on the form of the challenge after the printed questions. The judges of election shall indicate in the proper place on the form of challenge whether the challenge was withdrawn and whether the challenged voter refused to answer the questions and left the polling place without voting.

Source: L. 75: Entire title R&RE, p. 1064, § 1, effective July 1. **L. 79:** (2)(c), (2)(d), and (3) repealed, p. 1640, § 50, effective July 19. **L. 92:** (4) and (5) amended, p. 2179, § 42, effective June 2. **L. 94:** IP(4), (4)(a), (4)(b), and (5) amended, p. 1774, § 42, effective January 1, 1995. **L. 2014:** (4) and (5) amended, (HB 14-1164), ch. 2, p. 68, § 26, effective February 18.

Editor's note: This section is similar to former § 31-10-904 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-1105. Oath of challenged voter.

(1) If the challenge is not withdrawn after the person offering to vote has answered the questions put to him or her, one of the judges shall tender the following oath:

> "You do solemnly swear or affirm that you are a citizen of the United States of the age of eighteen years or over; that you have been a resident of this state for twenty-two days next preceding this election and have not retained a home or domicile elsewhere; that you are a resident of this municipality; that you are a registered elector of this precinct; and that you have not voted at this election."

(2) After the person has taken the oath or affirmation, his ballot shall be received and the word "sworn" shall be written on the pollbook after the person's name.

Source: L. 75: Entire title R&RE, p. 1065, § 1, effective July 1. **L. 92:** (1) amended, p. 2179, § 43, effective June 2. **L. 94:** (1) amended, p. 1775, § 43, effective January 1, 1995. **L. 2014:** (1) amended, (HB 14-1164), ch. 2, p. 69, § 27, effective February 18.

Editor's note: This section is similar to former § 31-10-905 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-10-1106. Refusal to answer questions or take oath.

If the challenged person refuses to answer fully any question which is put to him as provided in section 31-10-1104 or refuses to take the oath or affirmation tendered as provided in section 31-10-1105, the judges shall reject his vote.

Source: L. 75: Entire title R&RE, p. 1065, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-906 as it existed prior to 1975.

PART 12

CANVASS OF VOTES

31-10-1201. Returns - canvass.

The returns of all municipal elections shall be made to the clerk of the municipality. The clerk shall request the assistance of the mayor of the municipality in conducting the canvass of votes. If there is no mayor or if the mayor has been a candidate at the election, the clerk shall appoint a municipal judge, a member of the election commission, or a person who is qualified to be an election judge and who did not serve as an election judge in the election as an assistant. No later than ten days after the election, the clerk, in the presence of the assistant, shall open the returns and make out abstracts of votes for each office.

Source: L. 75: Entire title R&RE, p. 1065, § 1, effective July 1. **L. 93:** Entire section amended, p. 1712, § 16, effective July 1. **L. 2015:** Entire section amended, (HB 15-1130), ch. 230, p. 857, § 10, effective August 5.

Editor's note: This section is similar to former § 31-10-1001 as it existed prior to 1975.

Cross references: For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

ANNOTATION

Law reviews. For article, "Election Preview: New Statutory Duties to Investigate Ineligible Voters and Fraud", see 27 Colo. Law. 67 (Aug. 1998).

31-10-1202. Imperfect returns.

When the clerk and his assistant find that the returns from any precinct do not strictly conform to the requirements of law in making, certifying, and returning the same, the votes cast in such precinct nevertheless shall be canvassed and counted if such returns are sufficiently explicit to

enable such persons authorized to canvass votes and returns to determine therefrom how many votes were cast for the several candidates.

Source: L. 75: Entire title R&RE, p. 1066, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1002 as it existed prior to 1975.

31-10-1203. Corrections.

If, upon proceeding to canvass the votes, it clearly appears to the clerk and his assistant that in any statement produced to them certain matters are omitted which should have been inserted or that any mistakes which are merely clerical exist, they shall cause the statement to be sent to the precinct judges from whom they were received to have the same corrected. The judges of election, when so demanded, shall make such correction as the facts of the case require but shall not change or alter any decision made before by them. The clerk and his assistant may adjourn from day to day for the purpose of obtaining and receiving such statement.

Source: L. 75: Entire title R&RE, p. 1066, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1003 as it existed prior to 1975.

31-10-1204. Tie - lots - notice to candidates.

If any two or more candidates receive an equal and the highest number of votes for the same office and if there are not enough offices remaining for all such candidates, the clerk and his assistant shall determine by lot the person who shall be elected. Reasonable notice shall be given to such candidates of the time when such election will be so determined.

Source: L. 75: Entire title R&RE, p. 1066, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1004 as it existed prior to 1975.

31-10-1205. Statement - certificates of election.

(1) The clerk shall immediately make out statements from the abstract of votes which shall show the names of the candidates and the whole number of votes given to each, distinguishing the several precincts in which they were given. The clerk and his assistant shall certify such statement to be correct and subscribe their names thereto. They shall thereupon determine which persons have been by the greatest number of votes duly elected and shall endorse and subscribe on such statements a certificate of their determination.

(1.5) In any election in a municipality that utilizes four-year overlapping terms of office for members of the governing body as provided in sections 31-4-107 (3) and 31-4-301 (5), any available four-year terms of office shall be awarded to the candidate or the candidates receiving the highest number of votes. The term of office of the candidate or candidates receiving the next highest vote total or totals shall be shortened as provided in sections 31-4-107 (3) and 31-4-301 (5).

(2) The clerk shall record in his or her office, in a book to be kept for that purpose, each such certified statement and determination and shall, without delay, make out and transmit to each of the persons declared to be elected a certificate of election, certified by the clerk under his or her seal of office. The clerk shall also, without delay, cause a copy of the certified statement and determination to be published in a newspaper of general circulation within the municipality or posted when no newspaper is published within the municipality. The clerk shall also file a copy with the division of local government in the department of local affairs, which shall post the same on its official website in a form that is readily accessible to the public. The secretary of state shall provide a hyperlink to such posting on his or her official website.

Source: L. 75: Entire title R&RE, p. 1066, § 1, effective July 1. **L. 93:** (1.5) added, p. 1712, § 17, effective July 1. **L. 96:** (1.5) amended, p. 1769, § 66, effective July 1. **L. 2016:** (2) amended, (HB 16-1012), ch. 19, p. 44, § 1, effective August 10.

Editor's note: This section is similar to former § 31-10-1005 as it existed prior to 1975.

31-10-1206. Fees of municipal judge.

Each municipal judge appointed to assist the clerk in opening the returns of any municipal election and making abstracts of the votes cast thereat, as required in this article, shall receive for such services the sum of ten dollars for each day in which he is actually engaged therein, to be paid by the municipality in which such service is rendered.

Source: L. 75: Entire title R&RE, p. 1066, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1006 as it existed prior to 1975.

31-10-1207. Recount.

(1) The municipal clerk shall conduct a recount of the votes cast in any election if it appears, as evidenced by the survey of returns, that the difference between the highest number of votes cast in the election and the next highest number of votes cast in the election is less than or equal to one-half of one percent of the highest number of votes cast in the election. Any recount conducted pursuant to this subsection (1) shall be completed no later than the fifteenth day following the election and shall be paid for by the governing body. The clerk shall give notice of the recount to all candidates and, in the case of a ballot issue or question, to any petition representatives identified pursuant to sections 31-2-221 (1), 31-4-502 (1)(a)(I), and 31-11-106 (2) that are affected by the result of the election. Such notice shall be given by certified mail, by posting such notice in three public places within the municipal limits, or by other means reasonably expected to notify the affected candidates or petition representatives. Any affected candidate or petition representative is allowed to be present during and observe the recount.

(2) Whenever a recount of the votes cast in an election is not required pursuant to subsection (1) of this section, any interested party, including a candidate for office or the petition representatives for a ballot issue or question, may submit to the clerk a written request for a recount at the expense of the interested party making the request. This request shall be filed with the clerk within ten days after the election. Before conducting the recount, the clerk shall give notice of the recount in accordance with the provisions of subsection (1) of this section, shall determine the cost of the recount, shall notify the interested party that requested the recount of such cost, and shall collect the cost of conducting the recount from such interested party. The interested party that requested the recount shall pay on demand the cost of the recount to the clerk. The funds paid to the clerk for the recount shall be placed in escrow for payment of all expenses incurred in the recount. If, after the recount, the result of the election is reversed in favor of the interested party that requested the recount or if the amended election count is such that a recount otherwise would have been required pursuant to subsection (1) of this section, the payment for expenses shall be refunded to the interested party who paid them. Any recount of votes conducted pursuant to this subsection (2) shall be completed no later than the fifteenth day after the election.

(3) The clerk shall be responsible for conducting the recount and shall be assisted by those persons who assisted in preparing the official abstract of votes. If the person cannot participate in the recount, another person shall be appointed as provided in section 31-10-1201. The clerk may appoint additional persons qualified to be the election judges who did not serve as judges in the

election as assistants in conducting the recount. Persons assisting in the conduct of the recount shall be compensated as provided in section 31-10-1206.

(4) The clerk may require the production of any documentary evidence regarding the legality of any vote cast or counted and may correct the survey of returns in accordance with the clerk's findings based on the evidence presented.

(5) In precincts using paper or electronic ballots, the recounts shall be of the ballots cast, and the votes shall be tallied on sheets other than those used at the election. In precincts using voting machines, the recount shall be of the votes tabulated on the voting machines, and separate tally sheets shall be used for each machine.

(6) After a recount conducted pursuant to this section has been completed, the clerk shall notify the governing body of the results of the recount, shall make a certificate of election for each candidate who received the highest number of votes for an office for which a recount was conducted, and shall deliver the certificate to such candidate.

Source: L. 93: Entire section added, p. 1712, § 18, effective July 1. **L. 2000:** (1) and (2) amended and (6) added, p. 797, § 19, effective August 2. **L. 2015:** (1) and (2) amended, (HB 15-1130), ch. 230, p. 857, § 11, effective August 5.

Cross references: For the legislative declaration in HB 15-1130, see section 1 of chapter 230, Session Laws of Colorado 2015.

PART 13

CONTESTS

31-10-1301. Who may contest - causes.

(1) The election of any person declared duly elected to any municipal office may be contested by any registered elector of such municipality:

(a) When the contestee is not eligible for the office to which he has been declared elected;

(b) When illegal votes have been received or legal votes rejected at the polls in sufficient numbers to change the results;

(c) For any error or mistake on the part of any of the judges of election or the clerk and his assistant in counting or declaring the result of the election if the error or mistake would be sufficient to change the result;

(d) For malconduct, fraud, or corruption on the part of the judges of election in any precinct or any clerk or his assistant if the malconduct, fraud, or corruption would be sufficient to change the result;

(e) For any other cause which shows that another was the legally elected person.

Source: L. 75: Entire title R&RE, p. 1067, § 1, effective July 1. **L. 87:** IP(1) amended, p. 331, § 94, effective July 1.

Editor's note: This section is similar to former § 31-10-1101 as it existed prior to 1975.

ANNOTATION

Subsection (1)(b) requires the contestor to prove for whom the illegal votes were cast, but the contestor cannot compel the testimony of the ineligible voters. Mahaffey v. Barnhill, 855 P.2d 847 (Colo. 1993).

Illegal votes have been received in sufficient numbers to change the results of an election when the number meets or exceeds the margin of victory. Mahaffey v. Barnhill, 855 P.2d 847 (Colo. 1993).

Applied in Jones v. Samora, 2014 CO 4M, 318 P.3d 462.

31-10-1302. District judge to preside - bond.

(1) All contested election cases of municipal officers shall be tried and determined in the district court of the county in which the municipality is located. Where a municipality is located in more than one county, the district court of either county has jurisdiction. The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution thereon shall be according to the rules and practices of the district court.

(2) Before the district court is required to take jurisdiction of the contest, the contestor must file with the clerk of said court a bond, with sureties, to be approved by the district judge, running to said contestee and conditioned to pay all costs in case of failure to maintain his contest.

Source: L. 75: Entire title R&RE, p. 1067, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1102 as it existed prior to 1975.

ANNOTATION

A cost bond need not be filed for a district court to have jurisdiction over an election contest. The language is permissive so the court may require a cost bond before it accepts jurisdiction but it need not do so. Mahaffey v. Barnhill, 855 P.2d 847 (Colo. 1993).

31-10-1303. Filing statement - contents.

The contestor shall file in the office of the clerk of the district court, within ten days after the expiration of the period within which a recount may be requested pursuant to section 31-10-1207 (2), or within ten days after the conclusion of a recount conducted pursuant to section 31-10-1207, whichever is later, a written statement of the contestor's intention to contest the election, setting forth the name of the contestor, that the contestor is a registered elector of the municipality, the name of the contestee, the office contested, the time of election, and the particular causes of the contest. The statement shall be verified by the affidavit of the contestor or some registered elector of the municipality that the causes set forth in such statement are true to the best of the affiant's knowledge and belief.

Source: L. 75: Entire title R&RE, p. 1067, § 1, effective July 1. **L. 87:** Entire section amended, p. 332, § 95, effective July 1. **L. 2000:** Entire section amended, p. 799, § 20, effective August 2.

Editor's note: This section is similar to former § 31-10-1103 as it existed prior to 1975.

ANNOTATION

Declaratory judgment action to determine whether sales and use tax properly authorized under municipal election is an election contest and therefore must be brought within ten days of canvassing. Molleck v. City of Golden, 884 P.2d 725 (Colo. 1994).

31-10-1304. Summons - answer.

(1) The clerk of the district court shall thereupon issue a summons in the ordinary form, in which the contestor shall be named as plaintiff and the contestee as defendant, stating the court in which the action is brought and a brief statement of the causes of contest, as set forth in the contestor's statement. The summons shall be served upon the contestee in the same manner as other summonses are served out of the district court of this state.

(2) The contestee, within ten days after the service of such summons, shall make and file his answer to the same with the clerk of said court in which he shall either admit or specifically deny each allegation intended to be controverted by the contestee on the trial of such contest and shall set up in such answer any counterstatement which he relies upon as entitling him to the office to which he has been declared elected.

(3) When the reception of illegal votes or the rejection of legal votes is alleged as the cause of the contest, a list of the number of persons who so voted or offered to vote shall be set forth in the statement of contestor and shall be likewise set forth in the answer of contestee if any such cause is alleged in his answer by way of counterstatement.

(4) When the answer of the contestee contains new matter constituting a counterstatement, the contestor, within ten days after the filing of such answer, shall reply to the same, admitting or specifically denying, under oath, each allegation contained in such counterstatement intended by him to be controverted on the trial, and file the same in the office of the clerk of the district court.

Source: L. 75: Entire title R&RE, p. 1067, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1104 as it existed prior to 1975.

31-10-1305. Trial and appeals.

Immediately after the joining of issue, the district court shall fix a day for the trial to commence, not more than twenty days nor less than ten days after the joining of issue. Such trial shall take precedence over all other business in said court. The testimony may be oral or by depositions taken before any officer authorized to take depositions. Any depositions taken to be used upon the trial of such contest may be taken upon four days' notice thereof. The district judge shall cause the testimony to be taken in full and filed in said cause. The trial of such causes shall be conducted according to the rules and practice of the district court in other cases. Such proceedings may be reviewed and finally adjudicated by the supreme court of this state if application to such court is made by either party and if the supreme court is willing to assume jurisdiction of the case.

Source: L. 75: Entire title R&RE, p. 1068, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1105 as it existed prior to 1975.

ANNOTATION

Statute creates no limitation on the district court's power to hear a controversy. It does not state that jurisdiction is lacking absent the setting of a trial within its limitations. Mahaffey v. Barnhill, 855 P.2d 847 (Colo. 1993).

31-10-1306. Recount.

If, upon the trial of any contested election under this article, the statement or counterstatement sets forth an error in canvass sufficient to change the result, the trial judge has the power to conduct a recount of the ballots cast or the votes tabulated on the voting machines in the precinct where the alleged error was made. The court may also require the production before it of such witnesses, documents, records, and other evidence as may have or may contain information regarding the legality of any vote cast or counted for either of the contesting candidates or the correct number of votes cast for either candidate and may correct the canvass in accordance with the evidence presented and its findings thereon.

Source: L. 75: Entire title R&RE, p. 1068, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1106 as it existed prior to 1975.

31-10-1307. Judgment.

The court shall pronounce judgment whether the contestee or any other person was duly elected. The person so declared elected is entitled to the office upon qualification. If the judgment is against the contestee and he has received his certificate, the judgment annuls it. If the court finds that no person was duly elected, the judgment shall be that the election be set aside and that a vacancy exists.

Source: L. 75: Entire title R&RE, p. 1068, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1107 as it existed prior to 1975.

ANNOTATION

Applied in Jones v. Samora, 2014 CO 4M, 318 P.3d 462.

31-10-1308. Ballot questions and ballot issues - how contested.

(1) The results of an election on any ballot question may be contested in the manner provided by this part 13. The grounds for such contest shall be those grounds set forth in section 31-10-1301 (1)(b), (1)(c), and (1)(d). The contestee shall be the appropriate election official. In addition to other matters required to be set forth by this part 13, the statement of intention to contest the election shall set forth the question contested.

(2) Any contest arising out of a ballot issue or ballot question, as defined in section 1-1-104 (2.3) and (2.7), C.R.S., concerning the order on the ballot or concerning whether the form or content of any ballot title meets the requirements of section 20 of article X of the state constitution, shall be conducted as provided in section 1-11-203.5, C.R.S.

(3) The result of an election on any ballot issue, as defined in section 1-1-104 (2.3), C.R.S., approving the creation of any debt or other financial obligation may be contested in the manner provided by this part 13. The grounds for such contest shall be those grounds set forth in sections 1-11-201 (4), C.R.S., and 31-10-1301 (1)(b), (1)(c), and (1)(d). The contestee shall be the municipality for which the ballot issue was decided.

Source: L. 81: Entire section added, p. 1507, § 31, effective July 1. **L. 94:** Entire section amended, p. 1192, § 94, effective July 1. **L. 2000:** (2) amended, p. 799, § 21, effective August 2. **L. 2003:** (3) added, p. 750, § 7, effective August 6.

Editor's note: This section is similar to former § 31-10-1108 as it existed prior to 1975.

PART 14

OTHER JUDICIAL PROCEEDINGS

31-10-1401. Controversies.

(1) When any controversy arises between any official charged with any duty or function under this article and any candidate or other person, the district court, upon the filing of a verified petition by any such official or person setting forth in concise form the nature of the controversy and the relief sought, shall issue an order commanding the respondent in such petition to appear before the court and answer under oath to such petition. It is the duty of the court to summarily hear and dispose of any such issues, with a view to obtaining a substantial compliance with the provisions of this article by the parties to such controversy, and to make and enter orders and judgments and to follow the procedures of such court to enforce all such orders and judgments.

(2) Such proceedings may be reviewed and finally adjudicated by the supreme court of this state if application to such court is made within five days after the termination thereof by the court in which the petition was filed and if the supreme court is willing to assume jurisdiction of the case.

Source: L. 75: Entire title R&RE, p. 1068, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1201 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-10-1401 is similar to former § 31-10-1201 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

There is no ambiguity in the explicit language of the statute which names the district court as the forum in which such petitions are to filed. Birkenmayer v. Carter, 165 Colo. 459, 439 P.2d 991 (1968).

Jurisdiction continues past election. Because the municipal election was 20 days ago and persons elected on that date are now in office, it appears that no remedy is afforded the petitioner whose name was omitted from the ballot in connection with the election; nevertheless, the district court erred in dismissing the action of the ground that it had no jurisdiction of the present controversy. Birkenmayer v. Carter, 165 Colo. 459, 439 P.2d 991 (1968).

Applied in Theobald v. Byrns, 195 Colo. 330, 579 P.2d 609 (1978).

31-10-1402. Correction of errors.

(1) The clerk shall, on his own motion, correct without delay any error in publication or sample or official ballots which he discovers or which is brought to his attention and which can be corrected without interfering with the timely distribution of the ballots.

(2) When it appears by verified petition of a candidate or his agent to the district court that an error or omission has occurred in the publication of the names or descriptions of the candidates or in the printing of the sample or official ballots which has not been corrected by the clerk, the court shall issue an order requiring the clerk to forthwith correct such error or to forthwith show cause why such error should not be corrected. Costs, including a reasonable attorney fee, may be taxed in the discretion of such court against either party.

(3) Such proceedings may be reviewed and finally adjudicated by the supreme court of this state if application to such court is made within five days after the termination thereof by the court in which the petition was filed and if the supreme court is willing to assume jurisdiction of the case.

Source: L. 75: Entire title R&RE, p. 1069, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1202 as it existed prior to 1975.

PART 15

ELECTION OFFENSES

31-10-1501. District attorney or attorney general to prosecute.

(1) Any person may file with the district attorney an affidavit stating the name of any person who has violated any of the provisions of this article and stating the facts which constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and, if reasonable grounds appear therefor, he shall prosecute the same.

(2) The attorney general of the state shall have equal power with district attorneys to file informations or complaints against any person for violating any provision of this article.

Source: L. 75: Entire title R&RE, p. 1069, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1301 as it existed prior to 1975.

31-10-1502. Sufficiency of complaint - judicial notice.

Irregularities or defects in the mode of calling, giving notice of, convening, holding, or conducting any regular or special election constitutes no defense to a prosecution for a violation of this article. When an offense is committed in relation to any municipal election, an indictment, information, or complaint for such offense is sufficient if it alleges that such election was authorized by law, without stating the call or notice of the election, the names of the judges of election holding such election, or the names of the persons voted for at such election. Judicial notice shall be taken of the holding of any regular or special election.

Source: L. 75: Entire title R&RE, p. 1069, § 1, effective July 1. **L. 81:** Entire section amended, p. 1507, § 32, effective July 1.

Editor's note: This section is similar to former § 31-10-1302 as it existed prior to 1975.

31-10-1503. Immunity of witness from prosecution.

Any person violating any provision of this article is a competent witness against any other such violator and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation in the same manner as any other person, but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying except for perjury in giving such testimony. A person so testifying shall not thereafter be liable to indictment, prosecution, or punishment for the offense with reference to which his testimony was given and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1303 as it existed prior to 1975.

31-10-1504. Penalties for election offenses.

In all cases where an offense is denominated by this article as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1304 as it existed prior to 1975.

31-10-1505. Payment of fines.

All fines collected under the provisions of this article shall be paid to the county in which the municipality concerned is located.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1305 as it existed prior to 1975.

31-10-1506. Perjury.

Any person, having taken any oath or made any affirmation required by this article, who swears or affirms willfully, corruptly, and falsely in a matter material to the issue or point in question or suborns any other person to swear or affirm willfully, corruptly, and falsely commits perjury in the second degree or subornation of perjury.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1306 as it existed prior to 1975.

31-10-1507. Forgery.

Any person who falsely makes, alters, forges, or counterfeits any ballot before or after it has been cast, or who forges any name of a person as a signer or witness to a petition or nomination paper, or who forges the name of a registered elector to an absent voter's ballot commits forgery.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1. **L. 97:** Entire section amended, p. 1027, § 57, effective August 6.

Editor's note: This section is similar to former § 31-10-1307 as it existed prior to 1975.

31-10-1508. Tampering with nomination papers.

Any person who, being in possession of nomination papers entitled to be filed under this article 10, wrongfully or willfully destroys, defaces, mutilates, suppresses, neglects, or fails to cause the same to be filed by the proper time in the clerk's office or who files any such paper knowing the same, or any part thereof, to be falsely made commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3251, § 512, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1308 as it existed prior to 1975.

31-10-1509. Bribery of petition signers.

Any person who offers or knowingly permits any person to offer for his or her benefit any bribe or promise of gain to an elector to induce the elector to sign any nomination petition or other election paper, or any person who accepts any such bribe or promise of gain of any kind in the nature of a bribe as consideration for signing the same, whether such bribe or promise of gain in the nature of a bribe is offered or accepted before or after signing, commits a class 1 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3251, § 513, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1309 as it existed prior to 1975.

31-10-1510. Statements of expenses. (Repealed)

Source: L. 75: Entire title R&RE, p. 1070, § 1, effective July 1. **L. 85:** Entire section repealed, p. 273, § 7, effective April 30.

Editor's note: Before its repeal, this section was similar to former § 31-10-1310 as it existed prior to 1975.

31-10-1511. Custody and delivery of ballots and other election papers.

(1) Any election official having charge of official ballots, tally sheets, the registration book or list, and the pollbook who destroys, conceals, or suppresses the same, except as expressly permitted by this article 10, commits a class 1 misdemeanor.

(2) Any election official who has undertaken to deliver the official ballots, the tally sheets, the registration book or list, and the pollbook to the clerk and who neglects or refuses to do so within the time prescribed by law or who fails to account fully for all official ballots and other papers in the election official's charge commits a class 1 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3251, § 514, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1311 as it existed prior to 1975.

31-10-1512. Destroying, removing, or delaying delivery of ballots and other election papers.

Any person who willfully destroys or defaces any ballot or tally sheet, or who willfully delays the delivery of the ballots, tally sheets, registration book or list, or pollbook, or who conceals or removes any ballot, ballot box, or tally sheet from the polling place or from the possession of the

person authorized by law to have the custody thereof, or who aids, counsels, procures, or assists any person in doing any of said acts commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3251, § 515, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1312 as it existed prior to 1975.

31-10-1513. Unlawfully refusing or permitting to vote.

Any election judge who willfully and maliciously refuses or neglects to receive the ballot of any registered elector who has taken or offered to take the oath prescribed in section 31-10-1105 or knowingly and willfully permits any person to vote who is not entitled to vote at any election commits a class 1 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3252, § 516, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1313 as it existed prior to 1975.

31-10-1514. Revealing how elector voted.

Any election official, watcher, or person who assists an individual with a disability in voting and who reveals how the individual with a disability voted commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1. **L. 2014:** Entire section amended, (SB 14-118), ch. 250, p. 986, § 21, effective August 6. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3252, § 517, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1314 as it existed prior to 1975.

31-10-1515. Violation of duty.

Any municipal official election official or other person upon whom any duty is imposed by this article 10 who violates, neglects, or omits to perform such duty or is guilty of corrupt conduct in the discharge of the same, or any notary public or other officer authorized by law to administer oaths who administers an oath knowing it to be false or who knowingly makes a false certificate in regard to an election matter, commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1071, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3252, § 518, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1315 as it existed prior to 1975.

31-10-1516. Unlawful receipt of money.

(1) It is unlawful for any person, directly or indirectly, by himself or through any other person:

(a) To receive, agree to, or contract for, before or during any municipal election, any money, gift, loan, or other valuable consideration for himself or any other person for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting for any particular person or measure at any municipal election; or

(b) To receive any money or other valuable thing during or after any municipal election on account of himself or any other person for voting or refraining from voting at such election, or on account of himself or any other person for voting or refraining from voting for any particular person at such election, or on account of himself or any other person for going to the polls or remaining away from the polls at such election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at such election.

(2) Each offense mentioned in subsection (1) of this section is a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3252, § 519, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1316 as it existed prior to 1975.

31-10-1517. Disclosing or identifying vote.

(1) No person shall solicit or induce a voter to reveal how he or she voted. No voter shall place any mark upon his or her ballot by means of which it can be identified as the one voted by him or her, and no other mark shall be placed upon the ballot to identify it after it has been prepared for voting.

(2) (a) Any voter may show his or her voted ballot to any other person as long as the disclosure is not undertaken in furtherance of any election violation proscribed in this part 15.

(b) Any voter who makes available an image of the voter's own ballot through electronic means after it is prepared for voting is deemed to have consented to the transmittal of that image.

(c) The ability of a voter to disclose his or her voted ballot as described in this subsection (2) at a polling place or at any other location at which votes are being tabulated is subject to the power of the clerk to properly monitor activity at such polling place or other location, including placing reasonable restrictions on the use of photography in such settings or imposing other restrictions on activity in such settings as the clerk finds necessary, to ensure the fair and efficient conduct of elections.

(3) Any person violating subsection (1) of this section commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1. **L. 2017:** Entire section amended, (HB 17-1014), ch. 42, p. 124, § 2, effective August 9. **L. 2021:** (3) amended, (SB 21-271), ch. 462, p. 3252, § 520, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1317 as it existed prior to 1975.

31-10-1518. Delivering and receiving ballots at polls.

(1) No voter shall receive an official ballot from any person except one of the judges of election, and no person other than a judge of election shall deliver an official ballot to a voter.

(2) No person except a judge of election shall receive from any voter a ballot prepared for voting.

(3) Any voter who does not vote the ballot received by him shall return his ballot to the judge of election from whom he received the same before leaving the polling place.

(4) Each violation of the provisions of this section is a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1. **L. 81:** (1) to (3) amended, p. 1507, § 33, effective July 1. **L. 2021:** (4) amended, (SB 21-271), ch. 462, p. 3253, § 521, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1318 as it existed prior to 1975.

31-10-1519. Voting twice.

Any person who votes more than once or, having voted once, offers to vote again or offers to deposit in the ballot box more than one ballot commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1. **L. 95:** Entire section amended, p. 858, § 105, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3253, § 522, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1319 as it existed prior to 1975.

31-10-1520. Voting in the wrong precinct.

Any person who, at any municipal election, fraudulently votes or offers to vote in any precinct in which he or she does not reside commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1072, § 1, effective July 1. **L. 95:** Entire section amended, p. 858, § 106, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3253, § 523, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1320 as it existed prior to 1975.

31-10-1521. Electioneering near polls.

Any person who does any electioneering on election day within any polling place or in any public street or room or in any public manner within one hundred feet of any building in which a polling place is located commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1073, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3253, § 524, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1321 as it existed prior to 1975.

31-10-1521.5. Anonymous statements concerning candidates or issues - penalties. (Repealed)

Source: L. 93: Entire section added, p. 1713, § 19, effective July 1. **L. 97:** Entire section repealed, p. 1545, § 16, effective July 1.

31-10-1522. Employer's unlawful acts.

(1) It is unlawful for any employer, whether corporation, association, company, firm, or person, or any officer or agent of such employer:

(a) To refuse any of his employees the privilege of taking time off to vote as provided in section 31-10-603; or

(b) To influence the vote of any employee by force, violence, or restraint, or by inflicting or threatening to inflict any injury, damage, harm, or loss, or by discharging from employment, or by promoting in employment; or

(c) To enclose, in paying his employees the salary or wages due them, their pay in pay envelopes upon which there are written or printed any political mottoes, devices, or arguments containing threats, expressed or implied, intended or calculated to control the political opinions, views, or actions of such employees; or

(d) To put up or otherwise exhibit, within ninety days prior to any municipal election, in his factory, workshop, mine, mill, office, or other establishment or place where his employees may be working or be present in the course of such employment any handbill, notice, or placard containing any threat, notice, or information that, in case any particular candidate is elected or

issue is carried, work in his place or establishment will cease in whole or in part or the wages of his employees be reduced or containing any other threats, expressed or implied, intended or calculated to control the political opinions or actions of his employees; or

(e) To either expressly or by implication threaten, intimidate, influence, induce, or compel any employee to vote or refrain from voting for any particular person or issue in any municipal election or to refrain from voting at any municipal election.

(2) Each offense mentioned in subsection (1) of this section is a class 1 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1073, § 1, effective July 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3253, § 525, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1322 as it existed prior to 1975.

31-10-1523. Intimidation.

It is unlawful for any person directly or indirectly, by himself or herself, or any other person in his or her behalf, to make use of any force, violence, restraint, abduction, duress, or forcible or fraudulent device or contrivance, or to inflict or threaten the infliction of any injury, damage, harm, or loss, or in any manner to practice intimidation upon or against any person in order to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any qualified elector, or to compel, induce, or prevail upon any qualified elector either to give or refrain from giving the elector's vote at any municipal election or to give or refrain from giving the elector's vote for any particular person or measure at any such election. Each such offense is a class 1 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1073, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3253, § 526, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1323 as it existed prior to 1975.

31-10-1524. Unlawfully giving or promising money.

(1) It is unlawful for any person, directly, by himself, or through any other person:

(a) To pay, loan, or contribute or offer or promise to pay, loan, or contribute any money or other valuable consideration to or for any qualified or registered elector or to or for any other person to induce such elector to vote or refrain from voting at any municipal election, or to induce any registered elector to vote or refrain from voting at such election for any particular person, or to induce such elector to go to the polls or remain away from the polls at such election or on account of such qualified or registered elector having voted or refrained from voting for any particular person or having gone to the polls or remained away from the polls at such election; or

(b) To advance or pay or cause to be paid any money or other valuable thing to or for the use of any other person with the intent that the same, or any part thereof, be used in bribery at any municipal election or to knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election.

(2) Each offense mentioned in subsection (1) of this section is a class 1 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1073, § 1, effective July 1. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3254, § 527, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1324 as it existed prior to 1975.

31-10-1525. Corrupt means of influencing vote.

If any person, by bribery, menace, or other corrupt means or device whatsoever, either directly or indirectly, attempts to influence any voter of this state in giving the voter's vote or ballot, or deters the voter from giving the same, or disturbs or hinders the voter in the free exercise of the right of suffrage at any municipal election in this state, or fraudulently or deceitfully changes or alters a ballot, such person so offending commits a class 1 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3254, § 528, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1325 as it existed prior to 1975.

31-10-1526. Interference with voter while voting.

Any person who interferes with any voter when inside the immediate voting area or when marking a ballot or operating a voting machine commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3254, § 529, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1326 as it existed prior to 1975.

31-10-1527. Introducing liquor into polls - repeal. (Repealed)

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1. **L. 2021:** Entire section repealed, (SB 21-271), ch. 462, p. 3254, § 530, effective March 1, 2022.

Editor's note: (1) This section was similar to former § 31-10-1327 as it existed prior to 1975.

(2) Subsection (2) provided for the repeal of this section, effective March 1, 2022. (See L. 2021, p. 3254.)

31-10-1528. Inducing defective ballot.

Any person who willfully causes a ballot to misstate in any way the wishes of the voter casting the same or who causes any other deceit to be practiced with intent fraudulently to induce such voter to deposit a defective ballot so as to have the ballot thrown out and not counted commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3254, § 531, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1328 as it existed prior to 1975.

31-10-1529. Personating elector.

Any person who falsely personates any registered elector and votes under the name of such elector commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1. **L. 95:** Entire section amended, p. 858, § 107, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3254, § 532, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1329 as it existed prior to 1975.

31-10-1530. Altering posted abstract of votes.

Any person who defaces, mutilates, alters, or unlawfully removes the abstract of votes posted outside of a polling place commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1074, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3255, § 533, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1330 as it existed prior to 1975.

31-10-1531. Wagers with electors.

It is unlawful for any person, including any candidate for public office, before or during any municipal election, to make any bet or wager with a qualified elector or take a share or interest in, or in any manner become a party to, any such bet or wager or provide or agree to provide any money to be used by another in making such bet or wager upon any event or contingency whatever arising out of such election. For each such offense, the offender commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3255, § 534, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1331 as it existed prior to 1975.

31-10-1532. Tampering with notices or supplies.

Any person who, prior to a municipal election, willfully defaces, removes, or destroys any notice of election posted in accordance with the provisions of this article 10, or who, during an election, willfully defaces, removes, or destroys any card of instruction or sample ballot posted for the instruction of voters, or who, during an election, willfully removes or destroys any of the supplies or conveniences furnished to enable a voter to prepare the voter's ballot commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3255, § 535, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1332 as it existed prior to 1975.

31-10-1533. Tampering with registration book, registration list, or pollbook.

Any person who mutilates or erases any name, figure, or word on any registration book, registration list, or pollbook, or who removes such registration book, registration list, or pollbook or any part thereof from the place where it has been deposited with an intention to destroy the same, or to procure or prevent the election of any person, or to prevent any registered elector from voting, or who destroys any registration book or pollbook or part thereof commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3255, § 536, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1333 as it existed prior to 1975.

31-10-1534. Tampering with voting machine.

Any person who tampers with a voting machine before, during, or after any municipal election with intent to change the tabulation of votes thereon to reflect other than an accurate accounting commits a class 1 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3255, § 537, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1334 as it existed prior to 1975.

31-10-1535. Interference with election official.

Any person who at any municipal election intentionally interferes with any election official in the discharge of the election official's duty, or who induces any election official to violate or refuse to comply with the election official's duty, or who aids, counsels, procures, advises, or assists any person to do so commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3256, § 538, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1335 as it existed prior to 1975.

31-10-1536. Unlawful qualification as taxpaying elector.

It is unlawful to take or place title to property in the name of another, or to pay the taxes, or to take or issue a tax receipt in the name of another for the purpose of attempting to qualify such person as a "qualified taxpaying elector", or to aid or assist any person to do so. The ballot of any such person violating this section shall be void. Each person violating any of the provisions of this section commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3256, § 539, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1336 as it existed prior to 1975.

31-10-1537. Absentee voting.

Any election official or other person who knowingly violates any of the provisions of this article 10 relative to the casting of absent voters' ballots or who aids or abets fraud in connection with any absent vote cast or to be cast commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1075, § 1, effective July 1. **L. 95:** Entire section amended, p. 859, § 108, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3256, § 540, effective March 1, 2022.

Editor's note: This section is similar to former § 31-10-1337 as it existed prior to 1975.

31-10-1538. Article to be liberally construed.

This article shall be liberally construed so that all legally registered electors may be permitted to vote and so that fraud and corruption in municipal elections may be prevented.

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1338 as it existed prior to 1975.

31-10-1539. Applicability.

(1) This article shall apply to regular and special municipal elections.

(2) This article shall not apply to cities, towns, or cities and counties having home rule, but any such city, town, or city and county may adopt all or any part of this article by reference.

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1.

Editor's note: This section is similar to former § 31-10-1339 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-10-1539 is similar to former § 31-10-1339 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Includes annexation election. It is the legislative intent that the term "special municipal elections" as contained in the municipal election code extends to annexation elections. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

The municipal election code applies to elections under the annexation act to the extent that its terms are not inconsistent with the specific provisions of the annexation act. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

31-10-1540. Political campaign signs - restrictions. (Repealed)

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1. **L. 79:** Entire section repealed, p. 293, § 1, effective June 7.

Editor's note: Before its repeal, this section was similar to former § 31-10-1340 as it existed prior to 1975.

PART 16

MULTILINGUAL BALLOT ACCESS

31-10-1601. Legislative declaration - intent.

(1) The general assembly finds and declares that:

(a) Congress enacted the language minority provisions of the federal "Voting Rights Act of 1965" because "through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process...";

(b) Based on the 2023 five-year estimates specified in the United States bureau of the census American community survey, there are one hundred twenty-three thousand six hundred fifty-seven eligible electors in Colorado who speak English "less than very well". As of the 2024 general election, an estimated one hundred five thousand four hundred eighty-four of those eligible electors live within a county that is covered by the multilingual ballot requirements of House Bill 21-1011, enacted in 2021. Out of an estimated one hundred thirty-one municipalities that exist wholly or partially in a covered county, an estimated fifty-eight municipalities coordinate their elections with the county and electors receive multilingual ballot access. The

estimated remaining seventy-three municipalities hold elections independently and the ability for electors to access minority language ballots is contingent on the municipality independently offering these resources.

(c) By passing House Bill 21-1011, the general assembly expanded minority language ballot access beyond federal requirements to cover additional counties and declared that ensuring Colorado citizens have access to minority language ballots is a matter of statewide concern;

(d) For electors in counties covered by the requirements of House Bill 21-1011, however, the ability to vote with a minority language ballot in a municipal election is contingent on whether the municipality aligns its election with a county, unless the municipality independently offers access to a minority language ballot, and electors should not be denied access to a minority language ballot that they would otherwise have access to; and

(e) Colorado again has an opportunity to make the ballot accessible to more eligible electors and provide them with meaningful access by expanding minority language ballot access beyond federal requirements and those enacted in House Bill 21-1011.

(2) The general assembly further finds and declares that the intent of this part 16 is to:

(a) Ensure minority language ballot access for electors in municipalities that are wholly or partially in counties covered by the requirements of House Bill 21-1011; and

(b) Expand minority language ballot access without changing or reducing the existing responsibilities pursuant to section 203 of the "Voting Rights Act of 1965" and part 9 of article 5 of title 1.

Source: L. 2025: Entire part added, (SB 25-001), ch. 178, p. 760, § 14, effective August 6.

31-10-1602. Definitions.

As used in this part 16, unless the context otherwise requires:

(1) "Minority language ballot" means a ballot that is fully translated into a language other than English. The content of a "minority language ballot" may be in only a language other than English or both English and a language other than English.

(2) "Minority language sample ballot" means a document that is available to qualified electors to help them prepare for an election that contains all candidates, questions, and instructions for voting, and is fully translated into a language other than English.

(3) "Qualified translator" means a translator who is determined by the secretary of state to:

(a) Be screened and tested for proficiency in both written English and the target language with affiliation or accreditation by a nationally recognized association of translators or have other credentials or certifications that are comparable to or exceed the standards used by a nationally recognized association of translators; and

(b) Produce translations that are linguistically accurate, culturally appropriate, and technically consistent with the original documents.

Source: L. 2025: Entire part added, (SB 25-001), ch. 178, p. 761, § 14, effective August 6.

31-10-1603. Multilingual ballot access - general provisions - clerks.

(1) If a municipality exists partially or wholly within a county covered by the multilingual ballot requirements of section 1-5-905 (1) and the municipality has a population of at least three thousand people, a clerk is required to provide multilingual ballot access in one of the following ways for any municipal election held on or after January 1, 2027:

(a) Ensuring that each ballot and sample ballot includes all ballot content in English and all ballot content fully translated into any minority language for which a minority language sample or in-person ballot is required pursuant to section 1-5-906 for the county in which the municipality partially or wholly exists; or

(b) Creating a minority language sample ballot pursuant to section 31-10-1604 and providing an in-person minority language ballot pursuant to section 31-10-1605.

(2) The clerk shall ensure that any translation provided as required by this part 16 is performed by one or more qualified translators.

Source: L. 2025: Entire part added, (SB 25-001), ch. 178, p. 761, § 14, effective August 6.

31-10-1604. Minority language sample ballots - clerks - mail ballot elections.

(1) Unless a clerk provides multilingual ballot access pursuant to section 31-10-1603 (1)(a), the clerk of any municipality that satisfies the criteria specified in section 31-10-1603 (1) shall create a minority language sample ballot in any minority language for which a minority language sample ballot is required pursuant to section 1-5-906 for the county in which the municipality partially or wholly exists.

(2) The minority language sample ballot must include all of the same content that is on the English language ballot.

(3) The clerk shall make the minority language sample ballot available and accessible to electors on the municipality's website and at polling places municipality-wide, if used. For an election using mail ballots, the clerk shall notify all qualified electors in the municipality via the mail ballot packet and in each language in which a minority language sample ballot will be created that a minority language sample ballot is available.

Source: L. 2025: Entire part added, (SB 25-001), ch. 178, p. 762, § 14, effective August 6.

31-10-1605. In-person minority language ballot - clerks - polling places.

(1) Unless a clerk provides multilingual ballot access pursuant to section 31-10-1603 (1)(a), the clerk of any municipality that satisfies the criteria specified in section 31-10-1603 (1) shall ensure that at least one publicly accessible location in the municipality is equipped to provide, upon the request of a qualified elector, an in-person minority language ballot in any minority language for which a minority language ballot is required pursuant to section 1-5-906 for the county in which the municipality partially or wholly exists. If the municipality establishes a polling place for an election, the clerk shall ensure that the polling place is equipped to provide, upon the request of a voter, an in-person minority language ballot.

(2) An in-person minority language ballot option must be a ballot on demand, a ballot from a printed stock of ballots, or a ballot via a voting device and must include all of the same content that is on the English language ballot.

(3) For an election using mail ballots, the clerk shall notify all qualified electors in the municipality via the mail ballot packet and in each language in which the in-person minority language ballot option will be available that electors may request an in-person minority language ballot and where the elector may request the in-person minority language ballot.

Source: L. 2025: Entire part added, (SB 25-001), ch. 178, p. 762, § 14, effective August 6.

31-10-1606. Coordination with counties.

Municipalities may coordinate elections with counties to collaborate on complying with the multilingual ballot requirements of this part 16 and part 9 of article 5 of title 1.

Source: L. 2025: Entire part added, (SB 25-001), ch. 178, p. 762, § 14, effective August 6.

ARTICLE 11

Municipal Initiatives, Referenda, and Referred Measures

31-11-101. Legislative declaration.
31-11-102. Applicability of article.
31-11-103. Definitions.
31-11-103.5. Computation of time.
31-11-104. Ordinances - initiative - conflicting measures.
31-11-105. Ordinances - when effective - referendum.
31-11-106. Form of petition sections.
31-11-107. Circulators - requirements.
31-11-108. Signatures.
31-11-109. Signature verification - statement of sufficiency.
31-11-110. Protest.
31-11-111. Initiatives, referenda, and referred measures - ballot titles.
31-11-112. Petitions - not election materials - no bilingual requirement.
31-11-113. Receiving money to circulate petitions - filing.
31-11-114. Unlawful acts - penalty.
31-11-115. Tampering with initiative or referendum petition.
31-11-116. Enforcement.
31-11-117. Retention of petitions.
31-11-118. Powers of clerk and deputy.

31-11-101. Legislative declaration.

It is the intention of the general assembly to set forth in this article the procedures for exercising the initiative and referendum powers reserved to the municipal electors in subsection (9) of section 1 of article V of the state constitution. It is not the intention of the general assembly to limit or abridge in any manner these powers but rather to properly safeguard, protect, and preserve inviolate for municipal electors these modern instrumentalities of democratic government.

Source: L. 95: Entire article added, p. 422, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-101.

31-11-102. Applicability of article.

This article shall apply to municipal initiatives, referenda, and referred measures unless alternative procedures are provided by charter, ordinance, or resolution.

Source: L. 95: Entire article added, p. 422, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-103.

31-11-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Ballot title" means the language that is printed on the ballot that is comprised of the submission clause and the title.

(2) "Final determination of petition sufficiency" means the date following passage of the period of time within which a protest must be filed pursuant to section 31-11-110 or the date on which any protest filed pursuant to section 31-11-110 results in a finding of sufficiency, whichever is later.

(3) "Petition section" means the stapled or otherwise bound package of documents described in section 31-11-106.

(4) "Submission clause" means the language that is attached to the title to form a question that can be answered by "yes" or "no".

(5) "Title" means a brief statement that fairly and accurately represents the true intent and meaning of the proposed initiative, referendum, or referred measure.

Source: L. 95: Entire article added, p. 422, § 1, effective May 8. **L. 96:** (2) amended, p. 1770, § 67, effective July 1.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-102.

31-11-103.5. Computation of time.

Except as otherwise provided in this article, calendar days shall be used in all computations of time made under the provisions of this article. In computing time for any act to be done before any municipal election, the first day shall be included, and the last or election day shall be excluded. Except when computing business days, Saturdays, Sundays, and legal holidays shall be included, but, if the time for any act to be done or the last day of any period is a Saturday, Sunday, or a legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday. If the time for an act to be done under this article is referred to in business days, the time shall be computed by excluding Saturdays, Sundays, and legal holidays.

Source: L. 2000: Entire section added, p. 799, § 22, effective August 2.

31-11-104. Ordinances - initiative - conflicting measures.

(1) Any proposed ordinance may be submitted to the legislative body of any municipality by filing written notice of the proposed ordinance with the clerk and, within one hundred eighty days after approval of the petition pursuant to section 31-11-106 (1), by filing a petition signed by at least five percent of the registered electors of the city or town on the date of such notice. The proposed ordinance may be adopted without alteration by the legislative body within twenty days following the final determination of petition sufficiency. If vetoed by the mayor, the proposed ordinance may be passed over the mayor's veto within ten days after the veto. If the proposed ordinance is not adopted by the legislative body, the legislative body shall forthwith publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance, in the form petitioned for, to the registered electors of the municipality at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

(2) Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

Source: L. 95: Entire article added, p. 423, § 1, effective May 8. **L. 96:** (1) amended, p. 1770, § 68, effective July 1. **L. 2000:** (1) amended, p. 799, § 23, effective August 2.

31-11-105. Ordinances - when effective - referendum.

(1) No ordinance passed by the legislative body of any municipality shall take effect before thirty days after its final passage and publication, except an ordinance calling for a special election or necessary to the immediate preservation of the public peace, health, or safety, and not then unless the ordinance states in a separate section the reasons why it is necessary and unless it receives the affirmative vote of three-fourths of all the members elected to the legislative body taken by ayes and noes.

(2) Within thirty days after final publication of the ordinance, a referendum petition protesting against the effect of the ordinance or any part thereof may be filed with the clerk. The petition must be signed during the thirty-day period by at least five percent of the registered electors of the municipality registered on the date of final publication.

(3) If a referendum petition is filed, the ordinance or part thereof protested against shall not take effect, and, upon a final determination of petition sufficiency, the legislative body shall promptly reconsider the ordinance. If the petition is declared not sufficient by the clerk or found not sufficient in a protest, the ordinance shall forthwith take effect, unless otherwise provided therein.

(4) If, upon reconsideration, the ordinance or part thereof protested is not repealed, the legislative body shall submit the measure to a vote of the registered electors at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance or part thereof shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.

Source: L. 95: Entire article added, p. 423, § 1, effective May 8.

31-11-106. Form of petition sections.

(1) Each petition section shall be printed in a form consistent with the requirements of this article. No petition section shall be printed or circulated unless the form and the first printer's proof of the petition section have first been approved by the clerk. The clerk shall approve or reject the form and the first printer's proof of the petition no later than five business days following the date on which the clerk received such material. The clerk shall assure that the petition section contains only those elements required by this article and contains no extraneous material. The clerk may reject a petition or a section of a petition on the grounds that the petition or a section of the petition does not propose municipal legislation pursuant to section 1 (9) of article V of the state constitution.

(2) Each petition section shall designate by name and mailing address two persons who shall represent the proponents thereof in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

(3) (a) At the top of each page of every initiative or referendum petition section, the following shall be printed, in a form as prescribed by the clerk:

WARNING:

IT IS AGAINST THE LAW

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A

REGISTERED ELECTOR

AND ELIGIBLE TO VOTE ON THIS MEASURE.

TO BE A REGISTERED ELECTOR,

YOU MUST BE A CITIZEN OF COLORADO

AND REGISTERED TO VOTE.

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

(b) A summary of the proposed initiative or ordinance that is the subject of a referendum petition shall be printed following the warning on each page of a petition section. The summary shall be true and impartial and shall not be an argument, or likely to create prejudice, either for or against the measure. The summary shall be prepared by the clerk.

(c) The full text of the proposed initiated measure or ordinance that is the subject of a referendum petition shall be printed following the summary on the first page or pages of the petition section that precede the signature page. Notwithstanding the requirement of paragraph (a) of this subsection (3), if the text of the proposed initiated measure or ordinance requires more than one page of a petition section, the warning and summary need not appear at the top of other than the initial text page.

(d) The signature pages shall consist of the warning and the summary, followed by ruled lines numbered consecutively for registered electors' signatures. If a petition section contains multiple signature pages, all signature lines shall be numbered consecutively, from the first signature page through the last. The signature pages shall follow the page or pages on which the full text of the proposed initiated measure or ordinance that is the subject of the referendum petition is printed.

(e) (I) Following the signature pages of each petition section, there shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include the following:

(A) The affiant's printed name, the address at which the affiant resides, including the street name and number, the municipality, the county, and the date the affiant signed the affidavit;

(B) That the affiant has read and understands the laws governing the circulation of petition;

(C) That the affiant was eighteen years of age or older at the time the section of the petition was circulated and signed by the listed electors;

(D) That the affiant circulated the section of the petition;

(E) That each signature thereon was affixed in the affiant's presence;

(F) That each signature thereon is the signature of the person whose name it purports to be;

(G) That, to the best of the affiant's knowledge and belief, each of the persons signing the petition section was, at the time of signing, a registered elector; and

(H) That the affiant has not paid or will not in the future pay and that the affiant believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to

any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition.

(II) The clerk shall not accept for filing any section of a petition that does not have attached thereto the notarized affidavit required by subparagraph (I) of this paragraph (e). Any disassembly of a section of the petition that has the effect of separating the affidavit from the signature page or pages shall render that section of the petition invalid and of no force and effect.

(III) Any signature added to a section of a petition after the affidavit has been executed shall be invalid.

(4) All sections of any petition shall be prenumbered serially.

(5) Any petition section that fails to conform to the requirements of this article or that is circulated in a manner other than that permitted by this article shall be invalid.

Source: L. 95: Entire article added, p. 424, § 1, effective May 8. **L. 2000:** (1) and (3)(e)(I) amended, p. 800, § 24, effective August 2.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-110.

31-11-107. Circulators - requirements.

The circulation of any petition section other than personally by a circulator is prohibited. No section of a petition for any initiative or referendum measure shall be circulated by any person who is not at least eighteen years of age at the time the section is circulated.

Source: L. 95: Entire article added, p. 426, § 1, effective May 8. **L. 2000:** Entire section amended, p. 801, § 25, effective August 2.

31-11-108. Signatures.

Any initiative or referendum petition shall be signed only by registered electors who are eligible to vote on the measure. Each registered elector shall sign his or her own signature and shall print his or her name, the address at which he or she resides, including the street number

and name, the city or town, the county, and the date of signing. Each registered elector signing a petition shall be encouraged by the circulator of the petition to sign the petition in ink. In the event a registered elector is physically disabled or is illiterate and wishes to sign the petition, the elector shall sign or make his or her mark in the space so provided. Any person, but not a circulator, may assist the disabled or illiterate elector in completing the remaining information required by this section. The person providing assistance shall sign his or her name and address and shall state that such assistance was given to the disabled or illiterate elector.

Source: L. 95: Entire article added, p. 426, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-111.

31-11-109. Signature verification - statement of sufficiency.

(1) The clerk shall inspect timely filed initiative or referendum petitions and the attached affidavits, and may do so by examining the information on signature lines for patent defects, by comparing the information on signature lines against a list of registered electors provided by the county, or by other reasonable means.

(2) After examining the petition, the clerk shall issue a statement as to whether a sufficient number of valid signatures have been submitted. A copy of the statement shall be mailed to the persons designated as representing the petition proponents pursuant to section 31-11-106 (2).

(3) The statement of sufficiency or insufficiency shall be issued no later than thirty calendar days after the petition has been filed. If the clerk fails to issue a statement within thirty calendar days, the petition shall be deemed sufficient.

Source: L. 95: Entire article added, p. 427, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see §§ 1-40-116 and 1-40-117.

31-11-110. Protest.

(1) Within forty days after an initiative or referendum petition is filed, a protest in writing under oath may be filed in the office of the clerk by any registered elector who resides in the municipality, setting forth specifically the grounds for such protest. The grounds for protest may include, but shall not be limited to, the failure of any portion of a petition or circulator affidavit to meet the requirements of this article. No signature may be challenged that is not identified in the protest by section and line number. The clerk shall forthwith mail a copy of such protest to the persons designated as representing the petition proponents pursuant to section 31-11-106 (2) and to the protester, together with a notice fixing a time for hearing such protest that is not less than five or more than ten days after such notice is mailed.

(2) The county clerk shall furnish a requesting protester with a list of the registered electors in the municipality and shall charge a fee to cover the cost of furnishing the list.

(3) Every hearing shall be held before the clerk with whom such protest is filed. The clerk shall serve as hearing officer unless some other person is designated by the legislative body as the hearing officer, and the testimony in every such hearing shall be under oath. The hearing officer shall have the power to issue subpoenas and compel the attendance of witnesses. The hearing shall be summary and not subject to delay and shall be concluded within sixty days after the petition is filed. No later than five days after the conclusion of the hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient. If the hearing officer determines that a petition is not sufficient, the officer shall identify those portions of the petition that are not sufficient and the reasons therefor. The result of the hearing shall be forthwith certified to the protester and to the persons designated as representing the petition proponents pursuant to section 31-11-106 (2). The determination as to petition sufficiency may be reviewed by the district court for the county in which such municipality or portion thereof is located upon application of the protester, the persons designated as representing the petition proponents pursuant to section 31-11-106 (2), or the municipality, but such review shall be had and determined forthwith.

Source: L. 95: Entire article added, p. 427, § 1, effective May 8. **L. 2000:** (1) amended, p. 801, § 26, effective August 2.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see §§ 1-40-118 and 1-40-119.

31-11-111. Initiatives, referenda, and referred measures - ballot titles.

(1) After an election has been ordered pursuant to section 31-11-104 or 31-11-105, the legislative body of the municipality or its designee shall promptly fix a ballot title for each initiative or referendum.

(2) The legislative body of any municipality may, without receipt of any petition, submit any proposed or adopted ordinance or resolution or any question to a vote of the registered electors of the municipality. The legislative body of the municipality or its designee shall fix a ballot title for the referred measure.

(3) In fixing the ballot title, the legislative body or its designee shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote would be unclear. The ballot title shall not conflict with those titles selected for any other measure that will appear on the municipal ballot in the same election. The ballot title shall correctly and fairly express the true intent and meaning of the measure.

(4) Any protest concerning a ballot title shall be conducted as provided by local charter, ordinance, or resolution.

Source: L. 95: Entire article added, p. 428, § 1, effective May 8.

ANNOTATION

Law reviews. For article, "Ballot Measures: The Scope of Authority in Statutory Counties", see 52 Colo. Law 22 (May 2023).

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see §§ 1-40-106 and 1-40-107.

The fixing of a ballot title occurs upon the final action of a local government legislative body to settle or decide the wording of the ballot title. Under § 1-11-203.5, a person must, therefore, contest the form or content of a ballot title within five days of the legislative body's final action concerning the ballot title. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

31-11-112. Petitions - not election materials - no bilingual requirement.

The general assembly hereby determines that initiative and referendum petitions are not election materials or information covered by the federal "Voting Rights Act of 1965", and are

therefore not required to be printed in any language other than English in order to be circulated in any municipality in Colorado.

Source: L. 95: Entire article added, p. 428, § 1, effective May 8.

Cross references: For the federal "Voting Rights Act of 1965", see Pub.L. 89-110, codified at 52 U.S.C. § 10301 et seq.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-114.

31-11-113. Receiving money to circulate petitions - filing.

The proponents of the petition shall file with the clerk a report disclosing the amount paid per signature and the total amount paid to each circulator. The filing shall be made at the same time the petition is filed with the clerk. Any payment made to circulators is an expenditure under article 45 of title 1, C.R.S.

Source: L. 95: Entire article added, p. 428, § 1, effective May 8.

ANNOTATION

Annotator's note. For cases construing a similar provision that applied to state and municipal elections, see § 1-40-121.

31-11-114. Unlawful acts - penalty.

(1) It is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or

submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of the person, organization, association, league, or political party;

(b) For any person to sign any name other than his or her own name to any petition or knowingly to sign his or her name more than once for the same measure at one election;

(c) For any person knowingly to sign any petition relating to an initiative or referendum in a municipality who is not a registered elector of that municipality at the time of signing the petition;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in the affidavit to be true;

(e) For any person to certify that an affidavit attached to a petition was subscribed or sworn to before him or her unless it was so subscribed and sworn to before him or her and unless the person so certifying is duly qualified under the laws of this state to administer an oath;

(f) For any officer or person to do willfully, or with another or others conspire, or agree, or confederate to do, any act that hinders, delays, or in any way interferes with the calling, holding, or conducting of any election permitted under the initiative and referendum powers reserved by the people in section 1 of article V of the state constitution or with the registering of electors therefor;

(g) For any officer to do willfully any act that shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election or refuse to submit any petition in the form presented for submission at any election;

(h) For any officer or person to violate willfully any provision of this article.

(2) Any person upon conviction of a violation of any provision of this section commits a class 2 misdemeanor.

Source: L. 95: Entire article added, p. 429, § 1, effective May 8. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3256, § 541, effective March 1, 2022.

31-11-115. Tampering with initiative or referendum petition.

(1) Any person commits a class 2 misdemeanor who:

(a) Willfully destroys, defaces, mutilates, or suppresses any initiative or referendum petition;

(b) Willfully neglects to file or delays the delivery of the initiative or referendum petition;

(c) Conceals or removes any initiative or referendum petition from the possession of the person authorized by law to have custody of the petition;

(d) Adds, amends, alters, or in any way changes the information on the petition as provided by the elector; or

(e) Aids, counsels, procures, or assists any person in doing any of such acts.

(2) Any person convicted of committing such a misdemeanor shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(3) This section shall not preclude a circulator from striking a complete line on the petition if the circulator believes the line to be invalid.

Source: L. 95: Entire article added, p. 430, § 1, effective May 8.

31-11-116. Enforcement.

(1) Any person may file with the district attorney an affidavit stating the name of any person who has violated any of the provisions of this article and stating the facts that constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and, if reasonable grounds appear therefor, the district attorney shall prosecute the same.

(2) The attorney general of the state shall have equal power with district attorneys to file information or complaints against any person for violating any provision of this article.

Source: L. 95: Entire article added, p. 430, § 1, effective May 8.

31-11-117. Retention of petitions.

After a period of three years from the time of submission of the petitions to the clerk, if it is determined that the retention of the petitions is no longer necessary, the clerk may destroy the petitions.

Source: L. 95: Entire article added, p. 430, § 1, effective May 8.

31-11-118. Powers of clerk and deputy.

(1) Except as otherwise provided in this article, the clerk shall render all interpretations and shall make all initial decisions as to controversies or other matters arising in the operation of this article.

(2) All powers and authority granted to the clerk by this article may be exercised by a deputy clerk in the absence of the clerk or in the event the clerk for any reason is unable to perform the duties of the clerk's office.

Source: L. 2000: Entire section added, p. 801, § 27, effective August 2.

ANNEXATION - CONSOLIDATION - DISCONNECTION

ARTICLE 12

Annexation - Consolidation - Disconnection

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PART 1

MUNICIPAL ANNEXATION ACT OF 1965

31-12-101. Short title.

This part 1 shall be known and may be cited as the "Municipal Annexation Act of 1965".

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-101 as it existed prior to 1975.

Cross references: For the annexation of school districts, see § 22-30-128.

ANNOTATION

Law reviews. For article, "Annexation in Colorado", see 37 Dicta 259 (1960). For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 and 809 (1988). For article, "Annexation: Municipal Discretion in Approving or Denying the Petition", see 22 Colo. Law. 1929 (1993). For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (Mar. 2002).

Annotator's note. Since § 31-12-101 is similar to former § 31-8-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Part 1 of this article is constitutional. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

This article deals with the subject of annexation of territory. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Annexation is a special statutory proceeding and § 1 of art. XX, Colo. Const., requires compliance with such procedures by the city and county of Denver. People ex rel. City & County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958).

Detaches territory from county. The provisions of this article make it clear that any annexation under any of the general laws of this state operates per se as a detachment of the annexed territory from the county in which it lies. People ex rel. Simon v. Anderson, 112 Colo. 558, 151 P.2d 972 (1944).

And becomes part of city. If land has been lawfully annexed it would ipso facto become a part of the city annexing for all authorized purposes. People ex rel. City & County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958).

Present annexation law applicable. After Denver was organized under the twentieth article of the constitution and became a charter city, its authority to annex territory had to be determined under the present applicable law rather than that under which it was originally organized. People ex rel. Simon v. Anderson, 112 Colo. 558, 151 P.2d 972 (1944).

Election code applicable. It is the legislative intent that the term "special

municipal elections" as contained in the municipal election code, extends to annexation elections. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

Part 1 is silent on power of municipality to repeal annexation ordinance. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Preannexation agreements not prohibited. There is no language in this article which prohibits a preannexation agreement which requests a certain zoning classification. Geralnes B.V. v. City of Greenwood Vill., 583 F. Supp. 830 (D. Colo. 1984).

Annexation authority under this article does not extend to Denver. Bd. of County Comm'rs v. Denver, 714 P.2d 1352 (Colo. App. 1986).

Act contemplates annexation agreements as a routine step in the annexation process. Although annexation agreement is not required for a valid annexation, where parties had contemplated execution of an annexation agreement throughout the process, adoption of annexation resolution without having an agreement in place was an abuse of discretion. Midcities Co. v. Town of Superior, 916 P.2d 595 (Colo. App. 1995), aff'd, 933 P.2d 596 (Colo. 1997).

31-12-102. Legislative declaration.

(1) The general assembly hereby declares that the policies and procedures in this part 1 are necessary and desirable for the orderly growth of urban communities in the state of Colorado, and to these ends this part 1 shall be liberally construed. The general assembly further declares that it is the purpose of this part 1:

(a) To encourage natural and well-ordered development of municipalities of the state;

(b) To distribute fairly and equitably the costs of municipal services among those persons who benefit therefrom;

(c) To extend municipal government, services, and facilities to eligible areas which form a part of the whole community;

(d) To simplify governmental structure in urban areas;

(e) To provide an orderly system for extending municipal regulations to newly annexed areas;

(f) To reduce friction among contiguous or neighboring municipalities;

(g) To increase the ability of municipalities in urban areas to provide their citizens with the services they require; and

(h) To respect the sovereignty of federally recognized Indian tribes with lands within the exterior boundaries of a federally recognized Indian reservation and within the exterior boundaries of the state, to reduce the jurisdictional complexities that arise when municipalities annex Indian reservation land, and to ensure cooperation and collaboration by municipalities with tribal governments.

(2) The general assembly further declares that:

(a) Section 30 of article II of the state constitution was added to the state constitution as a voter-approved ballot measure in 1980;

(b) Since its adoption, section 30 of article II of the state constitution has been in lawful force and effect. As part of the state constitution, all annexations since its enactment have been or should have been undertaken subject to its terms.

(c) By enacting House Bill 10-1259, enacted in 2010, which amends various provisions of this part 1, the general assembly does not intend to change the law governing annexations in the state but rather to better harmonize the provisions of this part 1 with those of section 30 of article II of the state constitution.

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1. **L. 2010:** (2) added, (HB 10-1259), ch. 211, p. 913, § 1, effective August 11. **L. 2024:** (1)(f) and (1)(g) amended and (1)(h) added, (SB 24-193), ch. 451, p. 3136, § 1, effective June 6.

Editor's note: This section is similar to former § 31-8-102 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-102 is similar to former § 31-8-102 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Policy. Policy of the enactment is to encourage natural and well-ordered development of municipalities, not to discourage it by providing for last minute maneuvers designed only to defeat annexation. Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972).

Organization of enclaves of municipal area into separate political units is inconsistent with objectives of section. This type of incorporation results in a duplication of government facilities, frustrates area-wide coordination and uniformity of regulations, complicates government structure, often circumvents

legitimate zoning controls, frequently leads to an avoidance of city tax burdens, and thus causes an inequitable distribution of the costs of municipal services. In re Incorporation of Town of Eastridge v. City of Aurora, 198 Colo. 440, 601 P.2d 1374 (1979).

Applied in City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969); City & County of Denver v. Bd. of County Comm'rs, 191 Colo. 104, 550 P.2d 862 (1976).

31-12-103. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Adult" means any person who has attained his twenty-first birthday.

(2) "Agricultural land" means land used for the growing of crops, truck gardening, the grazing of farm animals, and other agricultural pursuits in contrast to land used for urban development.

(3) "Development standards" means the substantive portions of building codes, zoning ordinances, housing codes, fire district ordinances, subdivision regulations, and any other ordinance, code, or regulation relating to the construction or occupancy of buildings upon land or the preparation of such land for such construction.

(4) "Enclave" means an unincorporated area of land entirely contained within the outer boundaries of the annexing municipality.

(5) "Identical ownership" means a situation where each owner has exactly the same degree of interest in each separate parcel of two or more parcels of land.

(6) "Landowner" means the owner in fee of any undivided interest in a given parcel of land. If the mineral estate has been severed, the landowner is the owner in fee of an undivided interest in the surface estate and not the owner in fee of an undivided interest in the mineral estate.

(7) (Deleted by amendment, L. 2010, (HB 10-1259), ch. 211, p. 913, § 2, effective August 11, 2010.)

(8) "Period of notice for hearing" means the time between the effective date of the resolution establishing the hearing date and the date when such hearing first commences.

(9) (Deleted by amendment, L. 2010, (HB 10-1259), ch. 211, p. 913, § 2, effective August 11, 2010.)

(10) "Quasi-municipal corporation" means a corporation vested with the municipal powers for the accomplishment of a limited municipal purpose, including but not limited to domestic

water districts, metropolitan districts, sanitation districts, water and sanitation districts, fire protection districts, recreation districts, and disposal districts.

(10.5) "Registered elector" shall have the same meaning as set forth in section 1-1-104 (35), C.R.S.

(11) "Resident" means one who makes his primary dwelling place within the area proposed to be annexed.

(12) "Taxpayer" means any person who has paid or becomes liable for ad valorem taxes on real property located in the area proposed to be annexed during a specified period of time.

(13) "Urban development" means the construction on land of improvements for residential, institutional, commercial, industrial, transportation, public flood control, and recreational and similar uses, in contrast to use of the land for growing crops, truck gardening, grazing of farm animals, and other agricultural pursuits. The term also applies to vacant ground which has been or is being prepared for urban development by such steps as subdivision into lots or plots and blocks, installation of water and sewer lines, construction of access streets, and construction of railroad spur or branch tracks.

Source: L. 75: Entire title R&RE, p. 1076, § 1, effective July 1. **L. 2010:** (7) and (9) amended and (10.5) added, (HB 10-1259), ch. 211, p. 913, § 2, effective August 11.

Editor's note: This section is similar to former § 31-8-103 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-103 is similar to former § 31-8-103 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Status prerequisites for parties. The requirements of ownership in fee and the liability for taxes are both prerequisites for participation as a proponent of the annexation, and the same requirements confront an opponent of the annexation. City & County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Option-holder not owner in fee. Where the holder of an option was under no obligation to exercise that option and could have abandoned the development at any time, he was not the "owner in fee" of a single lot at the time he affixed his name to the petition, and since the owners of more than 50 percent of the area proposed to be annexed had not joined in seeking the annexation, the ordinance of the city

council, purporting to annex the acres included in the petition is void. Elkins v. City & County of Denver, 157 Colo. 252, 402 P.2d 617 (1965).

The streets and public ways in an area were not to be included in calculating the area to be annexed. City & County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Applied in Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

31-12-104. Eligibility for annexation.

(1) No unincorporated area may be annexed to a municipality unless one of the conditions set forth in section 30 (1) of article II of the state constitution first has been met. An area is eligible for annexation if the provisions of section 30 of article II of the state constitution have been complied with and the governing body, at a hearing as provided in section 31-12-109, finds and determines:

(a) That not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality. Contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, public lands, whether owned by the state, the United States, or an agency thereof, except county-owned open space, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land proposed to be annexed. Subject to the requirements imposed by section 31-12-105 (1)(e), contiguity may be established by the annexation of one or more parcels in a series, which annexations may be completed simultaneously and considered together for the purposes of the public hearing required by sections 31-12-108 and 31-12-109 and the annexation impact report required by section 31-12-108.5.

(b) That a community of interest exists between the area proposed to be annexed and the annexing municipality; that said area is urban or will be urbanized in the near future; and that said area is integrated with or is capable of being integrated with the annexing municipality. The fact that the area proposed to be annexed has the contiguity with the annexing municipality required by paragraph (a) of this subsection (1) shall be a basis for a finding of compliance with these requirements unless the governing body, upon the basis of competent evidence presented at the hearing provided for in section 31-12-109, finds that at least two of the following are shown to exist:

(I) Less than fifty percent of the adult residents of the area proposed to be annexed make use of part or all of the following types of facilities of the annexing municipality: Recreational, civic, social, religious, industrial, or commercial; and less than twenty-five percent of said area's adult residents are employed in the annexing municipality. If there are no adult residents at the time of the hearing, this standard shall not apply.

(II) One-half or more of the land in the area proposed to be annexed (including streets) is agricultural, and the landowners of such agricultural land, under oath, express an intention to devote the land to such agricultural use for a period of not less than five years.

(III) It is not physically practicable to extend to the area proposed to be annexed those urban services which the annexing municipality provides in common to all of its citizens on the same terms and conditions as such services are made available to such citizens. This standard shall not apply to the extent that any portion of an area proposed to be annexed is provided or will within the reasonably near future be provided with any service by or through a quasi-municipal corporation.

(2) (a) The contiguity required by paragraph (a) of subsection (1) of this section may not be established by use of any boundary of an area which was previously annexed to the annexing municipality if the area, at the time of its annexation, was not contiguous at any point with the boundary of the annexing municipality, was not otherwise in compliance with paragraph (a) of subsection (1) of this section, and was located more than three miles from the nearest boundary of the annexing municipality, nor may such contiguity be established by use of any boundary of territory which is subsequently annexed directly to, or which is indirectly connected through subsequent annexations to, such an area.

(b) Because the creation or expansion of disconnected municipal satellites, which are sought to be prohibited by this subsection (2), violates both the purposes of this article as expressed in section 31-12-102 and the limitations of this article, any annexation which uses any boundary in violation of this subsection (2) may be declared by a court of competent jurisdiction to be void ab initio in addition to other remedies which may be provided. The provisions of section 31-12-116 (2) and (4) and section 31-12-117 shall not apply to such an annexation. Judicial review of such an annexation may be sought by any municipality having a plan in place pursuant to section 31-12-105 (1)(e) directly affected by such annexation, in addition to those described in section 31-12-116 (1). Such review may be, but need not be, instituted prior to the effective date of the annexing ordinance and may include injunctive relief. Such review shall be brought no later than sixty days after the effective date of the annexing ordinance or shall forever be barred.

(c) Contiguity is hereby declared to be a fundamental element in any annexation, and this subsection (2) shall not in any way be construed as having the effect of legitimizing in any way any noncontiguous annexation.

Source: L. 75: Entire title R&RE, p. 1078, § 1, effective July 1. **L. 87:** (1)(a) amended, p. 1218, § 1, effective May 28. **L. 91:** (2) added, p. 763, § 1, effective May 15. **L. 2010:** IP(1) amended, (HB 10-1259), ch. 211, p. 914, § 3, effective August 11.

Editor's note: This section is similar to former § 31-8-104 as it existed prior to 1975.

Cross references: For annexation of unincorporated areas, see § 30 of article II of the state constitution.

ANNOTATION

Annotator's note. Since § 31-12-104 is similar to former § 31-8-104 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The annexation statutes are more than mere formalities. Johnston v. City Council, 189 Colo. 345, 540 P.2d 1081 (1975).

Contiguity required. Territory is eligible for annexation if a percentage of its boundaries are contiguous with those of a city. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Specific findings required for proposed area for annexation. In a unilateral annexation pursuant to § 31-12-106 (2), the legislative body with annexing authority must make specific findings at a hearing that the proposed area to be annexed has had the requisite boundary contiguity for the requisite period of time before such an area is eligible for annexation by the governing body. Cesario v. City of Colo. Springs, 200 Colo. 459, 616 P.2d 113 (1980).

A resolution of the absolute factual existence of the one-sixth contiguity requirement is mandatory. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

The size and shape of a parcel to be annexed is immaterial and is conclusively a legislative problem. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

But courts will not read into the annexation statutes limitations relating to unusual or irregular shapes or patterns of territory annexed. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

City's division of property into multiple one-foot strips of land to satisfy the one-sixth contiguity requirement is not prohibited. Arapahoe County Bd. of County Comm'rs v. City of Greenwood Vill., 30 P.3d 846 (Colo. App. 2001).

Where the property annexed includes public streets, the court may include the perimeter of the streets in calculating whether one-sixth of the perimeter of the annexed property is contiguous to the annexing municipality. The one-sixth requirement is in no way altered by § 31-12-105 (1)(e). Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

It is not permissible to include and use a county street as the "pole" in order to meet the subsection (1) contiguity

requirement, but to ignore the county ownership of the street for purposes of meeting the § 31-8-106(3) sole ownership requirement in a city annexation ordinance. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 8, 543 P.2d 521 (1975).

But a public way or a portion of a public way can be utilized as a noncontiguous boundary of the annexed territory, since the statute contains no such restriction. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

Legal description held to be in substantial compliance with the requirements of this section. Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

Effect of ditch. The statutory requirement of contiguity is satisfied where part of the area to be annexed is bounded by a ditch, the east side of which is contiguous to the city. Rice v. City of Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Contiguity basis for finding of community of interest. With respect to the matters of community of interest, that the territory is urban or will be urbanized in the near future, and that the territory is integrated or capable of being integrated into the city, subsection (1)(a) provides that the fact that the territory has the contiguity with the annexing municipality required by this article shall be a basis for a finding of compliance, and where there was a requisite continuity, the court erred in its criticism of the findings of the city council. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Once the one-sixth contiguity requirement is satisfied, the community of interest requirement is also satisfied. Arapahoe County Bd. of County Comm'rs v. City of Greenwood Vill., 30 P.3d 846 (Colo. App. 2001).

Contiguity requirement not met where federal land intervened between town and the proposed annexation and consent was not obtained from federal agency to divide that tract from the rest of the federal lands. Caroselli v. Town of Vail, 706 P.2d 1 (Colo. App. 1985).

Subsection (1)(a) is not ambiguous; therefore the court will not consider the legislative history of the section to aid in construction. Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

Municipality lacked standing to contest annexation because it did not have a plan in place for the area annexed. Town of Berthoud v. Town of Johnstown, 983 P.2d 174 (Colo. 1999).

While the county is authorized to own, dispose of, and designate the uses of real property, it has no authority to define terms employed by the general assembly in state statutes. Rather, interpretation of subsection (1) is a question of law for the courts to decide, and judicial review is therefore de novo. Accordingly, in determining whether the roadways at issue are open space for purposes of subsection (1)(a), the county's designation is not binding. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

Property at issue designated by the county has been improved through grading and surfacing and serves as public roadways. A parcel consisting entirely of roadway is not "essentially unimproved" and, therefore, is not open space within the meaning of subsection (1)(a). Because the county roads here are not open space, they do not affect contiguity under the terms of this section. Hence, the court erred in voiding the annexation of the two parcels for failure to satisfy the contiguity requirement. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

Municipal annexation of property does not automatically remove property from all other political subdivisions. Municipal annexation of property detaches the property from the unincorporated portion of a county but does not automatically remove the property from other political subdivisions, particularly where other statutory provisions govern such removal. Municipal annexation of property within the boundaries of a regional transportation authority therefore does not remove the property from the authority and the authority may continue to levy its sales tax on taxable transactions conducted on the property. Wal-Mart Stores v. Pikes Peak Rural Transp., 2018 COA 73, 434 P.3d 725.

31-12-105. Limitations.

(1) Notwithstanding any provisions of this part 1 to the contrary, the following limitations apply to all annexations:

(a) In establishing the boundaries of any territory to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, shall be divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

(b) In establishing the boundaries of any area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty acres or more (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of two hundred thousand dollars for ad valorem tax purposes for the year next preceding the annexation) shall be included under this part 1 without the written consent of the landowners unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. In the application of this paragraph (b), contiguity shall not be affected by a dedicated street, road, or other public way.

(c) No annexation pursuant to section 31-12-106 and no annexation petition or petition for an annexation election pursuant to section 31-12-107 shall be valid when annexation proceedings have been commenced for the annexation of part or all of such territory to another municipality,

except in accordance with the provisions of section 31-12-114. For the purpose of this section, proceedings are commenced when the petition is filed with the clerk of the annexing municipality or when the resolution of intent is adopted by the governing body of the annexing municipality if action on the acceptance of such petition or on the resolution of intent by the setting of the hearing in accordance with section 31-12-108 is taken within ninety days after the said filings if an annexation procedure initiated by petition for annexation is then completed within the one hundred fifty days next following the effective date of the resolution accepting the petition and setting the hearing date and if an annexation procedure initiated by resolution of intent or by petition for an annexation election is prosecuted without unreasonable delay after the effective date of the resolution setting the hearing date.

(d) As to any annexation which will result in the detachment of area from any school district and the attachment of the same to another school district, no annexation pursuant to section 31-12-106 or annexation petition or petition for an annexation election pursuant to section 31-12-107 is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation.

(e) (I) Except as otherwise provided in this paragraph (e), no annexation may take place that would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. Within said three-mile area, the contiguity required by section 31-12-104 (1)(a) may be achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Prior to completion of any annexation within the three-mile area, the municipality shall have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. Such plan shall be updated at least once annually. Such three-mile limit may be exceeded if such limit would have the effect of dividing a parcel of property held in identical ownership if at least fifty percent of the property is within the three-mile limit. In such event, the entire property held in identical ownership may be annexed in any one year without regard to such mileage limitation. Such three-mile limit may also be exceeded for the annexation of an enterprise zone.

(II) Prior to completion of an annexation in which the contiguity required by section 31-12-104 (1)(a) is achieved pursuant to subparagraph (I) of this paragraph (e), the municipality shall annex any of the following parcels that abut a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, where the parcel satisfies all of the eligibility requirements pursuant to section 31-12-104 and for which an annexation petition has been received by the municipality no later than forty-five days prior to the date of the hearing set pursuant to section 31-12-108 (1):

(A) Any parcel of property that has an individual schedule number for county tax filing purposes upon the petition of the owner of such parcel;

(B) Any subdivision that consists of only one subdivision filing upon the petition of the requisite number of property owners within the subdivision as determined pursuant to section 31-12-107; and

(C) Any subdivision filing within a subdivision that consists of more than one subdivision filing upon the petition of the requisite number of property owners within the subdivision filing as determined pursuant to section 31-12-107.

(e.1) The parcels described in subparagraph (II) of paragraph (e) of this subsection (1) shall be annexed under the same or substantially similar terms and conditions and considered at the same hearing and in the same impact report as the initial annexation in which the contiguity required by section 31-12-104 (1)(a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Impacts of the annexation upon the parcels described in subparagraph (II) of paragraph (e) of this subsection (1) that abut such platted street or alley, public or private right-of-way, public or private transportation right-of-way or area, or lake, reservoir, stream, or other natural or artificial waterway shall be considered in the impact report required by section 31-12-108.5. As part of the same hearing, the municipality shall consider and decide upon any petition for annexation of any parcel of property having an individual schedule number for county tax filing purposes, which petition was received not later than forty-five days prior to the hearing date, where the parcel abuts any parcel described in subparagraph (II) of paragraph (e) of this subsection (1) and where the parcel otherwise satisfies all of the eligibility requirements of section 31-12-104.

(e.3) In connection with any annexation in which the contiguity required by section 31-12-104 (1)(a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, upon the latter of ninety days prior to the date of the hearing set pursuant to section 31-12-108 or upon the filing of the annexation petition, the municipality shall provide, by regular mail to the owner of any abutting parcel as reflected in the records of the county assessor, written notice of the annexation and of the landowner's right to petition for annexation pursuant to section 31-12-107. Inadvertent failure to provide such notice shall neither create a cause of action in favor of any landowner nor invalidate any annexation proceeding.

(f) In establishing the boundaries of any area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley shall be included within the area annexed.

(g) Notwithstanding the provisions of paragraph (f) of this subsection (1), a municipality shall not deny reasonable access to landowners, owner of an easement, or the owner of a

franchise adjoining a platted street or alley which has been annexed by the municipality but is not bounded on both sides by the municipality.

(h) The execution by any municipality of a power of attorney for real estate located within an unincorporated area shall not be construed to comply with the election provisions of this article for purposes of annexing such unincorporated area. Such annexation shall be valid only upon compliance with the procedures set forth in this article.

(i) For any annexation that will result in annexation of lands within the exterior boundaries of a reservation of a federally recognized Indian tribe located within the state, no annexation pursuant to section 31-12-106 or annexation petition or petition for an annexation election pursuant to section 31-12-107 is valid unless accompanied by a resolution or ordinance of the tribal council or other governing body of the federally recognized Indian tribe within whose reservation the annexation will occur approving the annexation. This subsection (1)(i) applies to annexation of all lands within the exterior boundaries of a reservation of a federally recognized Indian tribe located within the state regardless of the status of the lands sought to be annexed.

Source: L. 75: Entire title R&RE, p. 1078, § 1, effective July 1. **L. 87:** (1)(e) to (1)(g) added, p. 1218, § 2, effective May 28. **L. 96:** (1)(h) added, p. 1770, § 69, effective July 1. **L. 97:** (1)(c) and (1)(d) amended, p. 994, § 1, effective May 27. **L. 2001, 2nd Ex. Sess.:** (1)(e) amended and (1)(e.1) and (1)(e.3) added, p. 32, § 2, effective November 6. **L. 2024:** IP(1) amended and (1)(i) added, (SB 24-193), ch. 451, p. 3137, § 2, effective June 6.

Editor's note: This section is similar to former § 31-8-105 as it existed prior to 1975.

ANNOTATION

I. General Consideration.

II. Land Not to be Divided.

III. Land Comprising 20 Acres or More.

IV. Annexation of School District's Land.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 (1988). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-105 is similar to former § 31-8-105 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A statute is presumed to be constitutional, and to be declared unconstitutional it must be shown clearly to

be so. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Courts will not read into annexation statutes limitations relating to unusual or irregular shapes or patterns of territory annexed. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

Streets, etc., annexed in order to include territory. There is no legislative intent that a municipality may annex streets, roads, or highways only when it is necessary to do so to include territory otherwise eligible for annexation but separated from the annexing municipality by a public right-of-way. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

A public way or a portion of a public way can be utilized as a noncontiguous boundary of the annexed territory, since the statute contains no such restriction. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

Legal description held to be in substantial compliance with the requirements of this section. Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

Subsection (1)(e) is not ambiguous; therefore the court will not consider the legislative history in construing the statute. Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

Subsection (1)(e) in no way alters the contiguity requirements of § 31-12-104 (1)(a); it merely provides that contact between a street or an alley and an existing boundary of the annexing municipality may be used to achieve the contiguity requirements of § 31-12-104 (1)(a). Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

Deficiency in the notice required by subsection (1)(e.3) was inadvertent where defendant town provided notice 25 days before the hearing, the town mayor and clerk believed timely notice was given in compliance with the statute, and no one appeared at the annexation hearing to testify or object to lack of sufficient notice. Town of Erie v. Town of Frederick, 251 P.3d 500 (Colo. App. 2010).

II. LAND NOT TO BE DIVIDED.

Written consent prerequisite to annexation of divided parcel. This section makes it very clear that no territory owned by the same owner shall be divided into separate parts or parcels without the written consent of the owner thereof. City & County of Denver v. Bd. of County Comm'rs, 151 Colo. 230, 376 P.2d 981 (1962).

Division of tract from rest of federal land requires consent of the United States as owner. Caroselli v. Town of Vail, 706 P.2d 1 (Colo. App. 1985).

Annexation did not effect a separation. Where the owners of a tract own all of a half-section, a railroad track passed diagonally through the northeast corner of this half-section, it was apparent that the triangular piece of land lying north and east of the track was physically separated from the larger parcel, and this piece was not included in the area proposed to be annexed,

assuming that this was a right-of-way grant to a railroad by the congress and therefore it was not a mere easement but a limited fee with right of exclusive use and possession, as a result, the triangular tract was effectively separated by the congressional grant and the annexation did not "separate" the half-section within the meaning of subsection (1)(a). Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

III. LAND COMPRISING 20 ACRES OR MORE.

The policy of this enactment is to encourage natural and well-ordered development of municipalities, not to discourage it by providing for last minute maneuvers designed only to defeat annexation. Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972).

Written consent required. Land held in identical ownership in excess of 20 acres which, together with improvements thereon, has an assessed value in excess of $200,000 for the year next preceding the annexation shall not be included in a unilateral annexation without the written consent of the owner or owners. Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972).

This exemption as to 20 acres, etc., does not apply to enclaves. Cline v. City of Boulder, 168 Colo. 112, 450 P.2d 335 (1969).

Termination of proceedings when tract affects boundaries. Only if there is such a tract as would affect the establishment of the boundaries, i.e., the outer perimeters of the area to be annexed, does this statute cause the annexation proceedings to terminate; if the boundaries of the annexed area are not affected, the excluded tracts of 20 acres or more are not to be included in the annexed territory, but the annexation continues. Adams v. City of Colo. Springs, 178 Colo. 241, 496 P.2d 1005 (1972).

As no reference to tract "within area ...". If the general assembly meant to refer to such tracts "within the area or territory to be annexed" (rather than referring to "establishing the boundaries"), it would have said so as it did in other sections dealing with problems within the territory to be affected. Adams v. City of Colo. Springs, 178 Colo. 241, 496 P.2d 1005 (1972).

IV. ANNEXATION OF SCHOOL DISTRICT'S LAND.

Legislative intent. In enacting subsection (1)(d) of this section, the general assembly intended to empower school boards to protect themselves against having involuntarily to undertake responsibility for providing educational services in newly annexed areas. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

Formal written consent required. This section explicitly requires, in annexation involving school property, "the written consent of the board of education" of the school district involved, and faced with the clear mandate of the statute, we are not at liberty to hold that, in some cases, the giving of the required consent is but a ministerial act, not requiring formal action by the board.

Gavend v. City of Thornton, 165 Colo. 182, 437 P.2d 778 (1968).

Ordinance invalid due to lack of consent. Where on the date of final passage of the annexation ordinance here, the effective date thereof, no valid written consent of the board of education had been obtained, the ordinance was invalid when passed, and no action or resolution purporting to ratify the superintendent's consent taken by the board of education thereafter could, in and of itself, breathe life into this dead ordinance. Gavend v. City of Thornton, 165 Colo. 182, 437 P.2d 778 (1968).

Later ratification invalid. The school board's resolution consenting to the annexation of its property and ratifying the action of the superintendent in signing the annexation petition does not satisfy the express requirement that the written consent of the school board be obtained before any territory which includes school property can be annexed. Gavend v. City of Thornton, 165 Colo. 182, 437 P.2d 778 (1968).

Superintendent's signature insufficient. The act of the superintendent of schools in signing the annexation petition without prior formal authorization by the school board was not an act of the board, and could not satisfy the requirement that the "written consent of the board of education" be obtained. Gavend v. City of Thornton, 165 Colo. 182, 437 P.2d 778 (1968).

School board consented to the first stage of an annexation by having consented to the entire two-stage transaction. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

A school board's resolution was not ineffective on the theory that approval was conditional upon obtaining a particular zoning classification where the resolution's "whereas" clauses, rather than expressing conditions, recited the factual circumstances as presented to the board and the "resolved" clauses contained the board's unqualified approval of the annexation. City & County of Denver v. Bd. of County Comm'rs, 191 Colo. 104, 550 P.2d 862 (1976).

Substantial compliance with requirements that documents accompany petition. Where, in its resolution, the city council recited that the annexation petition was accompanied by a map and school board resolution, and these documents were available on file with the Denver clerk and recorder for the city council's inspection and consideration prior to passage of the annexation ordinance, there was substantial compliance with the requirements that the documents accompany the petition. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

While the resolution of a city's school board was not attached to the petition for annexation pursuant to subsection (1)(d), this defect was of no moment since the resolution was filed with the city clerk and the council could take notice of such information when it was contained within the city's files. Bd. of County Comm'rs v. City & County of Denver, 38 Colo. App. 171, 556 P.2d 486 (1976), aff'd, 194 Colo. 252, 571 P.2d 1094 (1977).

31-12-106. Annexation of enclaves, partly surrounded land, and municipally owned land.

(1) **Annexation of enclaves.** When any unincorporated area is entirely contained within the boundaries of a municipality, the governing body may by ordinance annex such territory to the municipality in accordance with section 30 (1)(c) of article II of the state constitution, but without complying with section 31-12-104, 31-12-105, 31-12-108, or 31-12-109, if said area has been so surrounded for a period of not less than three years; except that notice of the proposed annexation ordinance shall be given by publication as provided by section 31-12-108 (2) for notices of annexation petitions, and resolutions initiating annexation proceedings, but no public hearing on the proposed annexation ordinance shall be required, and the first publication of notice shall be at least thirty days prior to the adoption of the ordinance.

(1.1) **Exception to annexation of enclaves.**

(a) No enclave may be annexed pursuant to subsection (1) of this section if:

(I) Any part of the municipal boundary or territory surrounding such enclave consists at the time of the annexation of the enclave of public rights-of-way, including streets and alleys, that are not immediately adjacent to the municipality on the side of the right-of-way opposite to the enclave; or

(II) Any part of the territory surrounding the enclave was annexed to the municipality since December 19, 1980, without compliance with section 30 of article II of the state constitution.

(b) In the case of an enclave the population of which exceeds one hundred persons according to the most recent United States census and that contains more than fifty acres, the enclave shall not be annexed pursuant to subsection (1) of this section unless the governing body of the annexing municipality has:

(I) Created an annexation transition committee composed of nine members, five of whom shall reside, operate a business, or own real property within the enclave, two of whom shall represent the annexing municipality, and two of whom shall represent one or more counties in which the enclave is situated; and

(II) Published notice of the creation and existence of the committee, together with its regular mail, electronic mail, or telephonic contact information, in the same manner as provided by section 31-12-108 (2) for notices of annexation petitions and resolutions initiating annexation proceedings.

(c) The duties of the annexation transition committee required by paragraph (b) of this subsection (1.1) shall be to:

(I) Serve as a means of communication between or among the annexing municipality, one or more counties within which the enclave is situated, and the persons who reside, operate a business, or own real property within the enclave regarding any public meetings on the proposed annexation; and

(II) Provide a mechanism by which persons who reside, operate a business, or own real property within the enclave may communicate, whether by electronic mail, telephonic communication, regular mail, or public meetings, with the annexing municipality or any counties within which the enclave is situated regarding the proposed annexation.

(2) (Deleted by amendment, L. 97, p. 995, § 2, effective May 27, 1997.)

(3) **Annexation of unincorporated municipally owned land.** When the municipality is the sole owner of the area that it desires to annex, which area is eligible for annexation in accordance with section 30 (1)(c) of article II of the state constitution and sections 31-12-104 (1)(a) and 31-12-105, the governing body may by ordinance annex said area to the municipality without notice and hearing as provided in sections 31-12-108 and 31-12-109. The annexing ordinance shall state that the area proposed to be annexed is owned by the annexing municipality and is not solely a public street or right-of-way.

(4) **Additional terms and conditions on the annexation.** Additional terms or conditions may be imposed by the governing body in accordance with section 31-12-112.

(5) Any municipality that has entered into an intergovernmental agreement, any portion of which addresses issues pertaining to the annexation of enclaves shall, promptly upon execution of the agreement, record the agreement with the clerk and recorder of any county within which any land area addressed in the agreement is situated.

Source: L. 75: Entire title R&RE, p. 1079, § 1, effective July 1. **L. 81:** (1) amended and (1.1) added, p. 1510, § 1, effective July 1. **L. 97:** (1.1) and (2) amended, p. 995, § 2, effective May 27. **L. 2006:** (1.1) amended and (5) added, p. 1007, § 1, effective September 1. **L. 2010:** (1) and (3) amended, (HB 10-1259), ch. 211, p. 914, § 4, effective August 11.

Editor's note: This section is similar to former § 31-8-106 as it existed prior to 1975.

Cross references: For annexation of unincorporated areas, see § 30 of article II of the state constitution.

ANNOTATION

Law reviews. For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983). For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 (1988). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-106 is similar to former § 31-8-106 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

There is not absolute constitutional right under the due process clause to vote on a proposed annexation, and the state general assembly has the ultimate control of the method of annexing by its agency cities. The general assembly may grant the right to vote in some types of annexation and deny it in others, provided that there is some rational basis for the distinction, and the equal protection clause of the federal constitution does not preclude creation of distinct classes if such classifications are reasonably related to some legitimate state interest and all those within the class created are treated equally. Therefore, within each of the present classes based on the extent of contiguous boundaries all persons residing within the territory to be annexed are treated equally with respect to the right to exercise the franchise, and the distinction recognized by the assembly as to when the franchise may be exercised is reasonable in light of the manifest purpose for the differentiation. Adams v. City of Colo. Springs, 308 F. Supp. 1397 (D. Colo.), aff'd mem., 399 U.S. 901 (1970).

Unilateral annexation statute is not violative of due process and equality of rights where persons within territory proposed to be annexed are not allowed to vote on the annexation. Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972).

Plain meaning of "unincorporated area" cannot logically include areas which are not being considered for annexation or areas which have already become part of the annexing municipality for the purposes of a unilateral annexation. Cesario v. City of Colo. Springs, 200 Colo. 459, 616 P.2d 113 (1980).

Commencement of three-year period. The intendment of this section is that the area to be annexed need only be contiguous for a three-year period, the commencement of which can be either before or after the act became effective so long as the total time is three years. Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972).

Significance of required two-thirds contiguity. Where the area to be annexed has less than two-thirds contiguity with the annexing city, the interrelationship between the annexed area and the city may not be great enough to warrant a politically undesirable unilateral merger; where, however, the territory to be annexed has over two-thirds contiguity with the annexing city, the interrelationship between the two areas is or can be so close that the city should be allowed to annex despite the

unwillingness of the residents of the annexed territory. The law thus recognizes that a municipality such as Colorado Springs is severely handicapped by an annexation law which requires the approval of the property owners and qualified electors of an annexed area, it being unable to deal with groups of citizens who form small tax colonies on the borders of the core city which is the economic base of the urban area and to which the colonies owe their very existence and yet pay nothing for the advantages which the city provides, as these people would seldom consent to the annexation and their nonconsent would threaten the very existence of the core city. Adams v. City of Colo. Springs, 308 F. Supp. 1397 (D. Colo.), aff'd mem., 399 U.S. 901 (1970).

Annexation power is legislative in nature. Since by statute the general assembly has delegated the power to annex territory to a city, that power remains legislative in character. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

Certain preliminary findings are mandated by this section, i.e., that the subject property appears to have had the requisite contiguity for the requisite period prior to the commencement of annexation procedures. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

In a unilateral annexation pursuant to subsection (2), the legislative body with annexing authority must make specific findings at a hearing that the proposed area to be annexed has had the requisite boundary contiguity for the requisite period of time before such an area is eligible for annexation by the governing body. Cesario v. City of Colo. Springs, 200 Colo. 459, 616 P.2d 113 (1980).

The size and shape of a parcel to be annexed is immaterial and is conclusively a legislative problem. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

A public way or a portion of a public way can be utilized as a noncontiguous boundary of the annexed territory, since the statute contains no such restriction. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

Railroad rights-of-way do not constitute public rights-of-way as the term is used in subsection (1.1), and annexations in question are not void based on the public rights-of-way exception. Sinclair Mktg. Inc. v. Commerce City, 226 P.3d 1239 (Colo. App. 2009).

Streets not exempt from subsection (3). If the general assembly had intended that streets be excluded from the definition of sole ownership, it would have provided an exception to that effect. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 8, 543 P.2d 521 (1975).

Determination of sole ownership involving street as only contiguous point. Even though contiguity is not affected by the existence of a street the determination of sole ownership for purpose of annexation under § 31-12-106 (3) is affected by a street owned by an entity other than the annexing

authority where that street constitutes the only contiguous land. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 8, 543 P.2d 521 (1975).

Measurements for determining boundary contiguity confined to area's perimeter. The measurements for determining boundary contiguity under subsection (2) must be confined solely to the perimeter of the area proposed to be annexed. Cesario v. City of Colo. Springs, 200 Colo. 459, 616 P.2d 113 (1980).

Where city owns 50-foot strip in land to be annexed. Since the city council must decide whether annexation will be approved under § 31-12-107 (1)(g) where owners of 100% of the land to be annexed had signed the petition, no purpose would be served by requiring the city, as owner of a 50-foot contiguous strip in the land to be annexed, to sign a petition addressed to itself. Likewise, to require that since the city has not signed the petition, it must first annex the 50-foot strip pursuant to subsection (3), would be to establish a procedure that does not comport with the legislative mandate that the purpose of the act is to provide for the "orderly growth of urban communities". Bd. of County Comm'rs v. City & County of Denver, 38 Colo. App. 171, 556 P.2d 486 (1976), aff'd, 194 Colo. 252, 571 P.2d 1094 (1977).

County-owned street may be used as "pole". It is not permissible to include and use a county street as the "pole" in order to meet the § 31-12-104 (1) contiguity requirement, but to ignore the county ownership of the street for purposes of meeting the subsection (3) sole ownership requirement in a city annexation ordinance. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 8, 543 P.2d 521 (1975).

Where plaintiffs fail to go forward to demonstrate any deficiency in boundaries to defeat the contiguity requirement, findings of ultimate fact are substantially in the language of the statute and are sufficient when based on evidence not specifically controverted by other evidence in the record. Adams v. City of Colo. Springs, 178 Colo. 241, 496 P.2d 1005 (1972).

Applied in McArthur v. Zabka, 177 Colo. 337, 494 P.2d 89 (1972); Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

31-12-107. Petitions for annexation and for annexation elections.

(1) Petition for annexation in accordance with section 30 (1)(b) of article II of the state constitution:

(a) Persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets and alleys and any land owned by the annexing municipality, meeting the requirements of sections 31-12-104 and 31-12-105 may petition the governing body of any municipality for the annexation of such territory.

(b) The petition shall be filed with the clerk.

(c) The petition shall contain the following:

(I) An allegation that it is desirable and necessary that such area be annexed to the municipality;

(II) An allegation that the requirements of sections 31-12-104 and 31-12-105 exist or have been met;

(III) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;

(IV) A request that the annexing municipality approve the annexation of the area proposed to be annexed;

(V) The signatures of such landowners;

(VI) The mailing address of each such signer;

(VII) The legal description of the land owned by such signer;

(VIII) The date of signing of each signature; and

(IX) The affidavit of each circulator of such petition, whether consisting of one or more sheets, that each signature therein is the signature of the person whose name it purports to be.

(d) Accompanying the petition shall be four copies of an annexation map containing the following information:

(I) A written legal description of the boundaries of the area proposed to be annexed;

(II) A map showing the boundary of the area proposed to be annexed;

(III) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;

(IV) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

(e) No signature on the petition is valid if it is dated more than one hundred eighty days prior to the date of filing the petition for annexation with the clerk. All petitions which substantially comply with the requirements set forth in paragraphs (b) to (d) of this subsection (1) shall be deemed sufficient. No person signing a petition for annexation shall be permitted to withdraw his signature from the petition after the petition has been filed with the clerk, except as such right of withdrawal is otherwise set forth in the petition.

(f) The clerk shall refer the petition to the governing body as a communication. The governing body, without undue delay, shall then take appropriate steps to determine if the petition so filed is substantially in compliance with this subsection (1).

(g) If the petition is found to be in substantial compliance with this subsection (1), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed. If it is not in substantial compliance, no further action shall be taken.

(2) Petition for annexation election in accordance with section 30 (1)(a) of article II of the state constitution:

(a) The registered electors may petition the governing body of any municipality to commence proceedings for the holding of an annexation election in the area proposed to be annexed. This petition shall meet the standards described in paragraphs (c) and (d) of this subsection (2) and either:

(I) Shall be signed by at least seventy-five registered electors or ten percent of said electors, whichever is less, if such area is located in a county of more than twenty-five thousand inhabitants; or

(II) Shall be signed by at least forty registered electors or ten percent of said electors, whichever is less, if such area is located in a county of twenty-five thousand inhabitants or less.

(b) The petition shall be filed with the clerk.

(c) The petition for annexation election shall comply with the provisions of paragraph (c) of subsection (1) of this section; except that:

(I) Rather than an allegation of any certain percentage of land owned, it shall contain an allegation that the signers of the petition are qualified electors resident in and landowners of the area proposed to be annexed; and

(II) The petition shall request the annexing municipality to commence proceedings for the holding of an annexation election in accordance with section 30 (1)(a) of article II of the state constitution.

(d) The requirements and procedures provided for in paragraphs (e) and (f) of subsection (1) of this section shall be met and followed in a proceeding under this subsection (2).

(e) If the petition is found to be in substantial compliance with this subsection (2), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed, subject thereafter to an annexation election to be held in accordance with section 31-12-112. If the petition for an annexation election is not found to be in substantial compliance, no further action shall be taken; except that the governing body shall make such determination by resolution.

(3) Procedures alternative: The procedures set forth in subsections (1) and (2) of this section are alternative to each other and to any procedure set forth in section 31-12-106; except that a petition for annexation election filed pursuant to subsection (2) of this section shall take precedence over an annexation petition involving the same territory and filed pursuant to subsection (1) of this section if such petition for annexation election is filed at least ten days prior to the hearing date set for the annexation petition filed pursuant to subsection (1) of this section.

(4) Additional terms and conditions on the annexation: Additional terms and conditions may be imposed by the governing body in accordance with section 31-12-112.

(5) If a petition is filed pursuant to subsection (1) or (2) of this section and the territory sought to be annexed meets the specifications of section 31-12-106 (1), the governing body of the municipality with which the petition is filed shall thereupon initiate annexation proceedings pursuant to the appropriate provisions of section 31-12-106 (1). In the event that any governing body fails to initiate such annexation proceedings within a period of one year from the time that such petition is filed, annexation may be effected by an action in the nature of mandamus to the district court of the county where the land to be annexed is located, and the petitioner's court costs and attorney fees incident to such action shall be borne by the municipality.

(6) No proceedings for annexation to a municipality may be initiated in any area which is the same or substantially the same area in which an election for annexation to the same municipality has been held within the preceding twelve months.

(7) For the purpose of determining the compliance with the petition requirements in this section, a signature by any landowner shall be sufficient so long as any other owner in fee of an undivided interest in the same area of land does not object in writing to the governing body of the annexing municipality within fourteen days after the filing of the petition for annexation or annexation election. The entire area of the land signed for shall be computed as petitioning for annexation if such signing landowner has become liable for taxes in the last preceding calendar year or is exempt by law from payment of taxes. One who is purchasing land under a written contract duly recorded shall be deemed the owner of the land which is subject to the contract if he has paid the taxes thereon for the next preceding tax year. The signers for an area owned by a corporation, whether profit or nonprofit, shall be the same persons as those authorized to convey land for such corporation.

(8) No power of attorney providing the consent of a landowner to be annexed by a municipality pursuant to this section shall be valid for a term of more than five years, and no such power of attorney executed before May 27, 1997, shall be valid for a term of more than five years after May 27, 1997.

Source: L. 75: Entire title R&RE, p. 1080, § 1, effective July 1; (1)(d)(IV) amended, p. 1452, § 12, effective July 1. **L. 87:** (1)(e) and (1)(g) amended, p. 1219, § 3, effective May 28. **L. 97:** (5) amended and (8) added, p. 995, § 3, effective May 27. **L. 2010:** IP(1), (1)(a), (1)(c)(III), (1)(g), IP(2), (2)(a), (2)(c)(II), and (2)(e) amended, (HB 10-1259), ch. 211, p. 914, § 5, effective August 11.

Editor's note: This section is similar to former §§ 31-8-103 and 31-8-107 as they existed prior to 1975.

ANNOTATION

I. General Consideration.

II. Petition for Annexation.

III. Petition for Annexation Election.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 (1988). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-107 is similar to former § 31-8-107 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The 1965 annexation act provided for alternate methods of annexing land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Procedures detailed. This section detailed procedures relating to petitions by those owners residing within or only owning land within the area to be annexed. Tanner v. City of Boulder, 151 Colo. 283, 377 P.2d 945 (1962).

Differentiation of petitioner qualifications. Except for differences regarding the qualifications of the petitioners, the procedures under this section are substantially the same. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

The article contains no express prohibition against any person becoming the circulator of a petition. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

This section requires an affidavit that each signature thereon is the signature of the person whose name it purports to be. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

The streets and public ways in the area are not to be included in calculating the area to be annexed. City & County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Applied in Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 8, 543 P.2d 521 (1975); Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

II. PETITION FOR ANNEXATION.

Legislative intent in subsection (1)(g). The general assembly clearly intended to distinguish between petitions for annexation signed by 100 percent of the owners of the land proposed for annexation and petitions signed by a lesser number by enacting this section. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

The legislative limitation applies to the entire part, and not merely to this section. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

Initiation of proceedings by petition. This section provides that annexation proceedings of eligible territory shall be initiated by written petition presented to the legislative body of the city, city and county, or incorporated town to which it is proposed to annex such territory. People ex rel. City & County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958); City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Land ownership and tax liability proponent and opponent prerequisites. The requirements of ownership in fee and the liability for taxes were both prerequisites for participation as a proponent of the annexation, and the same requirements confronted an opponent of the annexation. City & County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Owners of land in joint tenancy are entitled to sign and to be counted with the resident landowners, because each joint tenant owns an interest and is in his own right a landowner. Rice v. City of Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Petition signed by executor. The petition for annexation was signed by the "owner" of 100 percent of the territory annexed where it was signed by an executor to whom was given full power to manage and sell estate property as well as authority to do any act or carry out any agreement respecting the property even though title was not in him. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

Where an annexation petition was signed by a tenant-in-common holding an undivided interest in the land annexed, the requirements of subsection (1)(g) were met and no notice, hearing, or election was necessary. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Where signers of the annexation petition owned well over 50% of the land proposed to be annexed, but at the same time five of the nine resident signers were favorable to the annexation, the fact that these resident owners represented a percentage of property less than 50% is inconsequential since much more than 50% of the area was represented by resident and nonresident owners. Rice v. City of

Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Notice and hearing are not required when 100% of the landowners sign the annexation petition. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

Streets and roadways are excluded when considering whether all of the landowners in an area proposed to be annexed have signed an annexation petition, and, if all other owners are signatories, there are no notice, hearing, or election requirements. Bd. of County Comm'rs v. City & County of Denver, 40 Colo. App. 281, 573 P.2d 568 (1977).

Immaterial who obtains consent. With regard to petitions for annexation, so long as the requisite number of landowners freely consent to the annexation it is wholly immaterial who obtains that consent. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Such as city officials. Nowhere does this article prohibit, either expressly or by necessary implication, the annexing city's officials from participating in the circulation of annexation petitions. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

The fact that city councilmen must "find" that the form of the petition meets the statutory requirements when it is presented to the annexing city's council does not disqualify the councilmen from acting as circulators of the petitions. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

"Finding" is administrative conclusion. The "finding" of compliance with the section, as a preliminary step in annexation proceedings, is no more than an administrative or ministerial conclusion of fact upon which the legislative power to act is dependent, and this "finding" would necessarily be made by the legislative body whether this section required it or not. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

An obvious typographical error in the signature page of an annexation petition considered in context was insubstantial and did not invalidate the petition. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

An annexation petition was sufficient even though the signature pages failed to set out the date of each signature, where the dates on the verifications accompanying the signatures showed that signing took place prior to filing the documents, and there was no allegation that prejudice resulted or that any of the signatures were stale. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

There is substantial compliance with the requirement of subsection (1)(d) that copies of the annexation map accompany the petition where the map is available to the city council whether or not it is physically attached to the petition. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Where, in its resolution, the city council recited that the annexation petition was accompanied by a map and school board

resolution, and these documents were available on file with the Denver clerk and recorder for the city council's inspection and consideration prior to passage of the annexation ordinance, there was substantial compliance with the requirements that the documents accompany the petition. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

When no substantial compliance with subsection (1)(g). The standard of substantial compliance under subsection (1)(g) is not met where the ownership of the land to be annexed does not clearly appear. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 321, 566 P.2d 340 (1977).

The standard of substantial compliance under subsection (1)(g) is not met where the description of the area to be annexed is so confused and contradictory that the area to be annexed cannot be determined from the petition and its attachments. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 321, 566 P.2d 340 (1977).

Where city owned 50-foot strip in land to be annexed. Since the city council must decide whether annexation will be approved under subsection (1)(g) where owners of 100% of the land to be annexed had signed the petition, no purpose would be served by requiring the city, as owner of a 50-foot contiguous strip in the land to be annexed, to sign a petition addressed to itself. Bd. of County Comm'rs v. City & County of Denver, 38 Colo. App. 171, 556 P.2d 486 (1976), aff'd, 194 Colo. 252, 571 P.2d 1094 (1977).

III. PETITION FOR ANNEXATION ELECTION.

This section provides for the electorate to have a veto power over annexation when it commands that an election petition take precedence over any petition filed with city council by petitioners who own more than 50% of the land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Compliance with subsection (1)(c)(III) not required. When a petition for annexation election if filed pursuant to subsection (2), the signers, if they comprise the requisite number or percentage and are qualified electors and resident landowners in the territory, need not also comply with subsection (1)(c)(II). Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

The general assembly intended that subsection (1)(c)(III) of this section requiring signatures of more than 50% of the landowners be excepted, i.e., "taken out" and excluded from consideration when the requisite number of petitioners sought annexation by the election alternative. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

If the provision of subsection (2) that either 75 electors or 10%, whichever is the lesser, can petition for an election in which the majority vote will control, it simply does not make sense to add the additional requirement that these same petitioners be owners of more than 50% of the land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Corporate or nonresident owners have no voice in election. Subsection (2), if it is

to be given life and meaning, was intended to provide for a voice in the annexation process to be given to people living in the area as opposed to corporate or nonresident owners of larger segments of the land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Except corporate owner may petition. By giving full force and effect to the subsection (2) alternative, one corporate owner, or two, or half a dozen owners of more than 50% of the land cannot impose their annexation whims on other resident-electors who own the balance or less than 50% of the territory, but the latter may nevertheless petition for an election if 75 electors or 10% wish to put the matter to a vote. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Suspension of actions on annexation petition. The provision that a petition for annexation election shall take precedence over an annexation petition does not require that, when the election petition was filed, all actions under the annexation petition should have been abandoned, and a new procedure should have been initiated under subsection (2). City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

Findings as to qualifications of signers proper. Where there was testimony that the signers of the petition were registered voters, that each signer stated under oath that he was a landowner, and that an examination of the county records disclosed them all to be landowners, and the petition recited that the signers were qualified electors, residents in and landowners of the area proposed to be annexed, and there is nothing in the record to indicate that less than 75 of the signers were not qualified to sign, the finding of the city council as to the qualifications of the signers is proper. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

31-12-108. Setting hearing date - notice given.

(1) As a part of the resolution initiating annexation proceedings by the municipality or of a resolution finding substantial compliance of an annexation petition or of a petition for an annexation election, the governing body of the annexing municipality shall establish a date, time, and place that the governing body will hold a hearing to determine if the proposed annexation complies with section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 or such provisions thereof as may be required to establish eligibility under the terms of this part 1. The hearing shall be held not less than thirty days nor more than sixty days after the effective date of the resolution setting the hearing. This hearing need not be held if the municipality has determined conclusively that the requirements of section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 have not been met.

(2) The clerk shall give notice as follows: A copy of the resolution or the petition as filed (exclusive of the signatures) together with a notice that, on the given date and at the given time and place set by the governing body, the governing body shall hold a hearing upon said

resolution of the annexing municipality or upon the petition for the purpose of determining and finding whether the area proposed to be annexed meets the applicable requirements of section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 and is considered eligible for annexation. Said notice shall be published once a week for four successive weeks in some newspaper of general circulation in the area proposed to be annexed. The first publication of such notice shall be at least thirty days prior to the date of the hearing. The proof of publication of the notice and resolution or petition, or the summary thereof, shall be returned when the publication is completed, the certificate of the owner, editor, or manager of the newspaper in which said notice is published shall be proof thereof, and a hearing shall then be held as provided in said notice. A copy of the published notice, together with a copy of the resolution and petition as filed, shall also be sent by registered mail by the clerk to the board of county commissioners and to the county attorney of the county wherein the territory is located and to any special district or school district having territory within the area to be annexed at least twenty-five days prior to the date fixed for such hearing. The notice required to be sent to the special district or school district by this subsection (2) shall not confer any right of review in addition to those rights provided for in section 31-12-116.

(3) The governing body of the annexing municipality, from time to time, may continue the hearing to another date without additional notice if the volume of material to be received cannot be presented within the available time for any given session; except that no session of a hearing shall be so continued unless at least one hour of testimony has been heard.

Source: L. 75: Entire title R&RE, p. 1083, § 1, effective July 1. **L. 87:** (2) amended, p. 1220, § 4, effective May 28. **L. 2010:** (1) and (2) amended, (HB 10-1259), ch. 211, p. 916, § 6, effective August 11.

Editor's note: This section is similar to former § 31-8-108 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 and 809 (1988).

Annotator's note. Since § 31-12-108 is similar to former § 31-8-108 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Proceedings duly commenced before a city council may be completed regardless of changes in personnel, because a city council is a continuing body. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Legal description held to be in substantial compliance with the requirements of this section. Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

Immaterial variation in two legal descriptions of annexed area does not invalidate annexation. TCD North, Inc. v. City Council of Greenwood, 713 P.2d 1320 (Colo. App. 1985).

The regional transportation district (RTD) and the Douglas county soil conservation district (DCSCD) are not special districts to whom notice of the annexation hearing must be given under subsection (2). Subsection (2) requires, among other things, that the annexing municipality provide notice of the annexation hearing to any special district having territory within the area to be annexed. For purposes of this subsection, a "special district" means any quasi-municipal corporation and political subdivision organized or acting pursuant to the provisions of the Special District Act, article 1 of title 32. Here, RTD and DCSCD were not created and do not act pursuant to the Special District Act. Rather, each was created and operates pursuant to its own enabling legislation. Such legislation refers to both entities as "districts" but not "special districts". Accordingly, the district court incorrectly voided the annexation because of the city's failure to give notice to these districts. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

Applied in City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969); Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

31-12-108.5. Annexation impact report - requirements.

(1) The municipality shall prepare an impact report concerning the proposed annexation at least twenty-five days before the date of the hearing established pursuant to section 31-12-108 and shall file one copy with the board of county commissioners governing the area proposed to be annexed within five days thereafter. Such report shall not be required for annexations of ten acres or less in total area or when the municipality and the board of county commissioners governing the area proposed to be annexed agree that the report may be waived. Such report shall include, as a minimum:

(a) A map or maps of the municipality and adjacent territory to show the following information:

(I) The present and proposed boundaries of the municipality in the vicinity of the proposed annexation;

(II) The present streets, major trunk water mains, sewer interceptors and outfalls, other utility lines and ditches, and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation; and

(III) The existing and proposed land use pattern in the areas to be annexed;

(b) A copy of any draft or final preannexation agreement, if available;

(c) A statement setting forth the plans of the municipality for extending to or otherwise providing for, within the area to be annexed, municipal services performed by or on behalf of the municipality at the time of annexation;

(d) A statement setting forth the method under which the municipality plans to finance the extension of the municipal services into the area to be annexed;

(e) A statement identifying existing districts within the area to be annexed; and

(f) A statement on the effect of annexation upon local-public school district systems, including the estimated number of students generated and the capital construction required to educate such students.

Source: L. 87: Entire section added, p. 1220, § 5, effective May 28.

ANNOTATION

Law reviews. For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 and 809 (1988).

Act contemplates annexation agreements as a routine step in the annexation process. Although annexation agreement is not required for a valid annexation, where parties had contemplated execution of an annexation agreement throughout the process, adoption of annexation resolution without having an agreement in place was an abuse of discretion. Midcities Co. v. Town of Superior, 916 P.2d 595 (Colo. App. 1995), aff'd, 933 P.2d 596 (Colo. 1997).

An immaterial variation from the requirements of this section is not fatal, and annexation may not be voided when there has been substantial compliance. Here, city was in substantial compliance with impact report requirement by providing maps showing the streets and utility lines near the area to be annexed. Accordingly, district court erred in determining that city failed to comply with impact report requirement. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

31-12-109. Hearing.

(1) Any person may appear at such hearing and present evidence upon any matter to be determined by the governing body.

(2) All proceedings at the hearing and any continuances thereof shall be recorded, but the recorder's notes need not be transcribed unless proceedings for judicial review are initiated as provided in section 31-12-116.

(3) The board of trustees of a town may dispense with the reporting of the hearing as provided in this section and substitute in lieu thereof minutes summarizing the presentation of each speaker and describing the proceedings of the hearing. In the event that any proceedings are commenced for judicial review of an annexation in which this subsection (3) has been followed, the provisions of section 31-12-116 (5) shall be applicable.

Source: L. 75: Entire title R&RE, p. 1083, § 1, effective July 1. **L. 87:** (1) amended, p. 1221, § 6, effective May 28.

Editor's note: This section is similar to former § 31-8-109 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-109 is similar to former § 31-8-109 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A city council can take official notice of all maps, records, and other pertinent information within a city's files to insure a fair disposition of an annexation controversy. Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972).

Subsection (2) complied with. Where stenographic notes of an annexation hearing were made by a reporter who attended the hearing and died shortly thereafter, and the notes were transcribed and certified by a different reporter even though the certification was not made by the attending reporter there was no failure of compliance with rule 80, C.R.C.P., and subsection (2). Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

When resorting to injunctive relief available. Where the statute relating to annexation of territory by a city provides a proper time and forum for hearing objections, objectors must exhaust all such remedies before resorting to the courts for injunctive relief. City & County of Denver v. Bd. of County Comm'rs, 141 Colo. 102, 347 P.2d 132 (1959).

31-12-110. Findings.

(1) Upon the completion of the hearing, the governing body of the annexing municipality, by resolution, shall set forth its findings of fact and its conclusion based thereon with reference to the following matters:

(a) Whether or not the requirements of the applicable provisions of section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 have been met;

(b) Whether or not an election is required under section 30 (1)(a) of article II of the state constitution and section 31-12-107 (2).

(2) The governing body shall also determine whether or not additional terms and conditions are to be imposed.

(3) A finding that the area proposed for annexation does not comply with the applicable provisions of section 30 of article II of the state constitution or sections 31-12-104 and 31-12-105 shall terminate the annexation proceeding.

Source: L. 75: Entire title R&RE, p. 1084, § 1, effective July 1. **L. 2010:** (1) and (3) amended, (HB 10-1259), ch. 211, p. 917, § 7, effective August 11.

Editor's note: This section is similar to former § 31-8-110 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-110 is similar to former § 31-8-110 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Specific findings required for proposed area for annexation. In a unilateral annexation pursuant to § 31-12-106 (2), the legislative body with annexing authority must make specific findings at a hearing that the proposed area to be annexed has had the requisite boundary contiguity for the requisite period of time before such an area is eligible for annexation by the governing body. Cesario v. City of Colo. Springs, 200 Colo. 459, 616 P.2d 113 (1980).

Findings of ultimate fact are sufficient where they are based on evidence not specifically controverted by other evidence in the record made before the city council. Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972).

Capricious or arbitrary exercise of discretion can arise where an administrative board neglects to use reasonable care in procuring such

evidence as it is authorized by law to consider such applying to a city council when it is attempting to employ or administer the municipal annexation act. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

A city council implicitly is authorized to consider all competent evidence with regard to the contiguity requirement by virtue of the fact that it has to make a finding thereon being under a duty to use reasonable diligence in searching for and procuring such evidence. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

Findings as to school districts other than Denver. When the city and county of Denver is the only city in the state whose boundaries are coexistent with those of the school district, the trial court can take judicial notice that the only occasion upon which annexation will cause territory in Colorado to be detached from one school district and attached to another is when territory is annexed by the city and county of Denver, such being the case, there is no necessity for evidence to support the finding concerning school districts in proceedings not involving Denver. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

31-12-111. Annexation without election.

If the resolution of the governing body adopted pursuant to section 31-12-110 determines that the applicable provisions of section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 have been met, and further determines that an election is not required under section 31-12-107 (2), and does not determine that additional terms and conditions are to be imposed, the governing body may thereupon annex the area proposed to be annexed by ordinance.

Source: L. 75: Entire title R&RE, p. 1084, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1259), ch. 211, p. 917, § 8, effective August 11.

Editor's note: This section is similar to former § 31-8-111 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-111 is similar to former § 31-8-111 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A state has broad discretion in determining the procedures for

effectuating annexation. Adams v. City of Colo. Springs, 308 F. Supp. 1397 (D. Colo.), aff'd mem., 399 U.S. 901 (1970).

Variance in description of deleted territory not fatal. A variation from requirements imposed by city charter or statutory authority is not fatal and does not render void an ordinance of annexation where variance in the descriptions deleting some territory is immaterial as to the area remaining. Adams v. City of Colo. Springs, 178 Colo. 241, 496 P.2d 1005 (1972).

And appellants are not deprived of due process because of the variance, for the general assembly may give to municipalities the power to annex upon any condition it chooses to impose. Adams v. City of Colo. Springs, 178 Colo. 241, 496 P.2d 1005 (1972).

It is clearly within the power of a city to require the payment of the annexation fees as a condition of annexation. City of Aurora v. Andrew Land Co., 176 Colo. 246, 490 P.2d 67 (1971).

Municipal ordinance may require an election even if its governing body determines that the other requirements of the act have been met. Minch v. Town of Mead, 957 P.2d 1054 (Colo. App. 1998).

Authority for assessing certain fees. Authority for assessing fees for water development and sanitary sewer taps may be found not only in an annexation petition, but also in an annexation ordinance. City of Aurora v. Andrew Land Co., 176 Colo. 246, 490 P.2d 67 (1971).

By city ordinance. The city council under its general powers can enact an ordinance which itself fixes the fees to be charged in a particular annexation proceedings. City of Aurora v. Andrew Land Co., 176 Colo. 246, 490 P.2d 67 (1971).

31-12-112. Election - annexation pursuant to election.

(1) If the governing body determines that an annexation election is required under the provisions of section 30 (1)(a) of article II of the state constitution and section 31-12-107 (2) or that additional terms and conditions should be imposed upon the area proposed to be annexed, an election shall be called, as provided in this section, to determine whether a majority of the landowners and the registered electors in the area proposed to be annexed approve such annexation, with such terms and conditions, if any, as may attach thereto.

(2) Any landowner owning land in the area proposed to be annexed may vote, irrespective of whether he or she is a registered elector. Any corporate landowner may by resolution designate one of its officers to cast its vote; except that nothing in this part 1 shall invalidate any memorandum of agreement or escrow arrangement voluntarily made by and between the annexing municipality and one or more landowners within the area proposed to be annexed nor require an election for the approval of any terms and conditions to be accomplished or assured in this manner.

(3) The municipality shall forthwith petition the district court of the county in which the area proposed to be annexed or a part thereof is located to hold such election.

(4) Upon receipt of such petition, the court shall appoint three commissioners, one of whom shall be nominated by the municipality, one of whom shall be a landowner of land in the area proposed to be annexed or such landowner's nominee, and the third shall be acceptable to the other two. All of the commissioners shall be residents of the state of Colorado and willing to serve as such commissioners. The appointees, within three days after the date of their appointment, shall take an oath before the court faithfully to perform their duties. In case of disability or failure of any commissioner to act, the court shall forthwith fill his place with some person competent, willing, and able to act.

(5) Such commissioners shall forthwith call an election of all the landowners and the registered electors in the area proposed to be annexed, to be held at some convenient place within the area proposed to be annexed. The commissioners shall establish such polling places within the area proposed to be annexed, or immediately adjacent thereto if such area is vacant and unoccupied, as in their judgment are necessary to afford all of the landowners and the registered electors the opportunity to cast their votes. If more than one polling place is found to be necessary, the court may appoint three additional persons to act as judges or clerks for each additional polling place. Such additional judges and clerks shall meet the same requirements as the original appointees.

(6) Notice of such election shall be given by publication once a week for four weeks in some newspaper of general circulation in the area and published in the county in which such area is located or, if there is no such newspaper in the county, in some newspaper of general circulation published in an adjacent county. Additional notice shall be given by posting a notice at each polling place. The said posting and first newspaper publication shall be not less than four weeks preceding such election. Such notice shall specify the time and place of such election, shall contain a description of the boundaries of the area proposed to be annexed, and shall state that a map or plat thereof is on file in the office of the clerk of the district court in which such area, or a part thereof, is located. Such notice shall also set forth the conditions and requirements proposed by the governing body for annexation of the area, and it shall inform the public that an issue committee is required by law to register with the appropriate officer pursuant to section 1-45-108, C.R.S., within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose the annexation question.

(7) Such commissioners and additional appointees provided for in subsection (5) of this section shall act as judges or clerks of the election, shall take the oath required by law for judges of general elections, and shall report the result of the voting in their respective polling places to the court within three days after such election. The court shall allow each judge and clerk a reasonable compensation for his services as such, not exceeding two dollars for each hour necessarily employed in the performance of his duties.

(8) The ballot used in such election shall contain the words "For Annexation" and "Against Annexation". At the time of voting, each voter shall indicate his choice by placing a cross mark (X) opposite one or the other of said groups of words. Voting machines may be used in the same manner as in municipal elections.

(9) If a majority of the votes cast at such election are against annexation or the vote is tied, the court shall order that all annexation proceedings to date are void and of no effect and that the governing body shall proceed no further with the instant annexation proceedings. If a majority of the votes cast at the election are for annexation, the court shall order, adjudge, and decree that such area may be annexed to the municipality upon the terms and conditions, if any, set forth by the governing body, and the municipality, by ordinance, may thereafter annex said area and impose the terms and conditions, if any, as approved by the landowners and the registered electors.

(10) All costs and expenses connected with such annexation election, including commissioner fees and all election expenses when incurred, shall be paid by the municipality to which the annexation is proposed.

Source: L. 75: Entire title R&RE, p. 1084, § 1, effective July 1. **L. 2009:** (6) amended, (HB 09-1153), ch. 174, p. 776, § 3, effective September 1. **L. 2010:** (1), (2), (5), and (9) amended, (HB 10-1259), ch. 211, p. 917, § 9, effective August 11; (1) amended, (HB 10-1422), ch. 419, p. 2127, § 192, effective August 11.

Editor's note: This section is similar to former § 31-8-112 as it existed prior to 1975.

Cross references: For municipal elections, see article 10 of this title.

ANNOTATION

Law reviews. For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 (1988).

Annotator's note. Since § 31-12-112 is similar to former § 31-8-112 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Election code applicable. It is the legislative intent that the term "special municipal elections" as contained in the municipal election code, extends to annexation elections. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

The municipal election code applies to elections under the annexation act to the extent that its terms are not inconsistent with the specific provisions of the annexation act. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

Nonresident landowner may vote. In view of the specific provision in subsection (2) that a landowner may vote irrespective of whether he is a qualified elector, which entails residency, and the further recognition in subsection (5) that qualified electors and landowners may be two separate groups, both entitled to vote, the supreme court concludes that the general assembly intended to permit a nonresident landowner to vote in an annexation election, because the specific provisions must be held to prevail over the general provisions, and to the extent that this construction conflicts with the residency requirements of the municipal election code, those provisions are held to be superseded by the provisions of the annexation act. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

Absentee ballots authorized. Since the municipal election code provides that such code should be construed liberally so that all legally qualified electors may be permitted to vote, we hold that the municipal election code by its terms authorized the absentee ballots in an annexation election. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

No election where 100% of landowners have consented. No election is triggered where 100% of the landowners, by petitioning for annexation, have already consented to be governed by the annexing city's preexisting ordinances. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Or unless annexation ordinance itself imposes terms and conditions. Unless the annexation ordinance itself imposes terms and conditions upon the annexed area, the requirement of an election under subsection (1) is not triggered. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Preexisting ordinances do not impose additional terms and conditions on the area to be annexed, but are merely general laws which become applicable to new territory upon annexation. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

The relatively standard practice under which a landowner donates land to a school district does not trigger the requirement of an election, since no term or condition is thereby imposed upon the area to be annexed. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

Annexation void because town exceeded its jurisdiction when it failed to hold election to get the consent of the landowner before the annexation. Town of Superior v. Midcities Co., 933 P.2d 596 (Colo. 1997).

31-12-113. Effective date of annexation - required filings.

(1) If the conditions of subsection (2) of this section are met, area annexed to a municipality, as provided in this part 1, shall be annexed upon the effective date of the annexing ordinance, except as otherwise provided in sections 31-12-118 and 31-12-118.5 and for tax purposes as provided in subsection (3) of this section.

(2) (a) The annexing municipality shall:

(I) File one copy of the annexation map with the original of the annexation ordinance in the office of the clerk of the annexing municipality;

(II) (A) File for recording three certified copies of the annexation ordinance and map of the area annexed containing a legal description of such area with the county clerk and recorder of each county affected.

(B) The county clerk and recorder of each county involved shall file one certified copy of such annexation ordinance and map with the division of local government of the department of local affairs and one certified copy of such annexation ordinance and map with the department of revenue.

(a.5) Upon receiving an annexation ordinance and map pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (a) of this subsection (2), the department of revenue shall communicate with any taxing entities affected by the annexation in order to facilitate the administration and collection of taxes within the annexed areas and to identify all retailers affected by the annexation. The department of revenue shall make copies of any such ordinances and maps available to all taxing entities in the state, including any special districts that impose a sales tax.

(b) No annexation shall be effective until the requirements of sub-subparagraph (A) of subparagraph (II) of paragraph (a) of this subsection (2) are met.

(c) In any action attacking the validity of an annexation proceeding, failure of the annexing municipality to have made the filings required by this subsection (2) shall not be deemed to invalidate the annexation where good cause for such failure is shown.

(3) An annexation shall be effective for the purpose of general taxation on and after the January 1 next ensuing.

(4) In the event that an annexation which has the effect of changing county lines occurs before January 1, the assessor of the county from which such area was detached shall provide to the assessor of the county to which such area has been added, on or before the February 1 next ensuing, the following:

(a) An abstract of the total valuation for assessment of all taxable property so transferred;

(b) A certified copy of the assessment records of the individual properties in the annexed area as of the effective date of annexation containing the legal description, the name and address of the owner, and the valuation for assessment of all taxable property, together with such supporting records as are required by the regulations of the property tax administrator.

Source: L. 75: Entire title R&RE, p. 1086, § 1, effective July 1. **L. 99:** (1) amended, p. 1, § 1, effective February 1. **L. 2000:** (2)(a)(II) amended and (2)(a.5) added, p. 422, § 2, effective August 2.

Editor's note: This section is similar to former § 31-8-113 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-113 is similar to former § 31-8-113 prior to the 1975 repeal and reenactment of this title, relevant cases construing that provision have been included in the annotations to this section.

Read with § 31-21-120. The legislative intent is clear, and § 31-12-116 and this section must be read in conjunction with § 31-12-120. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 347, 547 P.2d 249 (1976).

Annexation ordinance becomes effective after completion of annexation proceedings. Green Valley Ranch Venture Co. v. District Court, 186 Colo. 173, 526 P.2d 141 (1974).

District court does not have jurisdiction to review county petition for judicial review of an annexation when the petition is not timely filed within 10 days of the effective date of annexation. County of Teller v. City of Woodland Park, 2014 CO 35, 333 P.3d 55.

This section does not control "the effective date of the ordinance" referred to in § 31-12-116 (2)(a)(II). The effective date of the ordinance and the effective date of the annexation are distinct from one another. County of Teller v. City of Woodland Park, 2014 CO 35, 333 P.3d 55.

Filing requirements of subsection (2)(a)(II)(A) and § 24-32-109 not satisfied by mere substantial compliance. There are several clear indications in these statutory provisions that substantial compliance with filing requirements is insufficient. Both statutes plainly declare that the consequence of noncompliance is that annexation shall not become effective. Unlike statutes governing annexations by petition, this section and § 24-32-109 do not expressly allow for substantial compliance. Presence of an explicit good cause exception in subsection (2)(c) suggests general assembly intended that only a showing of good cause

would excuse strict compliance. Grandote Golf & Ctry. Club v. Town of La Veta, 252 P.3d 1196 (Colo. App. 2011).

Even assuming that substantial compliance with this section and the requirements of § 24-32-109 may render an annexation effective, there was no substantial compliance with additional requirement that a certified copy of the annexation ordinance and map be filed with division of local government. This requirement cannot be deemed a mere formality; excusing noncompliance with this requirement would not result in fulfillment of the relevant statutes' purposes. Grandote Golf & Ctry. Club v. Town of La Veta, 252 P.3d 1196 (Colo. App. 2011).

Because required filings of annexation ordinance did not occur, and because no good cause was shown (or even alleged for the failure), the annexation contemplated by the ordinance did not become effective. Grandote Golf & Ctry. Club v. Town of La Veta, 252 P.3d 1196 (Colo. App. 2011).

31-12-114. Conflicting annexation claims of two or more municipalities.

(1) At any time during a period of notice given by a municipality pursuant to section 31-12-108, any other municipality may, subject to compliance with section 30 of article II of the state constitution, receive a petition for annexation or a petition for an annexation election pursuant to section 31-12-107 with the area partly or wholly overlapping the area proposed for annexation by the first municipality. If this occurs, the respective rights of the several municipalities shall be determined in accordance with an election as provided in this section.

(2) All further proceedings for the annexation of the area claimed by both municipalities shall be held in abeyance pending the holding of an election of the landowners and the registered electors within such area as described in subsection (4) of this section for the purpose of determining to which municipality such electors prefer to annex. This election shall be held pursuant to the provisions of section 31-12-112, except as provided in this section.

(3) The second municipality indicating its intent to annex shall petition the district court of the county in which the area proposed to be annexed is located for the election provided for in subsection (2) of this section. Such petition shall be filed within thirty days after the effective date of the resolution of intent or the date of the filing of the petition described in subsection (1) of this section.

(4) All of the landowners and the registered electors in the area claimed by both municipalities shall be entitled to vote at said election. Any corporate landowner may by resolution designate one of its officers to cast its vote.

(5) (a) If the disputed area has less than two-thirds boundary contiguity with either municipality, the ballot shall contain two questions:

(I) "For Annexation" and "Against Annexation"; and

(II) "For annexation to "..... (name of municipality first starting proceedings)

and "For annexation to "..... (name of municipality second starting proceedings).

(b) If more than two municipalities dispute the same area, the ballot shall list each municipality in order of the date when it started proceedings under this part 1 and in the same form as specified in this section. If the disputed area does have more than two-thirds boundary contiguity with one of the municipalities, only the question in subparagraph (II) of paragraph (a) of this subsection (5) shall appear on the ballot. If both questions are to appear on the ballot, the notice of the election shall contain a statement that all of the landowners and the registered electors may vote on the second question irrespective of their votes on the first question.

(6) If, upon a canvass of the votes, it is found that a majority of the votes cast were against annexation, or that the vote on the issue of annexation is tied, or that the vote on which municipality should annex is tied, the court shall declare all annexation proceedings of both municipalities insofar as they relate to the disputed area to be void and of no effect, and both municipalities shall be barred from continuing with the current annexation proceedings insofar as they relate to such disputed area.

(7) If the vote is in favor of annexation, the municipality to which the landowners and the registered electors indicate their intention to annex may proceed to hold a hearing as provided in this part 1 and to comply with the other provisions of this part 1 with respect to the area claimed by both municipalities; if such area is found to comply with the applicable provisions of sections 31-12-104 and 31-12-105 and if the entire area proposed to be annexed has been in dispute, the subject election shall be deemed to comply with the provisions of sections 31-12-107 and 31-12-112 relative to an election of the landowners and the registered electors for areas having less than two-thirds boundary contiguity with the annexing municipality.

(8) If more than two municipalities claim a disputed area and a majority of the votes are cast in favor of one municipality, that municipality may proceed to hold a hearing as provided in this part 1 and to comply with the other provisions of this part 1 with respect to the area claimed by the several municipalities; but the subject election shall be deemed to comply with the provisions of sections 31-12-107 and 31-12-112 relative to an election of the landowners and the registered electors for areas having less than two-thirds boundary contiguity with the annexing municipality. If no municipality receives a majority, a runoff election between the two municipalities receiving the largest pluralities shall be held no sooner than four weeks and no longer than seven weeks after the date of the initial election to determine to which municipality the landowners and the registered electors desire to annex. Notice of such second election shall be given in the manner directed by the court. This election shall have the same effect as if it were the original election between the two municipalities involved.

(9) Notwithstanding any provision in this part 1 to the contrary, if the total area proposed for annexation or the disputed part thereof has more than two-thirds boundary contiguity with one of the municipalities, that municipality shall have the right to annex the disputed area unless three-fourths of the total votes cast at the election favor annexation to another municipality.

(10) Unless the area claimed by more than one municipality constitutes more than one-third of the area proposed for annexation, inclusive of streets, to the first annexing municipality, nothing in this part 1 shall prevent a municipality from proceeding with the annexation of that part of the area described in its resolution which is not claimed by another municipality without waiting for the holding of the election described in this section. In the hearing required by sections 31-12-108 and 31-12-109 and the findings required by section 31-12-110, the issue shall be the compliance of the undisputed portion of the area proposed for annexation with the requirements and limitations of sections 31-12-104 and 31-12-105. If the annexation was initiated by petition under section 31-12-107 and if the requirements of said sections 31-12-104 and 31-12-105 are met, the annexing municipality shall submit the issue of annexation with the changed boundaries to an election of the landowners and the registered electors to be held in accordance with section 31-12-112.

(11) The costs of the election shall be paid by the municipalities which are disputing the annexation by the first annexing municipality. If more than one municipality is disputing such annexation, the costs shall be apportioned among such disputing municipalities on a just and equitable basis by the court supervising the election.

Source: L. 75: Entire title R&RE, p. 1086, § 1, effective July 1. **L. 2010:** (1), (2), (4), (5)(b), (7), (8), and (10) amended, (HB 10-1259), ch. 211, p. 918, § 10, effective August 11; (1) amended, (HB 10-1422), ch. 419, p. 2120, § 168, effective August 11.

Editor's note: (1) This section is similar to former § 31-8-114 as it existed prior to 1975.

(2) Amendments to subsection (1) by House Bill 10-1259 and House Bill 10-1422 were harmonized.

ANNOTATION

Law reviews. For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-114 is similar to former § 31-8-114 prior to the 1975 repeal and reenactment of this title, a relevant case construing that provision has been included in the annotations to this section.

Annexation is strictly statutory. City of Westminster v. City of Northglenn, 178 Colo. 334, 498 P.2d 343 (1972).

Applied in Bd. of County Comm'rs v. City & County of Denver, 40 Colo. App. 281, 573 P.2d 568 (1977).

31-12-115. Zoning of land while annexation is under way - zoning of newly annexed land - subdivision of land while annexation is under way - regulatory impairments affecting newly annexed land used for agricultural purposes - notice - definitions.

(1) An annexing municipality may institute the procedure outlined in state statutes or municipal charter to make land subject to zoning at any time after a petition for annexation or a petition for an annexation election has been found to be valid in accordance with the provisions of section 31-12-107. The proposed zoning ordinance shall not be passed on final reading prior to the date when the annexation ordinance is passed on final reading. If the zoning process is commenced prior to the effective date of the annexation ordinance, the legal protest area for zoning shall be determined solely on geographic location, irrespective of whether the land in such legal protest area is within or without or partly within and partly without the annexing municipality.

(2) If the municipality has a zoning ordinance, any area annexed on or after January 1, 1966, shall be brought under such zoning ordinance and map within ninety days after the effective date of the annexation ordinance, irrespective of any legal review which may be instituted pursuant to section 31-12-116.

(3) During such ninety-day period or such portion thereof required to comply with subsection (2) of this section, the annexing municipality may refuse to issue any building or occupancy permit for any portion or all of the newly annexed area.

(4) Any provision in a zoning ordinance automatically applying a uniform zoning classification to all land which may be annexed in the future is void and of no effect as to any annexation completed on or after January 1, 1966.

(5) Any annexing municipality may institute the procedure outlined in its subdivision regulations to subdivide land in the area proposed to be annexed at any time after a petition for annexation or a petition for an annexation election has been found to be valid in accordance with the provisions of section 31-12-107. The ordinance accepting the proposed subdivision shall not be passed on final reading prior to the date when the annexation is passed on final reading.

(6) (a) Notwithstanding any other provision of law, whenever a municipality annexes an area that contains any portion of a public transportation right-of-way, a customary or regular use of which involves the movement of any agricultural vehicles and equipment, for the period during which land use within the annexed area is devoted to agricultural use and regardless of whether the annexed area has been zoned for agricultural uses, the municipality shall not adopt or enforce

any ordinance or regulation affecting the right-of-way, whether arising in connection with zoning, rezoning, the regulation of traffic, or otherwise, so as to restrict such customary or regular use of the right-of-way that is in existence as of the time of the annexation. Nothing in this subsection (6) shall be construed as in any way restricting the municipality from adopting or enforcing traffic regulations that are either consistent with the customary or regular use of the right-of-way or are necessary for the safety of vehicular and pedestrian traffic using the right-of-way.

(b) In addition to any other applicable notice requirements provided by law, not less than thirty days prior to final adoption of an ordinance or regulation affecting the right-of-way in an annexed area that is devoted to agricultural use and regardless of whether the annexed area has been zoned for agricultural uses, the municipality shall send notice of the proposed ordinance or regulation to the following persons by means of the following methods:

(I) To any person who owns property in the annexed area that is contiguous to the right-of-way, by certified mail; and

(II) To such persons as appear on a list maintained by the municipality of interested persons who are to receive such notice by first-class mail. The name of any such person shall remain on the list until such time as the person requests removal of the person's name from the list.

(c) For purposes of this subsection (6), "agricultural vehicles and equipment" means any vehicle or equipment that is designed, adapted, or used for agricultural purposes.

Source: L. 75: Entire title R&RE, p. 1088, § 1, effective July 1. **L. 97:** (1) and (5) amended, p. 996, § 5, effective May 27. **L. 2004:** (6) added, p. 618, § 1, effective September 1.

Editor's note: This section is similar to former § 31-8-115 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-115 is similar to former § 31-8-115 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

When a city annexes land from a county, the power to zone that land shifts to the city. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

In order to accommodate lands. The city is allowed to impose zoning restrictions on annexed lands, after annexation, in order that those lands may be accommodated into the orderly growth patterns of the city. Bird

v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

But this statute does not allow the city to impose arbitrary or automatic uniform zoning upon lands which it annexes in the future. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

Simultaneous passage of zoning and annexation ordinances. Since the statute states only that the zoning ordinance shall not be passed prior to the annexation ordinance, the statute does not preclude the two ordinances from being passed at the same time. Cline v. City of Boulder, 168 Colo. 112, 450 P.2d 335 (1969).

A county building permit obtained prior to the involuntary annexation ordinance does not preclude the rezoning made by the city, because the majority rule in the United States is that the owner must take some steps in reliance on the permit before his rights vest thereunder and a municipality may revoke permit where zoning in enacted or changed to prohibit the use and where the permittee has not materially changed his position in reliance on the permit. Cline v. City of Boulder, 168 Colo. 112, 450 P.2d 335 (1969).

31-12-116. Review.

(1) (a) If any landowner or any registered elector in the area proposed to be annexed, the board of county commissioners of any county governing the area proposed to be annexed, or any municipality within one mile of the area proposed to be annexed believes itself to be aggrieved by the acts of the governing body of the annexing municipality in annexing said area to said municipality, such acts or findings of the governing body may be reviewed by certiorari in accordance with the Colorado rules of civil procedure. Such review proceedings shall be instituted in any district court having jurisdiction of the county in which the annexed area is located. In no event shall such a proceeding be instituted prior to the effective date of the annexing ordinance by the annexing municipality.

(b) If the annexed area is located within two or more counties, review proceedings may be brought in any district court having jurisdiction of any one of such counties. In all such certiorari proceedings under this part 1, the district court shall be presided over by a judge appointed by the chief justice of the supreme court of the state of Colorado, which judge shall not be from the judicial district in which the area proposed to be annexed is located nor from a judicial district contiguous thereto.

(2) (a) (I) All such actions to review the findings and the decision of the governing body shall be brought within sixty days after the effective date of the ordinance, and, if such action is not brought within such time, such action shall forever be barred.

(II) All such actions to review the findings and the decision of the governing body shall be subject to the following requirement, which is a condition precedent to the right to obtain judicial

review under this section: Any party bringing such action shall first have filed a motion for reconsideration within ten days of the effective date of the ordinance finalizing the challenged annexation, which motion shall state with particularity the grounds upon which judicial review is sought.

(III) The district court shall schedule such actions for expedited hearing.

(IV) In the event that the person bringing an action pursuant to this section fails to substantially prevail, the court may award the municipality its reasonable attorney fees and costs of defense.

(b) In any action brought within the sixty-day limitation of paragraph (a) of this subsection (2) to review the annexation of an enclave pursuant to section 31-12-106 (1), the court may review the findings and determinations of the governing body in annexing any territory which, in whole or in part, resulted in the creation of the enclave. If the court finds that any such prior annexation resulted in the creation of a municipal boundary that consists of public rights-of-way as set forth in section 31-12-106 (1.1)(a)(I) or occurred without compliance with section 30 of article II of the state constitution as set forth in section 31-12-106 (1.1)(a)(II), it shall declare the annexation of the enclave to be void, but no such finding or decision shall affect the validity of the prior annexation.

(3) Review proceedings instituted under this section shall not be extended further than to determine whether the governing body has exceeded its jurisdiction or abused its discretion under the provisions of this part 1.

(4) Any annexation accomplished in accordance with the provisions of this part 1 shall not be directly or collaterally questioned in any suit, action, or proceeding, except as expressly authorized in this section.

(5) If the hearing has not been stenographically reported as provided in section 31-12-109 (2) and if the court determines, after proper investigation, that the minutes of the hearing are not adequate to form the basis for a determination of the issue in the certiorari proceedings, the court may proceed to try the issue de novo.

(6) All proceedings for judicial review of any annexation proceeding under this part 1 shall be advanced as a matter of immediate public interest and concern and heard at the earliest practical moment. The courts shall be open at all times for the purposes of this part 1.

Source: L. 75: Entire title R&RE, p. 1089, § 1, effective July 1. **L. 81:** (2) amended, p. 1511, § 2, effective July 1. **L. 87:** (1)(a) and (2) amended, p. 1221, § 7, effective May 28. **L. 90:** (1)(a) amended, p. 1479, § 1, effective March 9. **L. 97:** (2)(b) amended, p. 996, § 6, effective May 27. **L. 2006:** (2)(b) amended, p. 1008, § 2, effective September 1. **L. 2010:** (1)(a) amended, (HB 10-1259), ch. 211, p. 919, § 11, effective August 11.

Editor's note: This section is similar to former § 31-8-116 as it existed prior to 1975.

ANNOTATION

I. General Consideration.

II. District Court's Jurisdiction.

III. Aggrieved Persons.

IV. Time Limitation.

V. Annexation Enjoined.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Civil Procedure and Appeals", see 40 Den. L. Ctr. J. 66 (1963). For comment on Tanner v. City of Boulder (151 Colo. 283, 377 P.2d 945 (1962)), see 36 U. Colo. L. Rev. 288 (1964). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-116 is similar to former § 31-8-116 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

No denial of due process in review procedure. The procedures for review in the Colorado act are not so fundamentally unfair as to constitute a denial of due process under the federal constitution. Adams v. City of Colo. Springs, 308 F. Supp. 1397 (D. Colo.), aff'd mem., 399 U.S. 901 (1970).

This section must be construed as a whole. Green Valley Ranch Venture Co. v. District Court, 186 Colo. 173, 526 P.2d 141 (1974).

Annexation is a legislative function and it is within legislative competence to prescribe who may challenge annexation proceedings, and within what time limits a challenge must be made. City & County of Denver v. District Court, 181 Colo. 386, 509 P.2d 1246 (1973).

Since by statute the general assembly has delegated the power to annex territory to a city, that power remains legislative in character. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

Where a landowner or any registered elector seeks review of annexed property also at issue in a quiet title action, the court may stay the review until the quiet title matter is resolved under the common law priority rule. But a court may not vacate the annexation ordinance because the court would then exert control over a strictly legislative function of the municipality. Town of Minturn v. Sensible Hous. Co., 2012 CO 23, 273 P.3d 1154.

Unlimited legislative power over annexation. In the absence of express constitutional provisions to the contrary, the general assembly has unlimited power over annexation of territory by municipalities. Ft.

Collins-Loveland Water Dist. v. City of Ft. Collins, 174 Colo. 79, 482 P.2d 986 (1971).

Read in conjunction with § 31-12-120. The legislative intent is clear, and § 31-12-113 and this section must be read in conjunction with § 31-12-120. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 347, 547 P.2d 249 (1976).

Review procedure proper for state control. The question of what procedures should be provided for review of annexations is primarily a matter within the discretion of the general assembly, provided that the review procedures are not so arbitrary and unreasonable as to constitute a denial of due process, and since the state has provided and determined the powers, methods, and procedures for annexation of property by municipal corporations and the safeguards thought necessary to protect against abuse, such a subject is a proper one for state control. Adams v. City of Colo. Springs, 308 F. Supp. 1397 (D. Colo.), aff'd mem., 399 U.S. 901 (1970).

Judicial review of annexations is a special statutory proceeding. Ft. Collins-Loveland Water Dist. v. City of Ft. Collins, 174 Colo. 79, 482 P.2d 986 (1971).

And is limited. Annexation review is a special statutory proceeding and is limited to a determination of whether the city council has "exceeded its jurisdiction or abused its discretion". Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976); Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

Judicial review of an annexation is a special statutory procedure and is limited to whether the town's board of trustees exceeded its jurisdiction or abused its discretion. TCD N., Inc. v. City Council, Greenwood Vill., 713 P.2d 1320 (Colo. App. 1985); Midcities Co. v. Town of Superior, 916 P.2d 595 (Colo. App. 1995), aff'd, 933 P.2d 596 (Colo. 1997).

A motion for reconsideration must be filed no later than 10 days after the effective date of the ordinance finalizing the challenged annexation under the language of subsection (2)(a)(II). Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

District court does not have jurisdiction to review county petition for judicial review of an annexation when the petition is not timely filed within 10 days of the effective date of annexation. County of Teller v. City of Woodland Park, 2014 CO 35, 333 P.3d 55.

Section 31-12-113 does not control "the effective date of the ordinance" referred to in subsection (2)(a)(II) of this section. The effective date of the ordinance and the effective date of the annexation are distinct from one another. County of Teller v. City of Woodland Park, 2014 CO 35, 333 P.3d 55.

On review, great latitude must be accorded the legislative discretion, and every reasonable presumption in favor of validity of the action of the city must be indulged. Bd. of County Comm'rs v. City & County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976); Bd. of County Comm'rs v.

City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

The court is generally limited to determining whether the act's procedural mandates have been met and must indulge every reasonable presumption favoring the validity of the annexation. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

The rules of civil procedure do not apply insofar as they are inconsistent with special statutory law. City of Westminster v. District Court, 167 Colo. 263, 447 P.2d 537 (1968).

Subsection (1)(a) creates a substantive legal status for review of annexation proceedings and preempts the rules of civil procedure insofar as they are inconsistent with the statute. Berry Props. v. City of Commerce City, 667 P.2d 247 (Colo. App. 1983).

Special review procedure. The general assembly, rather than arrogate unto itself the right to establish an annexation review procedure, has adopted a specific procedure from the rules promulgated by the supreme court. Ft. Collins-Loveland Water Dist. v. City of Ft. Collins, 174 Colo. 79, 482 P.2d 986 (1971).

Annexation ordinance on review not presumed valid. Under this section, where the question to be determined in an annexation proceeding is whether the land involved has been lawfully annexed, the presumption of the validity of an ordinance does not apply, it being a defense only which shifts the burden of proof to a challenger in the pleadings and trial. People ex rel. City & County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958).

Findings of ultimate fact by city council are sufficient to support annexation on review when based on uncontradicted evidence. TCD N., Inc. v. City Council of Greenwood, 713 P.2d 1320 (Colo. App. 1985).

Applied in Colo. Land Use Comm'n v. Bd. of County Comm'rs, 199 Colo. 7, 604 P.2d 32 (1979).

II. DISTRICT COURT'S JURISDICTION.

Venue. Review proceedings may be brought in either the district court of the county in which the land was situated prior to annexation or in the district court of the county in which the land is located after annexation. Green Valley Ranch Venture Co. v. District Court, 186 Colo. 173, 526 P.2d 141 (1974).

The district court, composed of all of the district judges, is granted jurisdiction to hear an appeal from an annexation proceeding if the county wherein the annexed territory is located is in the judicial district. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

In this statute the use of the word "such" indicates that an "outside" judge need only be appointed when an annexation proceeding involves property in more than one county. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

Court reviews area eligibility and compliance with procedures. The function

of a county court in annexation proceedings is to provide a forum in order to insure first, that the area is eligible and, second, that the procedural requirements of the statute have been fully complied with. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Only grounds for invalidation. The district court cannot pass upon the wisdom of the annexation itself, nor can it invalidate any annexation for a reason other than a failure to comply with the provisions of the article. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Court hearing due to complexity. Since the annexation proceedings are somewhat intricate this complexity demonstrates the need for a district court hearing for the purpose of testing its sufficiency. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

This section does not vest in a district court plenary powers to grant relief in accordance with the justice or equities of the individual case. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Nor does this section confer jurisdiction on a district court to hear appeals of individual property owners following annexation and to grant or deny disconnection based upon a county court's uncontrolled discretion. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

There exists no inherent power in the courts to grant disconnection of property annexed to a city, such power is essentially legislative, and absent an express statutory authorization the courts possess no power to detach territory from a municipality. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Problems for legislative correction. The fact that the state statutes did not provide in more detail how to solve the problems of taxation and refunds, voting and building restrictions, where an annexation ordinance was later held to be invalid, were problems better addressed to the general assembly than to the courts. City & County of Denver v. Bd. of County Comm'rs, 141 Colo. 102, 347 P.2d 132 (1959).

III. AGGRIEVED PERSONS.

Only "any landowners or any qualified elector in the territory proposed to be annexed" may seek review. Ft. Collins-Loveland Water Dist. v. City of Ft. Collins, 174 Colo. 79, 482 P.2d 986 (1971); City of Westminster v. City of Northglenn, 178 Colo. 334, 498 P.2d 343 (1972).

All landowners in an area to be annexed were not indispensable parties to an action challenging the annexation. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 321, 566 P.2d 340 (1977).

And no standing if excluded from area subject to annexation. Landowners do not have standing to challenge the validity of annexation proceedings where their properties are excluded from the area subject to the annexation, as they cannot complain of the proposed annexation of property owned by others. Richter v. City of

Greenwood Vill., 40 Colo. App. 310, 577 P.2d 776 (1978).

It was held that a county had such an interest in the detachment of its territory as to be a "person aggrieved" under the statute where it was charged that the annexation was invalid. City & County of Denver v. Miller, 151 Colo. 444, 379 P.2d 169 (1963); Elkins v. City & County of Denver, 157 Colo. 252, 402 P.2d 617 (1965).

A resident of an unincorporated area, but not of the particular tract to be detached by annexation proceedings, is not a person aggrieved thereby, since such person does not suffer a detriment peculiar to himself as distinguished from detriment shared by all property owners in the governmental unit. City & County of Denver v. Miller, 151 Colo. 444, 379 P.2d 169 (1963); Smith v. City of Aurora, 153 Colo. 204, 385 P.2d 129 (1963).

Initial annexing city not "aggrieved". Where owners of a tract entered into agreements with a city to annex tract and to furnish water service to the land, but on the following day the city council of another city accepted a petition for an annexation election, the city in the position of the first city is not one of those specified in this section who may seek review of the action of city council. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Municipality lacked standing to contest annexation because it was not within one mile of the area that was annexed. Town of Berthoud v. Town of Johnstown, 983 P.2d 174 (Colo. 1999).

While municipality within one mile of the proposed annexations that believes itself to be aggrieved has standing to the extent it is actually aggrieved, said municipality does not have unfettered standing to raise issues on behalf of anyone else. Town of Erie v. Town of Frederick, 251 P.3d 500 (Colo. App. 2010).

Plaintiff outside of statutory category lacks standing. This section expressly limits the right of review to certain categories of plaintiffs. Where plaintiffs are not within those categories, they do not have standing to seek review. Berry Props. v. City of Commerce City, 667 P.2d 247 (Colo. App. 1983).

Standing to challenge zoning does not give standing to challenge annexation. Nothing in the annexation act limits the right to judicial review of zoning procedures to landowners or qualified electors within territory annexed under the annexation act. But it does not follow that standing to challenge zoning gives standing to challenge annexation. Snyder v. City Council, 35 Colo. App. 32, 531 P.2d 643 (1974).

Standing to challenge zoning and standing to challenge annexation are quite different matters. City of Thornton v. Bd. of County Comm'rs, 42 Colo. App. 102, 595 P.2d 264 (1979), aff'd, 629 P.2d 605 (Colo. 1981).

IV. TIME LIMITATION.

Annotator's note. In 1987, the general assembly increased the time limitation in subsection (2) from forty-five to sixty days.

The 45-day provision is jurisdictional. Snyder v. City Council, 35 Colo. App. 32, 531 P.2d 643 (1974).

If an action is not brought within the 45-day time limitation, the court has no jurisdiction to entertain the action. City & County of Denver v. District Court, 181 Colo. 386, 509 P.2d 1246 (1973).

Commencement of an action within the 45-day time period is necessary before a trial court has any jurisdiction to entertain an action which challenges a municipal annexation. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 300, 546 P.2d 497 (1976).

A complaint filed more than 45 days after the effective date of the ordinance must be dismissed. Val d'Gore, Inc. v. Town Council, 193 Colo. 311, 566 P.2d 343 (1977).

The 45-day period under subsection (2) did not begin to run until the enactment of an ordinance amending the original annexation ordinance where an erroneous property description was repeated throughout the election petitions, the election notices, and the original ordinance, thereby depriving potentially interested parties of an opportunity to contest the annexation of their property. Val d'Gore, Inc. v. Town Council, 193 Colo. 311, 566 P.2d 343 (1977).

Not a statute of limitations. The time limitation provision of subsection (2) is not a true statute of limitations, because the time limitation is jurisdictional, and, unlike other statutes of limitations, as a matter of public policy, it cannot be tolled or waived. Ft. Collins-Loveland Water Dist. v. City of Ft. Collins, 174 Colo. 79, 482 P.2d 986 (1971); Richter v. City of Greenwood Vill., 40 Colo. App. 310, 577 P.2d 776 (1978); Golden Run Estates, LLC v. Town of Erie, 2016 COA 145, 401 P.3d 87.

In effect, the 45-day provision is a condition precedent to the exercise of the right to challenge an annexation, and when it appears on the face of the complaint, or is admitted, the complaint simply does not state a claim upon which relief can be granted, the claim is barred, and the court has no jurisdiction of the subject matter, and can, for that reason, grant a motion to dismiss on this ground. Ft. Collins-Loveland Water Dist. v. City of Ft. Collins, 174 Colo. 79, 482 P.2d 986 (1971).

Favors finality. By enacting the 45-day time limitation set forth in this section the general assembly has pursued a deliberate policy of favoring the finality of an annexation even though there may have existed some ground for attacking the annexation. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 300, 546 P.2d 497 (1976).

Limitation recognizes that boundary lines be expeditiously and finally determined. Implicit in the 45-day time limitation imposed by this section is a recognition of the desirability that municipal boundary lines be expeditiously and finally determined in order that the responsibility for providing municipal services and the applicability of municipal ordinances and regulations may be known to those affected. City & County of Denver v. District Court, 181 Colo. 386, 509 P.2d 1246 (1973).

Applicable to challenge to repeal of annexation ordinance. No legislative intent appears in the municipal annexation act which would exclude from the 45-day time limitation a court challenge involving a municipality's capacity to repeal an annexation ordinance. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 300, 546 P.2d 497 (1976).

No time waiver. Just as no discretion is afforded the annexing municipality as to the application of ordinances, it has none with reference to the waiver of the time limitation for the challenge to the validity of the annexation ordinance. Ft. Collins-Loveland Water Dist. v. City of Ft. Collins, 174 Colo. 79, 482 P.2d 986 (1971).

Section (2)(a)(I) is a nonclaim statute that deprives a trial court of subject matter jurisdiction. Like other nonclaim statutes, this section provides that certain claims are forever barred if not brought within statutorily specified periods and its time limits cannot be tolled or waived by a contract or other agreement. Golden Run Estates, LLC v. Town of Erie, 2016 COA 145, 401 P.3d 87.

V. ANNEXATION ENJOINED.

Proceedings by a city to annex territory can only be enjoined where they are in excess of the powers of a city. City & County of Denver v. Bd. of County Comm'rs, 141 Colo. 102, 347 P.2d 132 (1959).

Legislative function cannot be enjoined. The general rule is that a municipal corporation, in the exercise of legislative power with relation to the subjects committed to its jurisdiction, can no more be enjoined than can the general assembly of the state. City & County of Denver v. Bd. of County Comm'rs, 141 Colo. 102, 347 P.2d 132 (1959).

31-12-117. Effect of review and of voiding of annexation ordinance by court order.

(1) After the effective date of an annexation ordinance, the annexing municipality shall apply all pertinent ordinances to the annexed area, irrespective of any proceedings for judicial review.

(2) In the event that the district court enters a final judgment, as defined in rule 54 (a), Colorado rules of civil procedure, declaring the annexation proceedings void, no acts taken in compliance with or pursuant to the charter, ordinances, or regulations of the annexing municipality shall be voided thereby, even though such acts are not in compliance with applicable county requirements or the requirements of other municipal or quasi-municipal corporations having jurisdiction over the area affected by such judicial proceedings. Such acts shall include, among others, subdivision platting and the construction and occupancy of improvements. A judicial declaration voiding an annexation shall not invalidate the levy and collection of any taxes, license fees, or charges collected or imposed by the annexing municipality prior to such final judgment.

(3) The provisions of subsection (2) of this section shall apply with equal force and validity to judicial review of any annexation proceedings which have affected the boundaries of any county or city and county; except that, within ninety days after the effective date of such a final judgment, the county clerk and recorder of the county or city and county to which the area was attempted to be annexed shall transmit to the county clerk and recorder of the county to which the territory was returned as a result of the judicial determination of the invalidity of the annexation proceedings a copy of each approved subdivision plat, which copy shall then be recorded without charge in the records of the county to which the territory was so returned.

(4) The execution of any final judgment by the district court in any judicial review of an annexation proceeding shall automatically be stayed upon the filing of the record on appeal as provided by law and the Colorado appellate rules, and no application for supersedeas shall be necessary. Such stay shall continue in full force and effect pending final disposition of the proceedings on appeal.

Source: L. 75: Entire title R&RE, p. 1090, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-117 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-117 is similar to § 31-8-117 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

Section held constitutional. Cline v. City of Boulder, 168 Colo. 112, 450 P.2d 335 (1969).

The general assembly was required to provide the specific guidelines that it did pending review proceedings, lest the disputed territory be left suspended in some no-man's land, with the citizenry of the territory left without clearly defined governmental services or obligations to any governmental entity. City of Westminster v. District Court, 167 Colo. 263, 447 P.2d 537 (1968).

Subsection (1) is a proper exercise of legislative authority to establish status of disputed annexed territory pending judicial review. City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist., 181 Colo. 334, 509 P.2d 317 (1973).

And is mandatory. No discretion is afforded the annexing municipality, because subsection (1) of this section is mandatory and therefore, absent a finding of inapplicability or unconstitutionality, the district court lacked jurisdiction to order the city to disobey the clear mandate of the

statute. City of Westminster v. District Court, 167 Colo. 263, 447 P.2d 537 (1968).

Stay order unavailable. While the courts have power to issue stay orders in certiorari proceedings, statutes may modify or abrogate that power, and in the annexation statutes it is clear that the general assembly intended to preclude the issuance of a stay order pending appeal of the annexation proceedings. In this respect they were not legislating on procedure but declaring by substantive law a legal status. City of Westminster v. District Court, 167 Colo. 263, 447 P.2d 537 (1968).

And while legality of annexation proceedings is being challenged in court, the disputed territory remains in the city subject to city taxes and assessments and is entitled to all city services. City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist., 181 Colo. 334, 509 P.2d 317 (1973).

Until an annexation is finally determined to be void, the disputed territory remains a part of the annexing municipality. City & County of Denver v. Bd. of Dirs., 38 Colo. App. 53, 554 P.2d 714 (1976).

Where the annexation is finally declared void, subsequent annexations which were passed immediately following the voided annexation and which were dependent upon the voided annexation for contiguity, are likewise void. The provisions of subsection (2) merely grant the annexing municipality governmental powers during the period of judicial review and if the annexation is finally declared void, the acts of the annexing municipality can have no further effect on the land in question. Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

No recovery of taxes. Under the Colorado annexation act, even if the procedures are declared to be unconstitutional, taxes which have been levied cannot be recovered. Adams v. City of Colo. Springs, 308 F. Supp. 1397 (D. Colo.), aff'd mem., 399 U.S. 901 (1970).

For collection and distribution of property taxes in disputed area during year in which annexation voided, see City & County of Denver v. Bd. of County Comm'rs, 661 P.2d 1185 (Colo. App. 1982).

Applied in McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

31-12-118. Priority of annexation proceedings.

(1) The purpose of this section is to give a first priority to annexation proceedings unless certain incorporation proceedings described in this section are commenced for all or part of the area subject to such annexation proceedings.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), when a governing body receives a petition for annexation pursuant to section 31-12-107 (1) or a petition for an election on the question of annexation pursuant to section 31-12-107 (2), no other proceedings shall be commenced or prosecuted for the annexation or incorporation of the same

area or any part thereof and no other proceedings shall be commenced or prosecuted for the creation of any quasi-municipal corporation in the same area or any part thereof until the question of annexing such area pursuant to any such petition has been finally determined. Nothing in this subsection (2) shall prevent a duly established special service district lawfully organized under part 5 or 6 of article 25 of this title, article 8 of title 29, C.R.S., part 2 of article 20 of title 30, C.R.S., or title 32 (except article 8), C.R.S., from receiving and prosecuting a petition for the inclusion of the same area or any part thereof within the boundaries of any such special service district during any pending annexation proceeding.

(b) A governing body shall hold annexation proceedings in abeyance if, on or after the date a petition for annexation pursuant to section 31-12-107 (1) or a petition for an election on the question of annexation pursuant to section 31-12-107 (2) is filed, a petition for incorporation of the same area or any part thereof is filed pursuant to part 1 of article 2 of this title and such area contains more than seventy-five thousand inhabitants.

(3) The fact that proceedings for the incorporation of an area have been commenced prior to the filing of a petition for annexation under section 31-12-107 (1) or prior to the filing of a petition for an election on the question of annexation under section 31-12-107 (2) shall in no way affect such proceedings for the annexation of all or part of the same area, and any such incorporation proceedings shall be held in abeyance until the question of annexation has been finally determined. Similarly the fact that proceedings for the creation of a quasi-municipal corporation have been commenced prior to the filing of a petition for annexation under section 31-12-107 (1) or the filing of a petition for an election on the question of annexation under section 31-12-107 (2) shall in no way affect such proceedings for the annexation of all or part of the same area, and any such proceedings for the creation of quasi-municipal corporations shall be held in abeyance until the question of annexation has been finally determined.

(4) This section shall not apply if the petition for annexation under said section 31-12-107 (1) or the petition for an election on the question of annexation under said section 31-12-107 (2) is first filed with the governing body within the ten days next preceding the date set for an election on the question of incorporation or an election on the question of the creation of a quasi-municipal corporation in part or all of the same area, nor shall this section apply to any incorporation petition involving an area which contains more than ten thousand inhabitants.

(5) In the event of any lawsuit challenging the provisions of this section or their applicability to any situation, such legal proceedings shall be advanced on the docket as a matter of immediate public interest and concern and shall be heard at the earliest practical moment.

Source: L. 75: Entire title R&RE, p. 1090, § 1, effective July 1. **L. 81:** (2) amended, p. 1614, § 15, effective July 1. **L. 99:** (1) and (2) amended, p. 1, § 2, effective February 1.

Editor's note: This section is similar to former § 31-8-118 as it existed prior to 1975.

ANNOTATION

Subsection (2) of this section, as amended in 1999, is not unconstitutional. The 1999 act does not violate the special legislation, retrospectivity, or impairment of contract provisions of the Colorado Constitution. Greenwood Vill. v. Petitioners for Proposed City of Centennial, 3 P.3d 427 (Colo. 2000).

Section gives annexation proceedings priority over incorporation procedures and thereby expresses a clear preference for consolidation over fragmentation. In re Incorporation of Town of Eastridge v. City of Aurora, 198 Colo. 440, 601 P.2d 1374 (1979) (decided prior to 1999 amendment).

Requirements for subsection (2) cessation of proceedings. Unless the petitions for annexation are found to be in compliance with the provisions of the annexation act, they do not trigger a cessation of all other annexation proceedings pursuant to subsection (2). Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

Rejected petitions may not be revived by amendment. Once petitions are rejected as defective, it is not possible to revive them by subsequent amendment. Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

Applied in Bd. of County Comm'rs v. City & County of Denver, 40 Colo. App. 281, 573 P.2d 568 (1977).

31-12-118.5. Effect of incorporation proceedings in an area of more than seventy-five thousand inhabitants - annexation ordinance - legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) Incorporation of areas containing more than seventy-five thousand inhabitants into new municipalities furthers the goal of orderly growth of urban communities and achieves the purposes stated in section 31-12-102;

(b) Municipal incorporations of areas containing such population present viable municipal communities and are favored over municipal annexations that may fragment affected communities and reduce or eliminate the ability to provide municipal government, services, and facilities to those communities;

(c) The current municipal annexation and incorporation laws do not adequately expressly address the priority to be given municipal incorporation of areas containing such population;

(d) This section and section 31-12-118 (2)(b) are necessary to provide remedial direction regarding the jurisdiction of municipalities to subject areas containing such population to

municipal annexation and, therefore, that each section shall apply on and after February 1, 1999, to all annexation proceedings that are pending or subject to judicial review or appeal commenced pursuant to sections 31-12-116 and 31-12-117 whether or not such review or appeal is sought;

(e) The enactment of this section and section 31-12-118 (2)(b) is not violative of section 11 of article II of the Colorado constitution with respect to annexation proceedings that are pending or subject to judicial review or appeal on February 1, 1999, since:

(I) Section 11 of article II of the Colorado constitution applies solely to statutes that take away or impair a vested right acquired under existing laws or that impose a new duty or create a new obligation with respect to completed transactions or considerations;

(II) No person has a vested right in any annexation proceedings that are pending or subject to judicial review or appeal on February 1, 1999, that will be impaired by this section or section 31-12-118 (2)(b); and

(III) This section and section 31-12-118 (2)(b) do not impose a new duty or create a new obligation with respect to any municipal annexation that is completed and that is final and no longer subject to judicial review or appeal.

(2) (a) If a petition for an incorporation election is filed pursuant to part 1 of article 2 of this title, then no annexation ordinance that annexes all or any part of the area included in such petition shall be deemed final. This subsection (2) shall apply only if such area proposed for incorporation contains more than seventy-five thousand inhabitants and such petition is filed:

(I) Prior to the expiration of the sixty-day limitation on review proceedings contained in section 31-12-116 (2)(a); or

(II) After a review proceeding on such annexation ordinance has been commenced pursuant to section 31-12-116 and prior to the date of a judicial declaration or final judgment, including an appellate judgment, on such review proceeding.

(b) If such incorporation election is approved by a court order entered pursuant to section 31-2-103, then such annexation ordinance shall be deemed void with respect to any area that is incorporated pursuant to such election.

Source: L. 99: Entire section added, p. 2, § 3, effective February 1.

ANNOTATION

This section is not unconstitutional and applies to all conflicting incorporation and annexation cases that were pending when it was enacted. This section does not violate the special legislation, retrospectivity, or impairment of contract

provisions of the Colorado Constitution. Greenwood Vill. v. Petitioners for Proposed City of Centennial, 3 P.3d 427 (Colo. 2000).

31-12-119. Disconnection of territory because of failure to serve.

The landowners of any tract or contiguous tracts of land aggregating five acres or more located on a boundary of the municipality at the time of the disconnection action may, three or more years after annexation, petition for disconnection from the municipality if such municipality does not, upon demand, provide the same municipal services on the same general terms and conditions as the rest of the municipality receives. The procedure for such disconnection shall be as set forth in parts 6 and 7 of this article, insofar as consistent with this section. To the extent that such parts are inconsistent with this section, the provisions of this section shall prevail when the action is based on failure of the municipality to serve an annexed area.

Source: L. 75: Entire title R&RE, p. 1091, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-119 as it existed prior to 1975.

ANNOTATION

Annexations "condition" does not relieve municipality of statutory obligations. An annexation "condition", that the municipality would not be required to supply water to the annexed subdivision, does not relieve the municipality of its statutory obligation to provide the subdivision with "the same municipal services on the same general terms and conditions as the rest of the municipality receives". Morgan v. Town of Palmer Lake, 44 Colo. App. 134, 608 P.2d 852 (1980).

Trial court did not err by requiring that landowners' petition to disconnect from home rule municipality contain all of the statutory elements required in a petition filed under § 31-12-601 because those procedural elements are incorporated by reference in this section. While § 31-12-601 applies to petitions to disconnect from statutory cities, this section applies to petitions to disconnect from municipalities, and those petitions must follow the procedures set forth in § 31-12-602. Radcliff Props. v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

The record supports the court's denial of landowners' petition because landowners failed to show that municipality did not, upon demand, provide landowners' parcels the same municipal services on the same general terms and conditions that the rest of the municipality received. Radcliff Props. v.

City of Sheridan, 2012 COA 82, 296 P.3d 310.

Landowners' petition to disconnect from home rule municipality filed under this section is not precluded by § 31-12-603 (1). A petition filed under this section only has to follow the procedures "set forth in parts 6 and 7" of this title, not the substantive provisions of those parts. Radcliff Props. v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

Where landowners seeking disconnection failed to show that municipality "does not, upon demand, provide the same municipal services on the same general terms and conditions as the rest of the municipality receives", trial court did not err in denying petition to disconnect. Radcliff Props. v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

31-12-120. Court approval required for certain annexations.

(1) Any annexation which would have the effect of detaching part of the area of an existing school district shall not become effective prior to court approval as specified in this section; except that this subsection (1) shall not apply to an enclave area which has five hundred or less inhabitants nor to any annexation the petition for which is signed by one hundred percent of the landowners in the area proposed to be annexed.

(2) In the event of an annexation as set forth in subsection (1) of this section, the annexing municipality, within ten days following the election as provided in section 31-12-107 or the adoption of the ordinance as provided in section 31-12-106, shall give written notice of intention to annex, pursuant to this part 1, to the board of education of the school district from which it is proposed that the area will be detached.

(3) Within thirty days after the notice of annexation proceedings specified in subsection (2) of this section is delivered to the board of education, the annexing municipality shall petition the district court in accordance with the jurisdictional requirements set forth for review of the governing body's actions in section 31-12-116 (1) for the granting or denial of the requisite court approval to consummate annexation. The petition shall name the board of education as party defendant.

(4) The court shall determine:

(a) On the basis of the most recent assessment, the aggregate valuation for assessment of all property in the school district and the aggregate valuation for assessment of all property in the territory proposed to be annexed; and

(b) On the basis of the most recent enrollment records of the school district, the aggregate number of pupils enrolled in the school district and the aggregate number of pupils so enrolled who live in the area proposed to be annexed.

(5) If the pupil percentage (the percentage of all enrolled pupils that is reflected by all enrolled pupils living in the area proposed to be annexed, carried to four decimal places) is less than three-fifths of the property percentage (the percentage of aggregate valuation for assessment of all property that is reflected by property lying within the area proposed to be annexed), the court shall disapprove the proposed annexation, and such annexation shall not become effective; except that the court shall not be required to disapprove a proposed annexation if it finds that ninety percent of the aggregate valuation for assessment of property in the area to be annexed consists of unimproved land. In no event shall the court approve a proposed annexation which, together with the valuation for assessment of all other property detached from a school district in any one calendar year, exceeds five percent of the aggregate valuation for assessment of all property in the school district.

Source: L. 75: Entire title R&RE, p. 1091, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-120 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-120 is similar to former § 31-8-120 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

The legislative intent is clear, and §§ 31-12-113 and 31-12-116 must be read in conjunction with this section. Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 347, 547 P.2d 249 (1976).

Court approval was unnecessary where an annexation petition was signed by a tenant-in-common holding an undivided interest in the land annexed. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Applied in Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

31-12-121. Provision of municipal services to outside consumers - agreement to annex.

Any municipality, as a condition precedent to the supplying of municipal services pursuant to contract, may require a contemporary agreement by such consumers, who are owners in fee of real property so supplied, to apply for or consent to the annexation of the area to be supplied with such municipal services to the supplying municipality at such future date as the area supplied, or any portion thereof, becomes eligible for annexation pursuant to the provisions of this part 1. The

agreement to annex shall be enforceable by an action for specific performance filed in the district court of the judicial district containing all or part of the supplying municipality. A memorandum of such agreement, setting forth the names of the owners in fee of real property supplied and the legal description of such area, shall be recorded in the office of the county clerk and recorder of the county in which such area is located and shall constitute constructive notice of such agreement to all persons not parties thereto. In no event shall the board of directors of any quasi-municipal corporation organized under part 5 or 6 of article 25 of this title, article 8 of title 29, part 2 of article 20 of title 30, or title 32 (except article 8), C.R.S., or any other law of this state be permitted to obligate or require property owners within any such district to sign any such agreement in order to obtain water service from a municipality.

Source: L. 75: Entire title R&RE, p. 1092, § 1, effective July 1. **L. 81:** Entire section amended, p. 1615, § 16, effective July 1.

Editor's note: This section is similar to former § 31-8-121 as it existed prior to 1975.

ANNOTATION

Law reviews. For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983).

31-12-122. Relation of this part 1 to other laws.

The powers conferred and limitations imposed by this part 1 shall be in addition and supplemental to and not in substitution for powers conferred by any other law.

Source: L. 75: Entire title R&RE, p. 1093, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-122 as it existed prior to 1975.

31-12-123. Applicability to city and county of Denver.

Notwithstanding any provisions of this article to the contrary, this article shall not apply to the city and county of Denver.

Source: L. 86: Entire section added, p. 1035, § 2, effective July 1.

PART 2

ANNEXATION OF ADJACENT AREA UPON REORGANIZATION

31-12-201. Including adjacent area upon reorganization.

(1) When a city or town incorporated prior to July 3, 1877, proceeds to abandon its prior organization and to reorganize under the provisions of part 3 of article 2 of this title, it may include within the boundaries of such reorganized municipality all or any part of contiguous area if:

(a) The contiguous area has been laid off or platted in accordance with the provisions of this title;

(b) The owner of such area has not constituted the same as an addition to such city or town;

(c) The area is not situate within another municipality.

(2) In such cases, the boundaries of all of such city or town, including such contiguous territory, shall be set forth in the petition described in part 3 of article 2 of this title, and all registered electors residing within those boundaries shall be entitled to vote at the election to be conducted under the provisions of said part 3 of article 2.

Source: L. 75: Entire title R&RE, p. 1093, § 1, effective July 1.

Editor's note: This section is similar to former § 31-4-107 as it existed prior to 1975.

PART 3

DISSOLUTION AND ANNEXATION (SPECIAL CHARTERS)

31-12-301. Annexation to charter city.

When any city or town is contiguous to any city existing under any special charter of this state or the territory of Colorado, which charter was issued prior to July 3, 1877, and in such special charter it is provided that when any such city or town, in pursuance of any law of this state, is dissolved or becomes annexed to the city existing under a special charter and the area included

within such city or town existing under general laws becomes part of the city existing under a special charter, the city or town may be annexed to and become part of the city existing under a special charter in the manner set forth in this part 3.

Source: L. 75: Entire title R&RE, p. 1093, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-201 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Colorado Income Tax Act of 1964", see 41 Den. L. Ctr. J. 337 (1964).

Annotator's note. Since § 31-12-301 is similar to former § 31-8-201 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This and the following sections on annexation are not unconstitutional. Valverde v. Shattuck, 19 Colo. 104, 34 P. 947, 41 Am. St. R. 208 (1893).

This and the following sections have a single object - the dissolution of incorporated towns and cities for the purpose of annexing their territory to another city. In a word, the object is annexation, and the dissolution is preliminary to, and inseparable from, annexation; and those provisions which prescribe the means and procedure to be pursued, are incidental or auxiliary to the same end, so, also, the remaining provisions are dependent upon and follow the accomplishment of the single object, annexation. Valverde v. Shattuck, 19 Colo. 104, 34 P. 947, 41 Am. St. R. 208 (1893).

Proceedings for the annexation of a city to the city and county of Denver are governed by § 1 of art. XX, Colo. Const., and this section, not § 3 of art. XIV, Colo. Const. Simon v. Arapahoe County, 80 Colo. 445, 252 P. 811 (1927).

31-12-302. Petition - order of court.

A petition signed by not less than twenty percent of the qualified taxpaying electors of such city or town for the dissolution of such city or town and the annexation of the same to the city existing under a special charter may be filed in the office of the clerk of the district court for the county in which the city or town is situated. The petition, or any part thereof, shall be accompanied by an affidavit of one or more of the petitioners showing that the signers are qualified taxpaying electors of such city or town and shall be prima facie evidence of the matters

therein set forth. Upon the filing of such petition and upon the consent of the special charter city being shown by published ordinance, the district court shall make an order reciting the substance of the petition and requiring the governing body of such city or town to submit the question of such dissolution and annexation at the next regular election or at a special election of such city or town, as provided in section 31-12-305, to a vote of the registered electors thereof. The order shall be served by delivering a copy thereof to any member of the governing body of such city or town and shall be filed in the office of the clerk of such city or town.

Source: L. 75: Entire title R&RE, p. 1093, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-202 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-302 is similar to former § 31-8-202 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Special statutory proceeding. The proceeding which this section requires shall be instituted, carried on, and consummated, as the means of dissolving one municipality and annexing the same to another, is unquestionably a special statutory proceeding as distinguished from an ordinary action at law, or suit in equity, but it is a judicial proceeding, manifestly a proceeding in the court and by the court. Martin v. Simpkins, 20 Colo. 438, 38 P. 1092 (1895).

A petition conforming to this section constitutes prima facie evidence of the essential and controlling facts. Such status continues until overthrown by evidence received in support of the challenge thereof. In re City of Westwood, 115 Colo. 224, 171 P.2d 770 (1946).

Validity of signatures. A showing that many of the signers of one small section of a petition were disqualified did not warrant the trial court's conclusion that the petition otherwise, signed by other petitioners and whose competence was supported by affidavits of various affiants, was insufficient. In re City of Westwood, 115 Colo. 224, 171 P.2d 770 (1946).

Applied in Valverde v. Shattuck, 19 Colo. 104, 34 P. 947, 41 Am. St. R. 208 (1893); Perry v. City of Denver, 27 Colo. 93, 59 P. 747 (1899).

31-12-303. Annexation consented to by ordinance - indebtedness.

No order shall be made by any district court requiring the submission of the question of dissolution and annexation to any election held pursuant to this part 3 until the city existing under a special charter to which it is proposed that such annexation be made has consented to such annexation by ordinance duly passed and published. In case of the annexation of any city or town to any city existing under a special charter, as provided in section 31-12-301, neither the indebtedness of the city or town so annexed nor that of the city to which the same shall be annexed shall become a common indebtedness. Such indebtedness shall be paid by general taxation upon all the taxable property within the city or town in and by which the indebtedness was created.

Source: L. 75: Entire title R&RE, p. 1094, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-210 as it existed prior to 1975.

31-12-304. School districts - annexation of area to another school district - applicability.

(1) When the dissolution and annexation of any city or town under the provisions of this part 3 will result in the detachment of an area from any school district and the attachment of such area to another school district, no petition under section 31-12-302 is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation. If there are any school facilities located within the detached area, the school district owning such facilities shall receive just compensation from the school district that acquires them. Such compensation shall be determined by mutual agreement of the school boards involved or in accordance with the applicable provisions of articles 1 to 7 of title 38, C.R.S. As used in this section, the term "facilities" is limited to school buildings and the real property on which they are situate. Any moneys received by a school district as compensation for such school facilities shall be treated as proceeds from sales of assets pursuant to section 22-45-112, C.R.S.

(2) The provisions of this section shall apply to any annexation or dissolution and annexation proceedings which have not been completed prior to May 22, 1971.

Source: L. 75: Entire title R&RE, p. 1094, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-211 as it existed prior to 1975.

31-12-305. Question submitted to registered electors.

The governing body of such city or town shall, by ordinance and within a reasonable time to be fixed by the court in said order, direct that an election be held to submit the question of the dissolution and annexation to a vote of the registered electors. If the order of the district court is served more than thirty days and less than one hundred twenty days prior to the next regular election of such city or town, the question shall be submitted to a vote of the registered electors at such regular election; otherwise, the question shall be submitted at a special election to be called and held for that purpose. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

Source: L. 75: Entire title R&RE, p. 1094, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-203 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-12-306. Notice of election.

Notice of the submission of the question at a regular or special election shall be given by the clerk in the manner provided in the "Colorado Municipal Election Code of 1965" and shall state the substance of the proposition as submitted by the ordinance. The clerk shall forthwith file in the office of the clerk of the district court a certificate under the seal of such city or town, containing a copy of said notice and specifying the time when and the places where such notices were posted and the newspapers in which said notices were published; and the same shall be prima facie evidence of the matters set forth therein.

Source: L. 75: Entire title R&RE, p. 1095, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-204 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-12-307. Ballots.

All ballots or voting machine tabs prepared for use pursuant to this part 3 shall contain the propositions "For Annexation" and "Against Annexation". If the question is submitted on paper ballots, such ballots shall be deposited in a separate ballot box used for that purpose only.

Source: L. 75: Entire title R&RE, p. 1095, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-205 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-307 is similar to former § 31-8-205 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

This section prescribes the only method in which the ballots can be prepared, evidently two simple tickets, one for, the other against, annexation. Phillips v. Corbin, 8 Colo. App. 346, 46 P. 224 (1896).

31-12-308. Report - approval by court.

(1) Following the canvass and certification of the results of the election, the clerk shall forthwith prepare a report, which shall be signed by the mayor and attested by the clerk under the seal of such city or town, containing a copy of the ordinance under which the question was submitted and of the certified statement and determination of the result of such vote, and he shall file said report in the office of the clerk of the district court.

(2) The court shall examine the report and hear any objections and evidence that may be offered concerning the regularity or irregularity of the proceedings. If the court finds the proceedings irregular, the court shall disapprove said report and order a new election in accordance with the provisions of this part 3. If the court finds that the proceedings were substantially regular, the court shall approve the report. If a majority of the votes cast are against annexation, the question shall not again be submitted at any election held within twelve months thereafter. If a majority of the votes so cast are for annexation, from the approval of such report, such city or town shall be dissolved, and the area then included within the boundaries thereof

shall be annexed to and become part of the city existing under a special charter upon the filing of two certified copies of notice of the completion of such action with a legal description accompanied by a map of the area concerned by the special charter city with the county clerk and recorder of the county in which such action has taken place. The county clerk and recorder shall file the second certified copy of such notice with the division of local government of the department of local affairs, as provided by section 24-32-109, C.R.S. Appeals may be made from judgments of the district court in such proceedings as in other civil cases.

(3) When residence or the payment of taxes is required by law as a qualification to vote or to hold office in the city existing under a special charter, residence and the payment of taxes in any area so annexed shall constitute such qualifications to the same extent as if the same had been in the city existing under a special charter during the same period.

Source: L. 75: Entire title R&RE, p. 1095, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-206 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-308 is similar to former § 31-8-206 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Judicial proceedings. That the section does not expressly require the court's approval of the report of the annexation proceedings to be in writing does not militate at all against the view that the proceedings before the court are judicial. Martin v. Simpkins, 20 Colo. 438, 38 P. 1092 (1895).

The effect which this section gives to the approval of the report is, in every respect, a most important judgment, because it is a judgment which dissolves a municipal corporation, deprives it of its franchises, annexes its territory to another municipality, and which may subject its inhabitants to increased taxation and other additional municipal burdens. Martin v. Simpkins, 20 Colo. 438, 38 P. 1092 (1895).

Citizens' and taxpayers' standing. Resident citizens and taxpayers of a municipality who sought to be annexed to another under this section, have such an interest in the subject matter of the annexation proceedings that they are entitled to a writ of error from the supreme court to review the judgment of the district court approving such proceedings. Martin v. Simpkins, 20 Colo. 438, 38 P. 1092 (1895).

31-12-309. Termination of offices.

If the question so submitted is submitted at a regular election of such city or town and it appears from the canvass that a majority of the votes cast at such election upon the question are "For Annexation", all votes for officers of such city or town, or upon any other question submitted at said election, and all certificates of election issued in pursuance thereof shall be of no force or effect. In such case, upon the approval of the report by the district court, the terms of office of the dissolved city or town shall cease.

Source: L. 75: Entire title R&RE, p. 1095, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-207 as it existed prior to 1975.

31-12-310. Rights become property of city enlarged - utilities not curtailed.

When in pursuance of this part 3 any city or town is annexed to any city existing under a special charter, all rights, causes of action, records, uncollected revenues, and other property of the city or town so annexed shall accrue to and become the property of the annexing city. At least a proportionate share of the moneys of the annexing city available for water service, lights, and other public improvements shall be expended each year within the area formerly included within the city or town so annexed, based upon the valuation for assessment thereof. The water and light service of any city or town so annexed shall not be curtailed after such annexation.

Source: L. 75: Entire title R&RE, p. 1096, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-208 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-310 is similar to former § 31-8-208 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Assessment property of annexing city. It is conceded that the special assessment made by the city of Highlands became, by the act of annexation, an asset of the city of Denver, and whatever power exists to enforce collection thereof was transferred to the latter municipality. City & County of

Denver v. Keeler, 48 Colo. 54, 108 P. 998 (1910).

31-12-311. Validity not questioned after ninety days.

The validity of any proceeding to dissolve and annex any city or town by virtue of this part 3 shall not be questioned in any action or proceeding commenced more than ninety days after such dissolution and annexation is effected.

Source: L. 75: Entire title R&RE, p. 1096, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-209 as it existed prior to 1975.

PART 4

CONSOLIDATION AND ANNEXATION - STATUTORY CITIES AND TOWNS

31-12-401. Consolidation of contiguous cities or towns.

(1) When two or more contiguous cities or towns desire to consolidate with each other, the governing body of each such city or town shall appoint from the officers or citizens thereof a total of three commissioners. The commissioners shall confer together and thereafter report to each governing body the terms and conditions of the proposed consolidation. Such report shall contain, in addition to any other matters which the commissioners may desire to insert therein, the following:

(a) The name for the proposed consolidated city or town;

(b) The number of wards into which the new city shall be divided, in the case of a proposed consolidated city, together with the boundaries of such wards.

(2) In fixing the number of wards, the commissioners shall not select a number which exceeds the entire number of wards contained in all of the cities and towns proposed to be consolidated; except that one ward may be allowed for each town proposed to be consolidated with a city.

(3) If the governing body of each such city or town approves the terms and conditions contained in the report, it shall so declare by proper ordinance which may be passed at any one regular or special meeting called for the purpose. Thereupon the governing body of each such city or town shall submit, by ordinance, the question of consolidation upon the terms and conditions so proposed to the registered electors of its respective city or town.

Source: L. 75: Entire title R&RE, p. 1096, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-301 as it existed prior to 1975.

ANNOTATION

Applied in Donahue v. Morgan, 24 Colo. 389, 50 P. 1038 (1897).

31-12-402. Election - notice - ballot.

(1) In case the ordinance of approval is passed by the governing body less than one hundred twenty days and more than thirty days prior to the regular election in such city or town, the submission to the electors shall be at such regular election; otherwise, the governing body, in the ordinance of approval, shall order a special election, to be held not less than thirty days nor more than forty days after that date for the purpose of determining the question of such consolidation. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

(2) The mayor or, in case there is no mayor, the presiding officer of the governing body shall cause notice of the election to be given, which notice shall be given in the manner prescribed by the "Colorado Municipal Election Code of 1965".

(3) The form of the ballots or voting machine tabs at such election shall be: "For Consolidation" and "Against Consolidation". If a majority of the votes cast at such election in each of the cities or towns proposed to be consolidated are for consolidation, the proposition shall be carried. If a majority of the votes cast at such election in any of the cities or towns proposed to be consolidated are against consolidation, the proposition shall be defeated, and such question shall not be submitted again for one year.

(4) If any one or more of the cities or towns proposed to be consolidated was a city, the consolidated corporation shall be a city.

Source: L. 75: Entire title R&RE, p. 1096, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-302 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Applied in Donahue v. Morgan, 24 Colo. 389, 50 P. 1038 (1897).

31-12-403. Election of officers after consolidation.

In case the proposition for consolidation is carried in all of said cities or towns, the mayors or presiding officers of the governing bodies shall at once issue a joint proclamation announcing an election of officers of the consolidated city or town. Notice of the election shall be given in the manner prescribed by the "Colorado Municipal Election Code of 1965". At said election there shall be chosen a board of trustees if the consolidated corporation is a town, and, if it is a city, there shall be chosen a mayor and two councilmen for each ward of the consolidated city. There shall be elected, in addition, such other officers as under the law are or may be elected by the electors in cities or towns. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965" insofar as practicable under the direction of the clerks and governing bodies of the cities and towns which were consolidated.

Source: L. 75: Entire title R&RE, p. 1097, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-303 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-12-404. Tenure of officers.

All officers chosen at such election, including councilmen, shall hold their respective offices until the next regular election. At the first regular election succeeding the consolidation and at each succeeding regular election thereafter, there shall be elected two councilmen for each ward of said city, each of whom shall hold office for a term of two years.

Source: L. 75: Entire title R&RE, p. 1097, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-304 as it existed prior to 1975.

31-12-405. Consolidation complete.

The members of the governing body elected at such election, on the second Monday after the election, shall meet and organize the governing body of the consolidated city or town and shall file two certified copies of the notice of the consolidation with a legal description accompanied by a map of the area concerned by the consolidated city or town with the county clerk and recorder of the county in which such action has taken place, and from that time the consolidation shall be deemed complete. The county clerk and recorder shall file the second certified copy of such notice with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S. The consolidated city or town shall thenceforth exist with the same powers and duties and subject to the same regulations as other cities or towns. The cities or towns so consolidated shall then be merged in the consolidated corporation, and the terms of office of all of the officers of the cities and towns so consolidated shall cease.

Source: L. 75: Entire title R&RE, p. 1097, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-306 as it existed prior to 1975.

31-12-406. First ordinances - appropriation.

The governing body of the consolidated city or town may pass, at the first meeting or as soon thereafter as possible, a resolution adopting in a body the ordinances of some one of the cities or towns forming the consolidated town or city as such ordinances existed at the date of consolidation. Upon the passage of the resolution, the whole of the ordinances of the city or town so designated as they existed at the date of consolidation shall become the ordinances of the consolidated city or town in the same manner as if they had been regularly passed and published by the governing body of the consolidated city or town and shall so remain until amended or repealed. They shall also make appropriation, by ordinance, for the expense of the then unexpired portion of the current fiscal or municipal year.

Source: L. 75: Entire title R&RE, p. 1098, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-307 as it existed prior to 1975.

31-12-407. Licenses.

All licenses or other privileges issued or granted by any of the consolidated towns or cities prior to consolidation shall remain in full force and effect until the expiration of the same according to the terms thereof.

Source: L. 75: Entire title R&RE, p. 1098, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-308 as it existed prior to 1975.

31-12-408. Bonded and floating indebtedness.

All bonded indebtedness due or owing by any city or town prior to consolidation shall remain, after consolidation, the debt of that portion of the consolidated city or town comprised within the former limits of the city or town which owed such indebtedness prior to consolidation. No tax shall be levied or collected for the payment of the principal and interest of such indebtedness, except upon and from persons or property residing or situated within the former limits of the town or city owing such indebtedness. The governing body of the consolidated city or town shall make such levies and take such other measures for the payment of the principal and interest out of the property within such limits as it would have been the duty or within the power of the governing body of the city or town owing such indebtedness to do had no such consolidation taken place. If any of the cities or towns consolidated owed any floating indebtedness at the date of consolidation, the governing body of the consolidated city or town shall ascertain the amount of such indebtedness owed by each of said cities or towns prior to consolidation and, at the next annual levy of taxes succeeding consolidation, shall make a special levy upon property situated within the former limits of the city or town owing such indebtedness sufficient for the payment of the same. The terms of consolidation may make other provisions for said bonded or floating indebtedness. Any such bonded indebtedness may be refunded by the consolidated city or town under the provisions of the laws of Colorado existing at the time of such refunding providing for the refunding of bonds of cities and towns.

Source: L. 75: Entire title R&RE, p. 1098, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-309 as it existed prior to 1975.

31-12-409. Property belongs to consolidated cities or towns.

All property, real or personal, belonging to any of the cities or towns prior to consolidation, unless the agreement for consolidation otherwise provides, immediately upon the accomplishment of consolidation, shall vest in and become the property of the consolidated city or town. All indebtedness, claims, demands, or rights owing or belonging to any of said cities or towns prior to consolidation in like manner shall vest in and become due to the consolidated city or town, which shall thereafter have the right to demand, have, sue for, recover, and enforce the same in its own name.

Source: L. 75: Entire title R&RE, p. 1098, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-310 as it existed prior to 1975.

ANNOTATION

Applied in Donahue v. Morgan, 24 Colo. 389, 50 P. 1038 (1897).

31-12-410. Suits - special tax.

If any actions, suits, or proceedings are pending against any one of the cities or towns at the time of the consolidation, the consolidated city or town shall be substituted as plaintiff or defendant in such action, suit, or proceeding. The same shall thenceforth proceed as if the claim, right, debt, or demand upon which said action, suit, or proceeding was founded had originally existed in favor of or against such consolidated town or city. In like manner, any person who, at the date of consolidation, has any claim, demand, or right of action against any one or more of the cities or towns so consolidating may bring any action, suit, or proceeding necessary for the collection or enforcement thereof after such consolidation against the consolidated city or town in the same manner as though the claim, demand, or right of action had originally existed against such consolidated city or town. In no case shall any tax be levied upon or liability incurred by any property or persons on account of such actions, suits, proceedings, debts, liabilities, or rights

of action, except those persons and property which would have been liable for the same in case no consolidation had taken place. The governing body of the consolidated city or town has the power to levy a special tax upon persons and property within the former limits of the city or town against which such action, suit, proceeding, claim, demand, or right of action existed for the payment, liquidation, or settlement thereof or of any judgment founded thereon. The terms of consolidation may make other provisions for the payment of such demands, liabilities, and judgments.

Source: L. 75: Entire title R&RE, p. 1099, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-311 as it existed prior to 1975.

31-12-411. Collection of prior taxes - disposition.

The county treasurer shall proceed to collect all taxes assessed against persons or property within the limits of the cities or towns consolidating prior to such consolidation in the same manner as if no such consolidation had taken place. All moneys in the hands of the county treasurer at the date of consolidation belonging to any of the consolidating cities or towns and all moneys thereafter collected by him on account of any of such consolidating cities or towns shall be turned over by him to the proper officers of the consolidated city or town. In the same manner, if there are, at the date of consolidation, any moneys in the hands of any officer of any of the consolidating cities or towns belonging to his city or town, he shall forthwith turn over such moneys, upon the accomplishment of consolidation, to the proper officers of the consolidated city or town. The moneys thus obtained shall be applied to the payment of the indebtedness of the city or town from which they were derived, and the balance, if any, shall be used for the purpose of the consolidated city or town, unless the terms of consolidation otherwise provide.

Source: L. 75: Entire title R&RE, p. 1099, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-312 as it existed prior to 1975.

31-12-412. Annexing cities and towns.

(1) When any city or town desires to be annexed to another contiguous city or town, the governing body of each such city or town shall appoint a total of three commissioners to arrange

and report to such governing body respectively the terms and conditions on which the proposed annexation can be made. If the governing body of each such city or town approves of the terms and conditions proposed, it shall so declare by proper ordinance. Thereupon, the governing body of each such city or town, by ordinance passed at least thirty days prior to the regular election therein or at least thirty days prior to a special election for that specific purpose, may submit the question of such annexation upon the terms and conditions so proposed to the registered electors of its respective city or town. Such election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965".

(2) If a majority of the registered electors of each city or town vote in favor of such annexation, the governing body of each shall so declare by proper ordinance. A certified copy of the whole proceedings for annexation of the city or town to be annexed shall be filed with the clerk of the city or town to which the annexation is made, and the latter shall file two certified copies of the notice of such action with a legal description accompanied by a map of the area concerned with the county clerk and recorder of the county in which such action has taken place. The county clerk and recorder shall file the second certified copy of such notice with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S.

Source: L. 75: Entire title R&RE, p. 1099, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-313 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965, see article 10 of this title.

ANNOTATION

Annotator's note. Since § 31-12-412 is similar to former § 31-8-313 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Complies with constitutional requirement. This statutory provision complied with the constitutional requirement that the general assembly provide by general law for the organization of cities and towns. Griffin v. City of Canon City, 147 Colo. 15, 362 P.2d 200 (1961).

31-12-413. Annexation complete - rights - liabilities.

When certified copies of the proceedings for annexation are filed as contemplated in section 31-12-412, the annexation shall be complete, and the city or town to which the annexation is made has the power to pass such ordinances, not inconsistent with law, as will carry into effect the terms of such annexation. Thereafter, the city or town annexed shall be governed as part of the city or town to which it is annexed. Such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or towns, and they may be enforced the same as if no such annexation had taken place.

Source: L. 75: Entire title R&RE, p. 1100, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-314 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-413 is similar to former § 31-8-314 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Complies with constitutional requirement. This statutory provision complied with the constitutional requirement that the general assembly provide by general law for the organization of cities and towns. Griffin v. City of Canon City, 147 Colo. 15, 362 P.2d 200 (1961).

Collateral attack limited. Unless proceedings for the annexation of territory to a municipal corporation are wholly void for want of authority or jurisdiction, their validity is not subject to collateral attack. Griffin v. City of Canon City, 147 Colo. 15, 362 P.2d 200 (1961).

When the annexation has been completed and a de facto, if not a de jure, corporation is created only quo warranto would lie, thereby foreclosing a collateral attack on the validity of the annexation. Griffin v. City of Canon City, 147 Colo. 15, 362 P.2d 200 (1961).

31-12-414. School districts - annexation of area to another school district - applicability.

(1) When any consolidation under this part 4 will result in the detachment of an area from any school district and the attachment of such area to another district, the provisions of section 31-12-304 shall apply with respect to the approval of the board of directors of the school district to which such area will be attached and with respect to the compensation required to be paid by the school district which acquires school facilities located within the detached area.

(2) The provisions of this section shall apply to any consolidation proceedings which have not been completed prior to May 22, 1971.

Source: L. 75: Entire title R&RE, p. 1100, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-315 as it existed prior to 1975.

PART 5

DISCONNECTION BY ORDINANCE - STATUTORY CITIES AND TOWNS

31-12-501. Application - enactment - filing - definitions.

(1) When the owner of a tract of land within and adjacent to the boundary of a municipality desires to have said tract disconnected from the municipality, the owner may apply to the governing body of the municipality for the enactment of an ordinance disconnecting the tract of land from the municipality. The owner shall also provide notice and a copy of the application to the board of county commissioners of the county in which the tract of land that is the subject of the application is located, to the board of directors of any affected special district, and to any affected urban renewal authority. No later than the effective date of the disconnection of a particular tract of land, any vested property rights affecting the tract that have been established pursuant to article 68 of title 24 prior to such date that are possessed by the owner of the tract shall be expired or relinquished.

(2) (a) Not more than thirty days after receiving the notice required by subsection (1) of this section, the board of county commissioners, the board of directors of any affected special district, or any affected urban renewal authority may request a meeting with the owner and the governing body of the municipality, or its appointee, to discuss and address any negative impacts that would result from the disconnection, including any change in the level or extent of services being provided by an affected special district or any interference with the implementation of an urban renewal plan of any affected urban renewal authority. If such meeting is requested, the owner and the governing body or its appointee shall meet with the board of county commissioners, or its appointee, the board of any affected special district, or its appointee, or any affected urban renewal authority, or its appointee, not more than thirty days after the meeting was requested. Failure by the board of county commissioners, the board of any affected special district, or any affected urban renewal authority to request a meeting constitutes an acknowledgment by the particular board or authority that the disconnection will not adversely affect the county, the affected special district, or the affected urban renewal authority, as applicable.

(b) (Deleted by amendment, L. 2026.)

(3) On receipt of such application, the governing body of the municipality shall give due consideration to the disconnection application, and, if such governing body is of the opinion that the best interests of the municipality will not be prejudiced by the disconnection of such tract, it shall enact an ordinance effecting such disconnection.

(4) If such an ordinance is enacted, it is immediately effective upon the required filing with the county clerk and recorder to accomplish the disconnection, and two certified copies thereof shall be filed by the clerk in the office of the county clerk and recorder of the county in which such tract lies. The county clerk and recorder shall file the second certified copy with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S.

(5) (a) Any tract of land that has been disconnected from a municipality, whether by means of an ordinance enacted under subsection (3) of this section or a court decree that has been entered under part 6 of this article 12, shall be made subject to the applicable county's zoning resolution and map and other land development regulations within ninety days after the effective date of the disconnection as described in subsection (4) of this section. Any provision of the county's zoning resolution, zoning map, or zoning plan automatically applying a uniform zoning classification to all land that may be disconnected in the future is void and of no effect as to any particular tract of land. The county may institute the procedure specified in the Colorado Revised Statutes, in its zoning resolution or zoning plan, or in its other land development regulations to allow the particular tract of land to obtain the necessary land entitlements at any time after the county receives the notice from the municipality regarding enactment of an ordinance disconnecting the tract from the municipality described in subsection (1) of this section; except that any such zoning resolution, zoning plan, or other land development action shall not be enacted and made effective until the tract of land has been disconnected from the municipality in accordance with this section.

(b) During the ninety-day period specified in subsection (5)(a) of this section, or such lesser time as is required to satisfy such requirement, the county may elect not to issue any building or occupancy permit for all or any portion of the land area that is the subject of the disconnection application.

(c) Any county may commence the procedure specified in its own subdivision regulations to subdivide the tract of land that is the subject of the disconnection application at any time after the disconnection has been completed and the ordinance has been filed with the county clerk and recorder in accordance with subsection (4) of this section; except that the county shall not make a final decision approving the subdivision until zoning affecting the particular tract of land has been enacted in accordance with subsection (5)(a) of this section.

(6) As used in this section, unless the context otherwise requires:

(a) "Affected special district" means any special district that, by its service plan or pursuant to an intergovernmental agreement, is or will be expected to provide service to the tract of land that is the subject of the disconnection application.

(b) "Affected urban renewal authority" means any urban renewal authority formed pursuant to part 1 of article 25 of this title 31 with an urban renewal area described in an urban renewal plan that includes the tract of land that is the subject of the disconnection application.

Source: L. 75: Entire title R&RE, p. 1100, § 1, effective July 1. **L. 2016:** Entire part amended, (HB 16-1272), ch. 82, p. 209, § 1, effective August 10. **L. 2020:** (1) amended and (5) added, (HB 20-1133), ch. 99, p. 384, § 1, effective September 14. **L. 2026:** (1) and (2) amended and (6) added, (HB 26-1253), ch. 100, p. 396, § 1, effective August 12.

Editor's note: (1) This section is similar to former § 31-8-601 as it existed prior to 1975.

(2) Section 8(2) of chapter 100 (HB 26-1253), Session Laws of Colorado 2026, provides that the act changing this section applies to applications for disconnection from a municipality and petitions for disconnection from a city or town commenced on or after August 12, 2026.

31-12-502. Liability for taxes.

The land so disconnected shall not thereby be exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the governing body of such municipality while such land was within the limits thereof and which remains unpaid and for the payment of which said land could be lawfully taxed.

Source: L. 75: Entire title R&RE, p. 1101, § 1, effective July 1. **L. 2016:** Entire part amended, (HB 16-1272), ch. 82, p. 210, § 1, effective August 10.

Editor's note: This section is similar to former § 31-8-602 as it existed prior to 1975.

31-12-503. Future levies - prepayment.

When the governing body of such municipality levies a tax upon the property within such municipality for the purpose of paying such indebtedness or any part thereof or interest thereon, such governing body may levy a tax at the same rate and for the same purpose on the land so

disconnected. The county treasurer shall pay over to such municipality all moneys collected by the treasurer on account of such tax, to be applied only to the payment of such indebtedness. In case the owner of any land so disconnected pays off and discharges a portion of such indebtedness equal in amount to the same proportion of the indebtedness which the valuation for assessment of the land bears to the entire valuation for assessment of all the property subject to taxation for the payment of such indebtedness, calculated according to the last assessment previous to such payment, said land is exempted from further taxation to pay such indebtedness. Upon such payment being made, the canceled bonds or other evidences of payment of such portion of said indebtedness must be deposited with the treasurer of such municipality, and a certificate shall be given by the treasurer stating that such payment has been made.

Source: L. 75: Entire title R&RE, p. 1101, § 1, effective July 1. **L. 2016:** Entire part amended, (HB 16-1272), ch. 82, p. 210, § 1, effective August 10.

Editor's note: This section is similar to former § 31-8-603 as it existed prior to 1975.

PART 6

DISCONNECTION BY COURT DECREE - STATUTORY CITIES

31-12-601. Petition to disconnect territory.

(1) Except as otherwise provided in subsection (2) of this section, when a tract or contiguous tracts of land, aggregating twenty or more acres in area, are embraced within the municipal limits of any city, which are upon or contiguous to the border of the city, the owners of the tracts of land may petition the district court for the county in which the land, or any part thereof, is situated to have the land disconnected from the city.

(2) The process for disconnection from a city as provided in this part 6 is not available for any tract of land that is included within the boundaries of:

(a) An urban renewal area described in an urban renewal plan approved pursuant to part 1 of article 25 of this title 31; or

(b) A special district that, by its service plan or pursuant to an intergovernmental agreement, is or will be expected to provide service to the tract of land.

Source: L. 75: Entire title R&RE, p. 1101, § 1, effective July 1. **L. 2026:** Entire section amended, (HB 26-1253), ch. 100, p. 397, § 2, effective August 12.

Editor's note: (1) This section is similar to former § 31-8-401 as it existed prior to 1975.

(2) Section 8(2) of chapter 100 (HB 26-1253), Session Laws of Colorado 2026, provides that the act changing this section applies to applications for disconnection from a municipality and petitions for disconnection from a city or town commenced on or after August 12, 2026.

ANNOTATION

Annotator's note. Since § 31-12-601 is similar to former § 31-8-401 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Procedures specified. The provisions of this section and § 31-12-701 specify the procedure to be followed and the standards which obtain where disconnection is sought. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Mandatory. This section permitting the owner of lands upon the border of the town to procure the disconnection thereof from the town is mandatory. Hendricks v. Town of Julesburg, 55 Colo. 59, 132 P. 61 (1913).

This section being mandatory, when the facts required by this section to be established have been established by competent evidence, it becomes the duty of the court to disconnect the territory without regard to its views concerning the justice and equity of the matter. Anaconda Mining Co. v. Town of Anaconda, 33 Colo. 70, 80 P. 144 (1905).

The procedures for disconnection by court decree of territory from a city as provided for in this section are mandatory. Master Kraft Bldrs. Corp. v. City of Lakewood, 44 Colo. App. 90, 615 P.2d 47 (1980).

The words tracts or tracts apply to the pieces making the aggregate of 20 acres or more in any city and apply to the 20 acres or more as a unit for consideration under the petition. Gypsum v. Lundgren, 61 Colo. 332, 157 P. 195 (1916).

The "border" of the city, as used in this section, means the corporate limits of the city and not the area adjacent to that part which is in actual use for municipal purposes. Anaconda Mining Co. v. Town of Anaconda, 33 Colo. 70, 80 P. 144 (1905).

This section does not require that each of the separate tracts should be upon or contiguous to the border, if contiguous to each other, that one of them is upon the border brings the case within this section. Gypsum v. Lundgren, 61 Colo. 332, 157 P. 195 (1916).

Tract not contiguous. A tract of land of irregular shape of an average width of about 600 feet and an average length of about 1,500 feet, and which extends from the border of an incorporated town several hundred feet into the town and to the platted portion of the town, and only about 150 feet in width of the tract touches the border, is

not upon or contiguous to the border of the town within the meaning of this section. Anaconda Mining Co. v. Town of Anaconda, 33 Colo. 70, 80 P. 144 (1905).

Court's finding as to acreage presumed legal. In absence of any direct statement as to amount of acreage involved, either in petition or evidence, the court was in position, from legal description of lands before it, to determine acreage, and presumption as to legality of finding and judgment on that point must be followed. Sheridan v. Fox Metal Prods. Corp., 123 Colo. 94, 227 P.2d 1003 (1950).

No review of special statutory proceeding. Because the statute conferring jurisdiction upon the court of appeals to review the final judgments of inferior courts in civil cases applied only to final judgments or decrees in actions at law or suits in equity, and did not apply to special statutory proceedings, the court of appeals had no jurisdiction to review a judgment of the county court in a proceeding under this section providing for the disconnection of outlying territory from cities and towns. Martin v. Simpkins, 20 Colo. 438, 38 P. 1092 (1894); Phillips v. Corbin, 25 Colo. 62, 49 P. 279 (1898); Town of Fletcher v. Smith, 18 Colo. App. 201, 70 P. 697 (1902).

This section does not apply to disconnection from home rule municipalities, because the applicable definition of "city" specifically does not include any city which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution. Allely v. City of Evans, 124 P.3d 911 (Colo. App. 2005).

Trial court did not err by requiring that landowners' petition to disconnect from home rule municipality contain all of the statutory elements required in a petition filed under this section because those procedural elements are incorporated by reference in § 31-12-119. While this section applies to petitions to disconnect from statutory cities, § 31-12-119 applies to petitions to disconnect from municipalities, and those petitions must follow the procedures set forth in § 31-12-602. Radcliff Props. v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

The record supports the court's denial of landowners' petition because landowners failed to show that municipality did not, upon demand, provide landowners' parcels the same municipal services on the same general terms and conditions that the rest of the municipality received. Radcliff Props. v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

Landowners' petition to disconnect from home rule municipality filed under § 31-12-119 is not precluded by § 31-12-603 (1). Radcliff Props. v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

31-12-602. Contents of petition.

(1) The petition must contain the following:

(a) A description of the land sought to be disconnected;

(b) An allegation that the land contains in the aggregate an area of twenty or more acres and is located upon or adjacent to the border of the city;

(c) An allegation that no part of the land has been duly platted into lots and blocks as a part of or addition to the city;

(d) An acknowledgment that, for a period of six years after the effective date of the disconnection, the land shall not be subdivided into lots or plats of smaller area than is required during such period for lots within the city adjoining the land sought to be disconnected under the applicable ordinances or regulations of such city;

(e) An acknowledgment that the land shall not be used during said six-year period for industrial or commercial uses if, during such period, the applicable ordinances of the city prohibit such uses upon the area within the city adjoining such land;

(f) An allegation that all taxes or assessments lawfully due upon the land up to the time of the filing of the petition have been fully paid; and

(g) An allegation that the tracts of land are not located within the boundaries of an urban renewal area described in an urban renewal plan approved pursuant to part 1 of article 25 of this title 31 or a special district that, by its service plan or pursuant to an intergovernmental agreement, is or will be expected to provide service to the tract of land.

(2) Any decree of disconnection entered pursuant to this part 6 shall restrict the use of the land in the manner set forth in paragraphs (d) and (e) of subsection (1) of this section, but such restrictions shall not continue to apply to any land which, within six years after the effective date of the disconnection, is annexed back into the city.

Source: L. 75: Entire title R&RE, p. 1101, § 1, effective July 1. **L. 2026:** IP(1) and (1)(f) amended and (1)(g) added, (HB 26-1253), ch. 100, p. 398, § 3, effective August 12.

Editor's note: (1) This section is similar to former § 31-8-402 as it existed prior to 1975.

(2) Section 8(2) of chapter 100 (HB 26-1253), Session Laws of Colorado 2026, provides that the act changing this section applies to applications for disconnection from a municipality and petitions for disconnection from a city or town commenced on or after August 12, 2026.

ANNOTATION

Annotator's note. Since § 31-12-602 is similar to former § 31-8-402 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Procedures for disconnection of territory are mandatory. The procedures for disconnection by court decree of territory from a city as provided for in this section are mandatory. Master Kraft Bldrs. Corp. v. City of Lakewood, 44 Colo. App. 90, 615 P.2d 47 (1980).

This section recognizes the 20 acres or more as a unit which is required to be upon or adjacent to the border of the town. Gypsum v. Lundgren, 61 Colo. 332, 157 P. 195 (1916).

Section does not prescribe amount of property to qualify land for disconnection. This section does not prescribe the amount or percentage of the subject property which must be located upon the border of the city to qualify a tract of land for disconnection. Master Kraft Bldrs. Corp. v. City of Lakewood, 44 Colo. App. 90, 615 P.2d 47 (1980).

This section applies only to unplatted lands within the corporate limits, land laid out in blocks and lots with the streets of the city or town running through it is not the character of land contemplated by the section. Town of Fruita v. Williams, 33 Colo. 157, 80 P. 132 (1905).

A block in a city is a part of the city enclosed by streets, whether occupied by buildings or composed of vacant lots. Town of Fruita v. Williams, 33 Colo. 157, 80 P. 132 (1905).

And the ordinary meaning of the term "lot", when used with reference to town or city property, is a subdivision of a block according to the map or survey of such town or city. Town of Fruita v. Williams, 33 Colo. 157, 80 P. 132 (1905).

Proof of contiguity required. In a proceeding to disconnect lands from a city it is not necessary for petitioners to allege the lands to be contiguous, but under § 31-12-601 it is necessary to prove that the lands are contiguous. Sheridan v. Fox Metal Prods. Corp., 123 Colo. 94, 227 P.2d 1003 (1950).

Standing despite failure to pay taxes. Under this section, the owner of a parcel of lands within the description set down in the statute may maintain a petition to disconnect it from the city or town within which it is included, even thought taxes levied thereon but not yet due are unpaid. Hendricks v. Town of Julesburg, 55 Colo. 59, 132 P. 61 (1913).

Taxes remain a lien on disconnected land. The argument that no land should be taken out of the corporate limits until all claims for taxes against it are adjusted, whether due or not, for such in effect is the contention of defendant in error, is without merit, because it is clear that, in any event, all taxes lawfully assessed against the land, prior to its disconnection, create a lien against it, and the land would be held for the payment of such taxes, as well after disconnection as before, and the provision that all taxes due at the time of the filing of the petition must be shown to have been

paid, was simply to preclude owners from making such application when actually in default, and is a very wise and proper requirement. It was in no sense intended thereby to discriminate against such owners and compel them to pay taxes before other taxpayers are required to do so. Hendricks v. Town of Julesburg, 55 Colo. 59, 132 P. 61 (1913).

Trial court did not err by requiring that landowners' petition to disconnect from home rule municipality contain all of the statutory elements required in a petition filed under § 31-12-601 because those procedural elements are incorporated by reference in § 31-12-119. While § 31-12-601 applies to petitions to disconnect from statutory cities, § 31-12-119 applies to petitions to disconnect from municipalities, and those petitions must follow the procedures set forth in this section. Radcliff Props. Ltd. P'ship, LLLP v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

The record supports the court's denial of landowners' petition because landowners failed to show that municipality did not, upon demand, provide landowner's parcels the same municipal services on the same general terms and conditions that the rest of the municipality received. Radcliff Props. Ltd. P'ship, LLLP v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

Landowners' petition to disconnect from home rule municipality filed under § 31-12-119 is not precluded by § 31-12-603 (1). Radcliff Props. Ltd. P'ship, LLLP v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

Applied in Anaconda Mining Co. v. Town of Anaconda, 33 Colo. 70, 80 P. 144 (1905); Brell v. Ovid, 88 Colo. 198, 293 P. 961 (1930).

31-12-603. Hearing - decree - proviso.

(1) Upon the filing of such petition in the district court, the judge shall set a date for a hearing, not less than forty days nor more than sixty days thereafter. The clerk of the court shall serve a copy of the petition and a notice of the date and the time set for such hearing upon the mayor of the city at least thirty days prior to the hearing of such petition. Upon the hearing and proof of the facts set forth in the petition, the court shall determine whether the tracts of land should be disconnected from the city, and the court shall enter an order or decree accordingly.

(2) The owners are not entitled to disconnect the land under the provisions of this part 6 when:

(a) The city has maintained streets, lights, and other public utilities for a period of three years through or adjoining the tracts of land; or

(b) The tracts of land are included within the boundaries of:

(I) An urban renewal area described in an urban renewal plan approved pursuant to part 1 of article 25 of this title 31; or

(II) A special district that, by its service plan or pursuant to an intergovernmental agreement, is or will be expected to provide service to the tract of land.

(3) If an area has been annexed to a city for a period of two years and then successful action is undertaken to disconnect the area, the disconnected land shall be made subject to the applicable county's zoning resolution and map and other land development regulations within ninety days after the effective date of the disconnection as described in section 31-12-501 (5).

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1. **L. 2020:** (2) amended, (HB 20-1133), ch. 99, p. 385, § 2, effective September 14. **L. 2026:** Entire section amended, (HB 26-1253), ch. 100, p. 398, § 4, effective August 12.

Editor's note: (1) This section is similar to former § 31-8-403 as it existed prior to 1975.

(2) Section 8(2) of chapter 100 (HB 26-1253), Session Laws of Colorado 2026, provides that the act changing this section applies to applications for disconnection from a municipality and petitions for disconnection from a city or town commenced on or after August 12, 2026.

ANNOTATION

I. General Consideration.

II. Effect of Maintenance of Streets or Public Utilities.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 31-12-603 is similar to former § 31-8-403 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section is unambiguous. Master Kraft Bldrs. Corp. v. City of Lakewood, 184 Colo. 254, 519 P.2d 1188 (1974).

Section grants unequivocal right to disconnect property any time prior to three years acceptance of services. Master Kraft Bldrs. Corp. v. City of Lakewood, 184 Colo. 254, 519 P.2d 1188 (1974).

No delegation of legislative power. It is settled in this state that laws which vest in courts, political bodies or the people of the community, authority to determine and change, under the provisions of the law, the boundaries of cities and towns, is not a delegation of the power to make laws, and is therefore not violative of the maxim that the power conferred upon the general assembly cannot be delegated by the department to any other body or authority. Town of Edgewater v. Liebhardt, 32 Colo. 307, 76 P. 366 (1904).

Procedures for disconnection of territory are mandatory. The procedures for disconnection by court decree of territory

from a city as provided for in this section are mandatory. Master Kraft Bldrs. Corp. v. City of Lakewood, 44 Colo. App. 90, 615 P.2d 47 (1980).

Duty of court to order disconnection is mandatory where statutory requisites are met. Master Kraft Bldrs. Corp. v. City of Lakewood, 184 Colo. 254, 519 P.2d 1188 (1974).

This section does not authorize the court to do as it pleases, and the section is mandatory. Town of Edgewater v. Liebhardt, 32 Colo. 307, 76 P. 366 (1904).

If, upon the trial, it appears that the conditions required to be established by this section have been established, it becomes the duty of the court to enter a decree disconnecting the territory from the city or town. Town of Edgewater v. Liebhardt, 32 Colo. 307, 76 P. 366 (1904).

Where, after petition in proceeding for disconnection had been filed, petitioners transferred a portion of land, but petitioner's ownership was established by evidence and grantee appeared and was treated as a party to proceeding by trial court, supreme court upheld disconnection. Sheridan v. Fox Metal Prods. Corp., 123 Colo. 94, 227 P.2d 1003 (1950).

Landowners' petition to disconnect from home rule municipality filed under § 31-12-119 is not precluded by subsection (1) of this section. The record supports the court's denial of landowners' petition because landowners failed to show that municipality did not, upon demand, provide landowners' parcels the same municipal services on the same general terms and conditions as the rest of the municipality received. A petition filed under § 31-12-119 only has to follow the procedures "set forth in parts 6 and 7" of this title, not the substantive provisions of those parts. Radcliff Props. v. City of Sheridan, 2012 COA 82, 296 P.3d 310.

II. EFFECT OF MAINTENANCE OF STREETS OR PUBLIC UTILITIES.

City need not be incorporated three years. There is no provision requiring that the city from which disconnection is sought must be incorporated three years. If a city has been incorporated less than three years, it could not have furnished the services for the requisite time and the statute applies. To require three years of incorporation by a city before the petition could be filed would lock the property in and prevent recourse to the statute. Master Kraft Bldrs. Corp. v. City of Lakewood, 184 Colo. 254, 519 P.2d 1188 (1974).

"Adjoining" connotes physical touching or bounding at some point. Master Kraft Bldrs. Corp. v. City of Lakewood, 44 Colo. App. 90, 615 P.2d 47 (1980).

Street lights and public utilities are not "adjoining". Street lights, public utilities, and streets situated only in close proximity to land sought to be disconnected are not "adjoining". Master Kraft Bldrs. Corp. v. City of Lakewood, 44 Colo. App. 90, 615 P.2d 47 (1980).

Streets. The streets contemplated by this section are those established by the municipality, or maintained primarily for municipal purposes, and the existence of which depends on the continued existence of

the town. Morrison v. Town of Lafayette, 67 Colo. 220, 184 P. 301 (1919).

Public utilities. A public utility, to come within this section, must be capable of benefit to a substantial portion of the premises sought to be discontinued. Morrison v. Town of Lafayette, 67 Colo. 220, 184 P. 301 (1919).

Street lighting furnished by an independent company under contract with a city is a maintenance of such lighting by the city under the provisions of this section. Town of Englewood v. Jones, 71 Colo. 181, 204 P. 607 (1922).

It is immaterial that the lights are upon the opposite side of the street from the land, that the street was at one time a county road, and that the amount of work done upon it by the city has been small. Town of Englewood v. Jones, 71 Colo. 181, 204 P. 607 (1922).

Combination of more than one not required. In order to prevent the disconnection of territory from a city or town under this section, it is not necessary that the city or town shall have maintained "streets, lights and other public utilities", all combined and each in the plural, upon the land sought to be disconnected, but it is sufficient to prevent such disconnection if the city or town has for a period of three years exercised supervision over the territory and has in good faith maintained thereon such public improvements or utilities as in the judgment of the town authorities the public interests require, and it is not necessary that more than one street, or more than one light or other public utilities shall have been maintained, if in the judgment of the town authorities the public interests do not require more than one. Anaconda Mining Co. v. Town of Anaconda, 33 Colo. 70, 80 P. 144 (1905).

Uncontradicted evidence of even a slight expenditure of money in improving a street is sufficient to defeat the petition of a landholder seeking to disconnect a tract of land. Adams v. Town of Gunnison, 62 Colo. 114, 160 P. 1033 (1916).

Where more than three years prior to the filing of the petition for disconnection, a portion of one of the streets upon which the land abutted, was graded, and a town ditch, extending for two blocks or more along this street, where the lands abutted, had been cleaned, twice in each of the four preceding years; and both this and another street, upon which the land abutted, had been worked, leveled, and cleaned from time to time for more than three years, it was held that under this section the petition must be denied. Town of Kersey v. Ewing, 59 Colo. 239, 140 P. 619 (1915). See Town of Englewood v. Jones, 71 Colo. 181, 204 P. 607 (1922).

Where what was relied upon as a street was a county road, existing before the incorporation of the town, and used as such ever since, and the only work done upon it by the town was the ordinary work of repair, the petitioner obtained no additional advantage from the road by the incorporation of the town, or anything done by the town authorities. The petitioner was entitled to the disconnection sought. Morrison v. Town of Lafayette, 67 Colo. 220, 184 P. 301 (1919); Sheridan v. Fox

Metal Prods. Corp., 123 Colo. 94, 227 P.2d 1003 (1950).

Water pipe line insufficient. Since the purpose of this section is to permit persons owning real estate lying upon the borders to disconnect it from the town, if no part of such property has been duly platted into lots and blocks, to hold that a water pipe line running up to, or even into, such property without conferring any substantial service or advantage thereto, is such a maintenance of a public utility as to prevent detachment of the land, would be to defeat the main purpose of the section in many proceedings of this kind. Morrison v. Town of Lafayette, 67 Colo. 220, 184 P. 301 (1919).

31-12-604. Lands subject to tax for prior indebtedness.

The land so disconnected is not exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the governing body of such city while such land was within the limits thereof and which remains unpaid and for the payment of which said land could be lawfully taxed.

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-404 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-12-604 is similar to former § 31-8-404 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Change in form of debt inconsequential. The plaintiff contends that this section is so worded that the change of the form of the indebtedness precludes a taxation of the disconnected land that otherwise was within the contemplation of the section. What possible bearing the change in form of the debt would have, we are unable to conceive. The section says that the disconnected lands shall not be exempt from taxes for the purposes of paying any indebtedness lawfully contracted while the lands are within the limits of the town. The indebtedness now evidenced by the refunding bonds, was contracted while plaintiff's land was within these limits, and it makes no difference that the original form of the debt has been changed into a judgment, then into funding, and then into refunding, bonds. Town of Aurora v. Watkins, 77 Colo. 234, 236 P. 556 (1925).

When the purchasers of the original bond issue acquired the water bonds the law was, and the bonds so stated, that all the property

within the limits of the town was subject to taxation for raising a fund to pay the bonded debt, and even had the general assembly explicitly enacted a disconnecting statute that property within the town when the debt was contracted shall, after disconnection, be exempt from taxation for the purpose of paying the bonded debt, the act would be unconstitutional. Town of Aurora v. Watkins, 77 Colo. 234, 236 P. 556 (1925).

31-12-605. Copy of decree filed.

Two copies of the order or decree of said court disconnecting any land described in said petition from any city, certified by the clerk of said court, shall be filed for record in the office of the county clerk and recorder of the county in which such disconnected land, or any part thereof, is situated. The county clerk and recorder shall file the second certified copy with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S. Such record or a copy of such order or decree, certified by the clerk of said court, shall be proof of the disconnection of such land.

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-405 as it existed prior to 1975.

PART 7

DISCONNECTION BY COURT DECREE - STATUTORY TOWNS

31-12-701. Part 7 relates to towns only.

This part 7 shall relate to towns only and shall not be construed to affect the disconnection of area from cities.

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-501 as it existed prior to 1975.

ANNOTATION

Applied in Burton v. Sheridan, 80 Colo. 361, 251 P. 725 (1926).

31-12-702. Petition court to disconnect from town.

(1) Except as otherwise provided in subsection (2) of this section, when a tract or two or more contiguous tracts of agricultural or farm land aggregating twenty or more acres in area are embraced within the corporate limits of any town, the outer boundary of which acreage is adjacent to or upon the border of said town, the owners of the tracts of land may petition the district court for the county in which the land is situated to have the land disconnected from the incorporated town. Intersecting highways or intervening railroads do not render the tracts of land noncontiguous or nonadjacent.

(2) The process for disconnection from a town as provided in this part 7 is not available for any tract of land that is included within the boundaries of:

(a) An urban renewal area described in an urban renewal plan approved pursuant to part 1 of article 25 of this title 31; or

(b) A special district that, by its service plan or pursuant to an intergovernmental agreement, is or will be expected to provide service to the tract of land.

Source: L. 75: Entire title R&RE, p. 1102, § 1, effective July 1. **L. 2026:** Entire section amended, (HB 26-1253), ch. 100, p. 399, § 5, effective August 12.

Editor's note: (1) This section is similar to former § 31-8-502 as it existed prior to 1975.

(2) Section 8(2) of chapter 100 (HB 26-1253), Session Laws of Colorado 2026, provides that the act changing this section applies to applications for disconnection from a municipality and petitions for disconnection from a city or town commenced on or after August 12, 2026.

ANNOTATION

Annotator's note. Since § 31-12-702 is similar to former § 31-8-502 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This and the following section are not special or class legislation, and are not in violation of § 25 of art. V, Colo. Const. Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P.2d 708 (1932).

Legislative intent. The clear intent of the general assembly was to permit persons

owning property lying upon the border to disconnect from the town. Town of Greenwood Vill. v. Heckendorf, 126 Colo. 180, 247 P.2d 678 (1952).

This section, permitting a joint petition, prevents a multiplicity of suits, and the causes are not necessarily interdependent. Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P.2d 708 (1932).

The word "owners" was intended to have the usual and customary meaning and the party in whom legal title rests is the proper party to maintain an action for disconnection. Sheridan v. Nesbitt, 123 Colo. 121, 227 P.2d 1000 (1950); Town of Greenwood Vill. v. Heckendorf, 126 Colo. 180, 247 P.2d 678 (1952).

The statute makes no distinction between legal owner and equitable owner. Town of Greenwood Vill. v. Heckendorf, 126 Colo. 180, 247 P.2d 678 (1952).

Where an owner of real estate, situated within the boundaries of a town, has entered into a contract for the sale thereof conditioned upon his ability to disconnect said property from the town, he is the "owner" of real estate within the meaning of the statute authorizing withdrawal of farm lands from the corporate limits. Town of Greenwood Vill. v. Heckendorf, 126 Colo. 180, 247 P.2d 678 (1952).

Analogous to power to attach. The power to detach territory from the town is analogous to and in the same class with the power to attach. Town of Greenwood Vill. v. Heckendorf, 126 Colo. 180, 247 P.2d 678 (1952).

This section authorizes disconnection of farm land. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

But there is no requirement that land sought to be disconnected must be in use as a farm, but only that the land is susceptible of being used for agriculture and is not in use for other purposes. Sheridan v. Nesbitt, 123 Colo. 121, 227 P.2d 1000 (1950).

This section does not require that each separate tract should be upon or contiguous to the border, and if contiguous to each other, the fact that one of them is upon the border brings the case with the statute. Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P.2d 708 (1932).

On the question of contiguity, "intersecting highways or intervening railroads shall not render said tracts of land non-contiguous or non-adjacent". Sheridan v. Fox Metal Prods. Corp., 123 Colo. 94, 227 P.2d 1003 (1950).

Procedures specified. The provisions of this section and § 31-12-601 specify the procedure to be followed and the standards which obtain where disconnection is sought. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Petitioners' rights unaffected by effect on third parties. If the petitioners are within the requirements under this section, their rights will not be defeated because of the effect which the proposed withdrawal will have upon the symmetry of the town, or by any situation with respect to the lands of third parties. Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P. 2d 708 (1932).

The disconnection of land from a town cannot be permitted where the result thereof would be to divide the municipality into two areas wholly isolated from each other. Town of Greenwood Vill. v. Heckendorf, 126 Colo. 180, 247 P.2d 678 (1952).

Estoppel inapplicable. The rights created by this statute are continuing ones, and estoppel does not arise against the rights of a petitioner to disconnect his land upon the ground that he at one time consented to its inclusion within the town, if he brings himself within the provisions of the statute which authorizes disconnection, whether the estoppel was based on contract or on a judgment which resulted from a contract (stipulation). Town of Greenwood Vill. v. Savage, 172 Colo. 217, 471 P.2d 606 (1970).

No res judicata as to lesser portion of tract. A dismissal or adverse ruling in a prior case is not a bar to resubmission of the question of disconnection of a lesser portion of a tract or tracts of land. Town of Greenwood Vill. v. Savage, 172 Colo. 217, 471 P.2d 606 (1970).

31-12-703. Petition - contents.

(1) The petition must contain the following:

(a) An allegation that such tracts of land contain in the aggregate an area of twenty or more acres of agricultural or farm land upon or adjacent to the border of said town;

(b) An allegation that the petitioners are the owners thereof;

(c) The description of the land;

(d) An allegation that no part of such area has been platted into lots or blocks as a part of or an addition to said town or, if so platted, that such plat has been vacated within a period of three years after the area was included within the boundaries of the town. The time limit provided in this paragraph (d) shall not apply to lands within towns that were incorporated prior to January 1, 1930.

(e) An allegation that all taxes or assessments lawfully due and payable upon said land up to the time of the presentation of said petition are fully paid;

(f) A representation that, for a period of six years after the effective date of disconnection, said tracts will not be subdivided into lots or plots of smaller area than is required during said period for lots within said town adjoining said tracts under the applicable ordinances or regulations of the town from which disconnection is sought and will not be used during said period for industrial or commercial use if during said period the applicable ordinances of the town from which disconnection is sought prohibits such use in the area within said town adjoining such tracts; and

(g) An allegation that the tracts of land are not located within the boundaries of an urban renewal area described in an urban renewal plan approved pursuant to part 1 of article 25 of this title 31 or a special district that, by its service plan or pursuant to an intergovernmental agreement, is or will be expected to provide service to the tract of land.

(2) Any decree of disconnection entered pursuant to this part 7 shall restrict the use of the land in the manner set forth in paragraph (f) of subsection (1) of this section, but such restrictions shall not continue to apply to any land which, within six years after the effective date of the disconnection, is annexed back into the town.

Source: L. 75: Entire title R&RE, p. 1103, § 1, effective July 1. **L. 2026:** IP(1) and (1)(f) amended and (1)(g) added, (HB 26-1253), ch. 100, p. 399, § 6, effective August 12.

Editor's note: (1) This section is similar to former § 31-8-503 as it existed prior to 1975.

(2) Section 8(2) of chapter 100 (HB 26-1253), Session Laws of Colorado 2026, provides that the act changing this section applies to applications for disconnection from a municipality and petitions for disconnection from a city or town commenced on or after August 12, 2026.

ANNOTATION

Law reviews. For article, "One Year Review of Property Law", see 38 Dicta 192 (1961).

Annotator's note. Since § 31-12-703 is similar to former § 31-8-503 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

Only territory not platted eligible. Territory may be disconnected from a town under this section only when no part of the area sought to be disconnected has been platted into lots and blocks as a part of or addition to the town. Weaver v. Town of Littleton, 95 Colo. 577, 38 P.2d 774 (1934).

Land is platted into lots or blocks when said land is divided into tracts which are surrounded and intersected by streets which have been declared dedicated to the public. Town of Cherry Hills Vill. v. Shafroth, 141 Colo. 572, 349 P.2d 368 (1960).

Proof, not allegation, of contiguity required. Town's answer in proceeding for disconnection of agricultural lands that there was no allegation of contiguity of lands in petition was groundless since statutes do not require such an allegation but only proof of contiguity. Sheridan v. Nesbitt, 123 Colo. 121, 227 P.2d 1000 (1950).

31-12-704. Hearing - decree - proviso.

(1) Upon the filing of such petition in the district court, the judge shall set a date for a hearing, not less than forty days nor more than sixty days thereafter. The clerk of the court shall serve a copy of the petition and a notice of the date and the time set for such hearing upon the mayor of the town at least thirty days prior to the hearing on such petition. Upon the hearing and proof of the facts set forth in such petition, the court shall determine whether the tracts of land should be disconnected from the town, and the judge shall enter an order or decree accordingly.

(2) The petitioners are not entitled to disconnect the land under the provisions of this part 7 when:

(a) A town has improved any of the highways passing through or adjoining said tracts of land by the construction and maintenance by the town of any special improvements along, under, or over the same for a period of more than two years prior to the presentation of the petition; or

(b) The tracts of land are included within the boundaries of:

(I) An urban renewal area described in an urban renewal plan approved pursuant to part 1 of article 25 of this title 31; or

(II) A special district that, by its service plan or pursuant to an intergovernmental agreement, is or will be expected to provide service to the tract of land.

(3) Any disconnected land shall be made subject to the applicable county's zoning resolution and map and other land development regulations within ninety days after the effective date of the disconnection as described in section 31-12-501 (5).

Source: L. 75: Entire title R&RE, p. 1103, § 1, effective July 1. **L. 2020:** Entire section amended, (HB 20-1133), ch. 99, p. 385, § 3, effective September 14. **L. 2026:** Entire section amended, (HB 26-1253), ch. 100, p. 400, § 7, effective August 12.

Editor's note: (1) This section is similar to former § 31-8-504 as it existed prior to 1975.

(2) Section 8(2) of chapter 100 (HB 26-1253), Session Laws of Colorado 2026, provides that the act changing this section applies to applications for disconnection from a municipality and petitions for disconnection from a city or town commenced on or after August 12, 2026.

ANNOTATION

Annotator's note. Since § 31-12-704 is similar to former § 31-8-504 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Rule not of symmetry but of contiguity. Although the supreme court has held that no disconnection of land can be upheld which divides a town into two areas wholly isolated from each other, where the creation of a "corridor" has the effect of making the town's boundaries somewhat irregular, but, the area concerned remains contiguous to the rest of the town with the same access to all parts of the town as existed before the disconnection, it is not wholly isolated, the rule is not one of symmetry, but of contiguity. Town of Greenwood Vill. v. Savage, 172 Colo. 217, 471 P.2d 606 (1970).

"Special improvements" as used in this section are limited to such improvements as are generally paid for by special assessments, or those which confer special benefit upon the property affected. Burton v. Town of Sheridan, 80 Colo. 361, 251 P. 725 (1926).

Limited to highways. This section limits these improvements to highways, it restricts them to special improvements on the highway "along, under or over the save", etc. Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P.2d 708 (1932).

Actions held not to be special improvements. Construction and maintenance of highways, electrical transmission lines, and water mains were held not to constitute "special improvements" as those words are used in this section. Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P.2d 708 (1932); Counce v. Town of Julesburg, 108 Colo. 317, 116 P.2d 917 (1941).

In an action for disconnecting land from an incorporated town, improvements on a highway in the nature of culverts, a bridge and a slight alteration in the course of the street, are not "special improvements", as that phrase is used in this section. Burton v. Town of Sheridan, 80 Colo. 361, 251 P. 725 (1926).

This section uses the words "construction and maintenance", conjointly, as against the word "maintained" in § 31-12-603. Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P.2d 708 (1932).

Burden of proof. In a proceeding under this section, the burden of proof, as to defensive matter, rests upon the town. Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P.2d 708 (1932).

31-12-705. Land not exempt from prior taxes.

The land so disconnected shall not be exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the governing body of said town while said land was within the limits thereof and which remains unpaid and for the payment of which said land could be lawfully taxed.

Source: L. 75: Entire title R&RE, p. 1104, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-505 as it existed prior to 1975.

31-12-706. Land subject to tax for prior indebtedness.

When the governing body of such town levies a tax upon the property within such town for the purpose of paying such indebtedness or any part thereof and interest thereon, such governing body shall have the authority to levy a tax at the same rate and for the same purpose on the land so disconnected. The county treasurer shall pay over to such town all moneys collected by him on account of such tax, to be applied only to the payment of such indebtedness. In case the owner of any land so disconnected pays off and discharges a portion of such indebtedness equal in amount to the same proportion of the indebtedness which the valuation for assessment of his land bears to the entire valuation for assessment of all the property subject to taxation for the payment of such indebtedness, calculated according to the last assessment previous to such payment, said land shall be exempted from further taxation to pay such indebtedness. Upon such payment being made, the canceled bonds or other evidences of payment of such portion of said indebtedness shall be deposited with the treasurer of such town, and a certificate shall be given by him stating that such payment has been made.

Source: L. 75: Entire title R&RE, p. 1104, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-506 as it existed prior to 1975.

31-12-707. Decree recorded - proof.

Two copies of the order or decree of said district court disconnecting any land described in said petition from any town, certified by the clerk of said district court, shall be filed for record in the office of the county clerk and recorder of the county in which such disconnected land is situated. The county clerk and recorder shall file the second certified copy with the division of local government in the department of local affairs, as provided by section 24-32-109, C.R.S. Such record or a copy of such order or decree, certified by the clerk of said district court, shall be proof of the disconnection of such land.

Source: L. 75: Entire title R&RE, p. 1104, § 1, effective July 1.

Editor's note: This section is similar to former § 31-8-507 as it existed prior to 1975.

POWERS AND FUNCTIONS OF CITIES AND TOWNS

ARTICLE 15

Exercise of Municipal Powers

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PART 1

VESTING OF CORPORATE POWERS

31-15-101. Municipalities bodies politic - powers.

(1) Municipalities:

(a) Shall be bodies politic and corporate, under such name as they are organized;

(b) May sue or be sued;

(c) May enter into contracts;

(d) May acquire, hold, lease, and dispose of property, both real and personal;

(e) May have a common seal which they may alter at their pleasure; and

(f) May accept the transfer of federal land for public purposes, including but not limited to municipal expansion and residential purposes.

(2) All such municipalities shall have the powers, authority, and privileges granted by this title and by any other law of this state together with such implied and incidental powers, authority, and privileges as may be reasonably necessary, proper, convenient, or useful to the

exercise thereof. All such powers, authority, and privileges are subject to the restrictions and limitations provided for in this title and in any other law of this state.

(3) Each municipality may coordinate, pursuant to 43 U.S.C. sec. 1712, the "National Environmental Policy Act of 1969", 42 U.S.C. sec. 4321 et seq., 40 U.S.C. sec. 3312, 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 40 CFR parts 1500 to 1508, with the United States secretary of the interior and the United States secretary of agriculture to develop management plans that address hazardous fuel removal and other forest management practices, water development and conservation measures, watershed protection, public utilities protection, private property protection, and the protection of air quality on federal lands within such municipality's jurisdiction.

Source: L. 75: Entire title R&RE, p. 1104, § 1, effective July 1. **L. 76:** (1)(f) added, p. 697, § 1, effective April 6. **L. 2003:** (3) added, p. 1037, § 11, effective April 17.

Editor's note: This section is similar to former §§ 31-12-201 and 31-12-202 as they existed prior to 1975.

Cross references: For the legislative declaration contained in the 2003 act enacting subsection (3), see section 1 of chapter 145, Session Laws of Colorado 2003.

ANNOTATION

Annotator's note. Since § 31-15-101 is similar to former §§ 31-12-201 and 31-12-202 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Express powers only. A municipal corporation can exercise only such powers as are granted to it by its charter or by the general law of the state, either in express words or by necessary or reasonable implication, or such as are incidental to the powers expressly granted, or such as are essential to the objects and purposes of the corporation. City of Durango v. Reinsberg, 16 Colo. 327, 26 P. 820 (1891); Hayward v. Bd. of Trustees, 20 Colo. 33, 36 P. 795 (1894).

May not deal in real estate. Under this section an incorporated town or city may acquire and hold such real and personal property as may be necessary to enable it to carry on its corporate business and exercise its proper municipal functions; but it cannot lawfully engage in the business of buying, selling, or dealing generally in real estate,

either as principal or broker. Hayward v. Bd. of Trustees, 20 Colo. 33, 36 P. 795 (1894).

Primary function of municipal corporation is to provide government within its territorial limits. Bailey v. People, 200 Colo. 549, 617 P.2d 549 (1980).

City employees do not have a vested contractual right in the continuance of a particular rate or method of compensation. A city council, in the exercise of its legislative power, cannot enter into a contract which will bind succeeding city councils and thereby deprive them of the unrestricted exercise of their legislative power. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Plaintiffs' assertion that they detrimentally relied upon the continuation of certain employee benefits was without merit since persons dealing with the city were on constructive notice of the scope of authority possessed by the municipal officials with whom they are dealing, and such constructive notice includes the knowledge that the city council acted pursuant to the authority granted it by the city charter and subject to the limitations provided therein which prohibited the imposition of future liability upon the city, unless prior appropriation was made. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Because municipalities, not their various subsidiary departments, exist as bodies corporate empowered to sue and be sued, naming a municipal department as a defendant is not an appropriate means of pleading a § 1983 action against a municipality. Stump v. Gates, 777 F. Supp. 808 (D. Colo. 1991).

Cities have such implied and incidental powers, authority, and privileges as may be reasonably necessary, proper, convenient, or useful to carry out the powers and authority granted to them. Authority of city to enter into intergovernmental agreement with county to operate a mass transit system outside of control of public utilities commission upheld. Durango Transp., Inc. v. City of Durango, 824 P.2d 48 (Colo. App. 1991).

The power to appropriate moneys for marketing is not implied by or incidental to the power to appropriate moneys for advertising under § 31-15-901 (1)(b). Estes Park Chamber of Commerce v. Town of Estes Park, 199 P.3d 11 (Colo. App. 2007).

31-15-102. Review without bond.

In all actions, suits, and proceedings in any court in this state in which a municipality of this state is a party, such municipality may take an appeal, as provided by law and the Colorado appellate rules, without giving bond.

Source: L. 75: Entire title R&RE, p. 1105, § 1, effective July 1.

Editor's note: This section is similar to former § 31-19-101 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-15-102 is similar to former § 31-19-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision have been included in the annotations to this section.

This section grants municipalities the right of appeal and permits the appeal to be taken without the giving of bond, and in cases reviewable by the supreme court only on error, it grants the municipalities of the state the right to a supersedeas, whenever a supersedeas is allowed, without the giving bond. Town of Del Norte v. Weiss, 38 Colo. 269, 88 P. 581 (1906).

And this section is broad enough to include every cause in which a municipality is a party, in any court of the state. Town of Del Norte v. Weiss, 38 Colo. 269, 88 P. 581 (1906).

Thus, this section permitted an appeal from a police court by the city and without filing a bond. Hummel v. City of Ouray, 38 Colo. 322, 88 P. 582 (1906).

Appealing party has reasonable time to file necessary papers, since this section does not fix the time within which the transcript and papers must be filed in the county court on appeal. Hummel v. City of Ouray, 38 Colo. 322, 88 P. 582 (1906).

31-15-103. Making of ordinances.

Municipalities shall have power to make and publish ordinances not inconsistent with the laws of this state, from time to time, for carrying into effect or discharging the powers and duties conferred by this title which are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof not inconsistent with the laws of this state.

Source: L. 75: Entire title R&RE, p. 1105, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-301 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Municipal Penal Ordinances in Colorado", see 30 Rocky Mt. L. Rev. 267 (1958). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959).

Annotator's note. Since § 31-15-103 is similar to former § 31-12-301 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Ordinance of statutory city that is in conflict with state law of general application is invalid. Lakewood Pawnbrokers, Inc. v. City of Lakewood, 183 Colo. 370, 517 P.2d 834 (1973).

A municipal ordinance of a home-rule city that is in clear opposition to the provisions of a general state law is invalid. Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

Public necessity a state and municipal legislative determination. Whether the recital in a municipal ordinance, what it is "necessary for the immediate preservation of the public peace, health or safety", is true or not is a legislative and not a judicial question, and respecting this matter, there is no distinction between state and municipal legislation. Shields v. City of Loveland, 74 Colo. 27, 218 P. 913 (1923).

Standard measuring exercise of police power. If a restriction upon the use of property is to be upheld as a valid exercise of the police power it must bear "a fair relation to the public health, safety, morals, or welfare", and have "a definite tendency to promote or protect the same". In determining the validity of restraints upon freedom imposed by statute or ordinance, the determination to be made is whether the ordinance has a real and substantial relation to the accomplishment of those objectives which form the basis of police regulation. City of Colo. Springs v. Grueskin, 161 Colo. 281, 422 P.2d 384 (1966).

Due process, as it applies to cases involving municipal trash ordinances, requires only that a municipal ordinance enacted under the police power shall not be unreasonable, arbitrary, or capricious, and that it bear a rational relation to a proper legislative object sought to be attained. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

A municipal regulation having a fair relation to the protection of human life and the protection of public convenience and welfare constitutes a reasonable application of the police power. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

The standard for determining whether there is a rational basis to uphold the constitutionality of a municipal ordinance is whether the ordinance is rationally related to a legitimate governmental goal. City of Leadville v. Rood, 198 Colo. 328, 600 P.2d 62 (1979).

The test of constitutionality for a municipal ordinance is whether there is a rational basis to uphold the classification created by the ordinance. City of Leadville v. Rood, 198 Colo. 328, 600 P.2d 62 (1979).

An ordinance comports with due process when it bears a reasonable relationship to a legitimate governmental interest. Municipal ordinances for road improvement project that eliminated parking on the municipality's right-of-way near a condominium were a reasonable exercise of the municipality's police powers. The ordinances were within the municipality's police power to regulate matters of public health, safety, and welfare. The measures were a reasonable exercise of that power because they were reasonably related to the municipality's objectives of improving traffic safety, improving water drainage, and remedying a missing portion of a recreational bike path. In examining the reasonableness of the relationship, a court does not compare or otherwise examine alternative methods for addressing the government objective. Town of Dillon v. Yacht Club Condo. Assn., 2014 CO 37, 325 P.3d 1032.

U.S. supreme court's contemporary regulatory takings jurisprudence makes clear that the relevant inquiries for due process and takings claims are distinct. Because the property owner did not (and could not) assert a takings claim, the lower courts' focus on the magnitude and character of the burden imposed on the property owner by the ordinance was misplaced. Town of Dillon v. Yacht Club Condo. Assn., 2014 CO 37, 325 P.3d 1032.

Cannot stifle fundamental personal liberties. Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744 (1972).

Differing treatment of people allowable where differentiation rational. The fact that an ordinance affects different people in different degrees does not invalidate the provision so long as the distinctions have a rational basis. City of Leadville v. Rood, 198 Colo. 328, 600 P.2d 62 (1979).

Ordinance must resemble national standards when regulating industry. Local ordinances should have some reasonable resemblance to recognized national standards established by qualified organizations, or otherwise the regulated industry would be at the mercy of every whim and caprice of the many different communities. City of Colo. Springs v. Grueskin, 161 Colo. 281, 422 P.2d 384 (1966).

A presumption of reasonableness attaches to ordinances promulgated for the health, safety, and welfare of the public. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977); City of Leadville v. Rood, 198 Colo. 328, 600 P.2d 62 (1979).

Determination binding on supreme court. Unless a city council acts arbitrarily or capriciously in adopting an ordinance and in finding it necessary for the preservation of health and safety, such a determination is binding on the state supreme court. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

Finding city standard unreasonable. It is not for the supreme court to substitute its

notions as to what is fair and reasonable, but to ascertain under all existing circumstances whether the standard established by the city is in fact reasonable and bears a reasonable relation to the public health, welfare, and safety of the city and its inhabitants. And while it might be desirable to classify service stations as to the capacity of the truck which may make delivery there, or to promulgate some other reasonable regulations applying to retail services stations based on their specific location in certain fire zones, the supreme court held that an ordinance which requires the tank vehicles to pass through the city to a bulk plant, unload at the bulk plant, and then reload vehicles and a capacity of less than 2,200 gallons for redelivery to retail filling stations throughout the city, necessarily involves a greater exposure to hazard and accident, and therefore a greater danger to the public health, welfare, and safety of the city and its populace. City of Colo. Springs v. Grueskin, 161 Colo. 281, 422 P.2d 384 (1966).

Liquor licensing ordinance required. The matter of issuing licenses by a municipality for the sale of liquor, in view of this section, should be governed by ordinance duly passed and published, and not left to the discretion of the city council. Maurer v. Boggs, 103 Colo. 72, 82 P.2d 1099 (1938).

And valid. Where an ordinance enumerating many places where men usually assemble or pass, provided that no person "shall drink" certain designated intoxicating liquors, while in any of these places "unless the person occupying the building be duly licensed by the city to sell, etc.", it was held that the manifest purpose of the ordinance is to prevent the drinking of intoxicating liquors in public view, and particularly of children and youth, and thus improve the public morals; that including all of the places of the classes designated it is therefore authorized by this section. City of Delta v. Charlesworth, 64 Colo. 216, 170 P. 965 (1918).

Set-back ordinances valid. Ordinances which require structures to be set back from the property line are a valid exercise of police power. City of Leadville v. Rood, 198 Colo. 328, 600 P.2d 62 (1979).

Regulation of signs permitted. The powers granted to a statutory city by this section and § 31-23-301 (1) are commodious enough to enable it to promote its safety and aesthetic interests by regulating the number and type of signs permitted in different zoning districts. City of Lakewood v. Colfax Unlimited Ass'n, 634 P.2d 52 (Colo. 1981).

City scavenger ordinance valid. Ordinance creating the office of city scavenger and defining his duties and prohibiting others from doing scavenger work without a license is not invalid because it fails to provide the special manner in which the scavenger work must be done. City of Ouray v. Corson, 14 Colo. App. 345, 59 P. 876 (1900).

The issuance of town bonds to fund a floating debt should conform with the provisions of this section as to procedure by ordinance. Nat'l Bank of Commerce v. Town of Granada, 54 F. 100 (8th Cir. 1893).

City ordinance on possession of deadly weapons held unconstitutionally overbroad. City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744 (1972).

Applied in City of Denver v. Webber, 15 Colo. App. 511, 63 P. 804 (1900).

31-15-104. Powers not exclusive.

The enumeration of the powers set forth in this title shall not be construed to limit the exercise of any other power granted to municipalities by the provisions of any other law of this state.

Source: L. 75: Entire title R&RE, p. 1105, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Regulation of Cable Television", see 48 U. Colo. L. Rev. 501 (1977).

PART 2

GENERAL ADMINISTRATIVE POWERS

31-15-201. Administrative powers.

(1) The governing bodies in municipalities shall have the following general powers in relation to the administration of the municipality's affairs:

(a) To fill, by appointment, any vacancy occurring by death, removal, or resignation of any member of the governing body. Such appointee shall receive a majority vote of the remaining members of the governing body and shall hold his office only until the next regular election when the vacancy shall be filled by election as in other cases.

(b) To provide by ordinance for the appointment, term of office, removal, powers, duties, and compensation of all officers not otherwise provided for and of all employees;

(c) To appoint a board of health and prescribe its powers and duties;

(d) To provide for the taking of the municipal census, but no such census shall be taken by authority of the governing body more often than once between the years prescribed by law for the United States census to be taken;

(e) To provide by ordinance that all the paper, printing, stationery, blanks, fuel, and all the supplies needed for the use of the municipality shall be furnished by contract let to the lowest bidder;

(f) To organize, own, operate, control, direct, manage, contract for, or furnish ambulance service;

(g) To provide for the management and operation of any municipally owned hospital by any entity, public or private, profit or nonprofit, which the municipality determines will provide adequate and efficient administration for the operation of such hospital and to enter into contracts relating to such municipally owned hospital as authorized by part 1 of article 3 of title 25.5, C.R.S.;

(h) To authorize the use of electronic records or signatures and adopt rules, standards, policies, and procedures for use of electronic records or signatures pursuant to article 71.3 of title 24, C.R.S.;

(i) To establish an affordable housing dwelling unit advisory board for the municipality in accordance with the requirements of article 26 of title 29, C.R.S.

Source: L. 75: Entire title R&RE, p. 1105, § 1, effective July 1. **L. 77:** (1)(f) added, p. 1285, § 4, effective January 1, 1978. **L. 79:** (1)(g) added, p. 836, § 5, effective June 21. **L. 83:** (1)(g) amended, p. 1146, § 4, effective July 1. **L. 89:** (1)(g) amended, p. 1005, § 9, effective October 1. **L. 91:** (1)(g) amended, p. 588, § 12, effective October 1. **L. 99:** (1)(h) added, p. 1348, § 7, effective July 1. **L. 2001:** (1)(i) added, p. 977, § 3, effective August 8. **L. 2002:** (1)(h) amended, p. 858, § 8, effective May 30. **L. 2006:** (1)(g) amended, p. 2022, § 115, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

PART 3

GENERAL FINANCIAL POWERS

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

31-15-301. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities.

(2) "Net interest cost" of a proposed issue of bonds means the total amount of interest to accrue on said bonds from their date of issuance to their respective maturities plus the amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

Source: L. 75: Entire title R&RE, p. 1105, § 1, effective July 1.

Editor's note: The provisions of this section are similar to several former provisions of § 31-12-101 (7)(e)(I) and (7)(e)(II) as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-15-302. Financial powers - legislative declaration.

(1) The governing bodies in municipalities shall have the following general powers in relation to the finances of the municipality:

(a) To control the finances and property of the corporation;

(b) To appropriate money for municipal purposes only and provide for payment of debts and expenses of the municipality;

(c) To levy and collect taxes for general and special purposes on real and personal property;

(d) (I) To contract indebtedness on behalf of the municipality and upon the credit thereof by borrowing money or issuing the bonds of the municipality for any public purpose of the municipality, including but not limited to the following purposes: Supplying water, gas, heating and cooling, and electricity; purchasing land; and purchasing, constructing, extending, and improving public streets, buildings, facilities, and equipment; and for the purpose of supplying a temporary deficiency in the revenue for defraying the current expenses of the municipality.

(II) The total amount of indebtedness for all such purposes shall not at any time exceed three percent of the actual value, as determined by the assessor, of the taxable property in the municipality except such debt as may be incurred in supplying water. No loan for any purpose shall be made except by ordinance, which shall be irrepealable until the indebtedness provided for is fully paid or discharged, specifying the purposes to which the funds to be raised shall be applied and providing for the levying of a tax which, together with such other revenue, assets, or funds as may be pledged, is sufficient to pay the annual interest and extinguish the principal of said debt within the time limited for the debt to run, which, except such debt as may be incurred in supplying water, shall not be more than thirty years, and further providing that said tax, when collected, shall only be applied for the purposes specified in said ordinance until the indebtedness is paid and discharged. No debt shall be created, except in supplying water, unless the question of incurring the same is submitted, at a regular or special election of the municipality, to the registered electors thereof as defined by the "Colorado Municipal Election Code of 1965" and a majority of the registered electors voting upon the question vote in favor of creating such debt.

(III) No statutory provisions of any other law limiting or fixing tax rates shall limit the provisions of this paragraph (d).

(IV) Bonds issued under this paragraph (d) may mature serially during a period of not more than thirty years from the date thereof, in which event the amounts of such annual maturities shall be fixed by the governing body; except that bonds issued to supply water may mature over a longer period. If the governing body so determines, said bonds may be redeemable prior to maturity with or without payment of a premium, not exceeding three percent of the principal thereof. In any event said bonds shall be subject to call commencing not later than fifteen years after the date thereof. The right to redeem all or part of said bonds prior to their maturity and the order of any such redemption shall be reserved in the ordinance authorizing the issuance of bonds and shall be set forth on the face of said bonds.

(V) The ordinance or resolution submitting the question of contracting an indebtedness shall contain a statement of the maximum net effective interest rate at which said indebtedness may be incurred.

(VI) (A) The governing body of any municipality, having received approval at an election to issue bonds and having determined that the limitations of the original election question are too restrictive to permit the advantageous sale of the bonds so authorized, may submit at another regular or special election the question of issuing the bonds or any portion thereof at a higher maximum net effective interest rate than the maximum interest rate or maximum net effective interest rate approved at the original election; the question of issuing the bonds or any portion thereof to mature over a longer period of time than the maximum period of maturity approved at the original election; or both such questions.

(B) An election held pursuant to this subparagraph (VI) shall be held in substantially the same manner as an election to authorize bonds initially except as may be required for the submission of the limited question permitted under this subparagraph (VI).

(C) At an election held pursuant to this subparagraph (VI), if the changes submitted are not approved, such result shall not impair the authority of the governing body at a later time to issue the bonds originally approved within the limitations established at the first election.

(e) To prescribe, by general ordinance, the manner in which the charge on the respective owners of lots or lands, and on the lots or lands, shall be assessed and determined for the purposes so authorized by law. Such charge, when assessed, shall be payable by the owners at the time of the assessment, personally, and also shall be a lien upon the respective lots or parcels of land from the time of the assessment. Such charge may be collected and such lien enforced by a proceeding at law or in equity, either in the name of such municipality or of any person to whom it has directed payment be made. In any such proceedings, where pleadings are required, it shall be sufficient to declare generally for work and labor done and materials furnished on the particular street, alley, or highway or for water rent or gas used. Proceedings may be instituted against all the owners, or any of them, to enforce the lien against all the lots or land, or each lot or parcel, or any number of them embraced in any one assessment; but the judgment or decree shall be entered separately for the amount properly chargeable to each. Any proceedings may be severed in the discretion of the court for the purpose of trial, review, or appeal.

(f) (I) For the purpose of providing and accumulating funds for the construction, acquisition, or improvement of public buildings, water facilities, sewer facilities, heating and cooling works, or other public works or to supplement bond issues for the same purpose, the governing body of each municipality is authorized to create, by resolution, a public works fund, setting forth in such resolution the description and location of the buildings, water facilities, sewer facilities, heating and cooling works, or other public works to be constructed, acquired, or improved; the estimated cost of the same; the annual tax levy required; and the number of years such a levy should be made; and the time of a public hearing. In lieu of an ad valorem levy, the governing body of the municipality may provide for other taxes or revenues authorized by law which will produce equivalent funds.

(II) If the amount needed does not require a tax levy in excess of two mills, the governing body is authorized, after a public hearing, to make such a levy without putting the proposition to a vote of the qualified electors. If a special levy in excess of two mills for any one fiscal year is required, the governing body, by resolution, in their discretion may submit to the registered electors of such municipality the question of making such a special levy. The special election may be held on the same day as any other special or general election.

(III) In submitting the question to said electors, a ballot shall be printed giving the description and location of the public buildings, water facilities, sewer facilities, or other public works to be constructed, acquired, or improved; the estimated maximum amount to be expended

for each single purpose; and the maximum mill levy, if any, required for each specified year. Each project shall be printed separately on the ballot.

(IV) The money derived from the special levy authorized shall be credited by the treasurer of the respective municipality to a special fund to be known as the public works fund. Such funds may be accumulated and held over for expenditure in subsequent years, but they shall be used only for the public works authorized. The governing body may change the purpose for which the fund may be expended after holding a public hearing. When the public works have been constructed, acquired, or improved and paid for, any unexpended balance in the public works fund shall be transferred to the general fund of the municipality.

(g) To deposit any moneys of general or special funds in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the governing body of a municipality may appoint, by written resolution, one or more persons to act as custodians of the moneys of the municipality. Such persons shall give surety bonds in such amounts and form and for such purposes as the governing body requires.

(h) To enter into installment purchase contracts or shared-savings contracts or otherwise incur indebtedness under section 29-12.5-103, C.R.S., to finance energy conservation and energy saving measures and enter into contracts for an analysis and recommendations pertaining to such measures under section 29-12.5-102, C.R.S.;

(i) (I) For a municipality that has a population of twenty thousand or fewer residents, to enter into contracts with a health-care provider, who is licensed in this state, to provide health-care services to such municipality. Such health-care providers shall be known as "community contracted health-care providers".

(II) The general assembly hereby finds, determines, and declares that access to health-care services in rural areas is an increasing problem in Colorado. Some rural Coloradans do not have access to a primary care provider in their town and are forced to travel. It is the intent of the general assembly to ease the strain on rural Coloradans' health-care needs by allowing a municipality with twenty thousand or fewer residents to contract with a health-care provider to provide health-care services to rural areas.

(III) (Deleted by amendment, L. 2008, p. 212, § 1, effective March 26, 2008.)

(j) To establish and administer an incentive program to directly incentivize improvement in an area of specific local concern related to the use of real property in the municipality in accordance with section 31-20-101.7.

Source: L. 75: Entire title R&RE, p. 1106, § 1, effective July 1. **L. 79:** (1)(g) added, p. 1618, § 20, effective June 8. **L. 81:** (1)(d)(I) and (1)(f)(I) amended, p. 1454, § 2, effective May 27. **L. 91:** (1)(h) added, p. 733, § 6, effective May 1. **L. 2001:** (1)(i) added, p. 1164, § 13, effective June 5.

L. 2007: (1)(i)(III) amended, p. 2046, § 85, effective June 1. **L. 2008:** (1)(i) amended, p. 212, § 1, effective March 26. **L. 2024:** (1)(j) added, (SB 24-002), ch. 25, p. 74, § 4, effective August 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: (1) For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

(2) For the legislative declaration contained in the 2001 act enacting subsection (1)(i), see section 1 of chapter 300, Session Laws of Colorado 2001. For the legislative declaration in SB 24-002, see section 1 of chapter 25, Session Laws of Colorado 2024.

ANNOTATION

I. General Consideration.

II. Levying and Collecting Taxes.

III. Contracting Indebtedness.

IV. Charges on the land.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 31-15-302 is similar to provisions of former § 31-12-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The governing bodies in cities and towns have the power to control the finances and property of the corporation. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Spending money for newsletters, annual reports and news releases may be for city purposes and is not necessarily personal or political. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

No authority for expenditures relating to proposed constitutional amendment. This section does not empower a city council to make expenditures or contributions to further the defeat of a proposed constitutional amendment. Campbell v. Joint Dist. 28-J, 704 F.2d 501 (10th Cir. 1983).

City employees do not have a vested contractual right in the continuance of a particular rate or method of compensation. A city council, in the exercise of its legislative power, cannot enter into a contract which will bind succeeding city councils and thereby deprive them of the unrestricted exercise of their legislative power. Colo. Springs Fire

Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Plaintiffs' assertion that they detrimentally relied upon the continuation of certain employee benefits was without merit since persons dealing with the city were on constructive notice of the scope of authority possessed by the municipal officials with whom they are dealing, and such constructive notice includes the knowledge that the city council acted pursuant to the authority granted it by the city charter and subject to the limitations provided therein which prohibited the imposition of future liability upon the city, unless prior appropriation was made. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Applied in Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

II. LEVYING AND COLLECTING TAXES.

Among the powers possessed by cities in this state is the power of taxation. Lewis v. State Bd. of Agriculture, 138 Colo. 540, 335 P.2d 546 (1959).

Constitutional and statutory sources of tax power. The source by which a municipality may impose either a general ad valorem tax or special assessment tax upon the properties within its corporate limits is found under the provisions of § 7 of art. X, Colo. Const.; in turn, this power is specifically amplified or implemented by the provisions of subsection (1)(c) of this section. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

When tax unconstitutional. Where taxes result in a flagrant inequality between the burden imposed and the benefit received, such is confiscatory and unconstitutional. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Taxation and assessment are not synonymous terms; each is a separate and distinct exercise of the sovereign power to tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Taxation defined. Taxation, as the word is employed in the Colorado constitution and statutes generally, is that burden or charge upon all property laid for raising revenue for general public purposes in defraying the expense of government. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Assessments defined. Assessments are local and resorted to for making local improvements on the theory that the property affected is increased in value at least to the amount of the levy. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

An assessment in the nature of a special tax is for purposes of municipal improvement conferring a special benefit upon the property being assessed. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

If a tax is for a "general" purpose it must be an ad valorem tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

If "taxes" are special assessments upon the certain properties, the revenues therefrom cannot be diverted to providing for general town purposes, but will necessarily have to be used and confined to payment for the capital improvement resulting in an equivalent benefit to the properties. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

When special assessment improper. So much of an improvement as is designated and utilized for the general benefit of the inhabitants and property within the limits of a municipality is in no sense local, and special assessments to raise funds to construct, purchase, pay for, or maintain that portion of it cannot be lawfully levied. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Special benefits which will sustain a special assessment must be immediate, and of such a character that they can be seen and traced, remote or contingent benefits enjoyed by the general public will not sustain a special assessment. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

To enforce a special assessment for a purpose which does not confer a special benefit upon the property upon which it is levied would result in taking private property without compensation, and without due process of law. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

When special tax proper. Authority to levy a special frontage tax can only be upheld on the theory that the property upon which it is levied is specially benefited by the purposes to which such tax may be applied. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

III. CONTRACTING INDEBTEDNESS.

Ordinance required. Under subsection (1)(d), no loan can be contracted on behalf of a municipal corporation save by authority of an ordinance. Town of Aurora v. Hayden, 23 Colo. App. 1, 126 P. 1109 (1912).

Resolution not sufficient. The general rules are that where authority to exercise a corporate power by ordinance is granted, an attempt to exercise it by resolution is futile, and that where the constitution or this section which permits or grants the right to exercise a corporate power expressly designates the way in which it may be exercised, such designation limits the right to exercise it to the way specified, and renders its attempted exercise in any other way ineffectual. Bosworthchanute & Co. v. Town of Brighton, 272 F. 964 (8th Cir. 1921).

Municipal bonds are clothed with all the attributes of negotiable or commercial paper, pass by delivery or endorsement, and are not subject to equities (where the power to issue them exists) in the hands of holder for value, before due, without notice. Hyden v. Town of Aurora, 57 Colo. 389, 142 P. 183 (1914).

Statutory recital creates justified reliance by purchasers. Recital in municipal bonds that they were issued in accordance with the provisions of the

enabling statute imports that they were sent forth in pursuant of a lawful and proper resolution or ordinance and of just and proper action by the governing board of a municipality. Such relieves the innocent purchaser of all inquiry, notice, or knowledge of the record, action, or omission of the municipal board or council or of the other officers of the municipality, and estops the municipality from denying that a lawful resolution or ordinance was passed and proper action was taken. Hayden v. Town of Aurora, 57 Colo. 389, 142 P. 183 (1914).

And estoppel applies. A municipality, a quasi-municipality, or a corporation and its officers, who by the apparent legality of their obligations or by recitals of their validity have induced innocent purchasers to invest in them are estopped from denying their legality on the ground that in some of the preliminary proceedings which led to their execution, or in their execution itself, they failed to comply with some law or rule of action relative to the mere time or manner of action relative to the mere time or manner of their procedure, with which they might have lawfully complied, but which they carelessly disregarded. Hayden v. Town of Aurora, 57 Colo. 389, 142 P. 183 (1914).

A municipality or a quasi-municipality may not, by the recital of certificates in its bonds, estop itself from denying that it is without power to issue them when the laws are such that there can be no state of facts or of circumstances under which it would have authority to emit them. Town of Aurora v. Gates, 208 F. 101 (8th Cir. 1913); Hayden v. Town of Aurora, 57 Colo. 389, 142 P. 183 (1914).

Municipal actions to which subsection is applicable. Although a contract for the purchase of electrical machinery by a town provides that the price shall be paid from the net revenues of its lighting plant, yet, if the contract creates other obligations which the town must meet, and which cannot be paid out of plant income, or if a diversion of the plant profits will deplete the current revenue of the town, necessitating increased taxation, a debt is thereby created within the meaning of subsection (1)(d). Reimer v. Holyoke, 93 Colo. 571, 27 P.2d 1032 (1933).

Authority to issue bonds to purchase water rights. Subsection (1)(d) empowers towns and cities to contract an indebtedness for the purpose of purchasing or constructing waterworks for fire and domestic purposes and for the purpose of constructing or purchasing canals or some suitable system of supplying water for irrigation. When considered in connection with §§ 31-15-708 (1)(a) and (1)(b) and 31-15-707 (1)(e), relating to the condemnation of property, the power to construct and purchase reservoirs, to provide pumps, conducting pipes and ditches, to take water from the public streams, and to purchase water and water rights, it gives authority to such municipalities to issue bonds for the purchase of water rights to secure water for its inhabitants. City of Cripple Creek v. Adams, 36 Colo. 320, 85 P. 184 (1906).

But when constant supply involved resubmission to voters not required. Where the court ruled that the money was not for the purpose of purchasing of constructing waterworks, but that such waterworks had already been authorized and

the city legislative body found the indebtedness necessary to supply the city with water, it was said that to render the waterworks effective so as to supply the city with water does not require constant submission to the voters for every improvement necessary to handle the water supply. Hiatt v. City of Manitou, 154 Colo. 525, 392 P.2d 282 (1964).

Municipal actions to which subsection is inapplicable. An agreement of a municipality, by ordinance, to pay a certain amount annually into a fund to be used for the payment of bonds to be issued for the constriction of a municipal lighting plant, was held not to be the creation of a debt as that term is used in the constitution and in subsection (1)(d). Shields v. City of Loveland, 74 Colo. 27, 218 P. 913 (1923).

Applied In Nat'l Bank of Commerce v. Town of Granada, 54 F. 100 (8th Cir 1893).

IV. CHARGES ON THE LAND.

Scope of power. Subsection (1)(e) shows a deliberate intention to invest the city council with ample power over the subject of municipal improvements, not only by means of general and special taxes, but also by means of special charges or assessments, in all cases where the same are applicable and allowable by the constitution and laws of the state, and to authorize the collection thereof by suit in court, or by the county treasurer, in the same manner as other delinquent taxes are collected. City of Pueblo v. Robinson, 12 Colo. 593, 21 P. 899 (1889).

Authorized for purposes other than gas or water rents. The provisions of subsection (1)(e) stating that "In any such proceedings, where pleadings are required, it shall be sufficient to declare generally for work and labor done and materials furnished on the particular street, alley or highway, or for water rent or gas used" plainly shows that it was the design of this subdivision to authorize special assessments for other purposes than gas or water rents. City of Pueblo v. Robinson, 12 Colo. 593, 21 P. 899 (1889).

Apportionment authorized. In cases where special assessments are authorized, the city council may prescribe the rule of apportionment, having reference to the special benefits accruing to the property by reason of the improvement, the same to be such as will secure an assessment in proportion to the benefits accruing as nearly as practicable. City of Pueblo v. Robinson, 12 Colo. 593, 21 P. 899 (1889).

Mode of assessment proper. When the property consists of lots of substantially equal depth abutting the local improvement, and there is nothing in the nature and circumstances of the particular case showing that an assessment in proportion to the frontage of the lots upon the improvement would work manifest injustice, such a mode of assessment should be upheld. City of Pueblo v. Robinson, 12 Colo. 593, 21 P. 899 (1889).

Authority for lien must be by ordinance. A municipal corporation cannot acquire a lien on town lots for unpaid water assessments unless and until the adoption of an ordinance authorizing such a lien under this subdivision. Ordway v. Kaiser, 90 Colo. 313, 9 P.2d 287 (1932).

Foreclosure of a trust deed cuts out all junior liens, including statutory liens, unless these be specifically excluded, hence the lien of a municipality for water assessments authorized under subsection (1)(e) is not superior to that of a trust deed on the property affected unless it attached under appropriate ordinance prior to the recording of the trust deed. Ordway v. Kaiser, 90 Colo. 313, 9 P.2d 287 (1932).

Sewer assessments. By subsection (1)(e) sewer assessments may be collected and the lien thereof enforced by the city council in a proceeding at law or in equity. City of Highlands v. Johnson, 24 Colo. 371, 51 P. 1004 (1897).

PART 4

POLICE REGULATIONS

31-15-401. General police powers - definition.

(1) In relation to the general police power, the governing bodies of municipalities have the following powers:

(a) To regulate the police of the municipality, including employing certified peace officers to enforce all laws of the state of Colorado notwithstanding section 16-2.5-201, and pass and enforce all necessary police ordinances;

(b) To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease;

(c) To declare what is a nuisance and abate the same and to impose fines upon parties who may create or continue nuisances or suffer nuisances to exist; except that a municipal ordinance may impose liability on the owner of real property for a nuisance committed on the property by a tenant in lawful possession of the property only if the municipality notifies the property owner and tenant of the nuisance before a fine or other liability is imposed;

(d) (I) To provide for and compel the removal of weeds, brush, and rubbish of all kinds from lots and tracts of land within such municipalities and from the alleys behind and from the sidewalk areas in front of such property at such time, upon such notice, and in such manner as such municipalities prescribe by ordinance, and to assess the whole cost thereof, including five percent for inspection and other incidental costs in connection therewith, upon the lots and tracts of land from which the weeds, brush, and rubbish are removed. The assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.

(II) If an assessment is not paid within a reasonable time specified by ordinance and a municipality complies with the recording and certification requirements specified in subsection

(1)(d)(III) of this section, the amount of the unpaid assessment may be certified to the county treasurer who shall collect the assessment, together with a ten percent penalty for cost of collection, in the same manner as other taxes are collected. The laws of this state for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, apply to the collection of such assessments.

(III) A county treasurer shall accept for collection pursuant to subsection (1)(d)(II) of this section and section 31-20-105 a lien levied pursuant to subsection (1)(d)(I) of this section if:

(A) Within four months of abating a nuisance pursuant to subsection (1)(d)(I) of this section, a municipality files for recording a notice of lien with the county clerk and recorder of the county in which the real property is located; and

(B) Within one year of filing the notice of lien for recording specified by subsection (1)(d)(III)(A) of this section, a municipality certifies the amount of the unpaid assessment for which the lien was levied to the county treasurer of the county in which the real property is located.

(e) To prevent and suppress riots, routs, affrays, noises, disturbances, and disorderly assemblies in any public or private place;

(f) To prevent fighting, quarreling, dog fights, cock fights, and all disorderly conduct;

(g) To suppress bawdy and disorderly houses and houses of ill fame or assignation within the limits of the municipality or within three miles beyond, except where the boundaries of two municipalities adjoin the outer boundaries of the municipality; to suppress gaming and gambling houses, lotteries, and fraudulent devices and practices for the purpose of gaining or obtaining money or property; and to regulate the promotion or wholesale promotion of obscene material and obscene performances, as defined in part 1 of article 7 of title 18, C.R.S.;

(h) To restrain and punish loiterers, mendicants, and prostitutes;

(i) To prohibit and punish for cruelty to animals;

(j) (I) To establish and erect municipal jails, correction centers, and reform schools for persons convicted of violating a municipal ordinance, to make rules and regulations for the government of municipal jails, correction centers, and reform schools, and to appoint necessary officers and assistants therefor;

(II) As used in this subsection (1)(j), unless the context otherwise requires, "municipal jail" means a city or town jail, detention facility, correctional center, or other penal institution that is operated by a municipality and that is used to detain persons facing criminal charges and persons convicted of crimes. A municipal jail does not include holding cells at court facilities, police stations, or reform schools.

(k) To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners;

(l) To authorize the acceptance of a bail bond when any person has been arrested for the violation of any ordinance and a continuance or postponement of trial is granted. When such bond is accepted, it shall have the same validity and effect as bail bonds provided for under the criminal statutes of this state.

(m) (I) To regulate and to prohibit the running at large and keeping of animals, including fowl, within the municipality and to otherwise provide for the regulation and control of such animals including, but not limited to, licensing, impoundment, and disposition of impounded animals.

(II) In case any municipality neglects or refuses to pass an ordinance in conformity with this paragraph (m), anyone impounding an animal running at large within the limits of said municipality shall notify the state board of stock inspection commissioners, and said animal shall be disposed of by said board as provided in article 44 of title 35, C.R.S.

(n) To regulate and license pawnbrokers as provided in section 29-11.9-102;

(o) To enact and enforce ordinances prohibiting gambling and the use of any gambling device, as the terms are defined in section 18-10-102, in a park, on a public way, or on a street; except that in enacting and enforcing the ordinances, a municipality, notwithstanding any other provision of law to the contrary, may also prohibit social gambling in or on parks, public ways, or streets. Nothing in this subsection (1)(o) shall be construed as prohibiting pari-mutuel betting or wagering under article 32 of title 44.

(p) (I) To adopt reasonable regulations for the operation of establishments open to the public in which persons appear in a state of nudity for the purpose of entertaining the patrons of such establishment; except that such regulations shall not be tantamount to a complete prohibition of such operation. Such regulations may include the following:

(A) Minimum age requirements for admittance to such establishments;

(B) Limitations on the hours during which such establishments may be open for business; and

(C) Restrictions on the location of such establishments with regard to schools, churches, and residential areas.

(II) The governing body of the municipality may enact ordinances which provide that any establishment which engages in repeated or continuing violations of regulations adopted by the governing body shall constitute a public nuisance. In addition to the power provided for in paragraph (c) of this subsection (1) the governing body of the municipality may bring an action

for an injunction against the operation of such establishment in a manner which violates such regulations.

(III) Nothing in the regulations adopted by the governing body of the municipality pursuant to this paragraph (p) shall be construed to apply to the presentation, showing, or performance of any play, drama, ballet, or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher education, or other similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise.

(q) (I) To control and limit fires, including but not limited to the prohibition, banning, restriction, or other regulation of fires and the designation of places where fires are permitted, restricted, or prohibited.

(II) Nothing in this paragraph (q) shall be construed to preempt or supercede state, tribal, or federal law concerning the control, limitation, or other regulation of fires described in this paragraph (q).

(r) May independently initiate and bring civil actions to enforce:

(I) Parts 1, 2, 5, 7, 9, 11, 12, and 14 of article 12 of title 38; and

(II) Beginning January 1, 2026, parts 4, 8, and 10 of article 12 of title 38.

(s) To license and regulate the establishment and operation of massage facilities to prevent human trafficking and the operation of illicit massage facilities in accordance with section 30-15-401.4.

(2) (a) Notwithstanding any law to the contrary, a contract between a municipality and a private attorney who the county retains in relation to a civil action described in subsection (1)(r) of this section shall specify an hourly rate, not to exceed five hundred dollars per hour, at which the municipality compensates the private attorney.

(b) A municipality may use an amount equal to or less than ten percent of any monetary award received as a result of a civil action commenced pursuant to subsection (1)(r) of this section to cover the costs of that civil action, including attorney fees.

(c) In commencing a civil action pursuant to subsection (1)(r) of this section, a municipality may confer with any housing authority created pursuant to title 29 that serves the municipality in whole or in part.

Source: L. 75: Entire title R&RE, p. 1108, § 1, effective July 1. **L. 76:** (1)(g) amended, p. 559, § 3, effective July 1. **L. 77:** (1)(g) amended, p. 985, § 2, effective July 1. **L. 82:** (1)(g) amended,

p. 627, § 34, effective April 2. **L. 84:** (1)(o) added, p. 838, § 1, effective April 2; (1)(n) added, p. 443, § 3, effective July 1. **L. 85:** (1)(p) added, p. 1060, § 2, effective May 10. **L. 86:** (1)(g) amended, p. 784, § 7, effective April 21. **L. 2002, 3rd Ex. Sess.:** (1)(q) added, p. 38, § 4, effective July 17. **L. 2005:** (1)(c) amended, p. 550, § 1, effective January 1, 2006. **L. 2017:** (1)(a) amended, (SB 17-066), ch. 105, p. 386, § 3, effective April 4; (1)(n) amended, (SB 17-228), ch. 246, p. 1042, § 8, effective August 9. **L. 2018:** (1)(o) amended, (HB 18-1024), ch. 26, p. 324, § 19, effective October 1. **L. 2023:** (1)(d)(II) amended and (1)(d)(III) added, (SB 23-052), ch. 55, p. 197, § 1, effective August 7. **L. 2025:** (1)(r) and (2) added, (SB 25-020), ch. 264, p. 1357, § 5, effective August 6. **L. 2026:** (1)(j) amended, (HB 26-1039), ch. 75, p. 297, § 8, effective August 12; (1)(s) added, (HB 26-1257), ch. 101, p. 406, § 2, effective August 12.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For requirement that a municipality be made a party in any proceeding involving the validity of an ordinance or franchise and that the attorney general be served with a copy in any proceeding involving the constitutionality of an ordinance or franchise, see § 13-51-115 and C.R.C.P. 57(j); for the authority of counties to adopt regulations pursuant to their police powers, see § 30-15-401; for the penalty for livestock grazing on roads and in municipalities, see § 35-46-105.

ANNOTATION

I. General Consideration.

II. Regulating Municipal Police.

III. Public Health.

V. Estrays and Impounding.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Colorado Municipal Government Authority to Regulate Obscene Materials", see 51 Den. L.J. 75 (1974). For article, "Civil Enforcement of Building and Zoning Codes in Municipal Court", see 19 Colo. Law. 469 (1990). For article, "The State of Short-Term Rentals in Colorado", see 51 Colo. Law. 34 (Apr. 2022).

Annotator's note. Since § 31-15-401 is similar to provisions of former §§ 31-12-101 and 31-12-701 to 31-12-706 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

II. REGULATING MUNICIPAL POLICE.

No local regulation in areas preempted by state. No limitation is implied upon the traditional but statutory rights of municipalities to prevent disturbances of the peace and to maintain law and order by appropriate police action, but it is only when the city's acts or regulations attempt to interfere with or cover a field preempted by the state or which is of statewide concern that they must fail, and it makes no difference whether the attempted exercise of power by a city is reasonable, or is wholly prohibitory. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

No authority to pass ordinance regulating labor dispute. Express delegations of power to municipalities to pass and enforce all necessary police ordinances, to regulate streets, or to prevent and suppress riots, routs, affrays, noises, disturbances, disorderly assemblies in any public or private place are not express delegations to cities and town to adopt an ordinance regulating the conduct of parties to a labor dispute which on its face covers matters of statewide concern already treated by state statute, the labor peace act. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

Applied in City of Colo. Springs v. Smith, 19 Colo. 554, 36 P. 540 (1894).

III. PUBLIC HEALTH.

Due process requirements. Due process, as it applies to cases involving municipal trash ordinances, requires only that a municipal ordinance enacted under the police power shall not be unreasonable, arbitrary, or capricious, and that it bear a rational relation to a proper legislative object sought to be attained. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

A municipal regulation having a fair relation to the protection of human life and the protection of public convenience and welfare constitutes a reasonable application of the police power. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

A presumption of reasonableness attaches to ordinances promulgated for the health, safety, and welfare of the public. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

Authority for scavenger ordinance. Subsection (1)(b) gives to cities and towns ample power to pass an ordinance creating the office of city or town scavenger and providing that no other person shall do scavenger work for the citizens of the city or town without the payment of a license fee, fixed by the ordinance, and procuring a license, and fixing a penalty for the violation of the ordinance. Ouray v. Corson, 14 Colo. App. 345, 59 P. 876 (1900).

Authority to prevent sewer disconnections for nonpayment. Under subsection (1)(b) and §§ 31-15-702 (1)(a) and 31-15-709 (1)(a), where there is no other sewer to connect with, the necessity for the protection of the public health certainly gives to the city the right, temporarily at least, to prevent the digging

up of its streets and alleys to disconnect private users who refuse to pay during the pendency of the quo warranto suit, regardless of who is right in that action. City of Leadville v. Leadville Sewer Co., 47 Colo. 118, 107 P. 801 (1909).

Basis for judicial interference limited. A court of equity should not interfere with the officials of a city in efforts directed to the preservation of the public health under this section, unless the right of the applicant is free from doubt, and then only in an extreme and exceptional case. City of Leadville v. Leadville Sewer Co., 47 Colo. 118, 107 P. 801 (1909).

Determination binding on supreme court. Unless a city council acts arbitrarily or capriciously in adopting an ordinance and in finding it necessary for the preservation of health and safety, such a determination is binding on the state supreme court. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

IV. DECLARING AND ABATING NUISANCES.

A. In General.

B. What Constitutes a Nuisance.

C. Abatement.

A. In General.

Constitutionality of conferring discretionary power of enforcement. The conferring of discretionary power upon administrative boards to grant or withhold permission to carry on a trade or business which is the proper subject of regulation within the police power of the state is not violative of rights secured by the fourteenth amendment of the federal constitution, and where the marshal was the agent of the city government when he issued the citation and impounded the steers, the ordinance is valid, and the execution thereof is strict compliance with its abatement provision is not within the ambit of the civil rights act. Martin v. King, 417 F.2d 458 (10th Cir. 1969).

Subsection (1)(c) is not self-executing. See Wolfe v. Abbott, 54 Colo. 531, 131 P. 386 (1912).

Ordinance pursuant to delegated police power. Where the title indicated that the ordinance defined nuisances and provided for the abatement, removal, or suppression of the same, and paragraph (c) authorizes municipalities under the police power section to declare what shall be a nuisance and to abate the same, accordingly, legislative authority existed for enacting the ordinance under the police power delegated by the state legislative body to the municipality. Martin v. King, 417 F.2d 458 (10th Cir. 1969).

Subsection (1)(c) requires an ordinance to make it effective. Houston v. Walton, 23 Colo. App. 282, 129 P. 263 (1913).

But not outside boundaries. Assuming, under subsection (1)(c), a town has power to declare it a nuisance for one to sell or keep for sale intoxicating liquor inside the corporate limits, and, by ordinance regulating the procedure, to abate the nuisance, this does not confer power to declare what shall constitute a nuisance within a mile beyond the outer boundaries,

and abate it. Wolfe v. Abbott, 54 Colo. 531, 131 P. 386 (1913).

Denoting nuisance insufficient unless city had power to punish conduct. The fact that a municipal ordinance which prohibits the solicitation of orders for merchandise from residents without invitation denominates such practice a nuisance, which it may not be in fact, is immaterial in a consideration of the validity of the ordinance, the real question being whether the city had power to punish the prescribed conduct, not whether it had the right to name it. McCormick v. City of Montrose, 105 Colo. 493, 99 P.2d 969 (1939).

City had authority to abate nuisance and to recoup its remediation expenses through liens if so provided in the nuisance ordinance. Gold Vein LLC v. Cripple Creek, 973 P.2d 1286 (Colo. App. 1999).

Municipality may not impose a priority lien for abatement expenses except as specifically authorized in subsection (1)(d) for weed, brush, and rubbish removal. Gold Vein LLC v. Cripple Creek, 973 P.2d 1286 (Colo. App. 1999).

Licensing ordinance repugnantly discriminatory. The attempt of a city council, by ordinance, to prevent the prosecution of lawful business avocations, not declared by any ordinance to be nuisances, within the city limits without a permit or license from the city council is not authorized by subsection (1)(c), and such an ordinance is repugnant to fundamental rights in that it is susceptible of being used to unjustly discriminate between individuals equally worthy and respectable by permitting certain individuals to pursue the avocations mentioned while denying the privilege to other persons of the same class, or by making acts done by one person penal and imposing no penalty for the same act when done under like circumstances by another. May v. People, 1 Colo. App. 152, 27 P. 1010 (1891).

Applied in Brophy v. Hyatt, 10 Colo. 223, 15 P. 399 (1887).

B. What Constitutes a Nuisance.

Animals. Under subsection (1)(c), the city council of a city or the board of trustees of a town may declare horses, cattle, sheep, swine, goats, or other like animals running at large within the corporate limits, a nuisance, and impose a fine on any person permitting it. Haldeman v. Colo. City, 52 Colo. 233, 120 P. 1041 (1911).

An ordinance was a valid nuisance abatement ordinance which lawfully declared maintenance of cattle within the town limits a nuisance and provided for abatement thereof unless a permit allowing such maintenance had been granted. Martin v. King, 417 F.2d 458 (10th Cir. 1969).

Liquor. The mere sale of, or keeping for sale, intoxicating liquors is not a nuisance per se, but the town council may by ordinance declare it a nuisance. Wolfe v. Abbott, 54 Colo. 531, 131 P. 386 (1913).

An ordinance prohibiting the sale of intoxicating liquors within the limits of the city, and declaring that "a place kept for such sale, and the business, and the liquor kept" is a nuisance "to be abated as any other nuisance" is conclusive in its effect,

and the provision that the nuisance shall be abated "as any other nuisance" can be held to mean only as any other nuisance may lawfully be abated. Houston v. Walton, 23 Colo. App. 282, 129 P. 263 (1913).

Privies. Cities may have the power to declare a privy in an established sewer district a nuisance per se, and to abate it, and fine the party suffering it to exist, but the proceeding would have to be under an ordinance based upon the power conferred by the statutes, and the ordinance must provide the manner of abatement. Gault v. City of Ft. Collins, 57 Colo. 324, 142 P. 171 (1914).

Nuisance per accidents. Even though zoning regulations permit an act to be done, and the act is being done with reasonable care and skill, the courts may grant relief where it is found that the acts complained of constitute a nuisance per accidents; to hold otherwise would be to state that the legislative body may license a nuisance. Hobbs v. Smith, 177 Colo. 299, 493 P.2d 1352 (1972).

C. Abatement.

The abatement procedure should be regulated by an ordinance, and the manner of abatement not left to the discretion of the officer executing the order. Wolfe v. Abbott, 54 Colo. 531, 131 P. 386 (1913).

Enjoining nuisance. Regardless of compliance with zoning ordinances or regulations, both business and residential uses may be enjoined if they constitute a nuisance to an adjoining property owner or resident. Hobbs v. Smith, 177 Colo. 299, 493 P.2d 1352 (1972).

Manner of arrest and destruction unwarranted. The arrest with unnecessary force of one found in possession of a stock of intoxicating liquors, the destruction of the liquors with other legitimate merchandise, all in a disorderly and tumultuous manner, in disturbance of the peace of the Sabbath day, was not justified by ordinance prohibiting the sale or keeping for sale of such liquors, and declaring that the sale or keeping for sale of such liquors was a nuisance; nor by a vote or resolution of the city council directing the city marshal to seize and bring before the police magistrate all such liquors, with the persons of those found upon the premises. Houston v. Walton, 23 Colo. App. 282, 129 P. 263 (1913).

As to nuisances which may at common law be summarily abated, e.g., the obstruction of the public highway, it may be that the municipal authorities may proceed without the aid or adjudication of any court, otherwise, in the absence of statute, as to other nuisances, or where the existence of the nuisance depends upon proof that the law has been violated. Houston v. Walton, 23 Colo. App. 282, 129 P. 263 (1913).

V. ESTRAYS AND IMPOUNDING.

Constitutional basis for power. A city organized under art. XX, Colo. Const., has the power to impound animals running at large, within its bounds, and to charge owner a reasonable amount for discharging this duty, and such an imposition is a matter of local concern. City of Pueblo v. Kurtz, 66 Colo. 447, 182 P. 884 (1919).

Denver municipal ordinance prohibiting pit bulls held constitutional. Colo. Dog Fanciers v. Denver, 820 P.2d 644 (Colo. 1991).

Applied in Brophy v. Hyatt, 10 Colo. 223, 15 P. 399 (1887).

31-15-402. Liability for violation of nuisance ordinance.

(1) If a municipality serves upon an owner and tenant of real property notice of a violation of a nuisance ordinance committed by a tenant on property that the owner rents or leases to a tenant, the owner shall have the right to deliver written notice to the tenant to abate the nuisance. If the tenant does not abate the nuisance within five days after delivery of the notice, the owner may enter the exterior area of the property and abate the nuisance.

(2) This section shall not be construed to prohibit a property owner from entering any area of the property under the terms of the lease with the tenant.

(3) If the abatement of a nuisance pursuant to this section requires the removal of a motor vehicle from the property, the property owner may abate the nuisance only by hiring a towing carrier, as defined in section 40-10.1-101, C.R.S., to take the vehicle to a lot for storage under appropriate protection.

(4) Unless the lease provides otherwise, the tenant shall be liable to the owner of the real property for the amount of the owner's direct costs in abating a nuisance pursuant to this section and for the amount of the fine imposed upon the owner on and after the date on which the tenant received notice of the nuisance from the municipality pursuant to section 31-15-401 (1)(c).

(5) Nothing in this section shall be construed to limit a tenant's legal remedies for harm caused by a property owner to the tenant's person or to the tenant's property other than the property that is the subject of an abatement pursuant to this section.

Source: L. 2005: Entire section added, p. 550, § 2, effective January 1, 2006. **L. 2011:** (3) amended, (HB 11-1198), ch. 127, p. 418, § 10, effective August 10.

31-15-403. Prohibition against the use of restraints on pregnant women in custody.

A municipality that chooses to establish and operate a jail, as authorized in section 31-15-401 (1)(j), shall comply with the provisions of section 17-26-104.7, C.R.S., concerning the use of restraints on pregnant women in custody.

Source: L. 2010: Entire section added, (SB 10-193), ch. 312, p. 1468, § 5, effective January 1, 2011.

31-15-404. Menstrual hygiene products for a person in custody.

A municipality that chooses to establish and operate a jail, as authorized in section 31-15-401 (1)(j), shall comply with the provisions of section 17-26-104.3 concerning the provision of menstrual hygiene products to a person in custody at no expense to the person in custody.

Source: L. 2019: Entire section added, (HB 19-1224), ch. 131, p. 589, § 6, effective April 25.

Cross references: For the legislative declaration in HB 19-1224, see section 1 of chapter 131, Session Laws of Colorado 2019.

31-15-405. Opioid treatment for a person in custody.

A municipality that chooses to establish and operate a jail, as authorized in section 31-15-401 (1)(j), is strongly encouraged to comply with the provisions of section 17-26-104.9 concerning opioid treatment for a person in custody.

Source: L. 2020: Entire section added, (HB 20-1017), ch. 288, p. 1424, § 4, effective September 14.

31-15-406. Incarceration of a person with the capacity for pregnancy.

A municipality that chooses to establish and operate a jail, as authorized in section 31-15-401 (1)(j), shall comply with the provisions of section 17-26-104.4 concerning the requirements of a facility that incarcerates persons who are capable of pregnancy.

Source: L. 2021: Entire section added, (SB 21-193), ch. 433, p. 2866, § 10, effective September 7.

31-15-407. Statewide policy to prevent the operation of illicit massage businesses - background checks required - legislative declaration.

(1) The general assembly finds and declares that because preventing the operation of illicit massage businesses, as defined in section 30-15-401.4, is a matter of mixed statewide and local concern, it is necessary, appropriate, and in the best interest of all Coloradans to require, uniformly throughout the state as a matter of statewide policy, that every current and prospective operator, owner, and employee of a massage facility submit to a background check, as defined in section 30-15-401.4 (2)(a.5), which generally means a fingerprint-based criminal history record check as required by section 30-15-401.4.

(2) In accordance with section 30-15-401.4 (3.5) and subject to the exception set forth in section 30-15-401.4 (3)(c), every statutory or home rule municipality shall establish a local process to ensure that required background checks are conducted in accordance with the requirements of section 30-15-401.4.

Source: L. 2022: Entire section added, (HB 22-1300), ch. 439, p. 3092, § 2, effective August 10. **L. 2024:** Entire section amended, (HB 24-1371), ch. 462, p. 3218, § 2, effective August 7. **L. 2026:** (1) amended, (HB 26-1257), ch. 101, p. 406, § 3, effective August 12.

PART 5

REGULATION OF BUSINESSES

31-15-501. Powers to regulate businesses.

(1) The governing bodies of municipalities have the following powers to regulate businesses:

(a) To prohibit within the limits of the municipality any offensive or unwholesome business or establishment and also to prohibit the carrying on of any business or establishment in an offensive and unwholesome manner within the limits of the municipality;

(b) To compel the owner of any grocery, cellar, soap or tallow candlery, tannery, stable, pigsty, privy, sewer, or other unwholesome or nauseous house or place to cleanse, abate, or remove the same, and to regulate the location thereof;

(c) **[*Editor's note: This version of subsection (1)(c) is effective until January 1, 2028.*]** To license, regulate, and tax, subject to any law of this state, any lawful occupation, business place, amusement, or place of amusements and to fix the amount, terms, and manner of issuing and revoking licenses issued therefor; except that, for purposes of the application of any occupational privilege tax, oil and gas wells and their associated production facilities have not been, are not, and shall not be considered an occupation or business place subject to such tax;

(c) **[*Editor's note: This version of subsection (1)(c) is effective January 1, 2028.*]** To license, regulate, and tax, subject to any law of this state, any lawful occupation, business place, amusement, or place of amusements and to fix the amount, terms, and manner of issuing and revoking licenses issued therefor; except that:

(I) For purposes of the application of any occupational privilege tax, oil and gas wells and their associated production facilities have not been, are not, and shall not be considered an occupation or business place subject to such tax; and

(II) In accordance with section 24-50-104 (4)(d)(I), the state of Colorado is not an occupation or business place subject to such tax.

(d) To direct the location and regulate the management and construction of slaughterhouses, packing houses, renderies, tallow candleries, bone factories, soap factories, tanneries, and dairies within the limits of the municipality;

(e) To direct the location and regulate the use and construction of breweries, distilleries, livery stables, blacksmith shops, and foundries within the limits of the municipality;

(f) (I) To license, regulate, and control the laying of railroad tracks, to provide for and change the location, grade, and crossing of any railroad, and to control, regulate, and prohibit the use of steam engines and locomotives propelled by steam power within the corporate limits;

(II) To require railroad companies to fence their respective railroads or any portion of the same and to construct cattle guards at crossings of streets and public roads and keep the same in repair within the limits of the municipality;

(III) To require railroad companies to keep flagmen at railroad crossings of streets and to provide protection against injury to persons and property in the use of such railroads;

(IV) To compel such railroads to raise or lower their railroad tracks to conform to any grade which may at any time be established by such municipality and, when such tracks run lengthwise of any street, alley, or highway, to keep their tracks on a level with the street surface so that such tracks may be crossed at any place on such street, alley, or highway;

(V) To compel and require railroad companies to make, keep open, and keep in repair ditches, drains, sewers, and culverts along and under their railroad tracks so that filthy or stagnant pools of water cannot stand on their grounds or rights-of-way and so that the natural drainage of adjacent property shall not be impeded;

(g) To license, tax, regulate, suppress, and prohibit hucksters, peddlers, pawnbrokers, and keepers of ordinaries, theatrical and other exhibitions, shows, and amusements and to revoke such license at pleasure;

(h) To license, tax, and regulate hackmen, omnibus drivers, carters, cabmen, porters, expressmen, and all others pursuing like occupations and to prescribe the compensation;

(i) To license, regulate, tax, and restrain runners for stages, cars, public houses, or other things or persons;

(j) To license, regulate, tax, or prohibit and suppress billiard, bagatelle, pigeonhole, or any other tables or implements kept or used for a similar purpose in any place of public resort and pin alleys and ball alleys;

(k) To regulate the sale of meats, poultry, fish, butter, cheese, lard, vegetables, and all other provisions and to provide for the place and manner of selling the same. It is unlawful for any municipality to impose by ordinance or otherwise any license, assessment, or other charge upon any person bringing food products to such municipality for sale, either in bulk or by retail, from house to house if said food products were grown or raised by the person so having them for sale and are products of the state of Colorado.

(l) To regulate the sale of bread in the municipality and to prescribe the weight and quality of the bread in the loaf;

(m) To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meal, and other provisions;

(n) To provide for the inspection and sealing of weights and measures;

(o) To enforce the keeping and use of proper weights and measures by vendors;

(p) To tax, license, and regulate auctioneers, lumberyards, livery stables, public scales, money changers, and brokers; except that the exercise of their powers shall not interfere with sales made by sheriffs, tax collectors, coroners, marshals, executors, guardians, any assignees of insolvent debtors, bankrupts, or debtors under the federal bankruptcy code of 1978 (title 11 of the United States Code), or any other persons required by law to sell real or personal property at auction;

(q) To tax, license, and regulate secondhand and junk stores, to forbid their purchasing or receiving from minors without the written consent of their parents or guardians any article, and to compel a record of purchases to be kept, subject at all times to the inspection by the police;

(r) To charge a fee for a local license and establish licensing requirements on businesses engaged in the storage, extraction, processing, or manufacturing of industrial hemp, as defined in section 35-61-101 (7), or hemp products, as defined in section 25-5-427 (2)(d). A municipality shall not impose additional food production regulations on hemp processors or hemp products if the regulations conflict with state law.

(2) Repealed.

Source: L. 75: Entire title R&RE, p. 1110, § 1, effective July 1. **L. 80:** (1)(p) amended, p. 785, § 12, effective June 5. **L. 96:** (1)(c) amended, p. 346, § 2, effective April 17. **L. 99:** (1)(a) and (1)(d) amended, p. 63, § 1, effective July 1. **L. 2006, 1st Ex. Sess.:** (2) added, p. 29, § 3, effective January 1, 2007. **L. 2019:** (1)(r) added, (SB 19-240), ch. 351, p. 3245, § 3, effective May 29. **L. 2021:** (2) repealed, (SB 21-077), ch. 186, p. 998, § 6, effective September 7; (2) repealed, (SB 21-199), ch. 351, p. 2283, § 6, effective July 1, 2022. **L. 2023:** (1)(r) amended, (SB 23-271), ch. 444, p. 2618, § 13, effective June 7. **L. 2026:** (1)(c) amended, (SB 26-193), ch. 317, p. 1861, § 3, effective January 1, 2028.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the legislative declaration in SB 26-193, see section 1 of chapter 317, Session Laws of Colorado 2026.

ANNOTATION

I. General Consideration.

II. Subsection (1)(c).

III. Subsection (1)(g).

IV. Subsection (1)(j).

I. GENERAL CONSIDERATION.

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (Oct. 2006). For article, "The State of Short-Term Rentals in Colorado", see 51 Colo. Law. 34 (Apr. 2022).

Annotator's note. Since § 31-15-501 is similar to former §§ 31-12-101 and 31-15-301 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Application of subsection (1)(a) to privies. Subsection (1)(a) gave the city sufficient authority to compel all buildings embraced within the power to connect with the sewer. It also confers ample power to prohibit the keeping of any privy within a sewer district, or within 400 feet of the sewer; but this does not mean the city has power to compel one who does not desire to make the connection to connect an outside or open privy or vault with the sewer. It can prohibit the maintenance and use of the privy, and can fine the keeper and abate the nuisance, if it is a nuisance, and can compel owners of buildings to connect with the sewer. This would seem sufficient power to rid any sewer district of all privies and

vaults, and to compel owners to connect all buildings with the sewer. Gault v. City of Ft. Collins, 57 Colo. 324, 142 P. 171 (1914).

Subsection (1)(b) was intended to apply to those things which are offensive to the senses, or unwholesome in the sense in which the terms are ordinarily used, and they refer to such things as dead carcasses, offensive and unwholesome slaughterhouses, privy vaults, pig sties, feeding pens, and the like. Wolfe v. Abbott, 54 Colo. 531, 131 P. 386 (1913).

Not as nuisances. Subsection (1)(b) does not confer upon towns and cities the power by ordinance to prohibit and abate a nuisance within a mile beyond the outer boundaries. Wolfe v. Abbott, 54 Colo. 531, 131 P. 386 (1913).

Enforced through fine and imprisonment. The town must prohibit the things mentioned in subsection (1)(b), and enforced the prohibition by fine and imprisonment. Wolfe v. Abbott, 54 Colo. 531, 131 P. 386 (1913).

Subsection (1)(b) does not apply to liquor, and if it did, there is no power given to declare the enumerated matters a nuisance with power to abate the same. Wolfe v. Abbott, 54 Colo. 531, 131 P. 386 (1913).

Valid subsection (1)(h) ordinance. A city ordinance providing that hotel runners, stage and omnibus drivers, hackmen, and expressmen, plying their respective vocations at any passenger depot of any railroad in such city on the arrival and departure of trains, should occupy no part of the depot grounds or premises except that portion allotted and designated to them by the station agent of such depot is not to be construed as giving a railroad company the right to exclude from its depot grounds or premises any person lawfully engaged in serving the traveling public either with or without vehicles, nor to confer upon such company the power to grant exclusive rights and privileges to persons engaged in such occupations; but such ordinance, being authorized by subsection (1)(h), is to be upheld as a reasonable regulation to promote the convenience of the traveling public and to prevent disorder at railway stations. City of Colo. Springs v. Smith, 19 Colo. 554, 36 P. 540 (1894).

Municipal weights and measures divisions authorized. There is no conflict between the 1877 grant of powers to cities and towns with the weights and measures statute because the general assembly, in enacting the weights and measures statute, expressly recognized that cities and towns may have established and maintained weights and measures divisions pursuant to statutory consent of 1877. Blackman v. County Court, 169 Colo. 345, 455 P.2d 885 (1969).

Matter of both state and local concern. The regulation of weights and measures to prevent misrepresentations and frauds in commercial transactions between vendor and vendee is a matter of both statewide and local concern and may be regulated under the police power at the state level and concurrently at the municipal level, providing there are no conflicting regulatory provisions. Blackman v. County Court, 169 Colo. 345, 455 P.2d 885 (1969).

Ticket brokers subject to subsection (1)(p). The power to license ticket brokers has been conferred by subsection (1)(p). Upon the city council of cities, but that body may not relinquish the delegated power, or any essential part of it, to a private person or corporation or a purely voluntary private association, or confer upon any such association power to perform any municipal function whatever. Munson v. City of Colo. Springs, 35 Colo. 506, 84 P. 683 (1906).

Unreasonable city ordinance as to ticket brokers. A city ordinance regulating the licensing of railroad ticket brokers which requires an applicant for license to file with the city clerk a certificate of membership in some reputable ticket brokers' association before a license will be issued in unreasonable and invalid. Munson v. City of Colo. Springs, 35 Colo. 506, 84 P. 683 (1906).

Railroad crossings may be abolished by public utilities commission (PUC). This section does not prohibit the PUC from abolishing railroad crossings in the interest of public safety, pursuant to § 40-4-106. City of Craig v. Pub. Utils. Comm'n, 656 P.2d 1313 (Colo. 1983).

Applied in City of Colo. Springs v. Smith, 19 Colo. 554, 36 P. 540 (1894); Rancho Colo., Inc. v. City of Broomfield, 196 Colo. 444, 586 P.2d 659 (1978); Central City Opera House Ass'n v. City of Central, 650 P.2d 1349 (Colo. App. 1982).

II. SUBSECTION (1)(c).

A tax on income is in excess of the powers delegated to Colorado municipalities. Bd. of Trustees v. Foster Lumber Co., 190 Colo. 479, 548 P.2d 1276 (1976).

Income and occupation tax differentiated. An income tax, whether net or gross, bears a direct relation to the income or receipts of a business. An occupation tax bears no such relationship. The latter is a tax upon the very privilege of doing business, and does not fluctuate from month to month depending upon the financial success or sales of the enterprise. Bd. of Trustees v. Foster Lumber Co., 190 Colo. 479, 548 P.2d 1276 (1976).

An occupation tax is a tax on the privilege of doing business and does not fluctuate from month to month depending upon the financial success or sales of the enterprise. Mtn. States Tel. & Tel. Co. v. City of Colo. Springs, 194 Colo. 404, 572 P.2d 834 (1977).

A true business or occupational tax is not an income tax nor a tax on real property, and the fact that the business necessarily involves and concerns realty does not change the nature of the tax. City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961).

Gross income and net income taxes are both 'income taxes" and their difference is a matter of degree. Bd. of Trustees v. Foster Lumber Co., 190 Colo. 479, 548 P.2d 1276 (1976).

Admissions tax not tax on privilege of doing business. An admissions tax imposed upon persons patronizing businesses is not a tax on the privilege of doing business as authorized by this section. City of Sheridan

v. City of Englewood, 199 Colo. 348, 609 P.2d 108 (1980).

Occupation tax authorized. The general assembly has given the power to impose an occupation privilege tax at a fixed rate regardless of the nature of the employment, to tax the privilege of all to engage in occupations within the municipality's territorial limits. City & County of Denver v. Duffy Storage & Moving Co., 168 Colo. 91, 450 P.2d 339 (1969).

Subsection (1)(c) authorized municipalities to impose occupation taxes on local businesses. Bd. of Trustees v. Foster Lumber Co., 190 Colo. 479, 548 P.2d 1276 (1976).

The purpose of an occupation tax is to tax the owners of businesses for the privilege of conducting various classes of businesses within the boundaries of the city. Bd. of Trustees v. Foster Lumber Co., 190 Colo. 479, 548 P.2d 1276 (1976).

As revenue measure. A home-rule city has the undoubted power to impose a business or occupational tax for the sole purpose of raising revenue. City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961).

Language denoting tax not indicative of true nature. The language used by the legislative body in denominating the nature of a tax assessed is not determinative of its true character. Bd. of Trustees v. Foster Lumber Co., 190 Colo. 479, 548 P.2d 1276 (1976).

Business defined. Business is a very comprehensive term and embraces everything about which a person can be employed, that which occupies the time, attention, and labor of men for the purpose of livelihood or profit, and corporations organized for the purpose of doing business, and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of this statute. City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961).

The renting of residential or commercial property is a "business" and as such is subject to the power to impose a business or occupational tax. City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961).

One who acquires realty and then improves, subdivides, and sells the land for building sites is also engaged in a business which can be subjected to an occupational tax. City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961).

Those who purchase land at tax sales are subject to a business or occupational tax. City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961).

Tax of two dollars per day for each room rented is a valid occupation tax. This roughly approximates the amount of use that the hotels, through their employees and customers, make of the town's services and facilities. Variation in the amount of tax paid during each taxing period caused by

calculations based on factors other than income is not fatal to a valid occupation tax. Town of Eagle v. Scheibe, 10 P.3d 648 (Colo. 2000).

A city ordinance passed by a city of the second class making any sale in the furtherance of business taxable, and imposing a tax on businesses and professions graduated according to the number of employees in each business or profession, did not contravene the right to acquire property without undue interference and so did not violate § 3 of art. II, Colo. Const. Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950).

Exercise of licensing power subject to judicial review. While the general power to license is conferred by this subdivision of this section, the mode of its exercise is not prescribed, hence the reasonableness, as well as the constitutionality, of an ordinance prescribing the mode of exercise of the power is a matter of judicial cognizance. Munson v. City of Colo. Springs, 35 Colo. 506, 84 P. 683 (1906).

Applied in Orman v. City of Pueblo, 8 Colo. 292, 6 P. 931 (1885).

III. SUBSECTION (1)(g).

Subsection (1)(g) ordinances constitutional. The adoption of a municipal ordinance restricting the operations of peddlers and solicitors at private residences is an authorized and reasonable exercise of police powers of the state delegated to municipal legislative bodies; such ordinances do not deprive the parties affected of any right guaranteed by either the fourteenth amendment to the federal constitution or provisions of the state fundamental law. McCormick v. City of Montrose, 105 Colo. 493, 99 P.2d 969 (1939).

And not a burden on interstate commerce. A restrictive municipal ordinance concerning the operations of peddlers and solicitors is not a regulation of, or burden upon, interstate commerce within the intent and meaning of the interstate commerce clause of the federal constitution. McCormick v. City of Montrose, 105 Colo. 493, 99 P.2d 969 (1939).

Peddler defined. To constitute a peddler within the meaning of subsection (1)(g), the trader must be one who carries with him the goods which he intends to sell. Kennedy v. People ex rel. La Junta, 9 Colo. App. 490, 49 P. 373 (1897).

One who sells by sample merely, for future delivery, is not a peddler. Kennedy v. People ex rel. La Junta, 9 Colo. App. 490, 49 P. 373 (1897).

No exclusive power to license shows, etc. There is nothing in subsection (1)(g) which shows any intention to take away from the county its power, or to grant unto cities and towns the exclusive power to license shows and amusements within their respective limits. Godfrey v. Bd. of Comm'rs, 53 Colo. 196, 124 P. 190 (1912).

Statutory licensing power only. Under subsection (1)(g) and the other pertinent provisions of this subsection, the authority of municipal corporations to grant licenses for occupations carried on within their limits exists by force of the statute alone, and they cannot legally exact license fees from those

engaged in business pursuits not included or covered by the statute. Bernheimer v. City of Leadville, 14 Colo. 518, 24 P. 332 (1890).

The general assembly did not intend to deprive the county of any of its revenue by enacting subsection (1)(g). Godfrey v. Bd. of Comm'rs, 53 Colo. 196, 124 P. 190 (1912).

Licensing ordinance allowing too much discretion violative of fundamental law. An ordinance passed under the authority of paragraph (g) requiring one peddling artesian water within the city limits to have a license, and giving the city council power to give or withhold such license at its discretion, is void in that it is violative of the fundamental law of the state and nation, because the right to pursue a lawful calling is a natural right, subject only to such restrictions as the legislative authority may impose upon all alike, and it is not dependent upon the will or caprice, or the pleasure or prejudice or discretion of a city council. City of La Junta v. Heath, 38 Colo. 372, 88 P. 459 (1906).

IV. SUBSECTION (1)(j).

No constitutional right. Section 3 of art. II, Colo. Const., does not confer upon the citizen a constitutional right to conduct a business which may be inimical to the public morals, such as the use of pinball machines as gambling devices. Bunzel v. City of Golden, 150 Colo. 276, 372 P.2d 161 (1962).

Discouragement or prohibition proper. With respect to those occupations or forms of business, however, that are not useful, but are inherently harmful and dangerous to society or the public welfare, license requirements and exactions may be so imposed as to discourage and even amount to a prohibition of them. Bunzel v. City of Golden, 150 Colo. 276, 372 P.2d 161 (1962).

Pinball machines. The supreme court has held that pinball machines may be used as gambling devices and has refused to enjoin officers from seizing them under the terms of local ordinances. Bunzel v. City of Golden, 150 Colo. 276, 372 P.2d 161 (1962).

A city is specifically authorized to prohibit entirely the use of such pinball machines. Bunzel v. City of Golden, 150 Colo. 276, 372 P.2d 161 (1962).

License fee, etc., constitutional. An ordinance exacting a license fee of $100 per machine from a person who owns and operates four or more machines in his own place of business, and a lesser fee for those operating fewer than four machines, does not deprive the former of equal protection of the law. Bunzel v. City of Golden, 150 Colo. 276, 372 P.2d 161 (1962).

PART 6

BUILDING AND FIRE REGULATIONS

31-15-601. Building and fire regulations - emission performance standards required - reporting.

(1) The governing bodies of municipalities have the following powers in relation to building and fire regulations:

(a) To regulate the construction, repairs, and use of vaults, cisterns, areas, hydrants, pumps, sewers, and gutters;

(b) To regulate partition fences and party walls;

(c) To prescribe the thickness and strength of, and the manner of constructing, stone, brick, and other buildings and to prescribe the construction of fire escapes therein;

(d) To prescribe the limits within which wooden buildings shall not be erected, or moved into from outside said limits or placed in or repaired without permission, to direct that any buildings within the fire limits, when the same have been damaged by fire, decay, or otherwise to the extent of fifty percent of the value, be torn down or removed, and to prescribe the manner of ascertaining such damage;

(e) (I) To prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, and apparatus used in and about any factory and to cause the same to be removed or placed in a safe condition when considered dangerous;

(II) To regulate and prevent the carrying on of manufacturing which causes and promotes fires;

(III) To prevent the deposit of ashes in unsafe places and to cause all such buildings and enclosures as may be in a dangerous state to be put in a safe condition;

(f) To provide for the inspection of steam boilers;

(g) To compel the owners and occupants of houses and other buildings to have scuttles on the roof and stairs or ladders leading to the same and to compel the owners of all buildings over two stories in height to provide fire escapes;

(h) To regulate the size, number, and manner of the construction of the doors and stairways of theaters, tenement houses, audience rooms, and all buildings used for the gathering of a large number of people, to provide convenient, safe, and speedy exits in case of fire;

(i) To compel the owners of all lots with a building fronting on the street to provide a number on said building;

(j) To regulate or prevent the storage and transportation of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, gasoline, nitroglycerine, petroleum, or any of the products thereof, and other combustible or explosive material within the municipal limits and to prescribe the limits within which any such regulations shall apply; to regulate the use of lights in garages, shops, and other places; to regulate or prevent the storage of gunpowder and other high explosives within the municipal limits or within one mile of the outer boundaries thereof; and to regulate and restrain the use of fireworks, firecrackers, torpedoes, roman candles, skyrockets, and other pyrotechnic displays;

(j.5) To regulate fires consistent with the provisions of section 31-15-401 (1)(q);

(k) To regulate and prohibit the keeping of any lumberyard and the placing, piling, or selling of any lumber, timber, wood, or other combustible material within the fire limits of the municipality and to regulate the storage of any combustible material at any place within the limits of the municipality;

(l) To erect engine houses and provide fire engines, hose, hose carts, hooks and ladders, and other implements for the extinguishing of fires and provide for the use and management of the same by volunteer fire companies or otherwise; to determine the powers and duties of the members of the fire department in taking charge of property to the extent necessary to bring under control and extinguish any fire; to preserve and protect property not destroyed by fire; and to restrain persons from interfering with the discharge of the duties of the members of the fire department in connection with the fighting of any fire;

(m) (I) To adopt an ordinance, in consultation with the local board of health, local public health agencies, and any water and wastewater service providers serving the municipality, regarding the use of graywater, as defined in section 25-8-103 (8.3), in compliance with any regulation adopted pursuant to section 25-8-205 (1)(g), and to enforce compliance with the governing body's ordinance. The governing body of a municipality:

(A) May adopt an ordinance prohibiting the installation of graywater treatment works, as defined in section 25-8-103 (8.4), and the use of all graywater or prohibiting one or more categories of graywater use that the water quality control commission establishes in rules adopted pursuant to section 25-8-205 (1)(g); and

(B) Pursuant to section 25-8-205.4 (2)(b), shall notify the division of administration within the department of public health and environment of any ordinance adopted pursuant to subsection (1)(m)(I)(A) of this section. A governing body of a municipality that sends notice pursuant to this subsection (1)(m)(I)(B) may subsequently authorize the installation of graywater treatment works and the use of graywater or authorize categories of graywater use previously prohibited at any time by adopting an ordinance. A governing body of a municipality that subsequently authorizes the use of graywater shall promptly notify the division of administration within the department of public health and environment of the subsequent authorization.

(II) A municipal governing body that has not prohibited all graywater use pursuant to subsection (1)(m)(I) of this section is encouraged to enter into a memorandum of understanding with the local board of health, local public health agencies, and any water and wastewater service providers serving the municipality concerning graywater usage and the proper installation and operation of graywater treatment works, as defined in section 25-8-103 (8.4).

(2) By the date established in section 25-7-407, C.R.S., every governing body of a municipality which has enacted a building code, and thereafter every governing body which enacts a building code, shall enact a building code provision to regulate the construction and installation of fireplaces in order to minimize emission levels. Such building code provision shall contain standards which shall be the same as or stricter than the approved emission performance standards for fireplaces established by the air quality control commission in the department of public health and environment pursuant to section 25-7-407, C.R.S.

(3) By January 1, 2020, every governing body of a municipality which has enacted a building code and an energy code shall report the current version of their municipality's building and energy codes to the Colorado energy office. Thereafter, every governing body of a municipality is encouraged to report any change in their municipality's building and energy code to the Colorado energy office within a month of changing their municipality's building and energy codes.

Source: L. 75: Entire title R&RE, p. 1111, § 1, effective July 1. **L. 84:** (2) added, p. 782, § 3, effective April 12. **L. 87:** (2) amended, p. 1144, § 9, effective June 16. **L. 94:** (2) amended, p. 2802, § 564, effective July 1. **L. 2002, 3rd Ex. Sess.:** (1)(j) amended and (1)(j.5) added, p. 38, § 5, effective July 17. **L. 2005:** (2) amended, p. 774, § 59, effective June 1. **L. 2013:** (1)(m) added, (HB 13-1044), ch. 228, p. 1089, § 5, effective May 15. **L. 2019:** (3) added, (HB 19-1260), ch. 357, p. 3285, § 3, effective August 2. **L. 2024:** (1)(m) amended, (HB 24-1362), ch. 277, p. 1841, § 3, effective January 1, 2026.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the legislative declaration in the 2013 act adding subsection (1)(m), see section 1 of chapter 228, Session Laws of Colorado 2013.

31-15-602. Energy efficient building codes - legislative declaration - definitions - repeal.

(1) The general assembly hereby finds and declares that there is statewide interest in requiring an effective energy efficient building code for the following reasons:

(a) Excessive energy consumption creates effects beyond the boundaries of the local government within which the energy is consumed because the production of power occurs in centralized locations.

(b) Air pollutant emissions from energy consumption affects the health of the citizens throughout Colorado.

(c) The strain on the grid from peak electric power demands is not confined to jurisdictional boundaries.

(d) There is statewide interest in the reliability of the electrical grid and an adequate supply of heating oil and natural gas.

(e) Controlling energy costs for residents and businesses furthers a statewide interest in a strong economy and reducing the cost of housing in Colorado.

(f) More recent energy codes are more effective at ensuring building durability and structural integrity and protecting public health and safety through better:

(I) Moisture management to prevent mold, mildew, and rot;

(II) Airflow management; and

(III) Protection during severe weather.

(g) More recent energy codes incorporate newer building technologies, techniques, and materials and offer more options for builders.

(h) Businesses and residents in low-income communities and rural areas of the state deserve at least the same durability, health and safety, and energy cost savings from energy efficient buildings as those in wealthier, urban, and suburban areas of the state.

(i) Highly energy efficient homes and buildings can reduce energy use and help consumers save money on energy bills.

(j) Highly energy efficient and low carbon new homes and buildings are critical for meeting the greenhouse gas pollution reduction targets established in section 25-7-102 (2)(g).

(2) As used in this section, unless the context otherwise requires:

(a) "Building code" means regulations related to energy performance, electrical systems, mechanical systems, plumbing systems, or other elements of residential or commercial buildings.

(a.5) "Colorado plumbing code" has the meaning set forth in section 12-155-103 (1.4).

(a.8) "Elevator and escalator code" means the rules adopted in accordance with section 9-5.5-112.

(b) "Energy code" means a subset of building codes related to the total energy performance and carbon emissions of residential and commercial buildings.

(b.5) "International energy conservation code" means the energy code published by the international code council or a successor organization.

(b.8) "National electrical code" has the meaning set forth in section 12-115-103 (8).

(c) "Office" means the Colorado energy office created in section 24-38.5-101, C.R.S.

(3) The governing body of any municipality that has adopted and enforced one or more building codes, or that adopts and enforces one or more building codes after July 1, 2022, shall adopt and enforce an energy code that applies to the construction of, and major renovations and additions to, all commercial and residential buildings as required by the energy code in the municipality to which the building code applies.

(3.5) (a) The governing body of a municipality that has adopted and enforced one or more building codes, and that updates one or more building codes on or after July 1, 2023, and before July 1, 2026, shall adopt and enforce an energy code that achieves equivalent or better energy performance than the 2021 international energy conservation code and the model electric ready and solar ready code language developed for adoption by the energy code board pursuant to section 24-38.5-401 (5) at the same time other building codes are updated.

(b) The governing body of a municipality that has adopted and enforced one or more building codes, and that updates one or more building codes on or after July 1, 2026, shall adopt and begin enforcing an energy code that achieves equivalent or better energy and carbon emissions performance than the model low energy and carbon code language developed for adoption by the energy code board pursuant to section 24-38.5-401 (6) at the same time other building codes are updated.

(c) When adopting or updating a building code prior to July 1, 2023, the governing body of a municipality shall adopt and enforce an energy code that achieves equivalent or better energy performance than one of the three most recent editions of the international energy conservation code.

(d) Notwithstanding the timing requirement of subsection (3.5)(a) of this section, a governing body of a municipality may comply with subsection (3.5)(a) of this section when the body adopts one or more building codes other than the national electrical code, the elevator and escalator code, and the Colorado plumbing code, or by June 30, 2026, whichever is earlier, if:

(I) The governing body of the municipality adopts or updates:

(A) The national electrical code by reference when adopted or updated by the state electrical board;

(B) The elevator and escalator code by reference when adopted or updated by the director of the division of oil and public safety within the department of labor and employment; or

(C) The Colorado plumbing code by reference when adopted or updated by the state plumbing board; and

(II) The adoption or update of the national electrical code, the elevator and escalator code, or the Colorado plumbing code occurs on a timing cycle different from the scheduled adoption or update of one or more building codes other than the national electrical code, the elevator and escalator code, or the Colorado plumbing code.

(e) Notwithstanding the timing requirement of subsection (3.5)(b) of this section, a governing body of a municipality may comply with subsection (3.5)(b) of this section when the body adopts one or more building codes other than the national electrical code, the elevator and escalator code, and the Colorado plumbing code, or by June 30, 2030, whichever is earlier, if:

(I) The governing body of a municipality adopts or updates:

(A) The national electrical code by reference when adopted or updated by the state electrical board;

(B) The elevator and escalator code by reference when adopted or updated by the director of the division of oil and public safety within the department of labor and employment; or

(C) The Colorado plumbing code by reference when adopted or updated by the state plumbing board; and

(II) The adoption or update of the national electrical code, the elevator and escalator code, or the Colorado plumbing code occurs on a timing cycle different from the scheduled adoption or update of one or more building codes other than the national electrical code, the elevator and escalator code, or the Colorado plumbing code.

(f) Notwithstanding the requirements set forth in subsections (3.5)(a) and (3.5)(b) of this section, a governing body of a municipality is not required to adopt and enforce an energy code that meets the requirements of subsections (3.5)(a) and (3.5)(b) of this section solely as a result of adopting the wildfire resiliency code.

(4) (a) Repealed.

(b) (I) (A) Except as otherwise provided in this section, the aggregate of all charges or other related or associated fees a municipality shall impose or assess to install an active solar electric or solar thermal device or system or a geothermal energy system shall not exceed the lesser of the municipality's actual costs in issuing the permit or five hundred dollars for a residential

application or one thousand dollars for a nonresidential application if the device or system produces fewer than two megawatts of direct current electricity or an equivalent-sized thermal energy system, or that exceed the municipality's actual costs in issuing the permit if the device or system produces at least two megawatts of direct current electricity or an equivalent-sized thermal energy system. A municipality may increase its fees or other charges as authorized by this subsection (4)(b)(I) by no more than five percent on an annual basis until the five hundred dollar limitation specified in this subsection (4)(b)(I) is achieved. The municipality shall clearly and individually identify all fees and taxes assessed on an application subject to this subsection (4)(b)(I) on the invoice. The general assembly hereby finds that there is a statewide need for certainty regarding the fees that can be assessed for permitting such devices or systems, and therefore declares that this subsection (4)(b) is a matter of statewide concern.

(B) In the case of a nonresidential application, on an individual installation basis only, if the municipality incurs actual costs for issuing the permit that are greater than one thousand dollars, the municipality is entitled to recovery of its actual costs for issuing the permit by submitting in writing and disclosing to the applicant for the particular permit proof of the municipality's actual costs.

(C) As used in this subsection (4)(b)(I), "active solar energy system" means a single system that contains electric generation, a thermal device, or is an energy storage system as defined in section 40-2-202 (2), and "geothermal energy system" means a system that uses geothermal energy for water heating or space heating or cooling in a single building, for space heating for more than one building through a pipeline network, or for electricity generation.

(II) This subsection (4)(b) is repealed, effective December 31, 2029.

(5) The following buildings are exempt from subsections (3), (3.5), and (4) of this section:

(a) Any building that is otherwise exempt from the provisions of the building code adopted by the governing body of the municipality in which the building is located and buildings that do not contain a conditioned space;

(b) Any building that does not use either electricity or fossil fuels for comfort heating. A building will be presumed to be heated by electricity even in the absence of equipment used for electric comfort heating if the building is provided with electrical service in excess of one hundred amps, unless the code enforcement official of the municipality determines that the electrical service is necessary for a purpose other than for providing electric comfort heating.

(c) Historic buildings that are listed on the national register of historic places or Colorado state register of historic properties and buildings that have been designated as historically significant or that have been deemed eligible for designation by a local governing body that is authorized to make such designations; and

(d) Any building that is exempt pursuant to the energy code.

(6) Notwithstanding any other provisions of this section, the governing body of any municipality that is required to adopt an energy code may make any amendments to the energy code that the governing body deems appropriate for local conditions, so long as the amendments do not decrease the effectiveness of the energy code.

(7) (a) The office shall ensure that information explaining the requirements of the energy code and describing acceptable methods of compliance is available to builders, designers, engineers, and architects.

(b) The office shall provide the governing body of any municipality with technical assistance concerning the implementation and enforcement of the energy code.

(8) Nothing in this section restricts the ability of an investor-owned utility with approval from the public utilities commission to:

(a) Provide incentives or other energy efficiency program services to help the governing body of any municipality or builders comply with the requirements of this section; or

(b) Earn shareholder incentives and claim credits towards its regulatory requirements for energy or greenhouse gas emission savings achieved as a result of incentives provided by the utility to help the governing body of any municipality or builders comply with the requirements of this section.

(9) A utility not subject to regulation by the public utilities commission may provide incentives or other energy efficiency program services as they so choose to assist the governing body of any municipality or any builders in complying with the requirements of this section.

(10) (a) A utility may count mass-based emissions reductions associated with the requirements of this section towards compliance with its requirements under section 25-7-105 (1)(e)(X.7) or (1)(e)(X.8), section 40-3.2-108 (3)(b), or any similar greenhouse gas emissions reduction program or set of requirements.

(b) A utility subject to regulation by the public utilities commission shall not count energy savings or greenhouse gas emissions reductions achieved through the requirements of this section for the purpose of calculating a shareholder incentive established pursuant to sections 40-3.2-103 (2)(d) and 40-3.2-104 (5) if the utility has not provided a financial investment for code adoption as documented in a plan approved by the commission.

Source: L. 2007: Entire section added, p. 697, § 3, effective July 1. **L. 2008:** (2)(b) and (2)(c) amended, p. 72, § 11, effective March 18; (4) amended, p. 893, § 2, effective May 20. **L. 2011:** (4)(b) amended, (HB 11-1199), ch. 311, p. 1519, § 3, effective June 10. **L. 2012:** (2)(b) and (2)(c) amended, (HB 12-1315), ch. 224, p. 975, § 38, effective July 1. **L. 2017:** (4)(b) amended, (SB 17-179), ch. 170, p. 622, § 3, effective August 9. **L. 2019:** (1)(f), (1)(g), and (1)(h) added

and (2)(b), (3), and IP(5) amended, (HB 19-1260), ch. 357, p. 3286, § 4, effective August 2. **L. 2021:** (4)(b) amended, (HB 21-1284), ch. 327, p. 2091, § 4, effective September 7. **L. 2022:** (1)(i), (1)(j), (2)(b.5), (3.5), (8), (9), and (10) added, (2)(b), (3), and IP(5) amended, and (4)(a) repealed, (HB 22-1362), ch. 301, p. 2186, § 8, effective June 2; (4)(b)(I)(A) and (4)(b)(I)(C) amended, (SB 22-118), ch. 335, p. 2372, § 8, effective August 10. **L. 2023:** (2)(a.5), (2)(a.8), (2)(b.8), (3.5)(d), and (3.5)(e) added, (HB 23-1233), ch. 245, p. 1326, § 11, effective May 23. **L. 2025:** (3.5)(f) added, (HB25-1269), ch. 216, p. 978, § 2, effective May 20. (2)(a.5) amended, (HB 25-1306), ch. 204, p. 926, § 5, effective August 6.

Cross references: (1) In 2011, subsection (4)(b) was amended by the "Fair Permit Act". For the short title, see section 1 of chapter 311, Session Laws of Colorado 2011.

(2) For the legislative declaration in HB 21-1284, see section 1 of chapter 327, Session Laws of Colorado 2021.

(3) For the legislative declaration in HB 23-1233, see section 1 of chapter 245, Session Laws of Colorado 2023.

31-15-603. Charging station rules prohibited.

(1) Notwithstanding any authority granted to the governing body of a municipality by this part 6, the governing body of the municipality shall not adopt an ordinance or resolution prohibiting the installation of or utilization of electric vehicle charging stations unless the ordinance or resolution is narrowly drafted to address a bona fide safety concern. The governing body of the municipality shall not restrict parking based on a vehicle being a plug-in hybrid vehicle or plug-in electric vehicle.

(2) A municipal official shall not prohibit the installation of or utilization of an electric vehicle charging station, or restrict parking based on a vehicle being a plug-in hybrid vehicle or plug-in electric vehicle, unless expressly authorized by ordinance or resolution.

(3) Any ordinance or resolution promulgated by the governing body of a municipality that prohibits the installation of or utilization of electric vehicle charging stations, or that restricts parking based on a vehicle being a plug-in hybrid vehicle or plug-in electric vehicle, is subject to judicial review in a district court with jurisdiction over the municipality.

Source: L. 2023: Entire section added, (HB 23-1233), ch. 245, p. 1324, § 9, effective May 23.

Cross references: For the legislative declaration in HB 23-1233, see section 1 of chapter 245, Session Laws of Colorado 2023.

31-15-604. Building codes - minimum accessibility standards required - international building codes.

When a governing body of a municipality or a regional building department operating through an intergovernmental agreement with a governing body of a municipality adopts or substantially amends any municipal building code, or updates an already adopted building code with a succeeding version of the international building code, the governing body or regional building department shall ensure that the building code meets or exceeds the accessibility standards adopted in one of the two most recent versions of the international building code, as adopted by the International Code Council or a successor organization. Adoption of the energy-efficient building codes in accordance with section 31-15-602 does not constitute a substantial amendment or update to the building codes for purposes of this section. The requirements for ensuring accessibility standards in accordance with this section do not apply to one- and two-family dwellings and townhomes that comply with the International Residential Code, as adopted by the International Code Council or a successor organization, or that comply with a local building code whose accessibility standards are equivalent to the accessibility standards in the International Residential Code. The accessibility standards adopted by a governing body of a municipality or a regional building department cannot provide less protection than what is required by the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.

Source: L. 2025: Entire section added, (HB 25-1030), ch. 8, p. 19, § 3, effective January 1, 2026.

Cross references: For the legislative declaration in HB 25-1030, see section 1 of chapter 8, Session Laws of Colorado 2025.

31-15-605. Single exit in multifamily residential structure - report - definition - repeal.

(1) Subject to the conditions set forth in subsections (2), (3), and (5) of this section and notwithstanding any other provision of law, on or before December 1, 2027, the governing body of a subject jurisdiction shall adopt a building code, or amend the subject jurisdiction's existing building code, to allow a single exit to serve no more than five stories including any occupiable roof of a group r-2 occupancy in the same building, so long as that building:

(a) Is constructed of materials that satisfy international building code type I, type II, or type IV construction standards;

(b) Is protected throughout, including at each landing of the exit stairway, with an automatic sprinkler system that is designed and installed in accordance with the international building code;

(c) Has no more than twenty feet of travel to the exit stairway from the exit or entry door of any dwelling unit;

(d) Has no more than one hundred twenty-five feet of travel to the exit stairway from any point in a dwelling unit;

(e) Except as provided in subsection (1)(f) of this section, does not have a floor with a square footage greater than four thousand feet and has an exit stairway that is at least forty-eight inches wide;

(f) Does not have a floor with a square footage greater than six thousand feet and has an exit stairway whose width is equal to or greater than a number of inches that is in the same ratio to forty-eight as the square footage of the floor is to four thousand but that is less than fifty-four inches;

(g) Has no more than four dwelling units per story;

(h) Only has openings to the exit stairway enclosure that allow exit access from normally occupied spaces, exit access from the exit stairway enclosure to another protected exit component, and access to the exterior from the exit stairway enclosure;

(i) Is fully protected throughout all common areas with smoke detection in accordance with the National Fire Protection Association's standard 72, known as the "National Fire Alarm and Signaling Code", and the international fire code;

(j) Does not have electrical receptacles in an exit stairway enclosure;

(k) Does not have publicly accessible electrical receptacles in corridors between dwelling units and the exit stairway;

(l) Has, in accordance with the international building code, an emergency escape and rescue opening on every floor;

(m) Has an exit stairway that is constructed in accordance with the international building code;

(n) Has a fire-resistant box that contains keys to access the building and the dwelling units in the building, is accessible to relevant firefighters, and is accompanied by a sign indicating that the building is only served by a single exit stairway;

(o) Has an exit stairway that is protected with two-hour fire-rated stair construction regardless of construction type;

(p) Has an exit stairway that is wide enough to allow simultaneous ingress and egress;

(q) Has passive and active fire protection features in occupiable spaces throughout the building, including individual dwelling units, that are periodically inspected and maintained by a third party approved by the subject jurisdiction;

(r) Has corridors that all have a minimum of one hour of fire resistance, in accordance with the international building code;

(s) Has elevator and exit stairway enclosures that all have smoke control systems, in accordance with the international fire code;

(t) Has elevators that are all within two-hour shaft enclosures, in accordance with the international building code;

(u) Does not allow storage, including the storage of deliveries, trash, and recycling, within the space between dwelling unit doors and the exit stairway; and

(v) Does not have more than one story below grade plane.

(2) To satisfy the requirements of subsection (1) of this section, the governing board of a subject jurisdiction may incorporate by reference, or adapt and adopt into the subject jurisdiction's building code, language from a portion of an existing building code of any other American jurisdiction that allows a single exit to serve no more than five stories including any occupiable roof of a group r-2 occupancy in the same building, so long as the incorporated, adapted, or adopted language would satisfy the requirements of this section.

(3) A subject jurisdiction shall coordinate with the applicable fire protection district, fire department, or fire authority to ensure, in accordance with standards established in the international building code and international fire code, that, for a building that serves no more than five stories of a group r-2 occupancy and satisfies the requirements of this section:

(a) Aerial apparatus of the applicable fire protection district, fire department, or fire authority can reach the highest point of the building;

(b) The site design allows for direct vertical access to the roofline and all upper floors from at least one of the required aerial access sides using an aerial apparatus deployed from ground level; and

(c) The site design provides unobstructed aerial apparatus access deployment or positioning.

(4) In addition to the requirements described in subsection (1) of this section, if a building has been constructed with a single exit, the building's landlord, manager, or owner shall conduct

inspections of the building's dwelling units, in addition to third-party inspections, and permission for the inspections shall be included in the lease agreements for each dwelling unit.

(5) If a fire protection district or fire department does not serve an entire subject jurisdiction, the governing board of that subject jurisdiction may satisfy the requirements of subsection (1) of this section by adopting or amending the subject jurisdiction's existing building code insofar as it applies only to the portion of the subject jurisdiction that is served by a single fire protection district or fire department.

(6) The adoption of a building code, or the amendment of a subject jurisdiction's existing building code, by the governing body of a subject jurisdiction to comply with subsection (1) of this section, is not adopting or enforcing a building code for purposes of determining whether a governing body of a municipality is required to adopt and enforce an energy code pursuant to section 31-15-602.

(7) A subject jurisdiction shall include the local International Association of Fire Fighter's affiliate, if one exists, within the subject jurisdiction's jurisdiction and the Colorado Professional Fire Fighters Association on the list of persons to provide notice of meetings pursuant to section 24-6-402 (7) with respect to the discussion of adopting or amending a building code pursuant to subsection (1) of this section.

(8) Nothing in this section requires the governing body of a subject jurisdiction to amend a subject jurisdiction's zoning code with respect to multifamily residential housing.

(9) Nothing in this section prevents a subject jurisdiction, fire protection district, fire department, or fire authority from applying and enforcing a locally adopted life safety code. A locally adopted life safety code may include, but is not limited to, standards governing emergency vehicle site access, fire hydrant spacing, and landscape clearance.

(10) A subject jurisdiction shall ensure that a building that serves no more than five stories of a group r-2 occupancy and satisfies the requirements of this section:

(a) Retains its legal occupancy status, even if a future building code adopted by the subject jurisdiction would disallow the construction of that building; and

(b) If that building is damaged or destroyed, the subject jurisdiction shall allow the building to be rebuilt according to the same standards that were in place when the subject jurisdiction issued the original construction permit for the building; except that:

(I) The building shall satisfy standards established by the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.;

(II) Any alteration to the building that constitutes a substantial improvement under the national flood insurance program established in 42 U.S.C. sec. 4001 et seq., shall comply with current requirements of the national flood insurance program;

(III) Any structural modifications to the building must comply with structural design load and safety requirements in the applicable building code; and

(IV) The reconstruction of the building must comply with state or local building codes that enhance health, safety, welfare, or energy efficiency.

(11) (a) On or before December 1, 2028, and each December 1 thereafter, a subject jurisdiction shall report to the state demography office in the department of local affairs, in a form and manner determined by the state demography office, concerning the previous twelve months:

(I) The number of permits that the subject jurisdiction issued for the construction of buildings with a single exit that serves no more than five stories of a group r-2 occupancy and satisfies the requirements of this section; and

(II) For each building that the subject jurisdiction issued a permit as described in subsection (10)(a)(I) of this section:

(A) The number of dwelling units in the building;

(B) The number of stories that the building has;

(C) The gross building area; and

(D) The total number of emergency incidents, including fire and medical calls, that occurred, as reported by the relevant emergency dispatch center.

(b) (I) Prior to January 2032, the department of local affairs shall consult with the Colorado Professional Fire Fighters Association concerning the implementation of this section.

(II) In January 2032, the department of local affairs shall include, as part of its presentation during its "SMART Act" hearing required by section 2-7-203, information concerning the implementation of this section.

(12) Nothing in this section prevents a governing body of a subject jurisdiction from allowing any type of building with group r-2 occupancy to be served by a single exit in accordance with an edition of the international building code published by the International Code Council on or after January 1, 2027.

(13) Nothing in this section prevents the governing body of a subject jurisdiction from applying sections of the international building code, the international fire code, referenced standards, and other ordinances or laws not specifically referenced in this section to a building served by single exit.

(14) As used in this section, unless the context otherwise requires:

(a) "Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(b) "Group r-2 occupancy" means a residential occupancy containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature.

(c) "International building code" means the most current edition of the international building code published by the International Code Council.

(d) "International fire code" means the most current edition of the international fire code published by the International Code Council.

(e) "Subject jurisdiction" means a municipality:

(I) With a population of one hundred thousand or greater; and

(II) That is served by a fire protection district, fire department, or fire authority that has been accredited by the Commission on Fire Accreditation International, even if the fire protection district, fire department, or fire authority later loses that accreditation, and that meets the aerial apparatus requirements for the fire protection district's, fire department's, or fire authority's Insurance Services Office public protection classification rating.

(f) "Two-hour fire-rated stair construction" means continuous wall, floor, or roof assemblies enclosing a stairway that are designed to restrict the spread of fire, excessive heat, or hot gases, such that the construction continues to perform its structural function for at least two hours as determined by test procedures set forth in American Society for Testing and Materials standard E-119, Underwriters Laboratories standard 263, or other methods approved by the relevant subject jurisdiction.

(15) This section is repealed, effective July 1, 2037.

Source: L. 2025: Entire section added, (HB 25-1273), ch. 188, p. 831, § 2, effective May 13.

Cross references: For the legislative declaration in HB 25-1273, see section 1 of chapter 188, Session Laws of Colorado 2025.

PART 7

PUBLIC PROPERTY AND IMPROVEMENTS

31-15-700.3. Definitions.

As used in this part 7, unless the context otherwise requires:

(1) "Landfill gas" means those gases resulting from the biological decomposition of landfilled solid wastes, including methane, carbon dioxide, hydrogen, and traces of other gases.

Source: L. 2025: Entire section added with relocations, (SB 25-275), ch. 377, p. 2088, §259, effective August 6.

Editor's note: Subsection (1) is similar to former § 31-15-716 (2) as it existed prior to 2025.

31-15-701. Necessary buildings.

The governing body of each municipality has the power to erect and care for all necessary public buildings for the use of the municipality.

Source: L. 75: Entire title R&RE, p. 1113, § 1, effective July 1.

Editor's note: The provisions of this section are similar to several former provisions of § 31-12-101 (19) as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-15-702. Streets and alleys.

(1) The governing body of each municipality has the power:

(a) (I) To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, parks, and public grounds and vacate the same and to direct and regulate the planting of ornamental and shade trees in such streets, parks, and public grounds; to plant trees upon the same; to regulate the use of the same; to prevent and remove encroachments or obstructions upon the same; to provide for the lighting of the same; and to provide for the cleansing of the same;

(II) To regulate the openings therein for the laying-out of gas or water mains and pipes, the building and repairing of sewers, tunnels, and drains, and the erecting of utility poles. Any company organized under the general laws of this state or any association of persons organized for the purpose of manufacturing energy to supply municipalities or the inhabitants thereof with the same has the right by consent of the governing body, but not without such consent, subject to existing rights, to erect factories and lay down pipes in the streets or alleys of any municipality in the state, subject to such regulations as any such municipality by ordinance may impose.

(III) To regulate the use of sidewalks along the streets and alleys and all structures thereunder and to require the owner or occupant of any premises to keep the sidewalks, or along the same, free from snow and other obstructions;

(IV) To regulate and prevent the throwing or depositing of ashes, garbage, or any offensive matter in and to prevent any injury to any street, park, or public ground;

(V) To provide for and regulate crosswalks, curbs, and gutters;

(VI) To regulate and prevent the use of streets, parks, and public grounds for signs, signposts, awnings, awning posts, and power and communications poles, and for posting handbills and advertisements; to regulate and prohibit the exhibition or carrying of banners, placards, advertisements, or handbills in the streets or public grounds or upon the sidewalks; and to regulate and prevent the flying of flags, banners, or signs across the streets or from houses;

(VII) To regulate traffic and sales upon the streets, sidewalks, and public places and to regulate the speed of vehicles, cars, and locomotives within the limits of the municipality;

(VIII) To regulate the numbering of houses and lots and to name and change the name of any street or other public place;

(b) (I) To provide for the construction and maintenance of sidewalks, curbs, and gutters of such material and in such manner as shall be designated and to provide for paying the expenses thereof by special assessments upon the adjacent or abutting property, which assessments shall constitute a lien as provided in section 31-15-401 (1)(d)(I);

(II) To grade, grade or gravel, or otherwise surface or improve streets and alleys and to assess the costs of such improvements upon the lots or lands adjacent to or abutting upon any street or alley or portion thereof so improved, which assessments shall constitute a lien as provided in section 31-15-401 (1)(d);

(c) To grant, by ordinance and upon such terms and conditions as may be prescribed therein, to other municipalities the right-of-way through, over, across, and under streets and alleys for the purpose of laying, constructing, operating, maintaining, and repairing waterworks and all pipelines connected therewith;

(d) To authorize the construction of mills and mill races, irrigating or mining ditches, and feeders on, through, or across the streets of the municipality at such places and under such restrictions as deemed proper.

Source: L. 75: Entire title R&RE, p. 1113, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Law reviews. For article, "Regulation of Cable Television", see 48 U. Colo. L. Rev. 501 (1977). For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983).

Annotator's note. Since § 31-15-702 is similar to former § 31-12-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

No constitutional limit. Under this section, municipalities have power to regulate the use of their public streets within constitutional limitations. Trujillo v. City of Walsenburg, 108 Colo. 427, 118 P.2d 1081 (1941).

Due process requirements regarding trash ordinances. Due process, as it applies to cases involving municipal trash ordinances, requires only that a municipal ordinance enacted under the police power shall not be unreasonable, arbitrary or capricious, and that it bear a rational relation to a proper legislative object sought to be attained. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

A presumption of reasonableness attaches to ordinances promulgated for the health, safety, and welfare of the public. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

An ordinance comports with due process when it bears a reasonable relationship to a legitimate governmental interest. Municipal ordinances for road improvement project that eliminated parking on the municipality's right-of-way near a condominium were a reasonable exercise of the municipality's police powers. The ordinances were within the municipality's police power to regulate matters of public health, safety, and welfare. The measures were a reasonable exercise of that power because they were reasonably related to the municipality's objectives of improving

traffic safety, improving water drainage, and remedying a missing portion of a recreational bike path. Town of Dillon v. Yacht Club Condo. Assn., 2014 CO 37, 325 P.3d 1032.

U.S. supreme court's contemporary regulatory takings jurisprudence makes clear that the relevant inquiries for due process and takings claims are distinct. Because the property owner did not (and could not) assert a takings claim, the lower courts' focus on the magnitude and character of the burden imposed on the property owner by the ordinance was misplaced. Town of Dillon v. Yacht Club Condo. Assn., 2014 CO 37, 325 P.3d 1032.

Police power prevails over proprietary powers. As between the proprietary powers given to a district organized under section 32-4-101 and the police power to protect its citizens and streets given to a city by this section, the police power prevails. People v. Haase, 198 Colo. 47, 596 P.2d 392 (1979).

Immune from liability. In regulating public streets, the town, as such, acts within its governmental capacity and falls within the rule of immunity against liability in connection with the enforcement of its ordinances. Walker v. Tucker, 131 Colo. 198, 280 P.2d 649 (1955).

Under this section, the city is authorized to establish and improve streets and sidewalks and prevent and remove obstructions therefrom and the execution of this power may be required as public duty. People ex rel. Stonebraker v. Wood, 90 Colo. 506, 10 P.2d 331 (1932).

A municipality has broad power to vacate streets or roadways within its boundaries. City of Colo. Springs v. Crumb, 148 Colo. 32, 364 P.2d 1053 (1961).

The broad power of a municipality to vacate streets or roadways within its boundaries is subject only to the limitations of the constitution and the authority delegated by statute, and a court of equity will not review its action in the absence of fraud or a plain abuse of power. City of Colo. Springs v. Crumb, 148 Colo. 32, 364 P.2d 1053 (1961).

Scope of powers under paragraph (a). Paragraph (a), giving to municipal authorities power to vacate parks and public grounds, does not empower such authorities to alienate a plat of ground dedicated to the use of the people of a city for a public park, or to appropriate it, or any part of it, for a use inconsistent with the purpose of the dedication. McIntyre v. Bd. of Comm'rs, 15 Colo. App. 78, 61 P. 237 (1900).

Street cut permit may be required by municipality. A municipality, acting reasonably, has the right to require a water and sanitation district, or those acting in its behalf, to obtain a permit to effect a street cut to repair the district's water lines located below the surface of a street. People v. Haase, 198 Colo. 47, 596 P.2d 392 (1979).

Theory upon which owner of property abutting street may be required to pay costs of public improvements, such as streets, street paving, curbs, gutters and sidewalks, is that the property is especially benefited by the improvements over and above the general benefit to the public at

large. Bethlehem Evangelical Lutheran Church v. City of Lakewood, 626 P.2d 668 (Colo. 1981).

Refuse and litter control is clearly within the framework of legitimate municipal concern. Mosgrove v. Town of Federal Heights, 190 Colo. 1, 543 P.2d 715 (1975).

A city has the power to regulate traffic by municipal ordinance within its boundaries only. Svaldi v. City of Lakewood, 36 Colo. App. 155, 536 P.2d 331 (1975).

A town was empowered by the Colorado constitution to adopt an ordinance that restricted truck traffic on two major streets in the town. Carl Ainsworth, Inc. v. Town of Morrison, 189 Colo. 223, 539 P.2d 1267 (1975).

The enforcement of a town ordinance prohibiting truck traffic on two major streets in the town did not operate as an unreasonable, arbitrary, and discriminatory exercise of police power in violation of amendment 14, U.S. Const. and § 25 of art. II, Colo. Const. Carl Ainsworth, Inc. v. Town of Morrison, 189 Colo. 223, 539 P.2d 1267 (1975).

A town has the right to regulate curb cuts under its police power. Heckendorf v. Town of Littleton, 132 Colo. 108, 286 P.2d 615 (1955).

Unconstitutional fee on use of curb cut. A town ordinance requiring a license and an annual fee to be paid by an abutting property owner using a curb cut as a means of ingress and egress to his property, where regulation under such ordinance amounted to nothing more than a billing of the property owner, such fee is a tax on the right of ingress and egress and not a regulatory fee, and as such is unconstitutional. Heckendorf v. Town of Littleton, 132 Colo. 108, 286 P.2d 615 (1955).

The privilege of a citizen to use the streets of a municipality may be regulated in the interest of all, however, such privilege is not absolute, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order, but it must not, under the guise of regulation, be abridged or denied. Trujillo v. City of Walsenburg, 108 Colo. 427, 118 P.2d 1081 (1941).

But not in violation of fourteenth amendment. A municipal ordinance which leaves to the uncontrolled official discretion of a chief of police the right to say who shall, and who shall not, use its streets for parades or assemblages is authorization of the exercise of arbitrary power by a governmental agency, is in violation of the fourteenth amendment of the federal constitution, and void on its face. Trujillo v. City of Walsenburg, 108 Colo. 427, 118 P.2d 1081 (1941).

Delegation of ministerial duties. A city cannot delegate the authority given by this section to establish the grade of a sidewalk, however it may delegate mere ministerial power, e.g., surveying, investigation, computation, and may take the advice of professional people, but the final determination must be made by the council. City of Leadville v. McDonald, 67 Colo. 131, 186 P. 715 (1919).

Ordinance preventing removal of buildings not within authority of section. An ordinance imposing on the moving of buildings outside the corporate limits of the town a license tax so high as to be prohibitive, which ordinance was plainly passed to prevent the removal of buildings from the town, is not a regulation of the use of the streets authorized by this section but is a pure prohibition, and it is on its face unjust, unreasonable, discriminative, oppressive, and resorted to for an illegal purpose; hence it is unconstitutional and void. Town of Eckley v. Meyers, 116 Colo. 536, 181 P.2d 1014 (1947).

Ordinance prohibiting utilities from requiring municipalities to pay for the relocation of a utility facility is valid as a reasonable exercise of police power and the power to regulate streets and utility poles. U S West Commc'ns v. City of Longmont, 948 P.2d 509 (Colo. 1997).

Applied In Lewis v. Denver Waterworks Co., 19 Colo. 236, 34 P. 993 (1893); Mitchell v. Titus, 33 Colo. 385, 80 P. 1042 (1905); City of Colo. Springs v. Colo. & S. Ry., 38 Colo. 107, 89 P. 820 (1906); Bittle v. Brunetti, 750 P.2d 49 (Colo. 1988).

31-15-703. Improvements - petition - construction.

(1) When the owners of sixty percent of the frontage of the lots or lands adjacent to or abutting upon any street or alley or designated portion thereof petition the governing body in writing to construct a sewer, including a storm sewer, in said street or alley or require sidewalks to be constructed along said street or alley or designated portion thereof, it is the duty of the governing body to order said improvement to be made, to assess the cost of said improvement against the lots or lands adjacent to or abutting upon said sidewalk, street, or alley so improved, and to collect the assessment as provided in sections 31-15-401 (1)(d) and 31-15-704.

(2) When the governing body deems it necessary that any sewer, including a storm sewer, should be constructed, it shall construct the same, assess the cost thereof against the adjacent property, and collect the assessment as provided in sections 31-15-401 (1)(d) and 31-15-704. When the governing body deems it necessary that any portion of a sidewalk, curb, and gutter be constructed or repaired, it may, on its own motion, order the same to be done, and if not constructed or repaired by the owner upon notice, the municipality may construct or repair the same, assess the costs thereof against the adjacent property owner, and collect the assessment as provided in sections 31-15-401 (1)(d) and 31-15-704.

Source: L. 75: Entire title R&RE, p. 1114, § 1, effective July 1.

Editor's note: This section is similar to former § 31-15-302 as it existed prior to 1975.

31-15-704. Collection of assessments.

When the cost of any improvement provided for in sections 31-15-702 (1)(b) and 31-15-703 is assessed against the owners of adjacent or abutting property and the assessment is not paid within thirty days, the clerk shall certify said assessment to the treasurer of the county who shall extend said assessment upon his tax roll and collect it in the same manner as other taxes assessed upon said property.

Source: L. 75: Entire title R&RE, p. 1114, § 1, effective July 1.

Editor's note: This section is similar to former § 31-15-303 as it existed prior to 1975.

31-15-705. Construction of highway - petition - notice - election - tax.

Any municipality may aid in the construction and repair of any highway leading thereto by appropriating a portion of the highway tax belonging to said municipality, not exceeding fifty percent thereof annually, as provided in this section. When a petition signed by twenty of the registered electors of said municipality asking that the question of aiding in the construction or repair of any highway leading thereto be submitted to the registered electors thereof is presented to the governing body, the governing body immediately shall give notice of a special election. Said notice shall specify the date of such election, the particular highway proposed to be aided, and the proportion of the highway tax then levied and not expended or next thereafter to be levied to be appropriated. The election shall be conducted in accordance with the provisions of the "Colorado Municipal Election Code of 1965". The question on the ballot or voting machine tabs shall be "Appropriation" or "No appropriation". If a majority of the votes polled are for appropriation, the governing body may aid in the construction and repair of said highway to the extent of the appropriation in the same manner as they otherwise would if said highway were within the municipal limits of said municipality. No part of such highway tax shall be expended more than two miles from the limits of such municipality.

Source: L. 75: Entire title R&RE, p. 1114, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-103 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-15-706. Railroad track.

(1) The governing body of each municipality has the power to grant the use of, or the right to lay down, any railroad track in any street of the municipality to any steam or street railroad company operating its cars, by any kind of mechanical motive power, only upon the written consent of the owners of the land representing more than one-half of the frontage of the street or so much thereof as is sought to be used for railroad purposes. No franchise shall be granted on that part of any street upon which any other company is operating cars without the written consent of a majority of the frontage owners in every block abutting the track already down upon said street.

(2) The governing body of each municipality has the power to extend, by condemnation or otherwise, any street, alley, or highway over or across or to construct any sewer under or through any railroad track, right-of-way, or land of any railroad company within the corporate limits, but where no compensation is made to such railroad company, the municipality shall restore such railroad track, right-of-way, or land to its former state or in a sufficient manner not to have impaired its usefulness.

Source: L. 75: Entire title R&RE, p. 1115, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-101 (75) and (76) as it existed prior to 1975.

ANNOTATION

Abolition of railroad crossings by public utilities commission (PUC). This section does not prohibit the PUC from abolishing railroad crossings in the interest of public safety, pursuant to § 40-4-106. City of Craig v. Pub. Utils. Comm'n, 656 P.2d 1313 (Colo. 1983).

31-15-707. Municipally owned utilities - powers of a municipality - greenhouse gas emission reduction goals.

(1) The governing body of each municipality has the power:

(a) (I) To acquire waterworks, gasworks, and gas distribution systems for the distribution of gas of any kind or electric light and power works and distribution systems, or heating and cooling works and distribution systems for the distribution of heat and cooling obtained from geothermal resources, solar or wind energy, hydroelectric or renewable biomass resources, including waste and cogenerated heat, and all appurtenances necessary to any of said works or systems or to authorize the erection, ownership, operation, and maintenance of such works and systems by others. No such works or systems, except waterworks, shall be acquired or erected by a municipality until the question of acquiring or erecting the same is submitted at a regular or special election and approved in the manner provided for authorization of bonded indebtedness by section 31-15-302 (1)(d) and in accordance with the requirements of law, including requirements of law relating to the acquisition and financing of public utilities by municipalities. The question of acquiring or erecting a waterworks need not be so submitted and approved at an election.

(II) All such works or systems authorized by any municipality to be erected by others or the franchise of which is extended or renewed shall be authorized, extended, or renewed upon the express condition that such municipality has the right and power to purchase or condemn any such works or systems at their fair market value at the time of purchasing or condemning such works or systems, excluding all value of the franchise or right-of-way through the streets and also excluding any value by virtue of any contract for hydrant or private rental or otherwise entered into with the municipality in excess of the fair market value of the works or systems. If, after an election conducted in the manner prescribed in section 31-15-302 (1)(d), the municipality is authorized to acquire any of said works or systems after granting a franchise therefor to any person, the municipality shall purchase or condemn such works or systems within the municipal limits then utilized in serving the inhabitants of such municipality at their fair market value. Nothing in this subparagraph (II) shall require such municipality to purchase or condemn all or any part of such works or systems which is obsolete or which has outworn its usefulness.

(III) If the municipality elects to purchase such works or systems and if the parties in interest cannot agree on the purchase price, they shall enter into a written agreement to arbitrate the matter and to abide by the award of the arbitrators, in which event each party shall choose an arbitrator to determine their fair market value. If the two arbitrators cannot agree on the fair market value, they shall choose a third disinterested arbitrator, and the award of any two arbitrators shall be final and binding upon the parties.

(IV) Nothing in this paragraph (a) shall authorize the condemnation or purchase of any such works or systems within twenty years after the granting of any franchise therefor, except at periods of ten or fifteen years thereafter, without the consent of the owner of the franchise.

(b) To construct or authorize the construction of such waterworks without their limits and, for the purpose of maintaining and protecting the same from injury and the water from pollution,

their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same and over the stream or source from which the water is taken for five miles above the point from which it is taken and to enact all ordinances and regulations necessary to carry the power conferred in this paragraph (b) into effect;

(c) To make such grant to inure for a term of not more than twenty-five years when the right to build and operate such water, gas, heating and cooling, or electric light works is granted to a person by said municipality and to authorize such person to charge and collect from each person supplied by them with water, gas, heat, cooling, or electric light such water, gas, heat, cooling, or electric light rent as may be agreed upon between the person building said works and said municipality; and to enter into a contract with the person constructing said works to supply said municipality with water for fire purposes and for such other purposes as may be necessary for the health and safety thereof and also with gas, heat, cooling, and electric light and to pay therefor such sums as may be agreed upon between said contracting parties;

(d) To assess from time to time, when constructing such water, gas, heating and cooling, or electric light works and in such manner as it deems equitable, upon each tenement or other place supplied with water, gas, heat, cooling, or electric light, such water, gas, heat, cooling, or electric light rent as may be agreed upon by the governing body. Gas, heat, cooling, and electric light shall be charged for according to use. At the regular time for levying taxes in each year, said municipality is empowered to levy and cause to be collected, in addition to the other taxes authorized to be levied, a special tax on taxable property in said municipality. Such tax, with the water, gas, heat, cooling, or electric light rents hereby authorized, shall be sufficient to pay the expenses of running, repairing, and operating such works. If the right to build, maintain, and operate such works is granted to a person by a municipality and the municipality contracts with said person for the supplying of water, gas, heat, cooling, or electric light for any purpose, such municipality shall levy each year and cause to be collected a special tax, as provided for in this paragraph (d), sufficient to pay off such water, gas, heat, cooling, or electric light rents so agreed to be paid to said person constructing said works. The tax shall not exceed the sum of three mills on the dollar for any one year.

(e) To condemn and appropriate so much private property as is necessary for the construction and operation of water, gas, heating and cooling, or electric light works in such manner as may be prescribed by law; and to condemn and appropriate any water, gas, heating and cooling, or electric light works not owned by such municipality in such manner as may be prescribed by law for the condemnation of real estate.

(2) The governing body of a municipally owned utility that submits an updated clean energy plan pursuant to section 25-7-105 (1)(e)(VIII.5)(I) shall instruct the municipally owned utility to seek to:

(a) Achieve a ninety-five percent reduction in greenhouse gas emissions caused by the municipally owned utility's Colorado retail electricity sales by December 31, 2039, relative to 2005 levels, without impairing the municipally owned utility's ability to maintain the electric reliability standards of a regional transmission organization of which the municipally owned utility is a member; and

(b) Reduce, between the date an eighty percent reduction in greenhouse gas emissions is achieved and December 31, 2035, any cumulative greenhouse gas emissions resulting from the updated clean energy plan relative to the municipally owned utility's original clean energy plan, without impairing the municipally owned utility's ability to maintain the electric reliability standards of a regional transmission organization of which the municipally owned utility is a member.

Source: L. 75: Entire title R&RE, p. 1115, § 1, effective July 1. **L. 77:** (1)(a)(I) amended, p. 1462, § 1, effective May 16. **L. 81:** (1)(a)(I) and (1)(c) to (1)(e) amended, p. 1455, § 3, effective May 27. **L. 2026:** (2) added, (SB 26-182), ch. 143, p. 806, § 2, effective May 21.

Editor's note: This section is similar to former § 31-12-101 as it existed prior to 1975.

ANNOTATION

I. General Consideration.

II. Water, Gas, and Electric Works.

III. Franchises and Assessments.

IV. Condemnation for Utilities.

I. GENERAL CONSIDERATION.

Law reviews. For article, "May Regulated Utilities Monopolize the Sun", see 56 U. Denver L.J. 31 (1979). For article, "Utility Use of Renewable Resources: Legal and Economic Implications", see 59 U. Den. L.J. 663 (1982). For article, "Quality Versus Quantity: The Continued Right to Appropriate — Part I", see 15 Colo. Law. 1035 (1986).

Annotator's note. Since § 31-15-707 is similar to former § 31-12-101 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Under subsection (1)(b), municipalities may either construct their own system of water works, or may grant a franchise therefor to a private company. Donahue v. Morgan, 24 Colo. 389, 50 P. 1038 (1897).

Applied in Greene v. City of Loveland, 51 Colo. 593, 119 P. 622 (1911); City of Colo. Springs v. Pikes Peak Hydro-Electric Co., 57 Colo. 169, 140 P. 921 (1914); City

of Thornton v. Pub. Utils. Comm'n, 157 Colo. 188, 402 P.2d 194 (1965).

II. WATER, GAS, AND ELECTRIC WORKS.

Primary object of subsection (1)(a) is to permit the inhabitants of towns and cities to secure an adequate supply of pure water, a paramount necessity more important than all other public utilities and absolutely necessary for the sustenance of life, the preservation of health, and the protection of property. The general assembly desired to invest the people, who were themselves to bear the burdens of the expense, with every power necessary to supply this imperative want, but the general assembly itself could not determine and fix upon some one invariable mode or manner by which this supply was to be obtained, for the obvious reasons that too many conditions were to be considered; that what would be proper, necessary, and entirely satisfactory at one town would be entirely impracticable in another, and the inhabitants of one municipality might feel perfectly able to supply their own wants, while those of another might feel wholly unable to assume this burden. Thomas v. City of Grand Junction, 13 Colo. App. 80, 56 P. 665 (1899).

Scope of city council's powers. From subsections (1)(a) and (1)(b) and § 31-15-708 (1)(a), it will be seen that the city council has had plenary authority to manage and control the water system and all the property of the city, and to distribute and apply its water not only to ordinary municipal uses, but to "irrigation and other purposes". Pikes Peak Power Co. v. City of Colo. Springs, 105 F. 1 (8th Cir. 1900).

Discretionary power. Subsection (1)(a) was intended to vest, and does vest in the authorities of cities and towns, entire discretion as to the use of any and all of the means specified in the statute to supply the city or town with water, and the fact that a city or town has granted to a private party or corporation a franchise to construct waterworks to supply the city or town does not preclude the city or town from afterwards constructing waterworks of its own. Thomas v. City of Grand Junction, 13 Colo. App. 80, 56 P. 665 (1899).

Antitrust statute not violated. City ordinance requiring permit to construct or operate a natural gas pipeline within city was a foreseeable consequence of the power granted municipalities by this section to acquire gas distribution systems and was shielded from antitrust liability under the state action exemption. Sterling Beef Co. v. Ft. Morgan, 810 F.2d 961 (10th Cir. 1987).

The operation of an electric plant by a town is the performance of a municipal function specifically authorized by subsection (1)(a). Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924); Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926); Cook v. City of Delta, 100 Colo. 7, 64 P.2d 1257 (1937).

Subsection (1)(a) expressly reserves the right of the city or town to condemn. Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926).

Although an ordinance granting the right to a private corporation to operate a lighting

plant in the city by its terms fails to reserve the right to the city to purchase or condemn the plant, nevertheless, the provision of subsection (1)(a) to that effect will be read into and made a part of the ordinance. Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926).

Inapplicable to private plants. Subsection (1)(a) has no application to electric light plants erected by private parties for their own business purposes; it applies only to waterworks, gas works, and electric light works purchased or erected by cities, or build for cities, under contracts with them, by other parties. Pikes Peak Power Co. v. City of Colo. Springs, 105 F. 1 (8th Cir. 1910).

It was not the intention of the general assembly to require the approving vote of the majority of the taxpayers of a city every time its council issued a license to a corporation, partnership, or person to erect or install a gas plant or an electric light plant upon its premises for domestic or business uses. Pikes Peak Power Co. v. City of Colo. Springs, 105 F. 1 (8th Cir. 1910).

III. FRANCHISES AND ASSESSMENTS.

The words "as may be agreed upon" used in subsection (1)(d) refer to the authority contained in subsection (1)(c), which leaves the amounts to the unrestricted agreement of the parties, and the intention is to provide a method by which the city might discharge its obligation. Grand Junction Water Co. v. City of Grand Junction, 14 Colo. App. 424, 60 P. 196 (1900).

The power of a municipality to levy assessments depends on express provision of charter or statute and the extent to which the power may be exercised is to be determined by the proper construction of such provision. City of Delta v. Lamb, 55 Colo. 483, 136 P. 77 (1913).

Reasonable exercise of power to limit compensation required. The general power of the legislative department to regulate the compensation of a corporation for performing public services, in the absence of a contract regulating it, is subject to the limitation that it must be reasonably exercised, and the reasonableness of the regulation is a proper subject of judicial inquiry; but where the corporation rendering the services and the municipality have mutually agreed upon a method for determining such compensation, and the latter has complied therewith, the former may not insist upon its constitutional rights and disregard the contract without showing the unreasonableness or nonenforceability thereof. Leadville Water Co. v. City of Leadville, 22 Colo. 297, 45 P. 362 (1896).

Contract for higher fee valid. Under subsection (1)(c), authorizing cities and towns to contract with individuals or companies constructing waterworks, to supply said cities or towns with water and to pay therefor such sum as may be agreed upon between the contracting parties, and subsection (1)(d), providing that if such contract is made, such city or town shall levy each year and cause to be collected a special tax sufficient to pay off the amount agreed to be paid for such water supply, not to exceed three mills on the dollar for any

one year, the amount that the city or town may contract to pay is not limited by the limit placed on the amount of special tax that may be levied and collected, and a city or town may contract to pay more than the three-mill levy will cover and pay the deficiency from its general revenue. The failure of a city or town to collect for any one or more years a sufficient sum to discharge its obligation for water rents could not extinguish its liability on the contract. Grand Junction Water Co. v. City of Grand Junction, 14 Colo. App. 424, 60 P. 196 (1900).

Amount of levy to pay back rents. Under subsection (1)(d), where a city is indebted to a water company for back rents and no levy has been made for several years to meet such rents, the city may levy a tax to pay such rents in excess of 3 mills provided the levy is not in excess of 3 mills for each year for which no levy was made. Bowen v. West, 10 Colo. App. 322, 50 P. 1085 (1897).

Statute of limitations. If an ordinance of a city whereby a water company was permitted to lay water mains on condition that the citizens of the city be permitted to make connections with the mains for domestic supply of water at the prevailing scheduled rates in another city created a perpetual term and was a municipal franchise agreement, the city was foreclosed by virtue of subsection (1)(c) from asserting its rights, more than 25 years after the passage of the ordinance, against the other city, successor to the properties of the water company. City of Englewood v. City & County of Denver, 123 Colo. 290, 229 P.2d 667 (1951).

IV. CONDEMNATION FOR UTILITIES.

Subsection (1)(e) is not unconstitutional by reason of the title of the act being defective, and it applies to plants acquired before, as well as after, its passage. Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926).

It is the province of the town authorities to determine what property shall be taken and condemned upon which to construct a plant to operate a waterworks system belonging to the town. Lavelle v. Town of Julesburg, 49 Colo. 290, 112 P. 774 (1910); Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926).

Discretionary power conclusive. Under subsection (1)(e) the exercise of discretionary power and judgment of municipal officers, when acting within the scope of their authority, is conclusive unless it clearly appears their action was fraudulent or unreasonable. Lavelle v. Town of Julesburg, 49 Colo. 290, 112 P. 774 (1910); Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926).

A municipality may condemn for public use private property which lies outside of the city limits. Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926); Colo. Cent. Power Co. v. City of Englewood, 89 F.2d 233 (10th Cir. 1937).

Applicable to private property. There is no authority extended to the city, in either subsection (1)(d) or § 38-1-102, to condemn property dedicated to public use. Both statutes relate to private property, and the authority given under subsection (1)(d) to cities and towns for condemnation for

private property is regulated by the laws prescribed for the condemnation for real estate, which is clearly and unmistakably set out in § 38-1-102. Beth Medrosh Hagodol v. City of Aurora, 126 Colo. 267, 248 P.2d 732 (1952).

Take only necessities and reimburse. Where a city, for public purposes, condemns a lighting plant of a private corporation, it has to take only such portions of the system as its necessities required, reimbursing the corporation for damages to the residue. Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926).

The compensation for land taken under subsection (1)(e) is to be paid by the town. Lavelle v. Town of Julesburg, 49 Colo. 290, 112 P. 774 (1910).

31-15-708. Water and water systems.

(1) The governing body of each municipality has the power:

(a) To construct public wells, cisterns, and reservoirs in the streets and other public and private places within the municipality or beyond the limits thereof for the purpose of supplying the same with water, to provide proper pumps and conducting pipes or ditches, to regulate the distribution of water for irrigating and other purposes, and to levy an equitable and just tax upon all consumers of water for the purpose of defraying the expense of such improvements;

(b) (I) To take water in sufficient quantity, for the purpose provided in paragraph (a) of this subsection (1), from any stream, creek, gulch, or spring in this state. If the taking of such water in such quantity materially interferes with or impairs the vested right of any person residing upon such creek, gulch, or stream or doing any milling or manufacturing business thereon, the governing body shall first obtain the consent of such person or acquire the right of domain by condemnation as prescribed by law and make full compensation or satisfaction for all the damages thereby occasioned to such person.

(II) When it is deemed necessary by any municipality to enter upon or take private property for any of the uses set forth in this section, the property shall be examined and appraised and the damages thereon assessed. The proceedings shall be in all respects the same as provided by articles 1 to 7 of title 38, C.R.S., for the taking of private property for public or private use.

(c) To regulate the water supply used in said municipality for domestic or household purposes and to prohibit and condemn the use of any and all surface wells and the waters thereof for domestic or household purposes when the same are found injurious to the health of said municipality or of the inhabitants thereof;

(d) To supply water from its water system to consumers outside the municipal limits of the municipality and to collect such charges upon such conditions and limitations as said municipality may impose by ordinance.

Source: L. 75: Entire title R&RE, p. 1117, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Law reviews. For comment, "Water: Statewide or Local Concern? City of Thornton v. Farmers Reservoir & Irrigation Co.", see 56 Den. L.J. 625 (1979).

Annotator's note. Since § 31-15-708 is similar to former § 31-12-101 (39) prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Denver authorized to provide water to users outside boundaries. Subsection (1)(d) necessarily provides that Denver has the power to appropriate water for such purposes. City and County of Denver v. Colo. River Water Conservation Dist., 696 P.2d 730 (Colo. 1985).

Operation and maintenance of water facilities power. The general assembly has empowered municipalities to operate and maintain water facilities for the benefit of users within and without their territorial boundaries. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

The right of a city to divert water for the use of its inhabitants is not superior to the right of an individual, or a farming community, to divert water for domestic or other purposes, in the sense that the city may take water for that purpose from those who have previously appropriated it for the same, or some other, beneficial use, without compensating the senior appropriators. Sterling v. Pawnee Ditch Extension Co., 42 Colo. 421, 94 P. 339 (1908).

And a city or town cannot take water for domestic purposes which have been previously appropriated for some other beneficial purpose by virtue of this section without fully compensating the owner. Sterling v. Pawnee Ditch Extension Co., 42 Colo. 421, 94 P. 339 (1908).

Sale of water. The general assembly has specifically defined selling water by a municipality both within and without its territorial boundaries to be a proper exercise of its powers. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

Subsection (1)(d) and the 1913 public utility act are not inconsistent, for the act did not expressly or impliedly repeal this section. City of Englewood v. City &

County of Denver, 123 Colo. 290, 229 P.2d 667 (1951).

Applied in Strickler v. City of Colo. Springs, 16 Colo. 61, 26 P. 313 (1891); City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978).

31-15-709. Sewers and sewer systems.

(1) The governing body of each municipality has the power:

(a) To construct and keep in repair culverts, drains, sewers, water mains, and cesspools and to regulate their use; and to assess, either in whole or in part, the cost of the construction of sewers, water mains, and drains upon the lots or lands adjacent to and opposite the improvements in proportion to the frontage of such lots or lands abutting upon the street in which such sewer, water main, or drain is to be laid. The cost of such sewer, water main, or drain at street intersections or crossings shall be wholly paid for by the municipality. The benefit to the public generally, if any, shall be determined by ordinance and shall be assessed against such municipality, and the balance shall be assessed against the lots or lands and the owners thereof according to the frontage.

(b) To establish a system of sewerage and for that purpose to divide the municipality into districts; to impose a special assessment or tax to defray the expense of constructing such sewers upon private property within such district or upon the lots or lands adjacent to or abutting upon the street where said sewer is laid; to compel the owners of any buildings located in said district and on blocks abutting on any established sewer to connect with such sewer; to prohibit the keeping or maintaining of any vault, closet, privy, or cesspool within said district or within four hundred feet of any established sewer; and to regulate the construction, maintenance, and use of all vaults, closets, privies, and cesspools within the municipal limits and not within said prohibited districts or in proximity to an established sewer.

Source: L. 75: Entire title R&RE, p. 1118, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-12-101 (22) and 31-15-301 (1)(f) as they existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-15-709 is similar to former §§ 31-12-101 (22) and 31-15-301 prior to the 1975 repeal and reenactment of this title, and laws

antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Exercise of legislative police power. A city council, in establishing a sewer district, exercises a legislative power for police purposes, having its origin in the taxing power. Wolff v. City of Denver, 20 Colo. App. 135, 77 P. 364 (1904).

Subsection (1)(a) limits the powers of municipal corporations in relation to sewers to those expressed in said paragraph and an ordinance purporting to grant to a private person an exclusive right and privilege to construct and operate a system of sewers within the limits of a municipal corporation and to collect from all persons using the same a reasonable annual compensation for connecting therewith is absolutely void, and one constructing a sewer system under such ordinance cannot maintain an action against an inhabitant of the city for the use of the same. Weaver v. Canon Sewer Co., 18 Colo. App. 242, 70 P. 953 (1902).

Ownership and control of sewers, except in the municipality, would be inconsistent with the terms of subsection (1)(a). Weaver v. Canon Sewer Co., 18 Colo. App. 242, 70 P. 953 (1902).

Judgment of city council conclusive. The judgment of the city council as to the extent of a sewer district and the properties to be included therein, when acting within the scope of the authority conferred by subsection (1)(a), is conclusive, unless it clearly appears that their action was fraudulent or unreasonable, and whoever assails the action of the city council has the burden of proof. Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

Power to subject outside lands to eminent domain not implied. Under subsection (1)(a), the giving of the right to construct sewers does not also grant authority to subject outside lands to the operation of eminent domain, because such power is not implied because there is nothing in out statutes to even indicate, much less imply, such purpose. Mack v. Town of Craig, 68 Colo. 337, 191 P. 101 (1920).

Subsection (1)(b) delegates to the city four general powers: First, to establish a sewer system and divide the city into sewer districts; second, to compel owners of buildings in a sewer district, or within 400 feet of a sewer, to connect with the sewer; third, to prohibit privies within a sewer district; and fourth, to regulate, within the city limits, privies not within a sewer district. Gault v. City of Ft. Collins, 57 Colo. 324, 142 P. 171 (1914).

Subsection (1)(b) confers power to compel owners of buildings to connect them with the sewer. Gault v. City of Ft. Collins, 57 Colo. 324, 142 P. 171 (1914).

But no power is given in subsection (1)(b) to compel parties to connect outside vaults or privies with the sewer. Gault v. City of Ft. Collins, 57 Colo. 324, 142 P. 171 (1914).

The power regarding privies is to prohibit them, within the sewer district, or within 400 feet of a sewer, not to compel them to connect, if not within the prohibited

district, the power then is to regulate the construction, maintenance, and use of privies. Gault v. City of Ft. Collins, 57 Colo. 324, 142 P. 171 (1914).

Liability for ministerial acts. Whenever the duty as respects drains and sewers ceases to be legislative or judicial or quasi-judicial, and becomes ministerial, then, although there be no statute giving the action, a municipal corporation is liable to the same extent and on the same principle as a private person or corporation would be under like circumstances for the negligent discharge or the negligent omission to discharge such duty, resulting in an injury to others. McCord v. City of Pueblo, 5 Colo. App. 48, 36 P. 1109 (1894).

Applied in City of Pueblo v. Robinson, 12 Colo. 593, 21 P. 899 (1889).

31-15-710. Water pollution control.

(1) The governing body of each municipality has the power:

(a) To provide for the cleansing and purification of water, watercourses, and canals and the draining or filling of ponds on private property when necessary to prevent or abate nuisances; and for the purpose of aiding in the prevention and abatement of water pollution all municipalities are authorized:

(I) To apply for and to accept grants or loans or any other aid from the United States or any agency or instrumentality thereof under any federal law in force;

(II) To construct, reconstruct, lease, improve, better, and extend sewerage facilities and sewage treatment works wholly within or wholly without the municipality or partially within and partially without the municipality;

(III) To issue its general obligation bonds or other general obligations for said purpose pursuant to and within the limitations prescribed by section 31-15-302 (1)(d) and to issue its revenue bonds or obligations for such purpose pursuant to law;

(IV) To provide that such bonds or obligations or any part thereof may be sold to the state of Colorado, the United States, or any agency or instrumentality of either at private sale and without advertisement;

(V) To cooperate with other local public bodies and with state agencies and institutions by contract for the joint construction and financing of sewerage facilities and sewage treatment works and the maintenance and operation thereof;

(VI) To enter into joint operating agreements with industrial enterprises and to accept gifts or contributions from such industrial enterprises for the construction, reconstruction, improvement, betterment, and extension of sewerage facilities and sewage treatment works. When determined by its governing body to be in the public interest and necessary for the protection of public

health, a municipality is authorized to enter into and perform contracts, whether long-term or short-term, with an industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such industrial establishment.

Source: L. 75: Entire title R&RE, p. 1118, § 1, effective July 1. **L. 2019:** (1)(a)(VI) amended, (HB 19-1071), ch. 17, p. 62, § 2, effective August 2.

Editor's note: This section is similar to former § 31-12-101 (24) as it existed prior to 1975.

Cross references: For the legislative declaration in HB 19-1071, see section 1 of chapter 17, Session Laws of Colorado 2019.

31-15-711. Other public improvements.

(1) The governing body of each municipality has the power:

(a) To deepen, widen, dock, cover, wall, alter, or change the channel of watercourses;

(b) To establish markets and market houses and provide for the regulation and use thereof. No charge or assessments of any kind shall be levied on any truck or other vehicle, or on the owner thereof, bringing produce or provisions to any of the markets in the municipality, for standing in or occupying a place in any of the marketplaces of the municipality or in the streets contiguous thereto on market days and evenings previous thereto. The governing body has full power to prevent forestalling, to prohibit or regulate huckstering in the markets, and to prescribe the kind and description of articles which may be sold and the stands and places to be occupied by the vendors. The governing body may authorize the immediate seizure, arrest, or removal from the markets of any person violating its regulations as established by ordinance, together with any article of produce in his possession, and additionally may authorize the immediate seizure and destruction of tainted or unsound meat or other provisions.

(c) To establish and operate at public expense municipal slaughterhouses and cold storage plants where animals may be slaughtered at the cost of labor and other necessary expense, held in cold storage, and delivered to the owners or sold. Any municipality establishing and operating

such slaughterhouse shall charge a reasonable fee for the slaughter of animals and the storage of meat, and said fees shall be used to pay the necessary expenses of conducting the business.

(d) To provide for and regulate public scales and to require the vendors of coal, hay, and like articles of merchandise, when requested to do so by the purchaser of such articles, to weigh the same upon the public scales before delivering the same to their customer or vendees;

(e) To erect, establish, and maintain public hospitals, medical dispensaries, and other suitable places of relief. No such hospitals, medical dispensaries, or other suitable places of relief shall be established, acquired, or erected by a municipality unless the question is submitted at a regular or special election and approved in the manner provided for authorization of bonded indebtedness by section 31-15-302 (1)(d) and unless such municipality does not have a general licensed medical and surgical hospital in operation within its municipal limits within the twelve months immediately preceding said election.

(f) To provide by ordinance for the construction, maintenance, and operation of public parking facilities, buildings, stations, or lots and to pay for their cost by general tax levy or otherwise or by the issuance of bonds of such municipality, which bonds may be retired by revenues assessed and collected as rentals, fees, or charges from the operation of such facilities or from parking meter rentals or charges;

(g) To develop, maintain, and operate mass transportation systems, either individually or jointly with any government, county, or other political subdivision, pursuant to the provisions of part 2 of article 1 of title 29, C.R.S.;

(h) To construct and keep in repair bridges, viaducts, and tunnels and regulate their use and to establish within the municipal limits all toll bridges and ferries, license and regulate the same, and, from time to time, fix tolls thereon;

(i) To construct, maintain, and operate safety measures that are necessary to allow the municipality to restrict the sounding of locomotive horns at highway-rail grade crossings in compliance with 49 U.S.C. sec. 20153, as amended, and the applicable rules of the federal railroad administration. The governing body of the municipality shall construct, maintain, and operate the safety measures in accordance with the provisions of section 40-4-106, C.R.S., and the standards of safety prescribed by the public utilities commission pursuant to section 40-29-110, C.R.S.

(j) To provide in the municipal budget for programs that support education and outreach on environmental sustainability and for financing capital improvements for energy efficiency retrofits and the installation of renewable energy fixtures, as defined in section 30-11-107.3, C.R.S., for private residences and commercial property within the municipality but that do not exempt the municipality from the requirements of any other statute;

(k) To encourage homeowners to participate in utility demand-side management programs where applicable.

Source: L. 75: Entire title R&RE, p. 1119, § 1, effective July 1. **L. 2006:** (1)(i) added, p. 348, § 3, effective August 7. **L. 2008:** (1)(j) and (1)(k) added, p. 1299, § 20, effective May 27.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. Since § 31-15-711 (1)(a) is similar to former § 31-12-101 (23) prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Discretionary power in subsection (1)(a). The privilege, the right, the power given under subsection (1)(a) is given to be exercised or not, at the discretion of the city, and there is nothing obligatory; no compulsory legislation. McCord v. City of Pueblo, 5 Colo. App. 48, 36 P. 1109 (1894).

Contractual work ministerial. When a corporation has adopted a plan and enters upon the construction of a public work, the work is then ministerial, and the plan must be followed in detail, and any departure or negligence causing damage to an individual furnishes a cause of action. McCord v. City of Pueblo, 5 Colo. App. 48, 36 P. 1109 (1894).

A municipal corporation is liable for injuries caused by negligence in the construction of improvements under subsection (1)(a) to the same extent a private person or corporation would be, under like circumstances, for the negligent omission to discharge such duty resulting in an injury to others. McCord v. City of Pueblo, 5 Colo. App. 48, 36 P. 1109 (1894).

31-15-711.5. Municipal jails - sanitary standards.

Any municipality that chooses to establish and operate a jail, as authorized in section 31-15-401 (1)(j), that begins operations on or after August 30, 1999, may establish sanitary standards for such jail relating to space requirements, furnishing requirements, required special use areas or special management housing, and environmental condition requirements, including but not limited to standards pertaining to light, ventilation, temperature, and noise level. If a municipality does not adopt standards pursuant to this section, the jail operated by or under

contract with the municipality shall be subject to the standards adopted by the department of public health and environment pursuant to section 25-1.5-101 (1)(i), C.R.S. In establishing such standards, the municipality is strongly encouraged to consult with national associations that specialize in policies relating to correctional institutions.

Source: L. 2000: Entire section added, p. 803, § 3, effective May 24. **L. 2003:** Entire section amended, p. 715, § 57, effective July 1.

31-15-712. Public improvements by contract - cities.

All work done by the city in the construction of works of public improvement of five thousand dollars or more shall be done by contract to the lowest responsible bidder on open bids after ample advertisement. It shall be unlawful for any person to divide a works of public improvement construction into two or more separate projects for the sole purpose of evading or attempting to evade the requirement that works of public improvement construction costing five thousand dollars or more be submitted to open bidding, unless the total cost of any such project would be less if divided into two or more projects than if submitted to open bidding as one project. If no bids are received or if, in the opinion of the city council, all bids received are too high, the city may enter into negotiations concerning the contract. No negotiated price shall exceed the lowest responsible bid previously received. The city is not required to advertise for and receive bids for such technical, professional, or incidental assistance as it may deem wise to employ in guarding the interest of the city against the neglect of contractors in the performance of such work.

Source: L. 75: Entire title R&RE, p. 1120, § 1, effective July 1. **L. 79:** Entire section amended, p. 1186, § 1, effective May 18.

Editor's note: This section is similar to former § 31-15-103 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-15-712 is similar to former § 31-15-103 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

And is not unconstitutional because not germane to the title of the act. Dalby v.

City of Longmont, 81 Colo. 271, 256 P. 310 (1927).

Public policy. The general assembly has by this mandatory section declared as public policy of this state that all work in the construction of public improvements, without reference to its character shall be by express contract, upon open bids, and that the superintending of the construction of a public building is not an exception. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

Intent of the general assembly was to require competitive bidding for only the construction work done in public improvement contracts. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

This section refers to all cities. Dalby v. City of Longmont, 81 Colo. 271, 256 P. 310 (1927).

This section provides for a contract to be let to the lowest responsible bidder on open bids after advertisement. Deti v. City of Durango, 136 Colo. 272, 316 P.2d 579 (1957).

And a public improvement to be paid out of revenues derived from taxes must be constructed and the contract let to the lowest responsible bidder. Deti v. City of Durango, 136 Colo. 272, 316 P.2d 579 (1957).

For protection of public. This section was not made for the benefit of the city council, nor of contractors, but for the protection of the public against both. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

Secures competition. It cannot be doubted that the true intent of the act is to secure to the city the benefit and advantage of fair and just competition between bidders, and at the same time close, as far as possible, every avenue to favoritism and fraud in its varied forms. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

Mandatory. A provision in a charter, statute, or ordinance requiring a contract to be let by competitive bidding is mandatory. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

A broad discretion in the selection among bidders is included within a reasonable construction of this section as to "responsible" bidders, because the word "responsible" is not limited to the meaning of pecuniary liability or responsibility, but includes as well skill, experience, and integrity; and if the character of the work be such that only one person can be found competent to perform the services, there is no reason to believe that the courts will interfere with the exercise in good faith by a city council of its selection upon the bids submitted. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

Unless this section is complied with, the contract is void. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

Where there is no opportunity afforded for submitting competitive bids on a common standard of comparison, both as to quantities and qualities of the many and varied types of materials called for, there is a

violation of this section. Colo. Cent. Power Co. v. Mun. Power Dev. Co., 1 F. Supp. 961 (D. Colo. 1932).

Nontechnical employment contract void for lack of bidding. Under this section a contract of a city to employ a person for nontechnical work is invalid where no bids are asked for. Dalby v. City of Longmont, 81 Colo. 271, 256 P. 310 (1927).

Lack of formalities cuts off action against municipality. Services rendered in the construction of a public improvement under a contract entered into without the formalities required by this section afford no action against the municipality, no matter how valuable such services may be, and through the corporation retains the results thereof. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

There is no apparent necessity for exempting superintendents of construction from the statutory rule, because it is a matter of common knowledge among people who deal in such matters that architects and engineers of unquestioned ability and high reputation frequently, if not usually, offer their services as superintendents of construction — upon a percentage of the contract price, or upon some other basis. Johnson-Olmsted Realty Co. v. City & County of Denver, 89 Colo. 250, 1 P.2d 928 (1931).

This section has no application to such work as is performed by salaried officers under a statute or charter which provides that such officers as the city engineer or his assistants and deputies shall supervise and superintend, because the statute and charters are coexistent and not conflicting. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

Nor to certain technical, etc., jobs. The general assembly did not intend, by the enactment of this section, that a municipality should advertise for and receive bids for such technical, professional, or incidental assistance as it may deem wise to employ in guarding the interest of the city against the neglect of contractors in the performance of their undertakings. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914)(concurring opinion).

By this section the general assembly did not contemplate as coming within its provisions as to competitive bidding after advertisement, any person employed by the city to render services calling for special skill, knowledge, or experience. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914)(concurring opinion).

Contracts with legal counsel, financial advisors, and banks are not subject to the competitive bidding requirement. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

Procurement violative of section. Where a city adopted without question the very sketchy and incomplete specifications submitted by a development company and the development company was in reality the only bidder and obtained the contract, such procedure not only violates this section requiring the work to be given to the "lowest responsible bidder" after "ample advertisement", but is contrary to the plainest dictates of public business practice.

Colo. Cent. Power Co. v. Mun. Power Dev. Co., 1 F. Supp. 961 (D. Colo. 1932).

Effect of Denver charter provisions. Under pertinent Denver charter provisions, contracts for architectural services in connection with the erection of public buildings must be awarded under competitive bidding, otherwise they are void, and the contractor cannot recover for services rendered either under his contract or on quantum meruit. City & County of Denver v. Moorman, 95 Colo. 111, 33 P.2d 749 (1934).

Award of contract when a mistake in the formation of the contract exists. This section does not by its terms require a municipality to award a construction contract to the lowest bidder when such bidder inadvertently makes a substantial computational error. Powder Horn Constructors v. City of Florence, 754 P.2d 356 (Colo. 1988).

No private cause of action for the recovery of damages by a disappointed bidder exists where such bidder failed to show that it was within the class of persons for whose benefit the statute was created and where there is no indication in the statutory language that the general assembly intended to create a private cause of action. L & M Enters. v. City of Golden, 852 P.2d 1337 (Colo. App. 1993).

Applied in Corn Constr. Co. v. Aetna Cas. & Sur. Co., 295 F.2d 685 (10th Cir. 1961).

31-15-713. Power to sell public works - real property.

(1) The governing body of each municipality has the power:

(a) To sell and dispose of waterworks, ditches, gasworks, geothermal systems, solar systems, electric light works, thermal energy networks as defined in section 40-3.2-108 (2)(s), or other public utilities, public buildings, real property used or held for park purposes, or real property used or held for any governmental purpose. Before any sale is made, the question of the sale and the terms and consideration of the sale shall be submitted at a regular or special election and approved in the manner provided for authorization of bonded indebtedness by section 31-15-302 (1)(d).

(b) To sell and dispose of, by ordinance, any other real estate, including land acquired from the federal government, owned by the municipality upon such terms and conditions as the governing body may determine at a regular or special meeting. With respect to such land acquired from the federal government, which land is located within or contiguous to the municipality, such terms and conditions shall be designed to prevent speculation and assure that benefits accrue to the municipality when the sale or disposition of said land is for municipal expansion or residential purposes. Nothing in this paragraph (b) or in section 31-15-101 (1) shall be construed to invalidate the acceptance of federal land by a municipality or the sale and disposal by a municipality of land acquired from the federal government, where such acceptance

or disposal was consummated prior to April 1, 1976, and municipal authority for any such acceptance or disposal is hereby confirmed.

(c) To lease any real estate, together with any facilities thereon, owned by the municipality when deemed by the governing body to be in the best interest of the municipality. Any lease for a period of more than one year shall be by ordinance. Any lease for one year or less than one year shall be by resolution or ordinance.

(d) Notwithstanding subsections (1)(a) and (1)(b) of this section, to sell and dispose of, by ordinance, any public building or real property owned by a municipality that is held for government purposes, other than park purposes, if the sale and disposition of the public building or real property is for the purpose of providing property to be used for the development of affordable housing or housing identified in a housing needs assessment conducted pursuant to section 24-32-3703 or 24-32-3704. The governing body shall determine the terms and conditions of the sale and disposition at a regular or special meeting.

(2) All leases and deeds of conveyance executed and acknowledged by the proper officers of such municipalities and purporting to have been made pursuant to the provisions of this section shall be deemed prima facie evidence of due compliance with all the requirements of this section.

(3) Any town holding title to any land settled and occupied as the site of such town pursuant to and by virtue of the act of congress entitled "An Act for the relief of the inhabitants of cities and towns upon the public lands.", approved March 2, 1867, 43 U.S.C. sections 718-723, and an act of congress entitled "An Act respecting the limits of reservations for town sites upon the public domain.", 43 U.S.C. sections 725-727, and any amendments thereto may dispose of and convey the title to such land in the manner provided in this section.

Source: L. 75: Entire title R&RE, p. 1120, § 1, effective July 1. **L. 76:** (1)(b) amended, p. 697, § 2, effective April 6. **L. 2026:** (1)(a) amended, (SB 26-142), ch. 290, p. 1590, § 4, effective August 12.; (1)(d) added, (SB 26-001), ch. 7, p. 20, § 2, effective August 12.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

(2) 43 U.S.C. secs. 718-723 and 725-727, referenced in subsection (3), were repealed, effective October 21, 1976. A savings provisions was contained in the act repealing said sections, stating "repeal by Pub.L. 94-579 not to be construed as terminating any valid lease, permit, patent . . . existing on Oct. 21, 1976", and said references have been left in this section for historical reference.

Cross references: For the legislative declaration in SB 26-142, see section 1 of chapter 290, Session Laws of Colorado 2026.

ANNOTATION

Annotator's note. Since § 31-15-713 is similar to former § 31-12-102 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The only power formerly possessed by a town over property was the power "to sell and dispose of" it and nothing short of a deed of conveyance was a compliance with the statute because the term "sell and dispose of" as used in this statute meant to get rid of, to finish with, to fully relinquish all interest in the property, to transfer and convey the same. Centennial Props., Inc. v. City of Littleton, 154 Colo. 191, 390 P.2d 471 (1964); City of Idaho Springs v. Golden Sav. & Loan Ass'n, 29 Colo. App. 119, 480 P.2d 847 (1970).

But a city could properly convey real property, yet retain a possibility of reverter to it, because possibility of reverter is merely the possibility that the land will come back to the grantor, and the holder of a bare possibility of reverter did not have a present "vested" interest or "estate" in the land. City of Idaho Springs v. Golden Sav. & Loan Ass'n, 29 Colo. App. 119, 480 P.2d 847 (1970).

Subsections (1)(a) and (1)(b) demonstrate a legislative intent to distinguish between property held or used for any governmental purpose, the sale of which must be approved by election, and any other real estate, which may be sold by ordinance. Although town held subject property for several years, it did not use or hold it for any governmental purpose. Although town entered into lease and option agreement in the context of relocating town hall to the subject property, the contingencies for construction failed to materialize. Therefore, the applicable statutory provision was subsection (1)(b), which applies to "any other real estate", and not subsection (1)(a), which applies to property held for "any governmental purpose". Because town did not use or hold subject property for any governmental purpose, no election was required for the approval of its sale. New Stanley Assocs., LLLP v. Town of Estes Park, 200 P.3d 1118 (Colo. App. 2008).

Consideration of potential uses for subject property, without any dedication to a particular use, is not a governmental purpose within the meaning of subsection (1)(a). Moreover, town's retention of subject property for the purpose of using its sale proceeds for construction of infrastructure for a performing arts center site is not a governmental purpose. The relevant statutory provisions address the use or purpose for which real estate is held and not the use or purpose of the proceeds from its

sale. Further, appropriation of public funds for the acquisition of subject property does not mean the property is held for a governmental purpose. The general assembly has recognized two types of property in subsection (1), and the distinction is not based on the method of appropriation of funds for the property. Equating the acquisition of property by means of appropriated municipal funds pursuant to § 31-15-302 with "any governmental purpose" under subsection (1)(a) would render meaningless the distinction between subsections (1)(a) and (1)(b). New Stanley Assocs., LLLP v. Town of Estes Park, 200 P.3d 1118 (Colo. App. 2008).

31-15-714. Oil and gas leases - unit agreements.

(1) The governing body of each municipality has the power:

(a) To lease any real estate or any interest therein owned by the municipality for oil and gas exploration, development, and production purposes, upon such terms and conditions as may be prescribed and contracted by the governing body in the exercise of its best judgment and as such governing body deems to be in the best interests of the municipality. Any such lease of oil and gas rights shall be for a term not to exceed ten years and as long thereafter as oil or gas is produced and shall provide for a royalty of not less than twelve and one-half percent of all oil or gas produced, saved, and marketed or the equivalent market value thereof, which royalty may be reduced proportionately under appropriate provision in such lease if the interest of the municipality is less than a full interest in the land or oil and gas rights in the land described in such lease. When, in the opinion of the governing body and because of the size, shape, or current use of any tract of real estate owned by said municipality, the best interest of the municipality so requires, any such lease of such tract may provide that no drilling shall be conducted on the land covered thereby, in which case such lease shall be for a term not to exceed ten years and so long thereafter as the municipality may share in royalties payable on account of production of oil or gas from lands adjacent to such tract so leased.

(b) To enter into, on behalf of the municipality, when deemed by the governing body to be in the best interest of the municipality, any agreement providing for the pooling, unitization, or consolidation of acreage covered by any oil and gas lease executed by such municipality with other acreage for oil and gas exploration, development, and production purposes and providing for the apportionment or allocation of royalties among the separate tracts of land included in such unit or pooling agreement on an acreage or other equitable basis and, by such agreement, with the consent of the lessee under such lease, to change any of the provisions of any such lease issued by such municipality, including the term of years for which such lease was originally granted and any drilling requirements contained therein, in order to conform such lease to the terms and provisions of such unit or pooling agreement and to facilitate the efficient and economic production of oil and gas from the unit lands.

(2) All leases of oil and gas or rights therein and all unit agreements relating to or dealing with oil and gas and containing provisions similar to those set forth in this section affecting municipal lands made or entered into by any municipality prior to April 16, 1953, acting by its governing body, are hereby confirmed, validated, and declared to be legal and valid in all respects.

Source: L. 75: Entire title R&RE, p. 1121, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-104 as it existed prior to 1975.

31-15-715. Legislative declaration concerning landfill gas.

The general assembly hereby declares that landfill gas constitutes a hazard to the health, welfare, and safety of the people of this state, whether such gas has accumulated as a result of a public or private landfill operation, and that the extraction of landfill gas will ameliorate this dangerous condition, and further declares that the development of landfill gas will provide a valuable, alternate energy resource to the citizens of this state. In order to diminish this hazard and utilize this energy resource, the powers of municipalities are hereby expanded to authorize landfill gas exploration, development, and production; the financing thereof; the marketing and sale of landfill gas to any public or private person or entity; and the municipal use thereof for any purpose.

Source: L. 80: Entire section added, p. 653, § 5, effective July 1.

31-15-716. Municipal authority relating to landfill gas.

(1) To accomplish the purposes specified in section 31-15-715, municipalities are granted the following powers:

(a) To acquire, hold, use, transfer and convey any real property or any interest therein, in fee or a leasehold interest, for purposes of landfill gas exploration, production, and development;

(b) To engage in any and all activities respecting the exploration, development, production, distribution, marketing, and sale of landfill gas to any person or public or private entity, or for municipal uses;

(c) (I) To acquire by gift, purchase, or condemnation necessary easements and rights-of-way, for ingress and egress and for the installation of facilities related to collection and distribution of

landfill gas; except that the power of condemnation granted in this paragraph (c) shall not extend to acquisition of landfill gas in place nor shall such power be available to a municipality until the municipality has entered into a contract with the owner of such landfill gas for the development, extraction, and purchase of such landfill gas, and except that such condemnation shall not interfere with the normal use of any real property, or other property appurtenant thereto, which is devoted or dedicated to a public utility use or upon which landfill gas abatement or recovery facilities have been placed in operation and shall be limited to the maximum reasonable width or area necessary to install, operate, and maintain such rights-of-way, ingress and egress, and collection and distribution facilities.

(II) Any interest in real property acquired by condemnation pursuant to this paragraph (c) shall terminate upon the completion of use of such real property, or any interest therein, for landfill gas operations, and any such condemnation shall be in the manner provided in part 1 of article 6 of title 38, C.R.S.

(d) To enter into contracts, including intergovernmental contracts, and to perform all acts necessary to produce, distribute, and market landfill gas;

(e) To issue general obligation bonds, after approval of the qualified electors of the municipality, for purposes of financing the exploration, development, production, distribution, and marketing of landfill gas;

(f) To issue revenue bonds authorized by action of the city council or comparable legislative body, without the approval of the qualified electors of the municipality, for purposes of financing the exploration, development, production, distribution, and marketing of landfill gas. Such revenue bonds shall be issued in the manner provided in part 4 of article 35 of this title for the issuance of revenue bonds by municipalities; except that such revenue bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the municipality, in its discretion, shall determine. Such revenue bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the municipality within the meaning of any provision or limitation of the state constitution, statutes, or home rule charter, and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers, and such revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(2) Repealed.

Source: L. 80: Entire section added, p. 653, § 5, effective July 1. **L. 2025:** (2) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6.

Editor's note: Subsection (2) was relocated to § 31-15-700.3 in 2025.

Cross references: For county provisions concerning landfill gas, see §§ 30-11-306 and 30-11-307.

31-15-717. Construction and maintenance of equestrian facilities - exception.

(1) (a) A municipality may construct and maintain equestrian road crossings or horse-trailer parking necessary to access equestrian trails. Equestrian road crossings may be used by other pedestrians and need not contain infrastructure not normally used for pedestrian road crossings.

(b) A municipality may require a person that is developing land for residential or commercial use to construct equestrian road crossings, horse-trailer parking, or equestrian-safety road improvements in order to obtain the necessary permits.

(c) A municipality may install signs, in accordance with section 31-23-228, that notify the public of equestrian road crossings, horse-trailer parking, or equestrian-safety road improvements.

(2) A municipality may identify locations where equestrian road crossings are needed to safely use horse trails. When a location is identified, the municipality may construct and maintain the equestrian road crossing. The crossing must:

(a) Have appropriate signs notifying road users of the equestrian crossing; and

(b) Be clearly marked on the road.

(3) A municipality shall obtain the permission of the department of transportation to construct an equestrian facility described in subsection (1) of this section on a state highway or a right-of-way for a state highway.

Source: L. 2025: Entire section added, (SB 25-149), ch. 266, p. 1375, § 6, effective August 6.

Cross references: For the legislative declaration in SB 25-149, see section 1 of chapter 266, Session Laws of Colorado 2025.

PART 8

LONG-TERM RENTALS AND LEASEHOLDS

31-15-801. Agreements - ordinance - financing.

In order to provide necessary land, buildings, equipment, and other property for governmental or proprietary purposes, including for the development of affordable housing or housing identified in a housing needs assessment conducted pursuant to section 24-32-3703 or 24-32-3704, or for financing of forest health projects, as defined in section 37-95-103 (4.9), any municipality is authorized to enter into long-term rental or leasehold agreements. Such agreements may include an option to purchase and acquire title to such leased or rented property within a period not exceeding the useful life of such property and in no case exceeding thirty years. Each such agreement and the terms thereof shall be concluded by an ordinance duly enacted by the municipality. No such ordinance shall take effect before thirty days after its passage and publication. The governing body of any municipality is authorized to provide for the payment of said rentals from a general levy imposed upon both personal and real property included within the boundaries of the municipality; by imposing rates, tolls, and service charges for the use of such property or any part thereof by others; from any other available municipal income; or from any one or more of the said sources. The obligation to pay such rentals shall not constitute an indebtedness of said municipality within the meaning of the constitutional limitations on contracting of indebtedness by municipalities.

Source: L. 75: Entire title R&RE, p. 1122, § 1, effective July 1. **L. 2021:** Entire section amended, (HB 21-1008), ch. 159, p. 906, § 4, effective May 20. **L. 2026:** Entire section amended, (SB 26-001), ch. 7, p. 21, § 3, effective August 12.

Editor's note: This section is similar to former § 31-12-501 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-15-801 is similar to former § 31-12-501 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Section 22-30-124 and this section make it clear that the school board had the power "to enter into long term rental or leasehold agreements" which should not exceed 30 years in duration. Bd. of Dirs. of Summit Sch. Dist. No. RE-1 v. Jeffrey, 149 Colo. 579, 370 P.2d 447 (1962).

Applied in Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

31-15-802. Tax exemption.

Property acquired or occupied pursuant to this part 8 shall be exempt from taxation so long as used for authorized governmental or proprietary functions of municipalities.

Source: L. 75: Entire title R&RE, p. 1122, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-502 as it existed prior to 1975.

31-15-803. Enforceability.

Purchase or leasehold agreements entered into by any municipality pursuant to this part 8 shall be enforceable in any court of competent jurisdiction.

Source: L. 75: Entire title R&RE, p. 1122, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-503 as it existed prior to 1975.

PART 9

MISCELLANEOUS POWERS

31-15-901. Miscellaneous powers.

(1) The governing body of each municipality has the power:

(a) To appropriate money in an amount not exceeding six-tenths of one mill on the valuation for assessment for the purpose of giving public concerts and entertainments by such municipality;

(b) To appropriate moneys for the purpose of advertising or marketing the business, social, and educational advantages, the natural resources, and the scenic attractions of such municipality;

(c) To aid and foster, by all lawful measures, associated charity organizations by appropriations and to grant the use of suitable rooms in the municipal buildings. No portion of any money so appropriated shall be given or loaned to any society, corporation, association, or institution that may be wholly or in part under sectarian or denominational control.

(d) To conduct or participate in forest health projects, as defined in section 37-95-103 (4.9), within and outside the municipal boundaries that benefit municipal property or improvements, including water collection and supply facilities, or reduce the risk of wildfire within the municipality and watersheds within which the municipality collects, transports, or stores its water supply;

(e) To enter into agreements with one or more entities, including other local governmental entities, for the provision of service from a thermal energy network in accordance with section 40-4-121 (7).

Source: L. 75: Entire title R&RE, p. 1122, § 1, effective July 1. **L. 93:** (1)(d) added, p. 347, § 5, effective April 12. **L. 98:** (1)(c) amended, p. 334, § 1, effective April 17; (1)(d) repealed, p. 826, § 42, effective August 5. **L. 2008:** (1)(b) amended, p. 5, § 2, effective July 1. **L. 2021:** (1)(d) RC&RE, (HB 21-1008), ch. 159, p. 906, § 5, effective May 20. **L. 2026:** (1)(e) added, (SB 26-142), ch. 290, p. 1590, § 5, effective August 12.

Editor's note: This section is similar to former §§ 31-12-101 and 31-15-201 as they existed prior to 1975.

Cross references: For the legislative declaration in SB 26-142, see section 1 of chapter 290, Session Laws of Colorado 2026.

ANNOTATION

The power to appropriate moneys for the purpose of advertising under subsection (1)(b) does not include the power to appropriate money for marketing. Marketing is a broader term than advertising. Estes Park Chamber of Commerce v. Town of Estes Park, 199 P.3d 11 (Colo. App. 2007).

31-15-902. Deferred compensation plans.

(1) Notwithstanding any other provision of law, a municipality and its employees may participate in the deferred compensation plan of the international city management association retirement corporation, a nonprofit corporation approved by the United States internal revenue service for establishing a retirement plan. No statute restricting the deposit or investment of municipal money shall be applicable to moneys in such plan.

(2) In addition to the authority granted in subsection (1) of this section, any municipality may otherwise provide a deferred compensation plan for its employees and may, by contract, agree with an employee to defer all or a part of the employee's salary or wages. Funds of such plan may be used to purchase fixed or variable annuities from any life insurance company duly authorized to do an insurance and annuity business in this state or may otherwise be deposited and invested in accordance with any statute applicable to the deposit or investment of municipal money.

(3) If a municipality participates in or establishes a deferred compensation plan for its employees pursuant to this section and if such plan is in addition to any other pension or retirement plan provided by the municipality, the amount of an employee's deferred compensation shall continue to be counted as part of his total salary or wages for the purpose of computing any other pension or retirement contributions or benefits which are based on total salary or wages.

Source: L. 77: Entire section added, p. 1464, § 1, effective May 24.

31-15-903. Legislative declaration - municipalities - new business facilities - expanded or existing business facilities - incentives - limitations - authority to exceed revenue-raising limitation.

(1) (a) The general assembly hereby finds and declares that the health, safety, and welfare of the people of this state are dependent upon the attraction of new private enterprise as well as the retention and expansion of existing private enterprise; that incentives are often necessary in order to attract private enterprise; and that providing such incentives stimulates economic development in the state and results in the creation and maintenance of new jobs.

(b) Notwithstanding any law to the contrary, any municipality may negotiate for an incentive payment or credit with any taxpayer who establishes a business facility, as defined in section 39-30-105.1 (6)(b), in the municipality. In no instance may any negotiation result in an annual incentive payment or credit that is greater than the amount of taxes levied by the municipality upon the taxable personal property located at or within the business facility and used in connection with the operation of the business facility for the current property tax year. The term

of any agreement made prior to August 6, 2014, pursuant to the provisions of this subsection (1) may not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (1) may not exceed thirty-five years, which does not include the term of any prior agreement.

(1.5) (a) Notwithstanding any law to the contrary, a municipality may negotiate an incentive payment or credit for a taxpayer that has an existing business facility located in the municipality if, based on verifiable documentation, the municipality is satisfied that there is a substantial risk that the taxpayer will relocate the facility out of state.

(b) The documentation required pursuant to paragraph (a) of this subsection (1.5) must include information that the taxpayer could reasonably and efficiently relocate the facility out of state and that at least one other state is being considered for the relocation. In order to be eligible for a payment or credit under this subsection (1.5), a taxpayer must identify the specific reasons why the taxpayer is considering leaving the state.

(c) A municipality shall not give an annual incentive payment or credit under this subsection (1.5) that is greater than the amount of the taxes levied by the municipality upon the taxable personal property located at or within the existing business facility and used in connection with the operation of the existing business facility for the current property tax year. The term of an agreement made prior to August 6, 2014, pursuant to this subsection (1.5) shall not exceed ten years, and this limit includes any renewals of the original agreement. The term of an agreement made on or after August 6, 2014, pursuant to this subsection (1.5) shall not exceed thirty-five years, and this limit does not include the term of any prior agreement. A municipality shall not give an annual incentive payment or credit under this subsection (1.5), unless the governing body of the municipality approves the payment or credit at a public hearing.

(2) Notwithstanding any law to the contrary, any municipality may negotiate for an incentive payment or credit with any taxpayer who expands a facility, as defined in section 39-30-105.1 (6)(e), the expansion of which authorizes a taxpayer to claim a credit described in section 39-30-105.1, and that is located in the municipality. In no instance may any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the municipality upon the taxable personal property directly attributable to the expansion, located at or within the expanded facility, and used in connection with the operation of the expanded facility for the current property tax year. The term of any agreement made prior to August 6, 2014, pursuant to the provisions of this subsection (2) may not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (2) may not exceed thirty-five years, which does not include the term of any prior agreement.

(3) (Deleted by amendment, L. 94, p. 2834, § 4, effective January 1, 1995.)

(4) Any municipality that negotiates any agreement pursuant to the provisions of this section shall inform any county in which a new business facility would be located, or an existing or expanded business facility is located, whichever is applicable, of such negotiations.

(5) Any municipality may adjust the amount of its tax levy authorized pursuant to the provisions of section 29-1-301, C.R.S., or pursuant to a municipal home rule charter, whichever is applicable, by an additional amount which does not exceed the total amount of annual incentive payments or credits made by such municipality in accordance with any agreements negotiated pursuant to the provisions of this section or section 39-30-107.5, C.R.S.

Source: L. 90: Entire section added, p. 1455, § 2, effective April 24. **L. 91:** (1) amended and (5) added, p. 724, § 2, effective May 24. **L. 94:** (1)(b), (2), (3), and (5) amended, p. 2834, § 4, effective January 1, 1995. **L. 2002:** (1)(b) and (2) amended, p. 1120, § 4, effective June 3. **L. 2007:** (1)(b) and (2) amended, p. 350, § 5, effective August 3. **L. 2012:** (1)(b) and (2) amended, (HB 12-1029), ch. 61, p. 220, § 4, effective August 8. **L. 2013:** (1.5) added and (4) amended, (HB 13-1206), ch. 374, p. 2204, § 2, effective August 7. **L. 2014:** (1)(b), (1.5)(c), and (2) amended, (SB 14-183), ch. 196, p. 721, § 2, effective August 6. **L. 2020:** (1)(b) and (2) amended, (HB 20-1166), ch. 103, p. 395, § 3, effective April 1.

Cross references: (1) For similar provisions for school districts and counties, see §§ 22-32-110 and 30-11-123.

(2) In 2012, subsections (1)(b) and (2) were amended by the "Save Colorado Jobs Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 61, Session Laws of Colorado 2012.

31-15-904. Third-party food delivery service fee restrictions - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Declared public health disaster emergency" means the declared public health disaster emergency to address the COVID-19 pandemic of 2020, as declared by the governor by executive order.

(b) "Retail food establishment" means a retail food establishment, as defined in section 25-4-1602 (14), that pays an annual license fee as required by section 25-4-1607. "Retail food establishment" does not include grocery stores or convenience stores.

(c) "Third-party food delivery service" means any person, company, website, mobile application, or other internet service that offers or arranges for the sale and the same-day delivery or same-day pickup of prepared food or beverages from a retail food establishment.

(2) During a declared public health disaster emergency, the governing body of each municipality may adopt, administer, and enforce ordinances and resolutions that:

(a) Limit the amount of the fee that a third-party food delivery service may charge to a retail food establishment, excluding fees related to credit card processing, within the municipality where indoor dining is prohibited and until indoor dining is again permitted in the municipality at a capacity of at least fifty percent or below at the discretion of the municipality;

(b) Restrict the ability of a third-party food delivery service to reduce the compensation rate paid to a delivery service driver or withhold gratuities or tips to a retail food establishment, its staff, or any delivery service driver to offset revenue reductions resulting from any ordinance or resolution enacted pursuant to subsection (2)(a) of this section;

(c) Require a third-party food delivery service to disclose to a consumer using the third-party food delivery service to make a purchase from a retail food establishment any commission, fee, or other monetary payment charged by the third-party food delivery service to the retail food establishment for a purchase from the retail food establishment; and

(d) Restrict a third-party food delivery service's ability to perform a service for a retail food establishment without the retail food establishment's consent.

(3) A governing body of a municipality that adopts an ordinance or resolution pursuant to subsection (2) of this section is immune from liability for all claims for injury resulting from any economic damage that a party may incur due to the ordinance or resolution except to the extent that the ordinance or resolution is held by a court of competent jurisdiction to constitute a taking of private property in violation of the United States or state constitution.

Source: L. 2020, 1st Ex. Sess.: Entire section added, (HB 20B-1005), ch. 4, p. 29, § 3, effective December 7. **L. 2025:** (1)(b) amended, (SB 25-285), ch. 296, p. 1518, § 8, effective August 6.

Cross references: For the legislative declaration in HB 20B-1005, see section 1 of chapter 4, Session Laws of Colorado 2020, First Extraordinary Session.

31-15-905. Regulation of pesticide use - definitions.

(1) The governing body of a municipality that adopts an ordinance that concerns pesticides, including an ordinance adopted pursuant to section 31-15-707 (1)(b), shall file the following with the commissioner of agriculture in accordance with section 35-10-112.5 (4):

(a) A certified copy of the ordinance; and

(b) A map or legal description of the geographic area that the governing body intends to regulate under the ordinance.

(2) As used in this section, unless the context otherwise requires:

(a) "Commissioner of agriculture" means the commissioner of the department of agriculture appointed pursuant to section 35-1-107 (1) or the commissioner's designee.

(b) "Pesticide" has the meaning set forth in section 35-10-103 (10).

Source: L. 2023: Entire section added, (SB 23-192), ch. 350, p. 2102, § 12, effective August 7.

PART 10

SOLID WASTE-TO-ENERGY INCINERATION SYSTEMS

Cross references: For the calculation by the public utilities commission of avoided cost information prior to construction of a solid waste-to-energy incineration system, see § 40-3-112; for authority for counties to develop solid waste-to-energy systems, see part 9 of article 20 of title 30.

Law reviews: For article, "The Legal Structure and Financing of Waste-to-Energy Projects -- Part 1", see 14 Colo. Law. 574 (1985).

31-15-1001. Legislative declaration.

The general assembly hereby finds and declares that methods for the efficient and economical production of usable energy should be achieved whenever possible and that the use of flammable waste material for the conversion of heat into steam, electrical power, or any other form of energy could provide energy in an efficient and economical manner. For such purposes, the

provisions of this part 10 are enacted to authorize municipalities to develop this type of energy for their own use and the use of the public.

Source: L. 83: Entire part added, p. 1243, § 3, effective May 31.

31-15-1002. Definitions.

As used in this part 10, unless the context otherwise requires:

(1) "Solid waste-to-energy incineration system" means the use of flammable waste material as a primary or supplemental fuel for the conversion of heat into steam, electrical power, or any other form of energy.

Source: L. 83: Entire part added, p. 1243, § 3, effective May 31.

31-15-1003. Municipal authority relating to solid waste-to-energy incineration systems.

(1) The governing body of any municipality has the power to:

(a) Acquire, hold, use, transfer, and convey any real or personal property for the purpose of developing and operating a solid waste-to-energy incineration system;

(b) Engage in any activities relating to the siting, development, and operation of a solid waste-to-energy incineration system and to the production, distribution, and sale of energy from such system;

(c) Issue revenue bonds authorized by action of the city council or comparable legislative body, without the approval of the qualified electors of the municipality, for purposes of financing the siting and development of a solid waste-to-energy incineration system and the production, distribution, and marketing of energy from such systems. Such revenue bonds shall be issued in the manner provided in part 4 of article 35 of this title for the issuance of revenue bonds by municipalities; except that such revenue bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the municipality, in its discretion, shall determine. Such revenue bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the municipality within the meaning of any provision or limitation of the state constitution, statutes, or home rule charter and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(d) Enter into contracts, including intergovernmental contracts pursuant to section 29-1-203, C.R.S., relating to the acts authorized by this part 10;

(e) Establish such terms and conditions by contract, ordinance, or any other method for the siting, development, and operation of a solid waste-to-energy incineration system and the production, distribution, and sale of energy from such system;

(f) Set, maintain, and revise charges for the disposal of solid waste at a solid waste-to-energy incineration system facility and for the distribution and sale of energy from such system for the purpose of financing the property, facilities, and operation of the system;

(g) Exercise any other powers which are essential in performing the acts authorized by this part 10;

(h) Perform any nonlegislative acts authorized by this part 10 by means of an agent or by contract with any person, firm, or corporation.

Source: L. 83: Entire part added, p. 1243, § 3, effective May 31.

31-15-1004. Department of public health and environment rules.

The department of public health and environment may promulgate rules for the engineering design and operation of solid waste-to-energy incineration systems, and any such system shall comply with such rules before beginning operations.

Source: L. 83: Entire part added, p. 1244, § 3, effective May 24. **L. 94:** Entire section amended, p. 2802, § 565, effective July 1.

PART 11

MOBILE HOME PARKS

Cross references: For the legislative declaration contained in HB 19-1309, see section 1 of chapter 281, Session Laws of Colorado 2019.

31-15-1100.3. Definitions.

As used in this part 11, unless the context otherwise requires:

(1) "Home owner" has the same meaning as set forth in section 38-12-201.5 (2).

(2) "Landlord" has the meaning set forth in section 38-12-201.5 (3).

(3) "Mobile home" has the meaning set forth in section 38-12-201.5 (5).

(4) "Mobile home lot" has the meaning set forth in section 38-12-201.5 (6.5).

(5) "Mobile home park" has the meaning set forth in section 38-12-201.5 (6).

Source: L. 2025: Entire section added with relocations, (SB 25-275), ch. 377, p. 2088, § 260, effective August 6.

Editor's note: This section is similar to former § 31-15-1101 (4) as it existed prior to 2025.

31-15-1101. Mobile home parks.

(1) The governing body of any municipality has the power to adopt, administer, and enforce ordinances and resolutions to provide for the safe and equitable operation of mobile home parks throughout the municipality. These ordinances and resolutions may be enacted within the scope of the "Mobile Home Park Act", part 2 of article 12 of title 38, and further as the municipality deems necessary to protect home owners' equity in the safe use and enjoyment of the mobile homes and mobile home lots, including but not limited to the imposition of penalties or adoption of a local registration system.

(2) Except as provided in subsection (3) of this section, an ordinance or resolution enacted by a municipality's governing body is only enforceable within the municipality.

(3) One or more contiguous counties and any municipality or town within each county may enter into intergovernmental agreements to extend the applicability of any ordinance or resolution adopted under this section to and throughout any participating county, municipality, or town.

(4) Repealed.

Source: L. 2019: Entire part added, (HB 19-1309), ch. 281, p. 2628, § 4, effective May 23. **L. 2025:** (4) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6.

Editor's note: Subsection (4) was relocated to § 31-15-1100.3 in 2025.

ARTICLE 16

Ordinances - Penalties

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PART 1

PROCEDURE FOR ADOPTION

31-16-101. Ordinance powers - penalty.

(1) (a) Except as provided in paragraph (b) of this subsection (1), the governing body of each municipality has power to provide for enforcement of ordinances adopted by it by a fine of not more than two thousand six hundred fifty dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(b) (I) The limitation on municipal court fines set forth in paragraph (a) of this subsection (1) shall be adjusted for inflation on January 1, 2014, and on January 1 of each year thereafter.

(II) As used in this paragraph (b), "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder, all items, all urban consumers, or its successor index.

(2) Notwithstanding subsection (1) of this section, the governing body of each municipality which implements an industrial wastewater pretreatment program pursuant to the federal act, as defined in section 25-8-103 (8), C.R.S., may seek such relief and impose such penalties as are required by such federal act and its implementing regulations for such programs.

Source: L. 75: Entire title R&RE, p. 1123, § 1, effective July 1. **L. 90:** Entire section amended, p. 1345, § 7, effective July 1. **L. 91:** (1) amended, p. 756, § 28, effective April 4. **L. 2013:** (1) amended, (HB 13-1060), ch. 121, p. 411, § 2, effective April 18.

Editor's note: This section is similar to former §§ 31-12-101 (79) and 31-12-301 as they existed prior to 1975.

ANNOTATION

When interpreting an ordinance, a court may review its other provisions in order to construe the disputed section in context. Humana, Inc. v. Bd. of Adjustment, 537 P.2d 741 (Colo. 1975); Abbott v. Bd. of County Comm'rs of Weld County, 895 P.2d 1165 (Colo. App. 1995).

The construction of an ordinance by administrative officials charged with its enforcement should be given deference by the courts and if there is a reasonable basis for the administrative agency's application of the law, the decision may not be set aside on review. Abbott v. Bd. of County Comm'rs of Weld County, 895 P.2d 1165 (Colo. App. 1995).

31-16-102. Style of ordinances.

The style of the ordinances in cities and towns shall be: "Be it ordained by the city council or board of trustees of ..... ."

Source: L. 75: Entire title R&RE, p. 1123, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-302 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-16-102 is similar to former § 31-12-302 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Directory. The requirements of this section are directory, and not imperative, and a substantial compliance herewith fulfills the law's demand. People ex rel. Town of Sterling v. Chipman, 31 Colo. 90, 71 P. 1108 (1903).

The words "town council" and the words "board of trustees", when used in relation to municipal corporations of this state, have practically the same meaning, and in view of this section it is immaterial which form is used as the "style" of the enacting clause of an ordinance. People ex rel. Town of Sterling v. Chipman, 31 Colo. 90, 71 P. 1108 (1903).

Applied in Reimer v. Town in Holyoke, 93 Colo. 571, 27 P.2d 1032 (1933).

31-16-103. Majority must vote for appropriations - proving ordinances.

Ordinances, resolutions, and orders for the appropriation of money shall require for their passage or adoption the concurrence of a majority of the governing body of any city or town. Unless otherwise specifically provided by statute or ordinance, all other actions of the governing body upon which a vote is taken shall require for adoption the concurrence of a majority of those present if a quorum exists. All ordinances may be proven by the seal of the city or town, and, when printed in book or pamphlet form and purporting to be printed and published by authority of the city or town, the same shall be received in evidence in all courts and places without further proof.

Source: L. 75: Entire title R&RE, p. 1123, § 1, effective July 1. **L. 89:** Entire section amended, p. 1292, § 14, effective April 6. **L. 91:** Entire section amended, p. 756, § 29, effective April 4.

Editor's note: This section is similar to former § 31-12-303 as it existed prior to 1975.

ANNOTATION

Applied in Rhodes v. People ex rel. Town of Haxtun, 67 Colo. 4, 185 P. 264 (1919).

31-16-104. Ordinances approved by mayor.

Only if an ordinance adopted pursuant to section 31-4-102 (3) or 31-4-302 so provides, any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract require the approval and signature of the mayor before they become valid, except as otherwise provided in this section. Such ordinance or resolution shall be presented to the mayor within forty-eight hours after the action of the governing body for his signature approving the same. If he disapproves, he shall return such ordinance or resolution to the governing body at its next regular meeting with his objections in writing. The governing body shall cause such objections to be entered at large upon the record and shall proceed at the same or next subsequent meeting to consider the question: "Shall the ordinance or resolution, notwithstanding the mayor's objections, be passed?" If two-thirds of the members of the governing body vote in the affirmative, such resolution shall be valid, and such ordinance shall become a law the same as if it had been approved by the mayor. If the mayor fails to return to the next subsequent meeting of the governing body any resolution or ordinance presented to him for his approval, the same shall become a valid ordinance or resolution, as the case may be, in like manner as if it had been approved by him.

Source: L. 75: Entire title R&RE, p. 1123, § 1, effective July 1. **L. 81:** Entire section amended, p. 1495, § 9, effective May 28. **L. 89:** Entire section amended, p. 1293, § 15, effective April 6.

Editor's note: This section is similar to former § 31-12-304 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since 31-16-104 is similar to former § 31-12-304 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

The duty of the mayor with respect to validating or attesting the ordinances of the town is directory and ministerial, and under this section an ordinance adopted by a majority of all the members elected to the council, and presented to the mayor for his approval, but not returned by him at the next meeting of the council, is, if regularly recorded and published, a valid ordinance, without the mayor's signature. Rhodes v. People ex rel. Town of Haxtun, 67 Colo. 4, 185 P. 264 (1919).

The clerk of a town has no authority to subscribe the mayor's name to an ordinance, and an ordinance so subscribed is not subscribed at all. Rhodes v. People ex rel. Town of Haxtun, 67 Colo. 4, 185 P. 264 (1919).

31-16-105. Record and publication of ordinances.

All ordinances, as soon as may be after their adoption, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer of the governing body and the clerk. All ordinances of a general or permanent nature and those imposing any fine, penalty, or forfeiture, following adoption and, if required by ordinance adopted pursuant to section 31-4-102 (3) or 31-4-302, compliance with the provisions of section 31-16-104, shall be published in some newspaper published within the limits of the city or town or, if there are none, in some newspaper of general circulation in the city or town. It is a sufficient defense to any suit or prosecution for such fine, penalty, or forfeiture to show that no publication was made. If there is no newspaper published or having a general circulation within the limits of the city or town, then, upon a resolution being passed by the governing body to that effect, ordinances may be published by posting copies thereof in three public places within the limits of the city or town, to be designated by the governing body. Except for ordinances calling for special elections or necessary to the immediate preservation of the public health or safety and containing the reasons making the same necessary in a separate section, such ordinances shall not take effect and be in force before thirty days after they have been so published. The excepted ordinances shall take effect upon adoption and, if required by ordinance adopted pursuant to section 31-4-102 (3) or 31-4-302, compliance with the provisions of section 31-16-104 if they are adopted by an affirmative vote of three-fourths of the members of the governing body of the city or town. The book of ordinances provided for in this section shall be taken and considered in all courts of this state as prima facie evidence that such ordinances have been published as provided by law. Any municipality may determine at a regular or special election to meet the requirements of this section and section 31-16-106 by publishing ordinances by title only rather than by publishing the ordinance in full. No municipality shall call a special election for the sole purpose of determining the issue of whether the municipality should publish new ordinances in full or by title only.

Source: L. 75: Entire title R&RE, p. 1123, § 1, effective July 1. **L. 81:** Entire section amended, p. 1496, § 10, effective May 28. **L. 92:** Entire section amended, p. 1053, § 3, effective January 1, 1993.

Editor's note: This section is similar to former § 31-12-305 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Adoption by Reference in Municipal Ordinances", see 22 Rocky Mt. L. Rev. 69 (1949). For article, "Publication of Legal Notices by Colorado Municipalities", see 22 Colo. Law. 59 (1993).

Annotator's note. Since 31-16-105 is similar to former § 31-12-305 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

If a party litigant raised the objection that the ordinance has been changed, the burden is upon him to prove it, and such proof requires more than merely casting a doubt or suspicion upon the validity of the ordinance. Handler v. City & County of Denver, 102 Colo. 53, 77 P.2d 132 (1938).

This section was intended to provide a convenient method of proving the fact that an ordinance had been published as required by law, and not for the purpose of making the book of ordinances the only and exclusive evidence of such fact. LaFitte v. City of Ft. Collins, 42 Colo. 293, 93 P. 1098 (1908).

This section does not require the signature of the mayor, or the attestation of the clerk, to give effect to the ordinance, but only requires that the ordinance, as soon as may be after its passage, shall be recorded in a book, etc., and be authenticated by the signature of the presiding officer, etc., thus clearly implying that the signature is not essential to the passing of the ordinance, but is merely for the purpose of evidencing its authentication, because apparently the signing is after the recording, and the recording is only to occur as soon as may be after the passage. Nat'l Bank of Commerce v. Town of Granada, 41 F. 87 (8th Cir. 1891).

All bylaws of a general or permanent nature had to be published as required by this section. Nat'l Bank of Commerce v. Town of Granada, 48 F. 278 (8th Cir. 1891).

This section is mandatory and an ordinance without the requisite publication is a nullity, and consequently of no force or validity. Nat'l Bank of Commerce v. Town of Granada, 48 F. 278 (8th Cir. 1891).

Publication or posting of ordinances is an essential condition precedent to their validity. People ex rel. Town of Wray v. Grant, 48 Colo. 156, 111 P. 69 (1910).

Conviction based on unpublished ordinance. Where an ordinance declared the keeping for sale of any intoxicating liquors a nuisance, and that the same "may be abated as any other nuisance", but the provision quoted was never published, it was held that such provision never became of force, and a judgment convicting the accused party of maintaining a nuisance, and directing the abatement of such nuisance, is no justification for acts done pursuant thereto. Wolfe v. Abbott, 54 Colo. 531, 131 P. 386 (1913).

This section is not mandatory as to the manner of proving the publication of an ordinance. LaFitte v. City of Ft. Collins, 42 Colo. 293, 93 P. 1098 (1908).

The recital in and certificate to bonds, stating full compliance with all preliminary requirements, estops the issuer of the bonds from subsequently denying that the ordinance authorizing the bond purchase was duly published. Hayden v. Town of Aurora, 57 Colo. 389 (1914).

Prima facie evidence of legal publication. This section makes the record of an ordinance in the "book of ordinances" to be kept for that purpose prima facie evidence of its lawful publication and in view of this fact, courts ought not to permit this salutary presumption of regularity to be overcome by anything less that substantial proof of irregularity. Town of Fletcher v. Hickman, 165 F. 403 (8th Cir. 1908).

31-16-106. Reading before city council - publication.

No ordinance shall be adopted by any city council of any city unless the same has been previously introduced and read at a preceding regular or special meeting of such city council and published in full in the manner provided in section 31-16-105 at least ten days before its adoption. The previous introduction of the ordinance at such preceding meeting of the city council and the fact of its publication shall appear in the certificate and the attestation of the clerk on the ordinance after its adoption. The provisions of section 31-16-105 shall apply to any ordinance adopted by a city council; except that, if publication after introduction was in a newspaper, publication after adoption may be in the same newspaper by title only and shall contain the date of the initial publication and shall reprint in full any section, subsection, or paragraph of the ordinance which was amended following the initial publication. Publication following adoption may be in full at the discretion of the city council.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1. **L. 77:** Entire section amended, p. 1466, § 1, effective May 20.

Editor's note: This section is similar to former § 31-15-104 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since 31-16-106 is similar to former § 31-15-104 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This section, by its terms, applies only to ordinances of a city and not to a town. People ex rel. Town of Wray v. Grant, 48 Colo. 156, 111 P. 69 (1910).

The term "unless the same has been previously ... published in full" imports but one occurrence in the running of time. Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950).

Compliance found. Where a proposed city ordinance was published only once in a newspaper but at least 10 days before its passage, it was held that this complied with the requirements of this section. Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950).

31-16-107. Reading - adoption of code.

Whenever the reading of an ordinance or of a code which is to be adopted by reference is required by statute, any such requirement shall be deemed to be satisfied if the title of the proposed ordinance is read and the entire text of the proposed ordinance or of any code which is to be adopted by reference is submitted in writing to the governing body before adoption.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1.

31-16-108. Majority of all members required - record.

On the adoption of an ordinance, resolution, or order for the appropriation of money or the entering into of a contract by the governing body of any city or town, the yeas and nays shall be called and recorded, and the concurrence of a majority of the governing body shall be required.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1. **L. 89:** Entire section amended, p. 1293, § 16, effective April 6. **L. 91:** Entire section amended, p. 756, § 30, effective April 4.

Editor's note: This section is similar to former § 31-12-306 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-16-108 is similar to former § 31-12-306 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases

construing those provisions have been included in the annotations to this section.

The provisions of this section are mandatory in cases where they apply. People ex rel. Sanders v. Hendrick, 93 Colo. 512, 27 P.2d 493 (1933); City of Greeley v. Hamman, 17 Colo. 30, 28 P. 460 (1891); Kinzie v. Incorporated Town of Haxtun, 99 Colo. 588, 63 P.2d 511 (1937).

And this section cannot be effectually waived; every contract must be expressed. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1914).

The power conferred is limited and can only be exercised in the manner prescribed. Tracey v. People, 6 Colo. 151 (1882).

The object of this section is to fix the individual responsibility for municipal legislation, of each member voting, by a permanent record. Any mode by which the vote of each member is clearly and definitely ascertained for the purposes of the record is sufficient, and a call of the roll is not regarded as essential. Brophy v. Hyatt, 10 Colo. 223, 15 P. 399 (1887).

Thus, it contemplates that the vote must be taken in a certain way and a record thereof made and that the record shall be the only evidence. City of Denver v. Spencer, 34 Colo. 270, 82 P. 590 (1905).

This is the only section which contains general provisions prescribing the vote necessary to pass ordinances, and the manner of taking and recording the votes. Tracey v. People, 6 Colo. 151 (1882).

A member of the board of trustees of an incorporated town while presiding over the sessions of the board as mayor pro tem is entitled to vote upon all questions whether or not there is a tie. Harris v. People ex rel. Squires, 18 Colo. App. 160, 70 P. 699 (1902).

This section specifies no cases wherein contracts are required to be entered into. Town of Durango v. Pennington, 8 Colo. 257, 7 P. 14 (1885).

Minutes as evidence of contract execution. On the issue of whether or not a contract has been executed by a town, recorded minutes of the council meeting relating thereto constitute the only permissible evidence. Kinzie v. Incorporated Town of Haxtun, 99 Colo. 588, 63 P.2d 511 (1937).

Compliance shown. Where it appeared from the record of meeting of the town board with reasonable certainty that all the members were present and voted for the ordinance upon its passage and that it was passed unanimously, it was held, that it showed a compliance with the provision of this section. People v. Raims, 20 Colo. 489, 39 P. 341 (1895).

Applied in Cordilla v. City of Pueblo, 34 Colo. 293, 82 P. 594 (1905); La Fitte v. City of Ft. Collins, 42 Colo. 293, 93 P. 1098 (1908).

31-16-109. Disposition of fines and forfeitures.

All fines and forfeitures for the violation of ordinances and all moneys collected for licenses or otherwise shall be paid into the treasury of the city or town at such times and in such manner as may be prescribed by ordinance, or, if there is no ordinance referring to the case, it shall be paid to the treasurer at once.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-307 as it existed prior to 1975.

Cross references: For disposition of fines and forfeitures involving the operation of motor vehicles, see § 42-1-217.

ANNOTATION

Applied in Orman v. City of Pueblo, 8 Colo. 292, 6 P. 931 (1885).

31-16-110. County officers may serve process.

Any sheriff of any county or city and county of this state may serve, within such sheriff's county, any process issued from any court or may make any arrest within such sheriff's county, authorized by law to be made by any municipal officers; but the only process or warrant for the arrest of any person charged with a violation of a municipal ordinance which shall be valid and executed outside the municipality where said violation occurred is that for the violation of an ordinance of any municipality in this state which is a criminal or quasi-criminal offense. For the purposes of this section, traffic offenses shall not be considered to be criminal or quasi-criminal offenses unless penalty points may be assessed under section 42-2-127 (5)(a) to (5)(r), (5)(w), and (5)(x), C.R.S.

Source: L. 75: Entire title R&RE, p. 1124, § 1, effective July 1. **L. 77:** Entire section amended, p. 795, § 9, effective June 3. **L. 94:** Entire section amended, p. 2565, § 78, effective January 1, 1995.

Editor's note: This section is similar to former § 31-12-308 as it existed prior to 1975.

31-16-111. One-year limitation of suits.

All suits for the recovery of any fine and prosecutions for the commission of any offense made punishable under any ordinance of any municipality shall be barred one year after the commission of the offense for which the fine is sought to be recovered.

Source: L. 75: Entire title R&RE, p. 1125, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-309 as it existed prior to 1975.

PART 2

ORDINANCE CODES ADOPTED BY REFERENCE

31-16-201. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Adopting municipality" means any municipality which has adopted or is in the process of adopting an ordinance pursuant to the provisions of this part 2.

(2) "Code" means any published compilation of statutes, ordinances, rules, regulations, or standards adopted by the federal government or the state of Colorado, by an agency of either of them, or by any municipality or other political subdivision in this state. The term includes any codification or compilation of existing ordinances of the adopting municipality. The term "code" also means published compilations of any nongovernmental organization or institution which may embrace any of the following subjects: The construction, alteration, repair, removal, demolition, equipment, use, occupancy, location, maintenance, or other matters related to buildings or other erected structures including, but not limited to, building codes, fire or fire prevention codes, plumbing codes, housing codes, mechanical codes, and electrical codes.

(3) "Municipality" means any city or any town operating under general or special laws of the state of Colorado or any home rule city or town, the charter or ordinances of which contain no provisions inconsistent with provisions of this part 2.

(4) "Primary code" means any code which is directly adopted by reference in whole or in part by any ordinance passed pursuant to this part 2.

(5) "Published" means issued in printed, lithographed, multigraphed, mimeographed, or similar form.

(6) "Secondary code" means any code which is incorporated by reference, directly or indirectly, in whole or in part in any primary code or in any secondary code.

Source: L. 75: Entire title R&RE, p. 1125, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-401 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Adoption by Reference in Municipal Ordinances", see 22 Rocky Mt. L. Rev. 69 (1949).

31-16-202. Adoption by reference - title.

If all the procedures and requirements of this part 2 are complied with, any municipality may enact any ordinance which adopts any code by reference in whole or in part, and such primary code thus adopted may in turn adopt by reference, in whole or in part, any secondary codes duly described therein. However, every primary code which is incorporated in any such adopting ordinance shall be specified in the title of the ordinance. Notwithstanding the procedures and requirements of this part 2, a municipality may enact any ordinance which adopts by reference any statute, rule, regulation, or standard adopted by the federal government or the state of Colorado, or by any agency of either of them, solely by referring to such statute, rule, regulation, or standard in the text of such ordinance.

Source: L. 75: Entire title R&RE, p. 1125, § 1, effective July 1. **L. 88:** Entire section amended, p. 1125, § 7, effective April 4.

Editor's note: This section is similar to former § 31-12-402 as it existed prior to 1975.

31-16-203. Notice - hearing.

After the introduction of the adopting ordinance, the governing body of any municipality shall schedule a public hearing thereon. Notice of the hearing shall be published twice in a newspaper of general circulation in the adopting municipality, once at least fifteen days preceding the hearing, and once at least eight days preceding it. If there is no such newspaper, the notice shall be posted in the same manner as provided for the posting of a proposed ordinance. The notice shall state the time and place of the hearing. It shall also state that copies of the primary code and copies of the secondary codes, if any, being considered for adoption are on file with the clerk and are open to public inspection. The notice shall also contain a description which the governing body deems sufficient to give notice to interested persons of the purpose of the primary code, the subject matter of the code, the name and address of the agency by which it has been promulgated or, if a municipality, the corporate name of such municipality which has enacted such code, and the date of publication of such code, and, in the case of a code of any municipality, the notice shall contain a specific reference to the code of a given municipality as it existed and was effective at a given date. The requirements as to the reading of the adopting ordinance are as provided in section 31-16-107.

Source: L. 75: Entire title R&RE, p. 1125, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-403 as it existed prior to 1975.

31-16-204. Adopting ordinance - adoption of penalty clauses by reference prohibited.

After the hearing, the governing body may amend, adopt, or reject the adopting ordinance in the same manner in which it is empowered to act in the case of other ordinances; but nothing in this part 2 shall permit the adoption by reference of any penalty clauses which may appear in any code which is adopted by reference. Any such penalty clauses may be enacted only if set forth in full and published in the adopting ordinance. All changes or additions to any code made by the governing body shall be published in the manner which is required for ordinances; except that changes or additions which are not substantive in nature made in connection with any codification or compilation of existing ordinances of the adopting municipality may be posted at the municipal offices in lieu of publication of such changes or additions.

Source: L. 75: Entire title R&RE, p. 1126, § 1, effective July 1. **L. 88:** Entire section amended, p. 1126, § 8, effective April 4.

Editor's note: This section is similar to former § 31-12-404 as it existed prior to 1975.

31-16-205. Publication of ordinance.

Nothing in this part 2 shall relieve any municipality from the requirement of publishing in full the ordinance which adopts any such code, and all provisions applicable to such publication shall be fully carried out. The adopting ordinance shall contain the same description of the primary adopted code as required in the notice of hearing in section 31-16-203.

Source: L. 75: Entire title R&RE, p. 1126, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-405 as it existed prior to 1975.

31-16-206. Filing of public record - sale of copies.

Not less than one copy of each primary code adopted by reference and of each secondary code pertaining thereto, all certified to be true copies by the mayor and the clerk, shall be filed in the office of the clerk at least fifteen days preceding the hearing and shall be kept there for public inspection while the ordinance is in force. After the adoption of the code by reference, a copy of the primary code and of each secondary code may be kept in the office of the chief enforcement officer instead of in the office of the clerk. Following the adoption of any code, the clerk shall at all times maintain a reasonable supply of copies of the primary code available for purchase by the public at a moderate price.

Source: L. 75: Entire title R&RE, p. 1126, § 1, effective July 1. **L. 88:** Entire section amended, p. 1126, § 9, effective April 4.

Editor's note: This section is similar to former § 31-12-406 as it existed prior to 1975.

31-16-207. Amendments.

If at any time any code which any municipality has previously adopted by reference is amended by the agency or municipality which originally promulgated, adopted, or enacted it, the governing body may adopt such amendment by reference through the same procedure as

required for the adoption of the original code, or an ordinance may be enacted in the regular manner setting forth the entire text of such amendment.

Source: L. 75: Entire title R&RE, p. 1126, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-407 as it existed prior to 1975.

31-16-208. Use as evidence.

Copies of such codes in published form, duly certified by the clerk and mayor of the municipality, shall be received without further proof as prima facie evidence of the provisions of such codes or public records in all courts and administrative tribunals of this state.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-408 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-16-208 is similar to former § 31-12-408 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Municipal courts may take judicial notice of the municipal ordinances that fall within their jurisdiction. City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

And a county court may take judicial notice of municipal ordinances when an appeal is taken from the municipal court to the county court for a trial de novo. City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

However, courts of general jurisdiction may not take judicial notice of the ordinances of municipal corporations in civil or criminal cases. City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

ARTICLE 20

Taxation and Finance

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COLLECTION

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PART 1

TAXATION AND ASSESSMENT COLLECTION

31-20-101. Power to levy taxes - on what property.

The governing body of any municipality has the power to levy taxes, the same kinds and classes, upon taxable property, real, personal, and mixed, within the municipal limits as are subject to taxation for state or county purposes in accordance with the laws of this state.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-101 as it existed prior to 1975.

Cross references: For the procedure to increase a tax levy beyond statutory limits, see § 29-1-302.

ANNOTATION

Law reviews. For note, "The Constitutionality of a Colorado Municipal Income Tax", see 25 Rocky Mt. L. Rev. 343 (1953).

The specific taxing power is governed by this section. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

When unconstitutional. Where taxes result in a flagrant inequality between the burden imposed and the benefit received, such is confiscatory and unconstitutional. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

To enforce a special assessment for a purpose which does not confer a special benefit upon the property upon which it is levied would result in taking private property without compensation, and without due process of law. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Scope of power. City councils and boards of trustees of cities and towns incorporated under the general statutes are authorized to levy taxes for city or town purposes upon the property in the city or town subject to taxation, and the time within which such annual levy shall be made is not limited,

except that it must be done before the county clerk extends the taxes on the tax list and delivers it to the treasurer for collection. Boston & Colo. Smelting Co. v. Elder, 20 Colo. App. 96, 77 P. 258 (1904).

Taxation defined. Taxation, as the word is employed in the Colorado constitution and statutes generally, is that burden or charge upon all property laid for raising revenue for general public purposes in defraying the expense of government. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Taxation and assessment are not synonymous terms, each is a separate and distinct exercise of the sovereign power to tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

If the tax is for a "general" purpose it must be an ad valorem tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Assessments are local and resorted to for making local improvements on the theory that the property affected is increased in value at least to the amount of the levy. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

An assessment in the nature of a special tax is for purposes of municipal improvement conferring a special benefit upon the property being assessed. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Special benefits which will sustain a special assessment must be immediate, and of such a character that they can be seen and traced; remote or contingent benefits enjoyed by the general public will not sustain a special assessment. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Portion of assessment for general benefit invalid. So much of an improvement as is designated and utilized for the general benefit of the inhabitants and property within the limits of a municipality is in no sense local, and special assessments to raise funds to construct, purchase, pay for, or maintain that portion of it, cannot be lawfully levied. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

The revenues derived from frontage taxes are designated for general purposes of a town, i.e., in maintenance of the town's water system, roads and road equipment, and the manner of imposition of taxes upon properties by a municipality is governed by § 3 of art. X, Colo. Const., prescribing that the same shall be uniform ad valorem taxes. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Authority to levy a special frontage tax can only be upheld on the theory that the property upon which it is levied is specially benefitted by the purposes to which such tax may be applied. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Spending of special assessments. If the "taxes" are special assessments upon the properties, the revenues therefrom could not be diverted to providing for general town purposes, but would necessarily have to be

used and confined to payment for the capital improvement resulting in an equivalent benefit to plaintiff's properties. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Showing needed to invalidate tax. A grant of power to impose municipal taxes involves a decision by the general assembly that benefits proportionate to the burden will be conferred, and the burden of proof is upon him who assails the legislative action, and to warrant judicial interference, he must show a clear case of violation of the principle exempting private property from condemnation to public use. Brown v. Denver, 3 Colo. 169 (1877).

31-20-101.3. Incentives for installation of renewable energy fixtures - definitions.

(1) Notwithstanding any law to the contrary, a governing body of any municipality may offer an incentive, in the form of a municipal property tax or sales tax credit or rebate, to a residential or commercial property owner who installs a renewable energy fixture on his or her residential or commercial property.

(2) For purposes of this section, unless the context otherwise requires, "renewable energy fixture" means any fixture, product, system, device, or interacting group of devices that produces energy, including but not limited to alternating current electricity, from renewable resources, including, but not limited to, photovoltaic systems, solar thermal systems, small wind systems, biomass systems, or geothermal systems.

Source: L. 2007: Entire section added, p. 489, § 3, effective August 3. **L. 2009:** (2) amended, (HB 09-1126), ch. 254, p. 1147, § 2, effective May 15.

Cross references: For the short title contained in the 2007 act enacting this section, see section 1 of chapter 130, Session Laws of Colorado 2007.

31-20-101.7. Property tax incentive programs for areas of specific local concern - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) (I) "Area of specific local concern" means a use of real property in a municipality that is determined by the governing body of the municipality to be diminishing or unavailable based on verifiable data and which use the governing body of the municipality finds and declares necessary for the preservation of the health, safety, or welfare of the residents of the municipality, including as to matters of equity, access to housing, and access to education.

(II) "Area of specific local concern" does not include a use of real property in a municipality that harms or may reasonably be expected to harm a disproportionately impacted community as defined in section 24-4-109 (2)(b)(II).

(III) "Area of specific local concern" does not include a use of real property in a municipality that prevents or may reasonably be expected to prevent meeting the minimum greenhouse gas emission reduction goals and deadlines established in section 25-7-102 (2)(g).

(b) "Governing body" has the same meaning as set forth in section 31-1-101 (4).

(c) "Incentive program" means a property tax credit or rebate program intended and designed to directly incentivize improvement in an area of specific local concern as specified in an ordinance adopted by a governing body of a municipality.

(d) "Municipal property tax credit or rebate" means a partial or full credit or refund of municipal property taxes owed or paid by a program participant in accordance with a municipal property tax levy.

(e) "Municipality" has the same meaning as set forth in section 31-1-101 (6).

(f) "Program participant" means an owner of real property in the municipality that has applied and meets the criteria set forth by ordinance adopted by the governing body of a municipality to participate in an incentive program and that in fact participates in the incentive program.

(2) Notwithstanding any law to the contrary, a municipality may offer an incentive, in the form of a municipal property tax credit or rebate, to a property owner that is a program participant in an incentive program established in accordance with this section.

(3) (a) An incentive program must be established by ordinance adopted by a governing body of a municipality at a hearing that is open to the public and that includes an opportunity for public testimony. The municipality must notify the clerk and recorder of each county that includes all or any portion of the municipality and that may be impacted by the incentive program of the hearing at least thirty days in advance. The notice must describe the specific area of local concern, including the use of real property, addressed by the incentive program and the proposed municipal property tax credit or rebate. Each county must have an opportunity to submit written comments and provide testimony at the hearing.

(b) An ordinance adopted by a governing body of a municipality must include:

(I) The governing body's findings and determinations regarding the diminishment or unavailability of a use of real property in the municipality that gives rise to an area of specific local concern that is the basis for the incentive program; and

(II) Specific criteria for the qualification of program participants.

(4) The opportunity to be a program participant must be equally available to all owners of the same class of real property located in the municipality whose use of their property is an area of specific local concern.

(5) (a) The governing body of a municipality shall, on an annual basis, evaluate each incentive program established pursuant to this section to determine its effectiveness in improving each area of specific local concern identified in the ordinance creating the incentive program.

(b) The governing body of a municipality shall, on an annual basis, publicize the results of the evaluation of each incentive program established pursuant to this section at a hearing that is open to the public and that includes an opportunity for public testimony.

(c) The governing body of a municipality may renew an incentive program for not more than one year if the governing body of the municipality determines that the incentive program has been and is likely to continue to be effective in addressing each area of specific local concern identified in the ordinance creating the incentive program.

Source: L. 2024: Entire section added, (SB 24-002), ch. 25, p. 75, § 5, effective August 7.

Cross references: For the legislative declaration in SB 24-002, see section 1 of chapter 25, Session Laws of Colorado 2024.

31-20-102. Assessor to designate property.

It is the duty of the county assessor each year, in making his return, to designate the property situated within the limits of any municipality in such county.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-102 as it existed prior to 1975.

ANNOTATION

Mandatory duty presumed discharged. The county assessor each year has the mandatory duty to designate the property situate in the towns of the county, and it is presumed, as the supreme court has many times held, that public officials properly discharge their duties. Town of Frisco v.

Brower, 171 Colo. 441, 467 P.2d 801 (1970).

Applied in Boston & Colo. Smelting Co. v. Elder, 20 Colo. App. 96, 77 P. 258 (1904).

31-20-103. Committee to appear before board of equalization.

Any governing body of any municipality has the authority to appoint a committee from its members to appear before the board of county commissioners, sitting as a board of equalization, and to recommend to said board such amendments and additions to or changes in the assessment made by the county assessor of the property or any portion thereof within the limits of such municipality as such committee may deem just.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-103 as it existed prior to 1975.

31-20-104. Assessor to extend taxes - warrant.

It is the duty of the county assessor, when the assessment roll is prepared each year for the extension of the taxes, to extend the municipal tax upon the tax list in the same manner as other taxes are extended, carrying said municipal tax into the general total of all taxes for the year, and to include said municipal taxes in his general warrant to the county treasurer for collection.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-104 as it existed prior to 1975.

ANNOTATION

Applied in Elder v. Fox, 18 Colo. App. 263, 71 P. 398 (1903); Boston & Colo. Smelting Co. v. Elder, 20 Colo. App. 96, 77 P. 258 (1904).

31-20-105. Municipality may certify delinquent charges.

Any municipality, in addition to the means provided by law, if by ordinance it so elects, may cause any or all delinquent charges, assessments, or taxes made or levied to be certified to the treasurer of the county and be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be by this title.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-105 as it existed prior to 1975.

ANNOTATION

Authority to collect. When the municipality by ordinance so provides, this section and said ordinance together constitute the authority, and the only authority, which the treasurer has for collecting said delinquent municipal assessments, in the same manner as he collects state, county, and municipal taxes; and when the municipality furnishes to the treasurer, with proof of the passage of an appropriate ordinance, the treasurer, without any other warrant, has the authority to collect the delinquent municipal assessment in the same manner as he collects other taxes. City of Highlands v. Johnson, 24 Colo. 371, 51 P. 1004 (1897).

Priority. A municipality may not impose a "superpriority lien" for nuisance abatement expenses except as specifically authorized by statute. Gold Vein LLC v. Cripple Creek, 973 P.2d 1286 (Colo. App. 1999).

Applied in Elder v. Fox, 18 Colo. App. 263, 71 P. 398 (1903).

31-20-106. County treasurer to collect municipal taxes - liens - publication.

(1) (a) It is the duty of the treasurer of said county and he is authorized to collect the municipal taxes in the same manner and at the same time as other taxes upon the same tax list are collected. The expense of construction and repair of sidewalks, streets, paving of streets, curb and gutter, drainage facilities, or other improvements, which are placed upon municipal streets, other than pursuant to part 5 of article 25 of this title, shall be assessed in the manner prescribed by the ordinance of any such municipality upon the property fronting upon the same. Except for the construction and repair of sidewalks, no such assessments for other construction shall be made by the municipality unless approved by petition signed by not less than sixty percent of the owners of property fronting upon the same and owning at least sixty percent of the property fronting thereon. Such assessment shall be a lien upon said property until it is paid. In case of

failure to pay such assessment in a reasonable time, to be specified by ordinance, the assessment, at any time after such failure, may be certified by the clerk of such municipality to the officer having the custody of the tax list at the time such certification is made to be placed by him upon such tax list for the current year and collected in the same manner as other taxes are collected, with ten percent penalty thereon to defray the cost of collection. All the laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for taxes and their redemption of the same, shall apply and have as full effect for the collection of all such municipal taxes as for such general taxes, except as modified by this title.

(b) Nothing in paragraph (a) of this subsection (1) shall be construed to repeal existing statutes concerning the power to levy taxes, charges, and assessments and the procedures for the assessments and collection thereof.

(2) The county treasurer, at the close of every month and more often if the governing body of said municipality requires, shall pay over to the municipal treasurer all moneys collected by him upon the presentation to him of an order signed by the mayor and clerk of such municipality. Any such county treasurer shall be liable on his official bond for the faithful discharge of all the duties and obligations imposed upon him.

(3) In case of sale of any lot or tract of ground for delinquent sidewalk tax, the same shall be advertised and sold for such tax, and the certificate of sale and deed therefor shall be made separate from the sale certificate and deed for other taxes. The amount of sidewalk tax so assessed shall not be certified to the county clerk and recorder until notice of such assessment has been published for ten days in some newspaper published in such municipality as provided by the ordinance of such municipality, giving the lot owner an opportunity to be heard before the governing body, at the time and place designated, as to the justness and correctness of the amount so assessed. The provisions of this title relating to collecting the expense of construction and repairs of sidewalks shall be construed to be for the purpose of carrying into effect the police powers of municipalities as to such construction and repairs of sidewalks and shall not be construed as imposing a special tax under the taxing power. The ordinance of such municipality shall provide for a reasonable time after the order of such municipality for the construction or repairs of such sidewalks for the owners of such lots to construct or repair such sidewalks. In case any such owners fail to so construct or repair such sidewalk in the time and manner prescribed by said ordinances, such municipality may proceed to construct or repair such sidewalk and charge such owners as prescribed by ordinance and in the manner described in this section.

Source: L. 75: Entire title R&RE, p. 1127, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-106 as it existed prior to 1975.

ANNOTATION

Inapplicable to sales made in pursuance of a special assessment. It is sufficient to say that no language to be found in this section will warrant the court in holding it was the intention of the general assembly to make this section applicable to sales made in pursuance of a special assessment for a sidewalk. Richardson v. City of Denver, 17 Colo. 398, 30 P. 333 (1892).

The rule of caveat emptor applies to a purchaser at an invalid tax sale of a city lot for delinquent sewer taxes and neither the purchaser nor his assignee of the tax sale certificate is entitled to recover from the city the amount due upon such certificate. Elder v. Fox, 18 Colo. App. 263, 71 P. 398 (1903).

Estopped from enforcing unrecorded tax lien. Where a special sewer tax was assessed against a city lot but no record thereof was made either in the office of the county treasurer or county clerk, and 12 years after such assessment was made the city attempted to enforce its lien by causing said lot to be sold for said tax, the city was estopped to assert its tax lien as against a purchaser of the lot who purchased without notice of such tax and after an examination of the records for tax liens, and who received no notice of the tax or the tax sale until the purchaser at the tax sale applied for a deed upon his tax sale certificate, the holder of the tax sale certificate was not entitled to a deed and the tax lien and certificate should be annulled. Elder v. Fox, 18 Colo. App. 263, 71 P. 398 (1903).

Applied in Boston & Colo. Smelting Co. v. Elder, 20 Colo. App. 96, 77 P. 258 (1904).

31-20-107. Municipality to pay share of county expenses.

The governing body of said municipality shall make in each year such allowance to be paid out of the general fund to the county as shall be a reasonable and just compensation for the extra labor imposed by this part 1 and shall also make an allowance, to be paid out of the general fund to the county in which said municipality is located, for the municipality's proportion of the expense of advertising the sale of lands for delinquent taxes in each year, the amount to be certified to the governing body by the county clerk and recorder of the proper county.

Source: L. 75: Entire title R&RE, p. 1128, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-107 as it existed prior to 1975.

ANNOTATION

By virtue of this section the council or board of trustees was undoubtedly constituted a quasi-judicial body, to which was intrusted, and on which was imposed the duty to determine the allowance which the assessor should receive for doing the work prescribed by the revenue act, and which was essential to facilitate the collection of city taxes and enable the municipality to determine the property which was liable to taxation and the amounts collectible by the city. Walpole v. City of Pueblo, 12 Colo. App. 151, 54 P. 910 (1898).

PART 2

FINANCE - GENERAL

31-20-201. Fiscal procedures - budgeting - appropriations.

The provisions of part 1 of article 1 of title 29, C.R.S., shall govern fiscal procedures, budgeting, and appropriations of towns and cities organized under this title.

Source: L. 75: Entire title R&RE, p. 1129, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-201 as it existed prior to 1975.

ANNOTATION

Bonds issued by a municipality for the purchase of water rights, for the purpose of supplying water to its inhabitants, were not within the provisions of this section and former CSA, C. 163, § 201. City of Cripple Creek v. Adams, 36 Colo. 320, 85 P. 184 (1906).

The defense that there was no compliance with this and repealed CSA, C. 163, § 200, was an affirmative defense. Morrison v. Burke, 103 Colo. 167, 84 P.2d 461 (1938).

Applied in Sullivan v. City of Leadville, 11 Colo. 483, 18 P. 736 (1888); Rizer v. People, 18 Colo. App. 40, 69 P. 315 (1902); Bd. of Trustees v. Endner, 18 Colo. App. 65, 70 P. 152 (1902).

31-20-202. Publication - penalty.

(1) It is the duty of the governing body of each city and town, except cities over ten thousand population, those operating under special charters, and those which have determined by election pursuant to subsection (1.5) of this section not to publish, to publish such of their proceedings as relate to the payment of bills, stating for what the same are allowed, the name of the person to whom allowed, and to whom paid. They shall also publish a statement concerning all contracts awarded and rebates allowed.

(1.5) Any city or town subject to this section may determine at a regular or special election not to publish their proceedings relating to payment of bills and statements concerning their contracts. However, no city or town shall call a special election for the sole purpose of determining whether the city or town shall publish their proceedings relating to payment of bills and statements concerning their contracts. Any city or town whose citizens elect not to publish may provide an alternative for distribution of the information.

(2) Such publication shall be made within twenty days after the adjournment of each regular or special meeting in a newspaper of general circulation published in the city or town where such meeting is held. If there is no reliable newspaper published within said city or town, said publication shall be made in some newspaper of general circulation nearest to said city or town within the county and the clerk shall furnish copy of such proceedings for publication.

(3) Any mayor, member of the governing body, or clerk who fails or refuses to make such publication shall be subject to a fine of not less than twenty-five dollars nor more than three hundred dollars and the costs of the suit for each offense; except that these penalties do not apply to the officials of any city or town which has elected pursuant to subsection (1.5) of this section not to make such publication.

Source: L. 75: Entire title R&RE, p. 1129, § 1, effective July 1. **L. 92:** (1) and (3) amended and (1.5) added, p. 1054, § 4, effective January 1, 1993.

Editor's note: This section is similar to former §§ 31-20-202 to 31-20-204 as they existed prior to 1975.

Cross references: For duty of towns and cities to have an annual audit, see part 6 of article 1 of title 29.

PART 3

FINANCE - TREASURER

31-20-301. Bond of treasurer - waiver - duties.

(1) The treasurer shall give a bond to the city or town in its corporate name with good and sufficient sureties, to be approved by vote of the governing body in such sum as it requires, conditioned on the faithful performance of his duties as treasurer of such city or town so long as he shall serve as such treasurer and requiring that, when he vacates such office, he will turn over and deliver to his successor all moneys, books, papers, property, or things belonging to such city or town and remaining in his charge as such treasurer. The governing body of the city or town may waive the requirement of a bond.

(2) The treasurer shall:

(a) Receive all moneys belonging to the city or town and shall keep his books and accounts in such manner as may be prescribed by ordinance. Such books and accounts shall always be subject to the inspection of any member of the governing body.

(b) Keep a separate account of each fund or appropriation and the debits and credits belonging thereto;

(c) Give every person paying money into the treasury a receipt therefor specifying the date of payment and upon what account paid, and he shall also file statements of such receipts with the city or town clerk on the date of his monthly report;

(d) Render an account to the governing body or such officer as may be designated by ordinance, at the end of each month and more often if required, showing the state of the treasury at the date of such account and the balance of money in the treasury. He shall also accompany such accounts with a statement of all moneys received into the treasury and on what account during the preceding month, together with all warrants redeemed and paid by him. Said warrants, with any vouchers held by the treasurer, shall be delivered to the clerk and filed with his account in the clerk's office upon every day of such statement. He shall return all warrants paid by him stamped or marked "paid". He shall keep a register of all warrants redeemed and paid, which shall describe such warrants and show the date, amount, number, the fund from which paid, and the name of the person to whom and when paid.

Source: L. 75: Entire title R&RE, p. 1129, § 1, effective July 1. **L. 89:** (1) amended, p. 1293, § 17, effective April 6.

Editor's note: This section is similar to former §§ 31-20-301 to 31-20-305 as they existed prior to 1975.

ANNOTATION

Applied in Manitou v. First Nat'l Bank, 37 Colo. 344, 86 P. 75 (1906); Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926).

31-20-302. Penalty for using municipal funds.

The treasurer is expressly prohibited from using, either directly or indirectly, the municipal money or warrants in his custody and keeping them for his own use or benefit or that of any other person. Any violation of this provision shall subject him to immediate removal from office by the governing body which is authorized to declare said office vacant, in which case his successor shall be appointed and shall hold office for the remainder of the unexpired term of such officer so removed.

Source: L. 75: Entire title R&RE, p. 1130, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-306 as it existed prior to 1975.

ANNOTATION

A city treasurer who deposits the money of the city in a bank is liable therefor if lost by the failure of the bank. Babcock v. City of Rocky Ford, 25 Colo. App. 312, 137 P. 899 (1914).

Except when bank specified by ordinance. Where an ordinance of a Colorado city of the second class expressly made it the duty of and ordered the city treasurer to remit certain moneys to a bank named in the ordinance for the purpose of paying interest on bonds issued by the city, and moneys so remitted by the city treasurer in compliance with the ordinance were lost due to the failure of the bank, such city treasurer, together with the surety upon his official bond was not liable to the city on account of such loss. McBride v. People ex rel. City of Trinidad, 111 Colo. 577, 144 P.2d 777 (1943).

31-20-303. Deposits - investments - interest - no liability.

(1) (a) As used in this subsection (1), the term "resolution" means a written resolution duly adopted by a majority vote of the governing body, which vote is entered in its minutes.

(b) Subject to the requirements of part 6 of article 75 of title 24, C.R.S., in all cities and towns in this state, the treasurer shall deposit all the funds and moneys that come into his possession by virtue of his office, in his name as treasurer or in the name of such other custodian as has been appointed by resolution, in one or more state banks, national banks having their principal office in this state, or, in compliance with the provisions of article 47 of title 11, C.R.S., savings and loan associations having their principal offices in this state which have been approved and designated by resolution. The governing body by resolution may authorize the investment of all or any part of such funds and moneys in any type of security or form of investment authorized by part 6 of article 75 of title 24, C.R.S., or by any other law of this state. All securities so purchased shall be duly registered in the name of the treasurer or other custodian appointed by resolution and, if issued in a form so permitting, shall be deposited and safely kept by him in the custody of some state or national bank located in this state. The governing body, by resolution, shall establish requirements for the sale or other disposal of securities and for the deposit or reinvestment of any proceeds, subject to the restrictions set forth in this section. For the purposes of investment of funds of the city or town, the governing body of the city or town, by resolution, may appoint one or more custodians of the funds and moneys, and such persons shall give surety bonds in such amount and form and for such purposes as the governing body may require.

(2) Such funds and moneys may be deposited in said banks and savings and loan associations in demand accounts, in interest-bearing savings accounts, or in certificates of deposit for fixed periods of time at such rates of interest as may be negotiated from time to time. All interest credited or received on such deposits shall become a part of the general fund of the city or town or of such other fund as the governing body designates.

(3) No city or town treasurer or member of the governing body who acts in good faith in approving and designating such depository shall be liable for loss of public funds deposited by such treasurer or his deputies by reason of default or insolvency of such depository; nor shall any such treasurer who invests any such funds as provided in this section or any member of the governing body who in good faith authorizes such investment be liable for any loss on account of such investment.

(4) Subject to the requirements of part 7 of article 75 of title 24, C.R.S., funds of the city or town may be pooled for investment with the funds of other local government entities.

Source: L. 75: Entire title R&RE, p. 1130, § 1, effective July 1; (1) and (2) amended and (3) and (4) repealed, pp. 407, 392, §§ 5, 5, 6, effective January 1, 1976. **L. 77:** (1) amended, p. 577,

§ 9, effective June 10. **L. 83:** (4) added, p. 1010, § 3, effective March 29; (1) and (2) amended, p. 1260, § 1, effective April 14. **L. 89:** (1)(b) amended, p. 1114, § 25, effective July 1.

Editor's note: (1) This section is similar to former § 31-20-307 as it existed prior to 1975.

(2) The subsections were renumbered on revision in the 1977 replacement volume for ease of location.

31-20-304. Reports - annual account - publication.

The treasurer shall report to the governing body, as often as required, a full and detailed account of all receipts and expenditures of the city or town as shown by his books up to the time of said report. Annually, by March 1 after the close of the fiscal year, he shall make out and file with the clerk a full and detailed account of all such receipts and expenditures and of all his transactions as such treasurer during the preceding fiscal year and shall show in such account the state of the treasury at the close of the fiscal year, which account the clerk shall immediately cause to be published in a newspaper printed in such city or town if there is one and, if not, by posting the same in a public place in the clerk's office.

Source: L. 75: Entire title R&RE, p. 1131, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-308 as it existed prior to 1975.

31-20-305. Collector to keep warrants - books - pay over weekly - receipt.

It is the duty of the collector, if anyone except the treasurer is specially appointed, or the person acting in that capacity to preserve all warrants returned into his hands, and he shall keep such books and his accounts in such manner as the governing body prescribes. Such warrants, books, and all papers pertaining to his office at all times shall be open to the inspection of and subject to the examination of the mayor, any member of the governing body, or any committee thereof. He shall pay over to the treasurer weekly, and more often if required by the governing body, all moneys collected by him, taking such treasurer's receipt therefor, which receipt he shall immediately file with the clerk. The clerk, at the time of filing or on demand, shall give such collector a copy of any such receipt so filed.

Source: L. 75: Entire title R&RE, p. 1131, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-309 as it existed prior to 1975.

ANNOTATION

Collector appointment optional. This section, with the two sections immediately following, refer to the office of city collector and prescribe the duties of such officer; but it is optional with the council whether a collector, as such shall be appointed, because they may leave the duties of the collector with the treasurer; they may specially appoint a collector; or they may authorize different officers to receive moneys, the payment of which arises from or in connection with a performance of the duties of their respective offices, and if no one be specially appointed collector, and if no other officer be authorized to receive funds in a particular instance, under the law the treasurer is the person to whom corporation moneys must be paid. Orman v. City of Pueblo, 8 Colo. 292, 6 P. 931 (1885).

31-20-306. Collector to report - annual statement - publication.

The collector shall make a written report to the governing body, or any officer designated by it, of all moneys collected by him, the account whereon collected, or of any other matter connected with his office when required by the governing body or by any ordinance of the town or city. He shall also annually, by March 1 after the close of the fiscal year, file with the clerk a statement of all moneys collected by him during the year, the particular warrant, special assessment, or account on which collected, the balance of moneys uncollected on all warrants in his hands, and the balance remaining uncollected at the time of the return on all warrants which he returned during the preceding fiscal year to the clerk. The clerk shall publish or post the same as required to be done by section 31-20-304 in regard to the annual report of the treasurer.

Source: L. 75: Entire title R&RE, p. 1132, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-310 as it existed prior to 1975.

31-20-307. Keeping moneys - inspection of books - paying over.

The collector is expressly prohibited from keeping the moneys of the city or town in his hands or in the hands of any person for his use beyond the time prescribed for the payment of the same to the treasurer. Any violation of this provision will subject him to immediate removal from

office. All the city or town collector's papers, books, warrants, and vouchers may be examined at any time by the mayor, clerk, or any member of the governing body. The collector shall pay over every two weeks, or more often if the governing body so directs, all money collected by him from any persons or associations to the treasurer taking his receipt therefor in duplicate, one of which receipts he shall at once file in the office of the clerk.

Source: L. 75: Entire title R&RE, p. 1132, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-311 as it existed prior to 1975.

PART 4

FINANCE - WARRANTS

31-20-401. Warrants signed - countersigned - fund.

All warrants drawn upon the treasurer shall be signed by the mayor and countersigned by the clerk and shall state the particular fund or appropriation to which the same is chargeable and the person to whom payable. No money shall be drawn except as provided in this part 4; except that the governing body of a municipality may provide for the disbursement of money by check in lieu of by warrant.

Source: L. 75: Entire title R&RE, p. 1132, § 1, effective July 1. **L. 79:** Entire section amended, p. 1187, § 1, effective May 18.

Editor's note: This section is similar to former § 31-20-401 as it existed prior to 1975.

31-20-402. Funds - how used.

All moneys received on any special assessment shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made. Said money shall be used for no purpose whatever other than to reimburse the city or town for money expended for such improvement. All moneys received for account of the general fund shall be held by the treasurer in the general fund and shall be used for no purpose other than that for which they were appropriated, collected, or received except to reimburse any special fund to which the general fund may be indebted.

Source: L. 75: Entire title R&RE, p. 1132, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-402 as it existed prior to 1975.

31-20-403. Warrant endorsed when no funds - new warrant.

When a city or town warrant is received by the treasurer or collector and there is no money in the treasury to pay the same, he is directed to endorse on it the amount for which it was received and the date thereof, and from that date the warrant is to be regarded as canceled and cannot be reissued; but when the warrant amounts to more than is to be paid by the person presenting it, the treasurer or collector shall give him a certificate of the balance due him, which certificate, on presentation to the board authorized to audit claims for the city or town, entitles the holder to receive a new warrant for the amount specified therein.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-403 as it existed prior to 1975.

31-20-404. Registry of orders - contents - inspection.

Every treasurer of any city or town shall keep in his office a book, to be called the registry of city or town orders, in which shall be entered, at the date of the presentation thereof and without any interval or blank line between any such entry and the one preceding it, every city or town order, warrant, or other certificate of such town or city indebtedness presented to such town or city treasurer at any time for payment, whether the same is paid at the time of presentation or not, the number and date of such order, warrant, or certificate, the amount, the date of presentation, the name of the person presenting the same, and the particular fund, if any, upon which the order is drawn. Every such registry of city or town orders shall be open at all reasonable hours to the inspection and examination of any person desiring to inspect or examine the same.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-404 as it existed prior to 1975.

ANNOTATION

Applicable to Denver. This and the following section providing for the registration and order of payment of city and town warrants were applicable to the city of Denver, although it was operating under a special charter. First Nat'l Bank v. Arthur, 10 Colo. App. 283, 50 P. 738 (1897).

31-20-405. Order warrants paid.

Every fund in the hands of any treasurer of any such city or town of this state for disbursement shall be paid out in the order in which the orders drawn thereon, payable out of the same, are presented for payment.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-405 as it existed prior to 1975.

31-20-406. Redemption of warrants.

When the treasurer of any city or town has any city or town funds on hand in cash to the amount of five hundred dollars or over, it is his duty to immediately apply all such funds to the redemption of an equal amount of such outstanding city or town warrants, certificates, or orders, with the interest due thereon, as may be entitled to a preference as to payment according to the order of time in which they were previously presented to the treasurer of such city or town, as evidenced by the registry of the orders of such city or town kept in his office as provided by law. For this purpose, he shall cause to be advertised for thirty days in some newspaper published in or nearest such city or town a notice that he will redeem such certain city or town orders, certificates, or warrants with interest due thereon, stating their number and amounts on presentation at the treasury of such city or town, and that, at the expiration of thirty days from the date of such notice, such orders, certificates, or warrants shall cease to bear interest.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1.

Editor's note: This section is similar to former § 31-20-406 as it existed prior to 1975.

31-20-407. Neglect in keeping register or paying - penalty.

Any city or town treasurer, or city or town treasurer's deputy, who fails or neglects to keep such registry or who fails or neglects to register any warrant or certificate of indebtedness of such city or town as is entitled to registry or neglects or refuses to pay such warrants or certificates in order of payments, there being then money in the treasury applicable to the payment thereof or from which the same ought to be paid, commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1133, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3256, § 542, effective March 1, 2022.

Editor's note: This section is similar to former § 31-20-407 as it existed prior to 1975.

ARTICLE 21

Bonds

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PART 1

FUNDING - FLOATING DEBT

31-21-101. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Floating indebtedness" means all obligations of the municipality to pay money, of whatever kind or character, except indebtedness evidenced by outstanding negotiable interest-bearing bonds of the municipality.

Source: L. 75: Entire title R&RE, p. 1134, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-101 as it existed prior to 1975.

ANNOTATION

By the term "floating debt" is meant that mass of lawful and valid claims against the corporation, for the payment of which there is no money in the corporate treasury specifically designed, nor any taxation or other means of providing money to pay, particularly provided. Thomas S. Hayden Realty Co. v. Town of Aurora, 62 Colo. 563, 163 P. 843 (1917) (decided prior to L. 17, p. 520, § 2, the earliest source of former section).

31-21-102. Funding bonds - determination of indebtedness.

The governing body of any municipality may issue negotiable coupon bonds, to be denominated funding bonds, for the purpose of funding any of the legal floating indebtedness of such municipality existing at any time. The specific indebtedness to be funded and the amount of such funding bonds to be issued under the provisions of this part 1 shall first be determined by such governing body and a certificate of such determination shall be made and entered in the records of the municipality prior to the issuance of said funding bonds. Nothing in this part 1 shall be construed to repeal or amend any law limiting the indebtedness of municipalities.

Source: L. 75: Entire title R&RE, p. 1134, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-102 as it existed prior to 1975.

31-21-103. Bond election - judgments.

(1) Whenever such governing body deems it expedient to issue funding bonds under the provisions of this part 1, it shall direct, by ordinance, that the question be submitted at a regular election in the manner provided for authorization of other bonded indebtedness in section 31-15-302 (1)(d). At any election held under the provisions of this part 1, the question of authorizing the funding of all or any part of the floating indebtedness of the city or town may be submitted as one question for determination, irrespective of the form or date of such indebtedness. The election shall be conducted as nearly as possible in conformity with the provisions of the "Colorado Municipal Election Code of 1965". The election notice shall specify, in addition to the time and places for holding said election, the qualifications for persons to vote on such question, the amount of the indebtedness to be funded, and the amount of funding bonds proposed to be issued and the rate of interest they shall bear. At such election the ballots or voting machine tabs shall contain the words "For the Funding Bonds" and "Against the Funding Bonds".

(2) No election shall be necessary to authorize the governing body to issue bonds for the purpose of funding indebtedness in the form of a valid subsisting judgment against the municipality.

Source: L. 75: Entire title R&RE, p. 1134, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-103 as it existed prior to 1975.

Cross references: For "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

For invalidity of bonds issued under improper ordinance, see Nat'l Bank of Commerce v. Town of Granada, 54 F. 100 (8th Cir. 1893) (decided prior to L. 17, p. 521, § 3, the earliest source of former section).

The use of an admission tax rather than an ad valorem tax to repay improvement bonds issued pursuant to this section is permissible. Friends of Cham. Music v. City and County of Denver, 696 P.2d 309 (Colo. 1985).

31-21-104. Ordinance - form and maturity of bonds.

(1) If the governing body determines to issue funding bonds for the purpose of paying and discharging any valid and subsisting judgment against the municipality or if, upon canvassing the vote cast at any election held under the provisions of this part 1, it is determined by the governing body that a majority of the votes cast upon the question submitted are for funding, the governing body shall make such determination a part of the official records of the municipality, and the governing body shall immediately thereafter adopt and make a law of the municipality an ordinance which shall not be subject to the referendum provisions of any law providing for the issue of said funding bonds in accordance with the provisions of this part 1. Such ordinance shall fix the date of said funding bonds, shall designate the denominations thereof, the rate of interest, the maturity date which shall not be more than twenty-five years from the date of said funding bonds, the place of payment, within or without the state of Colorado, of both principal and interest, and shall prescribe the form of said funding bonds.

(2) Such funding bonds shall be negotiable in form, shall recite the title of the act under which they are issued, and shall be executed in the name of the municipality, signed by the mayor, countersigned by the treasurer, with the seal of the municipality affixed thereto, and

attested by the clerk. The interest accruing on such funding bonds shall be evidenced by interest coupons attached bearing the engraved facsimile signature of the treasurer of the municipality. When so executed, such coupons shall be the binding obligations of the municipality according to their import. In the adoption of said ordinance providing for the issue of such funding bonds, the governing body shall make the principal of the debt payable in substantially equal annual installments during the period, not exceeding twenty-five years, within which the debt is to be discharged. The date of the maturity of the first installment of the debt shall not be more than five years from the date of said funding bonds.

Source: L. 75: Entire title R&RE, p. 1134, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-104 as it existed prior to 1975.

31-21-105. Disposition of bonds.

All such funding bonds may be exchanged, dollar for dollar, in satisfaction of the indebtedness to be funded, or they may be sold at not less than their par value, as directed by the governing body, and the proceeds thereof shall be applied only to the purpose for which such funding bonds were issued.

Source: L. 75: Entire title R&RE, p. 1135, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-105 as it existed prior to 1975.

31-21-106. Taxes for interest and redemption.

The interest accruing on such funding bonds issued pursuant to the provisions of this part 1 prior to the time when tax levies are available therefor shall be paid out of the general revenues of the municipality. For the purpose of reimbursing such general revenues and for the payment of subsequently accruing interest, the governing body issuing such funding bonds or the proper tax assessing and collecting officers upon whom shall devolve the duty of levying and collecting municipal taxes shall levy annually a sufficient tax upon all of the taxable property in the municipality fully to discharge such interest. For the ultimate redemption of such funding bonds, there shall be levied annually such a tax upon all the taxable property in such municipality as will create a fund sufficient to discharge each annual installment of such funding bonds at the

maturity thereof, which fund shall be called the redemption fund. All taxes for interest on and for the redemption of such bonds shall be paid in cash only and shall be kept by the municipal treasurer as a special fund to be used only in payment of the interest upon and for the redemption of such bonds. Such tax shall be levied and collected as other municipal taxes are levied and collected. The tax provisions for the ultimate redemption of such bonds shall be set forth in the ordinance authorizing their issue and shall set forth the years in which such taxes shall be levied for the creation of said redemption fund.

Source: L. 75: Entire title R&RE, p. 1135, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-106 as it existed prior to 1975.

ANNOTATION

A court has some discretion in the granting or refusing of a writ of mandamus to compel a tax levy for the payment of municipal bond interest coupons. City of Victor v. Halstead, 84 Colo. 450, 271 P. 185 (1928).

31-21-107. Ordinance irrepealable.

Any ordinance authorizing an issue of funding bonds under the provisions of this part 1 and providing for the levy of taxes for the payment of the interest upon the principal of such funding bonds shall not be altered or repealed until the indebtedness thereby authorized has been fully paid.

Source: L. 75: Entire title R&RE, p. 1135, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-107 as it existed prior to 1975.

PART 2

REFUNDING BONDED INDEBTEDNESS

31-21-201. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Net effective interest rate" of a proposed issue of refunding bonds means the net interest cost of said refunding issue divided by the sum of the products derived by multiplying the principal amount of such refunding issue maturing on each maturity date by the number of years from the date of said proposed refunding bonds to their respective maturities. The "net effective interest rate" of an outstanding issue of bonds to be refunded means the net interest cost of said issue to be refunded divided by the sum of the products derived by multiplying the principal amounts of such issue to be refunded maturing on each maturity date by the number of years from the date of the proposed refunding bonds to the respective maturities of the bonds to be refunded. In all cases the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(2) "Net interest cost" of a proposed issue of refunding bonds means the total amount of interest to accrue on said refunding bonds from their date to their respective maturities less the amount of any premium above par at which said refunding bonds are being or have been sold. "Net interest cost" of an outstanding issue of bonds to be refunded means the total amount of interest which would accrue on said outstanding bonds from the date of the proposed refunding bonds to the respective maturity dates of said outstanding bonds to be refunded. In all cases the net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(3) Repealed.

Source: L. 75: Entire title R&RE, p. 1136, § 1, effective July 1; (3) added, p. 1274, § 1, effective April 9. **L. 89:** (3) repealed, p. 1135, § 85, effective July 1.

Editor's note: This section is similar to former § 31-21-201 as it existed prior to 1975.

31-21-202. Refunding bonds - amount.

The governing body of any municipality may issue negotiable coupon bonds, to be denominated refunding bonds, for the purpose of refunding any of the bonded indebtedness of such municipality, whether due or not or which is payable at the option of such municipality, by

consent of the bondholders, or by any lawful means. The amount of the refunding bonds to be issued under the provisions of this part 2 shall first be determined by the governing body, and a certificate of such determination shall be made and entered in and upon the records of the municipality prior to the issuance of said refunding bonds.

Source: L. 75: Entire title R&RE, p. 1136, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-202 as it existed prior to 1975.

31-21-203. Vote of electors not required.

Whenever such governing body deems it expedient to issue refunding bonds under the provisions of this part 2 and the net interest cost and the net effective interest rate of the proposed issue of refunding bonds does not exceed the net interest cost and net effective interest rate of the issue of bonds to be refunded, such refunding bonds may be issued without the submission of the question of issuing such refunding bonds to a vote of the registered electors of such municipality. The issuance of bonds under this part 2 for the purpose of refunding bonds which were originally issued to supply water to such municipality shall not require approval of such electors.

Source: L. 75: Entire title R&RE, p. 1136, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-203 as it existed prior to 1975.

31-21-204. Vote of electors required - procedures.

(1) When such governing body deems it expedient to issue refunding bonds under the provisions of this part 2 and either the net interest cost or the net effective interest rate of the proposed issue of refunding bonds exceeds the net interest cost or the net effective interest rate, respectively, of the issue of bonds to be refunded, the governing body, by ordinance or resolution, shall submit the question of issuing said refunding bonds at a special election called and held for that purpose or at a regular election of the officers of such municipality; but bonds issued under this part 2 for the purpose of refunding bonds which were originally issued to supply water to such municipality shall not require such approval of the registered electors. An election held under this section shall be held in the manner provided for the authorization of an original bonded indebtedness in section 31-15-302 (1)(d).

(2) At any election held under the provisions of this part 2, the question of authorizing the refunding of all or any part of the then outstanding bonded indebtedness of the municipality may be submitted as one question for determination whether such bonds are of the same or of different issues.

(3) The election shall be conducted as nearly as possible in conformity with the provisions of the "Colorado Municipal Election Code of 1965".

(4) The election notice shall specify, in addition to the time and places for holding said election, the qualifications for persons to vote on such question, the amount and date of the bonds to be refunded, the amount of refunding bonds proposed to be issued, and the maximum net effective interest rate at which they may be issued.

(5) At such election the ballots or voting machine tabs shall contain the words "For the Refunding Bonds" and "Against the Refunding Bonds".

Source: L. 75: Entire title R&RE, p. 1136, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-204 as it existed prior to 1975.

Cross references: For "Colorado Municipal Election Code of 1965", see article 10 of this title.

ANNOTATION

Applied in Weedin v. United States, 509 F. Supp. 1052 (D. Colo. 1981).

31-21-205. Ordinance for bond issue - bonds.

(1) If the governing body determines to issue refunding bonds without an election by meeting the requirements set forth in sections 31-21-202 to 31-21-204 or if, upon canvassing the vote cast at any election held under the provisions of this part 2, it is determined by the governing body that a majority of the votes cast upon the question submitted are in favor of refunding, the governing body shall make such determination a part of the official records of the municipality and shall immediately thereafter adopt and make a law of the municipality, an ordinance providing for the issuance of said refunding bonds in accordance with the provisions of this part 2.

(2) Such ordinance shall fix the date of said refunding bonds, shall designate the denominations thereof, shall designate the maximum net effective interest rate, the rate of interest of individual bonds, the maturity dates, and the place or alternate places of payment, within or without the state of Colorado, of both principal and interest, and shall prescribe the form of said refunding bonds.

(3) Such refunding bonds shall be negotiable in form, shall recite the title of the act under which they are issued, and shall be executed in the name of the municipality and signed by the mayor, countersigned by the treasurer, with the seal of the municipality affixed thereto, and attested by the clerk. The interest accruing on such refunding bonds shall be evidenced by interest coupons thereto attached bearing the engraved facsimile signature of the treasurer of the municipality. When so executed, such coupons shall be the binding obligations of the municipality, according to their import.

(4) In the adoption of said ordinance providing for the issuance of said refunding bonds, the governing body shall make the principal of the debt payable in annual or semiannual installments commencing not later than five years after the date of such bonds and maturing during a period not exceeding thirty-five years from the date thereof. The amounts of such maturities shall be fixed by the governing body. The right to redeem all or any part of said issue of bonds prior to the respective maturities thereof and the order of any such redemption may be reserved in said ordinance, and, if so reserved, shall be set forth on the face of said bonds.

(5) Outstanding bonds which are secured by a pledge of specific special funds or revenues of the municipality in addition to the general ad valorem tax revenues of said municipality may be refunded under the provisions of this part 2, and substantial compliance with the provisions of this part 2 is deemed and taken to be sufficient to legally authorize such refunding and the issuance of refunding bonds for such purpose without further actions being taken by the municipality. Such a pledge of specific special funds or revenues need not be made to additionally secure the refunding bonds so issued, but such funds or revenues may be so pledged if it is deemed advisable by the governing body of the municipality.

Source: L. 75: Entire title R&RE, p. 1137, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-205 as it existed prior to 1975.

31-21-206. Exchange - sale - proceeds - amounts.

Such refunding bonds may be exchanged dollar for dollar for the bonds to be refunded, or they may be sold at, above, or below their par value at a price such that the net effective interest rate

of the issue of refunding bonds does not exceed the maximum net effective interest rate authorized. Such refunding bonds shall be in a principal amount not exceeding the principal amount of the bonds to be refunded, as directed by the governing body, and the proceeds thereof shall be applied only to the purpose for which such refunding bonds were issued. The principal amount of said refunding bonds may be the same or less than the principal amount of the bonds to be refunded if due, adequate, and sufficient provision has been made for the payment, or redemption, and retirement of said bonds to be refunded and the payment of the interest accrued thereon in accordance with this part 2.

Source: L. 75: Entire title R&RE, p. 1138, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-206 as it existed prior to 1975.

31-21-207. Tax for payment of refunding bonds.

The interest accruing on such refunding bonds issued pursuant to the provisions of this part 2 prior to the time when the proceeds of tax levies are available therefor shall be paid out of the general revenues or any other revenues of the municipality available therefor. For the purpose of reimbursing such general revenues or other revenues and for the payment of subsequently accruing interest, the governing body issuing such refunding bonds shall certify and the board of county commissioners of the county in which the city or town is located shall levy, annually, a sufficient tax upon all the taxable property in the municipality fully to discharge such interest. For the ultimate payment or redemption of such refunding bonds, there shall be certified and levied annually such a tax upon all the taxable property in such municipality as will create a fund sufficient to pay or redeem and discharge such refunding bonds at or prior to their respective maturities. In the event the bonds to be redeemed and the interest thereon accruing would have been paid from taxes levied upon only part of the taxable property in the municipality, the taxes levied for payment or redemption of the refunding bonds and the interest accruing thereon shall be levied in the same manner and upon only the same taxable property as would have been levied for payment of the bonds to be refunded if no refunding of said bonds had been made and accomplished. As collected, all taxes levied for payment of interest on and for the payment or redemption of the principal of such bonds shall be kept by the treasurer of the municipality in a special fund to be used only in the payment of the interest upon and for the payment or redemption of the principal of such bonds. Such tax shall be levied and collected in the same manner as other municipal taxes are levied and collected. The ordinance authorizing the issuance of said bonds shall set forth the years in which such taxes shall be levied for the creation of said fund.

Source: L. 75: Entire title R&RE, p. 1138, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-207 as it existed prior to 1975.

31-21-208. Ordinance not to be altered.

Any ordinance authorizing an issue of refunding bonds under the provisions of this part 2 and providing for the levy of taxes for the payment of the interest upon and the principal of such refunding bonds shall not be altered or repealed until the indebtedness thereby authorized has been fully paid.

Source: L. 75: Entire title R&RE, p. 1139, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-208 as it existed prior to 1975.

31-21-209. Consolidated city or town - refunding indebtedness of constituent portions - bonds.

When any city or town consolidates with another city or town under the laws of the state of Colorado and has incurred a bonded indebtedness prior to such consolidation, such bonded indebtedness may be refunded by the consolidated city or town under the provisions of this part 2, as is provided for the refunding of other bonds in the same manner as it would have been the duty or within the power of the city council or board of trustees of the city or town which contracted such indebtedness to do had no such consolidation taken place. All the provisions of this part 2, including elections authorizing issuance of such refunding bonds, shall apply only within the former limits of the city or town which contracted such indebtedness. All refunding bonds so issued shall state in substance that they, together with interest thereon, are payable only by levies upon property situated within such limits as the same existed prior to such consolidation, unless the terms of consolidation shall provide that such refunding shall apply within the entire limits of the consolidated city or town.

Source: L. 75: Entire title R&RE, p. 1139, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-209 as it existed prior to 1975.

31-21-210. Combined issues - procedures.

Any refunding bonds may be issued to refund one or more issues of outstanding bonds of a municipality, but no two or more issues of outstanding bonds may be refunded by a single issue of refunding bonds unless the taxable property upon which tax levies are being made for payment of each such outstanding issue of bonds is identical to the taxable property on which such levies are being made for the payment of all other outstanding bonds proposed to be refunded by such single issue of refunding bonds. In the event that two or more issues of outstanding bonds of a municipality are to be refunded by the issuance of a single issue of refunding bonds as provided in this section, the net interest cost and net effective interest rate on the bonds to be refunded shall be computed as if all of said bonds had originally been combined as a single issue aggregating the total of the smaller issues, and the results of this computation shall be compared with the net interest cost and net effective interest rate on the whole of the single refunding issue for purposes of determining the necessity of submitting the question of issuing such refunding bonds to a vote of the registered electors of the municipality.

Source: L. 75: Entire title R&RE, p. 1139, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-210 as it existed prior to 1975.

31-21-211. Application of refunding bond proceeds - procedures - limitations.

(1) The proceeds derived from the issuance of any refunding bonds under the provisions of this part 2 shall either be immediately applied to the payment, or redemption, and retirement of the bonds to be refunded and the cost and expense incident to such procedures or shall immediately be placed in escrow to be applied to the payment of said bonds upon their presentation therefor and the costs and expenses incident to such proceedings and for no other purpose whatsoever until the bonds being refunded have been paid in full and discharged and all accrued interest thereon has also been paid in full, upon which occurrences the escrow shall terminate, and any funds remaining therein shall be returned to the municipality and may be used to pay other bonds of the municipality.

(2) The costs and expenses incident to the refunding of outstanding bonded indebtedness, the issuance of refunding bonds, and the establishment and maintenance of escrow accounts, pursuant to the provisions of this part 2, may be paid from any moneys or funds of the municipality which are legally available therefor. Any moneys or funds of the municipality

legally available therefor may be placed in any escrow account established under the provisions of this part 2 and may be used and expended for the purposes specified in the escrow agreement if such procedure is deemed by the governing body to be in the best interests of the municipality.

(3) Any escrowed funds, pending such use, may be invested or, if necessary, reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., maturing at such times as to ensure the prompt payment of the bonds refunded under the provisions of this part 2 and the interest accruing thereon.

(4) Escrowed funds and investments, together with any interest to be derived from such investments, shall be in an amount which at all times shall be sufficient to pay the bonds refunded as they become due at their respective maturities or as they are called for redemption and payment on prior redemption dates as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom, and the computations made in determining such sufficiency shall be verified by a certified public accountant.

(5) For the purpose of implementing the provisions of this part 2, the governing body of any municipality has the power to enter into escrow agreements and to establish escrow accounts with any commercial bank having full trust powers located within the state of Colorado, which is a member of the federal deposit insurance corporation, under protective covenants and agreements whereby such accounts shall be fully secured by, or shall be invested in, securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., in such amounts as will be sufficient and maturing at such times as to ensure the prompt payment of the bonds refunded and the interest accruing thereon under the provisions of this part 2.

(6) In no event shall the aggregate amount of bonded indebtedness of any municipality exceed the maximum allowable amount as determined pursuant to the state constitution, statutes, and charter applicable to such municipality. In determining and computing such aggregate amount of bonded indebtedness of any municipality, bonds which have been refunded as provided in this part 2, either by immediate payment, or redemption, and retirement or by the placement of the proceeds of refunding bonds in escrow shall not be deemed outstanding indebtedness from and after the date on which sufficient moneys are placed with the paying agent of such outstanding bonds for the purpose of immediately paying, or redeeming, and retiring such bonds or from and after the date on which the proceeds of said refunding bonds are placed in such an escrow.

(7) The issuance of refunding bonds by any municipality for the purposes and in the manner authorized by this part 2 or under the provisions of any other law enabling such an issuance shall never be interpreted or taken to be the creation of an indebtedness such that the same would require the approval of the registered electors of the municipality, and no such approval shall be required for the issuance of such refunding bonds except as is specifically required by this part 2 or such other law under which said refunding bonds are sought to be issued or have been issued.

(8) No bonds may be refunded under the provisions of this part 2 unless the holders thereof voluntarily surrender said bonds for immediate exchange or immediate payment or unless said bonds either mature or are callable for redemption prior to their maturity under their terms within ten years from the date of issuance of the refunding bonds, and provisions shall be made for paying, or redeeming, and discharging all of the bonds refunded within said period of time.

Source: L. 75: Entire title R&RE, p. 1139, § 1, effective July 1; (3) and (5) amended, p. 1274, § 2, effective April 9. **L. 89:** (3) and (5) amended, p. 1115, § 26, effective July 1.

Editor's note: This section is similar to former § 31-21-211 as it existed prior to 1975.

31-21-212. Registration of refunding bonds.

Whenever any municipality issues refunding bonds under the provisions of this part 2, the governing body shall direct that the clerk of said municipality, as a part of said clerk's duties, register said bonds in a book to be kept by him for that purpose, and, when so registered, the legality thereof shall not be open to contest by such municipality, or by any other person or corporation in behalf of such municipality for any reason whatever. It is the duty of the clerk to register said bonds, noting the principal amount, the date of issuance and maturity, and the rate of interest of said bonds.

Source: L. 75: Entire title R&RE, p. 1141, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-212 as it existed prior to 1975.

31-21-213. Redemption of refunding bonds prior to maturity - procedures.

(1) If any bonds of a municipality, either bonds issued for refunding purposes or bonds issued for other purposes as set forth in section 31-15-302 (1)(d), are made redeemable prior to their respective maturities and the governing body determines that any part of such bonds should be called for redemption according to their terms, it is the duty of the clerk of such municipality, as soon as the governing body has authorized the redemption, to cause notice to be given of such action.

(2) Such notice shall be given by publication at least once in a newspaper customarily used by said municipality for legal notices at least thirty days prior to the date on which said bonds are

to be redeemed and paid. Such notice shall contain the date and place on which said bonds shall be redeemed and paid, shall describe the bonds by their legal designation, date, number, and amount, and shall state that after the date so fixed for redemption and payment the interest on said bonds shall cease.

(3) After the date so fixed for redemption and payment, the bonds so called for redemption and payment shall cease to draw interest.

Source: L. 75: Entire title R&RE, p. 1141, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-213 as it existed prior to 1975.

PART 3

PAYMENTS OF MATURED SPECIAL ASSESSMENT

31-21-301. Power to issue bonds - purpose.

Subject to the provisions of this part 3, any municipality has the power to issue its negotiable coupon bonds for the purpose of paying any special assessment bonds or obligations which it may issue, together with interest thereon, when it appears that there is not or will not be sufficient money for the payment of the same at maturity in the particular fund out of which payment should be made.

Source: L. 75: Entire title R&RE, p. 1141, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-301 as it existed prior to 1975.

31-21-302. Ordinance - taxes - interest - disposition.

The issuance of any bonds in accordance with this part 3 shall be authorized by an ordinance, subject to and otherwise in accordance with the provisions of section 31-15-302 (1)(d). Such bonds shall bear interest at a rate and shall be exchanged or sold at a price such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized. Interest shall be paid semiannually at such place, in such denominations, and by such officers as may be prescribed in such ordinance. Such bonds may be exchanged for

outstanding matured and overdue special assessment bonds or obligations and interest thereon, or they may be sold and the proceeds thereof used for the purpose specified in this part 3.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-303 as it existed prior to 1975.

31-21-303. Construction - disposition of delinquent assessment.

Nothing in this part 3 shall release or discharge any special assessment which is a lien on or against any property. Any municipality issuing bonds under this part 3 shall be subrogated to the rights of the holders or owners of the outstanding special assessment bonds or obligations paid. If, after the issuance of bonds authorized by this part 3, the delinquent or defaulted special assessments, or any part thereof, are collected and the special assessment bonds or obligations payable out of the particular special assessment fund have been redeemed by means of bonds issued under this part 3, the amounts so collected shall be used to pay the principal of and the interest on the bonds authorized and the tax levies therefor shall be reduced in a like manner.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-304 as it existed prior to 1975.

PART 4

PAYMENT BY TAX LEVY ON PETITION OF ELECTORS

31-21-401. Power to levy - manner paid.

On the petition of a majority of the registered electors of any city or town having an outstanding bonded indebtedness amounting to one-fourth or more of its valuation for assessment, the governing body of such city or town is authorized to levy or cause to be levied at one time a tax on all the taxable property subject to taxes for payment of such bonds sufficient to discharge the entire principal of and the accrued interest on such indebtedness plus fifteen percent for delinquencies, which tax may be paid by the property owners at one time or in installments, as provided in this part 4. In determining the amount of outstanding bonded indebtedness, any sum in the sinking fund may be deducted.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1. **L. 87:** Entire section amended, p. 332, § 96, effective July 1.

Editor's note: This section is similar to former § 31-21-401 as it existed prior to 1975.

31-21-402. Discharge of lien by property owner.

Any property owner may discharge the lien of said bond tax on his property by paying the tax in full, in bonds or matured coupons of the issue for which the levy is made at their face value. Thereafter the same property shall not be liable for the payment of such tax as between the city or town and the property owner.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-402 as it existed prior to 1975.

31-21-403. Payment in installments.

Any property owner not paying the tax in full at one time has the privilege of paying the same in cash installments, the number of which installments shall be determined by the governing body and which shall equal the number of years from the time the next tax is payable to the last maturity of the bonds, with interest on the unpaid installments at the same rate which the outstanding bonds bear. After any property owner has paid one or more cash installments, he may pay the balance of said tax with bonds or matured coupons as provided in section 31-21-402.

Source: L. 75: Entire title R&RE, p. 1142, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-403 as it existed prior to 1975.

31-21-404. Payment in bonds - warrant for excess.

(1) The tax-collecting officers are authorized to accept full payment of such taxes in said bonds or coupons and to cancel said bonds and coupons on such payment. Said tax-collecting officers are authorized to deliver to the person paying such tax a certificate, in duplicate, showing such payment and a description of the property on which the tax was paid, which certificate may be filed or recorded in the office of the county clerk and recorder of the county wherein the property is situated.

(2) In the event that any bonds or coupons presented as payment exceed the amount due, the tax-collecting officers shall deliver to the property owner a certificate to that effect, whereupon the property owner shall be entitled to receive from the city or town a warrant on its treasury, payable out of the bond and interest fund, in the amount of such excess, which warrant until paid shall bear the same rate of interest as the bonds for the payment of which the tax was levied.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-404 as it existed prior to 1975.

31-21-405. Assessment and collection.

Said taxes shall be certified, levied, assessed, and collected in the same manner and shall be subject to the same penalties as general taxes.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-405 as it existed prior to 1975.

31-21-406. Suit by bondholder - city or town to protect.

In the event that any action, suit, or proceeding is brought by any bondholder, creditor, or other person, wherein it is sought to compel the levy of any further bond tax on property which has been discharged from said tax by payment in full, the city or town shall take all necessary steps to protect said property on which the tax has been paid in full by purchasing property sold for the nonpayment of such tax in the event that there are no other purchasers and by making ample provisions for the payment of delinquent bond taxes or the installments thereof out of the general

fund or any other available fund, the intention being that, as between the city or town and the taxpayer, any particular property may be fully discharged and relieved from the lien of such tax or the levy of any further tax for the same purpose by payment in full of its proportionate share thereof at the time of payment.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-406 as it existed prior to 1975.

31-21-407. Other laws unaffected.

Nothing in this part 4 shall prevent the issuance of any bonds or the levy of taxes for the payment thereof in the manner as is authorized by law nor shall anything in this part 4 prevent the issuance of bonds for the purpose of refunding any outstanding bonded indebtedness of any city or town in accordance with the provisions of law applying thereto.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-21-407 as it existed prior to 1975.

ARTICLE 23

Planning and Zoning

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PART 1

PLATS OF CITIES AND TOWNS

Cross references: For vacation of streets and alleys, see part 3 of article 2 of title 43.

31-23-101. Plats of cities and towns organized prior to 1885.

In all cases in which a city or town was organized prior to March 31, 1885, in which lands embraced within the boundaries thereof have been conveyed or known by lots, blocks, streets, highways, parks, squares, or other divisions of land or in which any such lots, blocks, streets, highways, parks, squares, or other divisions of land have been known as such by reference to some previous plat or map, whether prepared or submitted in accordance with law or not, the owners of such lands, in order to determine the location and boundaries thereof, may cause a plat of the same to be filed in accordance with the provisions of this part 1.

Source: L. 75: Entire title R&RE, p. 1143, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-401 as it existed prior to 1975.

31-23-102. Application to other cities or towns.

The provisions of this part 1 are applicable to lands within the boundaries of cities and towns organized on or after March 31, 1885, to the extent that any owners of lands therein desire to make any change in the plat of any such city or town from the plat as originally made.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-405 as it existed prior to 1975.

31-23-103. Plats of whole municipal area.

(1) When any such plat embraces in its description the whole municipal area of any such city or town, it shall set forth, as near as may be:

(a) All streets and highways and the width thereof;

(b) All parks, squares, and other grounds reserved for public uses with the boundaries and dimensions thereof;

(c) All lots and blocks and other divisions of land, with their boundaries, designating such lots and blocks by numbers and giving the dimensions of such lots and other divisions of land.

(2) Reference shall be made in said plat to one or more permanent monuments. The scale of said plat shall be indicated therein, and any other matters necessary or proper to clarify the descriptions of lands indicated on any such plat may be entered thereon.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-402 as it existed prior to 1975.

31-23-104. Acknowledgment of plat.

Any such plat shall be acknowledged in the manner of a deed by the owners and proprietors of the lands designated upon any such plat before some officer authorized to take the acknowledgment of deeds. A copy thereof so acknowledged shall be filed in the office of the county clerk and recorder of the county where such lands are situated and also in the office of the clerk of any such city or town. When any such plat embraces in its description any street,

highway, park, square, or other lands owned or held by the city or town for any public use or otherwise, said plat shall be acknowledged in behalf of the city or town by the mayor of the city or town when authorized by the resolution or ordinance of the governing body. Any such acknowledgment of any owner or proprietor may be made for such owner or proprietor by any attorney-in-fact duly authorized by deed.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-403 as it existed prior to 1975.

31-23-105. Plats of portion of municipal area.

A plat of any portion of such municipal area may be filed, and any number of such plats may be filed. When any plat is filed containing a description of any less than all of the municipal area, the same matters shall be indicated upon such plat, to the extent of lands described in such plat, as are required to be indicated in a plat of the whole municipal area, as near as may be. Every plat shall be acknowledged by such owner and proprietor whose lands are embraced within the description of such plat.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-404 as it existed prior to 1975.

31-23-106. How parcels designated.

In case of filing any such plat under this part 1, the designation by which any lot, block, or other parcel of land has previously been known shall be retained in said plat. With the consent of the city or town, any such lot, block, or other parcel of land specified in said plat may be designated by other numbers or names than those by which said lots, blocks, or other parcels of land have been previously known. Such consent of any such city or town, through its governing body, shall be evidenced by the acknowledgment of the mayor. In case of tracts or parcels of land within any such city or town which have not been known or platted by lots, blocks, or other parcels of land of a designated number or name, the same may be platted as provided in section 31-23-105 upon the consent of the city or town as provided in this section.

Source: L. 75: Entire title R&RE, p. 1144, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-406 as it existed prior to 1975.

31-23-107. Public property dedicated.

All streets, parks, and other places designated or described as for public use on the map or plat of any city or town or of any addition made to such city or town are public property and the fee title thereto vested in such city or town.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-108 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Mineral Ownership Under Highways, Streets, Alleys and Ditches", see 17 Colo. Law. 43 (1988).

Annotator's note. (1) Since § 31-23-107 is similar to former § 31-1-108 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

(2) For additional annotations concerning the dedication of public property, see § 31-2-106.

This section requires no magic words. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

The only requirement of this section is that the streets be described as for public use. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Legal consequences of dedication. The section declares that all streets, etc., described as for public use on the map or plat of any city, or any additions, shall be deemed to be public property and the fee thereof vested in such city or town. In thus providing, this section declares that the legal consequence of a dedication is that the streets, etc., are deemed to be public property and the fee is vested in the city. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

By dedication the original owner divests himself of the power of disposition of the property and vests the city with this

legal power. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Absent failure to comply or nonacceptance statutory dedication presumed. Where it does not appear that there was any failure to comply with the statute or that there was nonacceptance, it must be concluded that it was a statutory dedication, and the terms of a statutory dedication are governed by this section. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Statutory provisions as to dedication may materially affect the common-law rule. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Statutory dedication and common-law dedication distinguished. A statutory dedication operates by way of grant and ordinarily conveys the full fee title to the subject property, whereas a common-law dedication operates by way of "estoppel in pais" and ordinarily conveys only an easement. City of Greenwood Vill. v. Boyd, 624 P.2d 362 (Colo. App. 1981); State Dept. of Hwys. v. Town of Silverthorne, 707 P.2d 1017 (Colo. App. 1985).

In Colorado a dedication of land to public use may be made either according to the common law or pursuant to statute. City & County of Denver v. Publix Cab Co., 135 Colo. 132, 308 P.2d 1016 (1957).

Dedication of land to a county may be accomplished only through common law dedication because procedures under this section apply only to cities and towns. Turnbaugh v. Chapman, 68 P.3d 570 (Colo. App. 2003).

A dedication by acts and conduct of a city is a common-law dedication through an estoppel in pais and not a statutory dedication requiring a grant. City & County of Denver v. Publix Cab Co., 135 Colo. 132, 308 P.2d 1016 (1957).

Unless prohibited by statute, an offer, constructive or actual, to dedicate a street can be made by a municipal corporation as well as by private owner. City & County of Denver v. Publix Cab Co., 135 Colo. 132, 308 P.2d 1016 (1957).

Whether there has been a common-law dedication is a question of fact, and the general rule that the decision of the trial court based on substantial though conflicting evidence is binding on appeal applies. City & County of Denver v. Publix Cab Co., 135 Colo. 132, 308 P.2d 1016 (1957); State Dept. of Hwys. v. Town of Silverthorne, 707 P.2d 1017 (Colo. App. 1985).

The fee title, to the surface at least, of the dedicated street passes to the city or the municipality. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Language of dedication created conveyance to public use of area for limited purposes. Language of dedication in developer's plats and planned unit development plan, i.e., "dedicate to the public all roadways and easements for purposes shown hereon", buttressed by the other evidence, was sufficient only to convey to the public the use of the area

dedicated for the limited purposes specified plus concurrent use of the area for utility and drainage easement purposes. City of Greenwood Vill. v. Boyd, 624 P.2d 362 (Colo. App. 1981).

City not limited to mere easement. It cannot be said that merely because the grantor has granted the entire highway and continues to own the land which abuts the highway on one side, that he has a right to the whole or any part of the highway when it is vacated, as there is nothing in this section which suggests that the interest granted to the city is limited to an easement. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

The fee granted is a limited one, in trust for the abutting owners and the users of the street, but the city nevertheless has a title to the property sufficient to allow disposition of it in accordance with § 43-2-302. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Rights of abutting owner retained. When a dedication satisfied this section and vested a fee in the city to the surface and so much thereof as was reasonably necessary for street and highway purposes, it operated to divest the dedicator of the property in it except to the extent of his rights as an abutting owner — rights extending only to the center of the street as dedicated. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

Title of vacated portions vests in adjoining owner. A dedicator, even though not immediately divested of subsurface rights, is on notice at the time of dedication that if a portion of the dedicated street should be vacated by the city and county unconditional title would vest in the adjoining owner. Buell v. Sears, Roebuck & Co., 321 F.2d 468 (10th Cir. 1963).

One dedicating highways to the public by filing plats showing highways located thereon is not unconstitutionally deprived of its property by § 43-2-302 which provides that upon vacation of the highway the title shall vest in the abutting owner. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), modified, 321 F.2d 468 (10th Cir. 1963).

For the requirement that a political subdivision accept a dedication, see Bd. of County Comm'rs v. Warneke, 85 Colo. 388, 276 P. 671 (1929); Hand v. Rhodes, 125 Colo. 508, 245 P.2d 292 (1952); Litvak v. Sunderland, 143 Colo. 347, 353 P.2d 381 (1960); Thornton v. City of Colo. Springs, 173 Colo. 357, 478 P.2d 665 (1970).

Land was not statutorily dedicated as a park. Where it was undisputed that land used as a park was not designated for public use on a map or plat, it was not statutorily dedicated as a park. Save Cheyenne v. City of Colo. Springs, 2018 COA 18, 425 P.3d 1174 (decided based on 1877 statutory language similar to this section).

31-23-108. Record and preservation - definition.

The county clerk and recorder shall record all such plats of lands within his or her county together with the description, acknowledgment, or other writing thereon in a book to be kept for that purpose and, when necessary, may reduce the scale of any such plat. Upon each record in the book he or she shall endorse his or her certificate that the same is truly recorded from the original plat filed in his or her office. The county clerk and recorder may receive an original plat for recording in an electronic format. The county clerk and recorder shall preserve the original plat in the original format, an electronic format, or both. If the plat is received for recording in the original format, the county clerk and recorder may preserve it in an electronic format by digitizing or scanning the plat at a minimum resolution of three hundred dots per inch. The county clerk and recorder shall keep an index to such book of plats, which index shall contain the names of the parties acknowledging such plats and the name of the city or town, as the case may be. The county clerk and recorder shall likewise make entries of all the plats in the index in his or her office in which deeds are required to be entered. As used in this section, "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1. **L. 2017:** Entire section amended, (SB 17-129), ch. 213, p. 832, § 1, effective August 9. **L. 2020:** Entire section amended, (HB 20-1318), ch. 239, p. 1157, § 1, effective September 14.

Editor's note: This section is similar to former § 31-1-407 as it existed prior to 1975.

31-23-109. Plats shall be evidence.

All such original plats, the record thereof, or copies therefrom, certified by the county clerk and recorder of such county, shall be evidence in all courts and places.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-408 as it existed prior to 1975.

31-23-110. Boundaries settled by plat.

Upon the filing of any such plat in the office of the county clerk and recorder, the boundaries of contiguous divisions of land, as described in section 31-23-103, upon any such plat shall be determined and settled as indicated in the plat. All the other matters indicated upon said plat are binding upon the parties acknowledging such plat. For the purpose of description in any instrument affecting title to any land described in any such plat, the designation given upon such plat shall be sufficient.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-409 as it existed prior to 1975.

31-23-111. Owner construed.

For the purposes of this part 1, any person having a legal or equitable interest in any lands shall be deemed an owner and proprietor. Nothing in this part 1 shall affect the rights of anyone other than those acknowledging any such plat.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-410 as it existed prior to 1975.

31-23-112. Fees of recorder.

The county clerk and recorder shall receive the same fees for filing and recording the plats provided for by this part 1 as are allowed for filing and recording original maps or plats of cities or towns.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1.

Editor's note: This section is similar to former § 31-1-411 as it existed prior to 1975.

Cross references: For fees for filing and recording maps or plats, see § 30-1-103.

PART 2

PLANNING COMMISSION

Law reviews: For article, "Land Use Decisionmaking: Legislative or Quasi-judicial Action", see 18 Colo. Law. 241 (1989).

31-23-201. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Commission" means the municipal planning commission described in section 31-23-203 (1).

(2) "Mayor" means the chief executive of the municipality, whether the official designation of his office is mayor, city manager, or otherwise; except that with respect to municipalities operating under the statutory city manager form of government, the term means the city manager.

(3) "Subdivision" means any parcel of land which is to be used for condominiums, apartments, or any other multiple-dwellings units, unless such land was previously subdivided and the filing accompanying such subdivision complied with municipal regulations applicable to subdivisions of substantially the same density, or the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. "Subdivision" includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

Source: L. 75: Entire title R&RE, p. 1145, § 1, effective July 1. **L. 81:** (2) amended, p. 1512, § 1, effective June 4. **L. 2025:** Entire section amended, (SB 25-275), ch. 377, p. 2089, § 261, effective August 6.

Editor's note: This section is similar to former § 31-23-101 (3) and (6) as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980).

Applied in Wood Bros. Homes v. City of Colo. Springs, 42 Colo. App. 15, 592 P.2d 1336 (1978).

31-23-202. Grant of power to municipality.

Any municipality is authorized to make, adopt, amend, extend, add to, or carry out a plan as provided in this part 2 and to create by ordinance or resolution a planning commission with the powers and duties set forth in this part 2.

Source: L. 75: Entire title R&RE, p. 1146, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-102 as it existed prior to 1975.

31-23-203. Personnel of the commission.

(1) The municipal planning commission shall consist of not less than five nor more than seven members; except that a home rule city or town shall not be limited in the size of its commission. Unless otherwise provided by ordinance, the membership and terms of members shall be as follows:

(a) When the commission is limited to five members, the membership shall consist of the mayor and a member of the governing body as ex officio members and three persons appointed by the mayor, if the mayor is an elective officer; otherwise by such office as the governing body may designate as the appointing power in the ordinance creating the commission.

(b) When the commission consists of seven or more members, there shall be four ex officio members consisting of the mayor, one of the administrative officials selected by the mayor, a member of the governing body selected by the mayor, and a member of the governing body selected by the governing body; the balance of the membership shall be appointed as provided in paragraph (a) of this subsection (1).

(2) All members of such commission shall be bona fide residents of the municipality and, if any member ceases to reside in such municipality, his membership on the commission shall automatically terminate.

(3) All members of the commission shall serve without compensation unless otherwise provided by ordinance and the appointed members shall hold no other municipal office; except that one such appointed member may be a member of the zoning board of adjustment or appeals.

The terms of ex officio members shall correspond to their respective official tenures; except that the term of the administrative official selected by the mayor shall terminate with the expiration of the term of the mayor who selected him or her. The term of each appointed member shall be six years or until his or her successor takes office; except that the respective terms of one-third of the members first appointed shall be two years, one-third shall be four years, and one-third shall be six years. Members other than the member representing the governing body may be removed, after public hearings, by the mayor for inefficiency, neglect of duty, or malfeasance in office, and the governing body may remove the member representing it for the same reasons. The mayor or the governing body, as the case may be, shall file a written statement of reasons for such removal. Vacancies occurring otherwise than through the expiration of term shall be filled for the remainder of the unexpired term by the mayor in the case of members selected or appointed by the mayor, by the governing body in the case of the member appointed by it, and by the appointing power designated by the governing body in municipalities in which the mayor is not an elective officer.

(4) Notwithstanding any provisions of subsections (1) and (3) of this section to the contrary, the governing body of each municipality may provide by ordinance for the size, membership, designation of alternate membership, terms of members, removal of members pursuant to subsection (3) of this section, and filling of vacancies of the commission.

Source: L. 75: Entire title R&RE, p. 1146, § 1, effective July 1. **L. 79:** (4) added, p. 1188, § 1, effective June 19. **L. 2014:** (3) amended, (HB 14-1060), ch. 67, p. 292, § 1, effective August 6. **L. 2025:** IP(1) amended, (SB 25-275), ch. 377, p. 2089, § 262, effective August 6.

Editor's note: This section is similar to former § 31-23-103 as it existed prior to 1975.

31-23-204. Organization and rules.

The commission shall elect its chairman from among the non ex officio members and shall create and fill such other of its offices as it may determine. The term of the chairman shall be one year, with eligibility for reelection. The commission shall hold at least one regular meeting in each month. It shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

Source: L. 75: Entire title R&RE, p. 1147, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-104 as it existed prior to 1975.

31-23-205. Staff and finances.

The commission may appoint such employees as it deems necessary for its work; except that the appointment, promotion, demotion, and removal of such employees shall be subject to the same provisions of law as govern other corresponding civil employees of the municipality. The commission may also contract, with the approval of the governing body, with municipal planners, engineers, and architects and other consultants for such services as it requires. The expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the governing body, which shall provide the funds, equipment, and accommodations necessary for the commission's work.

Source: L. 75: Entire title R&RE, p. 1147, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-105 as it existed prior to 1975.

31-23-206. Master plan - definitions.

(1) It is the duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside its boundaries, subject to the approval of the governmental body having jurisdiction thereof, that in the commission's judgment bear relation to the planning of the municipality. The master plan of a municipality is an advisory document to guide land development decisions; however, the master plan or any part thereof may be made binding by inclusion in the municipality's adopted subdivision, zoning, platting, planned unit development, or other similar land development regulations after satisfying notice, due process, and hearing requirements for legislative or quasi-judicial processes as appropriate. The master plan, with the accompanying maps, plats, charts, and descriptive matter, must show the commission's recommendations for the development of the municipality and outlying areas.

(1.3) (a) When a commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the municipality in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of the master plan and shall accept and consider oral and written public comments throughout the process of developing the master plan.

(b) The commission shall follow the procedures in section 24-32-3209. For purposes of this section, any special district that supplies water to the area covered by the master plan is a neighboring jurisdiction as defined in section 24-32-3209 (1)(h).

(c) For any master plan adopted after January 1, 2026, the commission shall consider the following, where applicable or appropriate, and any other information deemed relevant by the commission:

(I) The applicable housing needs assessments published pursuant to section 24-32-3702 (1)(b), 24-32-3703, or 24-32-3704;

(II) The statewide strategic growth report created pursuant to section 24-32-3707;

(III) The natural land and agricultural opportunities report published pursuant to section 24-32-3708; and

(IV) The Colorado water plan adopted pursuant to section 37-60-106.3.

(1.5) The master plan must include:

(a) A narrative description of the procedure used for the development and adoption of the master plan, including a summary of any objections to the master plan made by neighboring jurisdictions pursuant to section 24-32-3209 and a description of the resolution or outcome of the objections;

(b) The most recent version of the master plan required by section 31-12-105 (1)(e) or a similar master plan for areas of potential growth within three miles of the municipality's existing boundaries and a description of how the municipality intends to integrate that plan into the master plan;

(c) (I) A water supply element developed in consultation with entities that supply water for use within the municipality to ensure coordination on water supply and facility planning. Nothing in this section requires the public disclosure of confidential information related to water supply or facilities.

(II) The water supply element must:

(A) Estimate a range of water supplies and facilities needed to support the potential public and private development described in the master plan; and

(B) Include water conservation policies, to be determined by the municipality, which may include goals specified in the Colorado water plan adopted pursuant to section 37-60-106.3 and policies to implement water conservation and other Colorado water plan goals as a condition of development approval, including subdivisions, planned unit developments, special use permits, and zoning changes.

(III) A municipality with a master plan that includes a water supply element shall ensure that its master plan includes water conservation policies at the first amending of the master plan, but not later than July 1, 2025;

(IV) Nothing in this subsection (1.5)(c) supersedes, abrogates, or otherwise impairs the allocation of water pursuant to the state constitution or any other provision of law, the right to beneficially use water pursuant to decrees, contracts, or other water use agreements, or the operation, maintenance, repair, replacement, or use of any water facility; and

(V) The department of local affairs may hire and employ one full-time employee to provide educational resources and assistance to municipalities that include water conservation policies in the water supply elements of master plans as required by this subsection (1.5)(c).

(d) A strategic growth element that integrates elements of the master plan to discourage sprawl and promote the development or redevelopment of vacant and underutilized parcels in urban areas to address the municipality's demonstrated housing needs and mitigate the need for extension of infrastructure and public services to develop natural and agricultural lands for residential uses. The strategic growth element must include:

(I) A description of existing and potential policies and tools to promote strategic growth and prevent sprawl;

(II) An analysis of vacant and underutilized sites that:

(A) Identifies vacant, partially vacant, and underutilized land near existing or planned transit or job centers that could be used for infill development, redevelopment, and new development of housing;

(B) Assesses the general feasibility of the development or redevelopment of such sites for residential use based on existing and needed infrastructure, transportation capacity, access to public transit, and public facilities and services to serve such sites;

(C) Describes the public benefits of the development or redevelopment of such sites to the municipality as an alternative to the development of previously undeveloped natural or agricultural land; and

(D) In a manner that is consistent with the master plan, designates such sites for which development or redevelopment is deemed to be generally feasible for future uses that include residential uses in a manner that addresses the municipality's demonstrated housing needs at all income levels; and

(III) An analysis of undeveloped sites that:

(A) Identifies previously undeveloped parcels that are not adjacent to developed land, including existing natural and agricultural land, under consideration for future development, and, for a municipality in a metropolitan planning organization established under the "Federal Transit

Act of 1998," 49 U.S.C. sec. 5301 et seq., as amended, land outside of census urban areas as defined by the United States bureau of the census;

(B) Assesses the general feasibility of the development of such sites for residential use based on existing and needed infrastructure, transportation capacity, access to public transit, and public facilities and services to serve such sites; and

(C) Describes the long-term fiscal impact to the municipality of the construction, ownership, maintenance, and replacement of infrastructure and public facilities and the provision of public services to serve development of such sites; and

(e) The most recent housing action plan adopted by the municipality pursuant to section 24-32-3705.

(1.7) (a) A municipality with a master plan shall ensure that its master plan includes a water supply element and strategic growth element as required by subsection (1.5) of this section at the first amending of the master plan that occurs on or after January 1, 2026, but not later than December 31, 2026. The master plan of a municipality adopted or amended after December 31, 2026, must include a water supply element and strategic growth element as required by subsection (1.5) of this section. A municipality shall update the water supply element and strategic growth element as required by subsection (1.5) of this section no less frequently than every five years.

(b) A municipality with a master plan is not required to include a strategic growth element if the municipality has not received funding to include the strategic growth element pursuant to section 24-32-3710 and either:

(I) Has a population of twenty thousand or less and has experienced negative population change in the most recent decennial census; or

(II) Has a population of two thousand or less.

(1.9) The master plan may include, where applicable or appropriate:

(a) The general location, character, and extent of existing, proposed, or projected streets, roads, rights-of-way, bridges, waterways, waterfronts, parkways, highways, mass transit routes and corridors, and any transportation plan prepared by any metropolitan planning organization that covers all or a portion of the municipality and that the municipality has received notification of or, if the municipality is not located in an area covered by a metropolitan planning organization, any transportation plan prepared by the department of transportation that the municipality has received notification of and that covers all or a portion of the municipality;

(b) The general location of public places or facilities, including public schools, culturally, historically, or archaeologically significant buildings, sites, and objects, playgrounds, squares, parks, airports, aviation fields, military installations, and other public ways, grounds, open

spaces, trails, and designated federal, state, and local wildlife areas. For purposes of this section, "military installation" has the same meaning as specified in section 29-20-105.6 (2)(b).

(c) The general location and extent of public utilities terminals, capital facilities, and transfer facilities, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes and any proposed or projected needs for capital facilities and utilities, including the priorities, anticipated costs, and funding proposals for such facilities and utilities;

(d) The acceptance, removal, relocation, widening, narrowing, vacating, abandonment, modification, change of use, or extension of any of the public ways, rights-of-way, including the coordination of such rights-of-way with the rights-of-way of other municipalities, counties, or regions, grounds, open spaces, buildings, property, utility, or terminals referred to in subsections (1.5)(c), (1.7)(a), and (1.7)(b) of this section;

(e) A zoning plan for the control of the height, area, bulk, location, and use of buildings and premises. Such a zoning plan may protect and assure access to appropriate conditions for solar, wind, or other alternative energy sources, including geothermal energy used for water heating or space heating or cooling in a single building, for space heating for more than one building through a pipeline network, or for electricity generation; however, regulations and restrictions of the height, number of stories, size of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation;

(f) The general character, location, and extent of community centers, housing developments, whether public or private; the existing, proposed, or projected location of residential neighborhoods and sufficient land for future housing development for the existing and projected economic and other needs of all current and anticipated residents of the municipality; and redevelopment areas. If a municipality has entered into a regional planning agreement, the agreement may be incorporated by reference into the master plan.

(g) A plan for the extraction of commercial mineral deposits pursuant to section 34-1-304;

(h) A plan for the location and placement of public utilities that facilitates the provision of such utilities to all existing, proposed, or projected developments in the municipality;

(i) Projections of population change and housing needs to accommodate the projected population for specified increments of time. The municipality may base these projections upon data from the department of local affairs and upon the municipality's local objectives;

(j) The areas containing steep slopes, geological hazards, endangered or threatened species, wetlands, floodplains, floodways, and flood risk zones, highly erodible land or unstable soils, and wildfire hazards. For purposes of determining the location of such areas, the commission should consider the following sources for guidance:

(I) The Colorado geological survey for defining and mapping geological hazards;

(II) The United States fish and wildlife service of the United States department of the interior and the parks and wildlife commission created in section 33-9-101 for locating areas inhabited by endangered or threatened species;

(III) The Unites States army corps of engineers and the United States fish and wildlife service national wetlands inventory for defining and mapping wetlands;

(IV) The federal emergency management agency for defining and mapping floodplains, floodways, and flood risk zones;

(V) The natural resources conservation service of the United States department of agriculture for defining and mapping unstable soils and highly erodible land; and

(VI) The Colorado state forest service for locating wildfire hazard areas.

(2) As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part thereof. Any such part shall cover one or more major sections or divisions of the municipality or one or more of the foregoing or other functional matters to be included in the plan. The commission may amend, extend, or add to the plan from time to time.

(3) (Deleted by amendment, L. 2007, p. 613, § 2, effective August 3, 2007.)

(4) (a) Each municipality that has a population of two thousand persons or more and that is wholly or partially located in a county that is subject to the requirements of section 30-28-106 (4), C.R.S., shall adopt a master plan within two years after January 8, 2002.

(b) The department of local affairs shall annually determine, based on the population statistics maintained by said department, whether a municipality is subject to the requirements of this subsection (4), and shall notify any municipality that is newly identified as being subject to said requirements. Any such municipality shall have two years following receipt of notification from the department to adopt a master plan.

(c) Once a municipality is identified as being subject to the requirements of this subsection (4), the municipality shall at all times thereafter remain subject to the requirements of this subsection (4), regardless of whether it continues to meet the criteria specified in paragraph (a) of this subsection (4).

(5) A master plan adopted in accordance with the requirements of subsection (4) of this section shall contain a recreational and tourism uses element pursuant to which the municipality shall indicate how it intends to provide for the recreational and tourism needs of residents of the municipality and visitors to the municipality through delineated areas dedicated to, without limitation, hiking, mountain biking, rock climbing, skiing, cross country skiing, rafting, fishing, boating, hunting, and shooting, or any other form of sports or other recreational activity, as applicable, and commercial facilities supporting such uses.

(6) The master plan of any municipality adopted or amended in accordance with the requirements of this section on and after August 8, 2005, shall satisfy the requirements of section 29-20-105.6, C.R.S., as applicable.

(7) Notwithstanding any other provision of this section, no master plan originally adopted or amended in accordance with the requirements of this section shall conflict with a master plan for the extraction of commercial mineral deposits adopted by the municipality pursuant to section 34-1-304, C.R.S.

(8) The commission shall submit the master plan and any separately approved water supply element and strategic growth element to the division of local government in the department of local affairs. The division of local government shall review master plans and may provide comments to the commission.

(9) (a) As used in this subsection (9):

(I) (A) "Equestrian" means an individual who is riding a horse, leading a horse, or riding in a vehicle drawn by a horse.

(B) "Equestrian" includes the horse being ridden, being led, or drawing a vehicle, as each are described in subsection (9)(a)(I)(A) of this section.

(II) "Equestrian zone" means an area that a municipality determines is suburban or urban and contains:

(A) An equestrian fairground, public equestrian riding arena, public equestrian center, or public riding trail;

(B) An equestrian-centric residential neighborhood where equestrians regularly ride and that was zoned in such a manner as to allow housing privately owned equines but is now being developed for primarily residential use or that is zoned in such a manner as to allow housing privately owned equines;

(C) A keystone property; or

(D) Roads or trails that equestrians use and that are related to an area described in subsections (9)(a)(II)(A) to (9)(a)(II)(C) of this section.

(III) "Keystone property" means a property that has at least one of the following equestrian facilities:

(A) Boarding facilities that provide housing for equines, training for equestrians, or equine service and education programs;

(B) Equine stables that facilitate animal welfare rescue programs or equine therapy programs;

(C) Breeding facilities for equines; or

(D) Nonpublic equestrian venues that provide services to the equestrian community.

(IV) "Suburban or urban" means the population and traffic density are sufficient to cause significant and regular interactions between equestrians and motor vehicles or other residents.

(b) A municipality with a master plan may identify and show on the master plan the location of and character of existing or proposed equestrian infrastructure, venues, and equestrian zones.

(c) A municipality may organize public events to educate the public about equestrian use of recreational trails and roads and the duties of users of trails and roads with regard to equestrian users. A municipality may partner with local horse advocacy groups to educate the public about these matters or to hold the public events.

Source: L. 75: Entire title R&RE, p. 1147, § 1, effective July 1. **L. 79:** (1)(d) amended, p. 1162, § 10, effective January 1, 1980. **L. 97:** (3) added, p. 414, § 2, effective April 24. **L. 2000:** (1) amended, p. 874, § 2, effective August 2. **L. 2001, 2nd Ex. Sess.:** (4) and (5) added, p. 22, § 2, effective January 8, 2002. **L. 2002:** (5) amended, p. 1036, § 84, effective June 1. **L. 2005:** (6) added, p. 223, § 3, effective August 8. **L. 2007:** IP(1) and (3) amended and (7) added, p. 613, § 2, effective August 3. **L. 2010:** (1)(b) and (6) amended, (HB 10-1205), ch. 242, p. 1078, § 3, effective August 11. **L. 2012:** IP(1) and (1)(k)(II) amended, (HB 12-1317), ch. 248, p. 1206, § 13, effective June 4. **L. 2020:** IP(1) and (1)(d) amended, (HB 20-1095), ch. 82, p. 332, § 2, effective September 14. **L. 2022:** (1)(f) amended, (SB 22-118), ch. 335, p. 2373, § 9, effective August 10. **L. 2024:** (1) R&RE and (1.3), (1.5), (1.7), (1.9), and (8) added, (SB 24-174), ch. 290, p. 1969, § 3, effective May 30. **L. 2025:** (9) added, (SB 25-149), ch. 266, p. 1376, § 8, effective August 6.

Editor's note: This section is similar to former § 31-23-106 as it existed prior to 1975.

Cross references: For the legislative declaration in SB 25-149, see section 1 of chapter 266, Session Laws of Colorado 2025.

ANNOTATION

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983). For article, "Growth Management: Recent

Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (Mar. 2002).

City in advisory role. There is nothing in this section and § 31-23-209 which indicates a legislative intent to broaden a city's authority. They place ultimate governmental authority in matters pertaining to land use in unincorporated areas in the county. In effect, a city is given only an advisory role. Robinson v. City of Boulder, 190 Colo. 357, 547 P.2d 228 (1976).

Standing of owner of property outside territory of authority to challenge rezoning. An owner of property adjacent to property being rezoned but not within the territory of the zoning authority has standing to challenge the rezoning. Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981).

Sections 31-23-206 through 31-23-208 do not apply to rezoning or to a zoning change to a particular area. Coates v. City of Cripple Creek, 865 P.2d 924 (Colo. App. 1993).

Applied in Margolis v. District Court, 638 P.2d 297 (Colo. 1981).

31-23-207. Purposes in view.

In the preparation of such plan, the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality, with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire, flood waters, and other dangers, adequate provision for light and air, distribution of population, affordable housing, the promotion of good civic design and arrangement, efficient expenditure of public funds, the promotion of energy conservation, and the adequate provision of public utilities and other public requirements.

Source: L. 75: Entire title R&RE, p. 1147, § 1, effective July 1. **L. 79:** Entire section amended, p. 1163, § 11, effective January 1, 1980. **L. 97:** Entire section amended, p. 414, § 3, effective April 24.

Editor's note: This section is similar to former § 31-23-107 as it existed prior to 1975.

ANNOTATION

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983).

Sections 31-23-206 through 31-23-208 do not apply to rezoning or to a zoning change to a particular area. Coates v. City of Cripple Creek, 865 P.2d 924 (Colo. App. 1993).

Applied in Margolis v. District Court, 638 P.2d 297 (Colo. 1981).

31-23-208. Procedure of commission.

The commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan (said parts corresponding with major geographical sections or divisions of the municipality or with functional subdivisions of the subject matter of the plan) and may adopt any amendment or extension thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension, or addition, the commission shall hold at least one public hearing thereon, notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the municipality and in the official newspaper of the county affected. The adoption of the plan, any part, amendment, extension, or addition shall be by resolution of the commission carried by the affirmative votes of not less than two-thirds of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the commission to form the whole or part of the plan, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the chairman or secretary of the commission. An attested copy of the plan or part thereof shall be certified to each governmental body of the territory affected and, after the approval by each body, shall be filed with the county clerk and recorder of each county wherein the territory is located.

Source: L. 75: Entire title R&RE, p. 1148, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-108 as it existed prior to 1975.

ANNOTATION

Sections 31-23-206 through 31-23-208 do not apply to rezoning or to a zoning change to a particular area. Coates v. City of Cripple Creek, 865 P.2d 924 (Colo. App. 1993).

31-23-209. Legal status of official plan.

When the commission has adopted the master plan of the municipality or of one or more major sections or districts thereof, no street, square, park or other public way, ground or open space, public building or structure, or publicly or privately owned public utility shall be constructed or authorized in the municipality or in such planned section and district until the location, character, and extent thereof has been submitted for approval by the commission. In case of disapproval, the commission shall communicate its reasons to the municipality's governing body, which has the power to overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership. If the public way, ground space, building, structure, or utility is one the authorization or financing of which does not, under the law or charter provisions governing the same, fall within the province of the municipal governing body, the submission to the commission shall be by the governmental body having jurisdiction, and the planning commission's disapproval may be overruled by said governmental body by a vote of not less than two-thirds of its membership. The failure of the commission to act within sixty days from and after the date of official submission to it shall be deemed approval.

Source: L. 75: Entire title R&RE, p. 1148, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-109 as it existed prior to 1975.

ANNOTATION

City in advisory role. There is nothing in § 31-23-206 and this section which indicates a legislative intent to broaden a city's authority. They place ultimate governmental authority in matters pertaining to land use in unincorporated areas in the county. In effect, a city is given only an advisory role. Robinson v. City of Boulder, 190 Colo. 357, 547 P.2d 228 (1976).

Amendment to plan not subject to referendum powers. Being advisory only, an amendment to a municipal master plan is not legislation which is subject to the referendum powers reserved to the people. Margolis v. District Court, 638 P.2d 297 (Colo. 1981).

31-23-210. Publicity - travel - information - entry.

The commission has power to promote public interest in and understanding of the plan and to that end may publish and distribute copies of the plan or any report and may employ such other means of publicity and education as it may determine. Members of the commission may attend

city planning conferences, meetings of city planning institutes, or hearings upon pending municipal planning legislation, and the commission may pay, by resolution, the reasonable traveling expenses incident to such attendance. The commission shall recommend, from time to time, to the appropriate public officials programs for public structures and improvements and for the financing thereof. It shall be part of its duties to consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens in relation to protecting and carrying out the plan. The commission has the right to accept and use gifts for the exercise of its functions. All public officials shall furnish to the commission, upon request, within a reasonable length of time, such available information as the commission may require for its work. The commission and its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary marks and monuments thereon. In general, the commission has such powers as are necessary to enable it to fulfill its functions, to promote municipal planning, or to carry out the purposes of this part 2.

Source: L. 75: Entire title R&RE, p. 1148, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-110 as it existed prior to 1975.

31-23-211. Zoning.

Where a commission is established in accordance with the provisions of this part 2, it has and shall exercise all of the powers and rights granted to the zoning commission by part 3 of this article. When there is a zoning commission in existence at the time that a commission is created, the zoning commission shall deliver to the commission all of its records and shall thereafter cease to exercise the powers and prerogatives previously exercised by it; except that, if the existing zoning commission is nearing completion of a zoning plan, the governing body of the municipality may postpone, by resolution, the transfer of the zoning commission's powers until completion of the zoning plan; but in no event shall the period of such postponement exceed six months from the date of the creation of the commission. Nothing in this section shall invalidate or otherwise affect any zoning law or regulation or any action of the zoning commission adopted or taken prior to the creation of a commission.

Source: L. 75: Entire title R&RE, p. 1149, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-111 as it existed prior to 1975.

31-23-212. Jurisdiction.

The territorial jurisdiction of any commission over the subdivision of land includes all land located within the legal boundaries of the municipality and, limited only to control with reference to a major street plan and not otherwise, also includes all land lying within three miles of the boundaries of the municipality not located in any other municipality; except that in the case of any such land lying within five miles of more than one municipality, the jurisdiction of each commission shall terminate at a boundary line equidistant from the respective municipal limits of such municipalities. The jurisdiction over the subdivision of lands outside the boundary of a municipality shall apply equally to any municipality.

Source: L. 75: Entire title R&RE, p. 1149, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-112 as it existed prior to 1975.

31-23-213. Scope of control.

When a commission has adopted a major street plan for the territory within its subdivision control, or any part thereof, as provided in section 31-23-208, and has filed a certified copy of such plan in the office of the county clerk and recorder of the county in which such territory or such part is located, no plat of a subdivision of land within such territory or such part shall be filed or recorded until it has been approved by such commission and such approval entered in writing on the plat by the chairman or secretary of the commission.

Source: L. 75: Entire title R&RE, p. 1149, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-113 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "The Lawyer's Role in Developing an Area", see 28 Rocky Mt. L. Rev. 453 (1956).

31-23-214. Subdivision regulations.

(1) Before any commission exercises the powers set forth in section 31-23-213, it shall adopt regulations governing the subdivision of land within its jurisdiction and shall publish the same in pamphlet form, which shall be available for public distribution, or, at the election of the commission, the regulations may be published once each week for three consecutive weeks in the official paper of the municipality or county in which such subdivisions, or any part thereof, are located. Such regulations may provide for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, and air, and for the avoidance of congestion of population, including minimum area and width of lots. The regulations may also provide for waivers from subdivision requirements and may establish different requirements applicable to subdivisions of different sizes, densities, or types of dwelling units. In the territory subject to subdivision jurisdiction beyond the municipal limits, the regulations shall provide only for conformance with the major street plan.

(1.5) Subdivision regulations adopted under provisions of this section may protect and assure access to sunlight for solar energy devices by considering in subdivision development plans the use of restrictive covenants or solar easements, height restrictions, side yard and setback requirements, street orientation and width requirements, or other permissible forms of land use controls.

(2) Before the adoption of the regulations referred to in this section, a public hearing shall be held thereon in the municipality. A copy of such regulations shall be certified by the commission to the county clerk and recorders of the counties in which the municipality and territory are located.

(3) Subdivision regulations adopted under provisions of this section shall require that a subdivider, as defined in section 30-28-101 (9), C.R.S., submit to the commission evidence that provision has been made for facility sites, easements, and rights of access for electrical and natural gas utility service sufficient to ensure reliable and adequate electric or, if applicable, natural gas service for any proposed subdivision. Submission of a letter of agreement between the subdivider and utility serving the site shall be deemed sufficient to establish that adequate provision for electric or, if applicable, natural gas service to a proposed subdivision has been made.

Source: L. 75: Entire title R&RE, p. 1150, § 1, effective July 1. **L. 79:** (1.5) added, p. 1163, § 12, effective January 1, 1980. **L. 81:** (1) amended, p. 1512, § 2, effective June 4. **L. 83:** (2) amended, p. 1262, § 1, effective March 15. **L. 2000:** (3) added, p. 1618, § 2, effective July 1.

Editor's note: This section is similar to former § 31-23-114 as it existed prior to 1975.

Cross references: For registration of subdivision developers, see part 5 of article 10 of title 12.

ANNOTATION

Law reviews. For article, "Subdivision Regulations and Compulsory Dedications", see 39 Dicta 299 (1962). For article, "Subdivision Improvement Requirements and Guarantees in Colorado", see 14 Colo. Law. 554 (1985).

31-23-214.1. Subdivision plan or plat - access to public highways.

No person may submit an application for subdivision approval to a local authority unless the subdivision plan or plat provides, pursuant to section 43-2-147, C.R.S., that all lots and parcels created by the subdivision will have access to the state highway system in conformance with the state highway access code.

Source: L. 80: Entire section added, p. 796, § 59, effective June 5. **L. 82:** Entire section amended, p. 627, § 35, effective April 2.

31-23-215. Procedure - legal effect.

(1) The commission shall approve or disapprove a plat within thirty days after said plat has been submitted to it; otherwise such plat shall be deemed approved and a certificate to that effect shall be issued by the commission on demand unless the applicant for the commission's approval waives this requirement and consents to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. No plat shall be acted on by the commission without affording a hearing thereon. Notice of the time and place of such hearing shall be sent to mineral estate owners in accordance with article 65.5 of title 24, C.R.S.

(2) Every plat approved by the commission, by virtue of such approval, shall be deemed to be an amendment or an addition to or a detail of the municipal plan and a part thereof. Approval of a plat shall not constitute or effect an acceptance by the public of any street or other open space shown upon the plat. From time to time, the commission may recommend to the governing body amendments of the zoning ordinance or map or additions thereto to conform to the commission's recommendations for the zoning regulations of the territory comprised within

approved subdivisions. The commission has the power to impose use, height, area, or bulk requirements or restrictions governing buildings and premises within the subdivision if such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality. Such requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof, shall have the force of law, and shall be enforceable in the same manner and with the same sanctions and penalties and subject to the same powers of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality. No action taken under this section shall be binding for any purpose until such action has been approved by the governmental body of the territory affected or any part thereof.

Source: L. 75: Entire title R&RE, p. 1150, § 1, effective July 1. **L. 79:** (1) amended, p. 1167, § 3, effective July 1. **L. 2001:** (1) amended, p. 490, § 5, effective July 1. **L. 2007:** (1) amended, p. 2122, § 8, effective August 3.

Editor's note: This section is similar to former § 31-23-115 as it existed prior to 1975.

31-23-216. Penalties for sales in unapproved subdivisions.

Whoever, being the owner or agent of the owner of any land located within a subdivision, transfers or sells, agrees to sell, or negotiates to sell any land by reference to or exhibition of or by use of a plat of a subdivision before such plat has been approved by the commission and recorded or filed in the office of the appropriate county clerk and recorder shall pay a penalty of one hundred dollars to the municipality for each lot or parcel so transferred, or sold, or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. The municipality may enjoin such transfer or sale or agreement by action for injunction brought in any court of competent jurisdiction and may recover the penalty by civil action in any court of competent jurisdiction.

Source: L. 75: Entire title R&RE, p. 1151, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-116 as it existed prior to 1975.

Cross references: For the requirements of monumentation of external boundaries of all subdivisions prior to recording of a plat, see § 38-51-105.

31-23-216.5. Additional enforcement - fine or imprisonment - abatement or removal.

(1) In addition to any other remedies, the governing body of any municipality may provide by ordinance that it is unlawful to erect, construct, reconstruct, use, or alter any building or structure or to use any land in violation of any municipal subdivision regulation, and the governing body may enforce obedience to such ordinance by fine or imprisonment as provided in section 31-16-101.

(2) In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used or any land is or is proposed to be used in violation of any municipal subdivision regulation, the municipality, in addition to other remedies provided by law, may institute an appropriate action to prevent, enjoin, abate, or remove the violation to prevent the occupancy of the building, structure, or land or to prevent any illegal act or use in or on such premises.

Source: L. 81: Entire section added, p. 1513, § 3, effective June 4.

31-23-217. Acceptance and improvement of streets.

(1) The municipality shall not accept, lay out, open, improve, grade, pave, curb, or light any street or lay or authorize water mains or sewers or connections to be laid in any street within any portion of a territory for which the commission has adopted a major street plan unless such street:

(a) Has been accepted or opened as or otherwise has received the legal status of a public street prior to the adoption of such plan; or

(b) Corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat made by and adopted by the commission. However, the governing body may accept any street not shown on or not corresponding with a street on the official master plan or on any approved subdivision plat or an approved street plat if the ordinance or other measure accepting such street is first submitted to the commission for its approval and, if approved by the commission, is enacted or passed by not less than a majority of the entire membership of the governing body or, if disapproved by the commission, is enacted or passed by not less than two-thirds of the entire membership of the governing body.

(2) A street approved by the commission upon submission by the governing body or a street accepted by a two-thirds vote after disapproval by the commission shall have the status of an approved street as though it had been originally shown on the official master plan or on a subdivision plat approved by the commission or had been originally platted by the commission.

Source: L. 75: Entire title R&RE, p. 1151, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-117 as it existed prior to 1975.

31-23-218. Erection of buildings.

(1) After the time when a commission has adopted a major street plan of the territory within the municipal limits of said municipality, no building shall be erected on any lot within such territory or part nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed:

(a) Has been accepted or opened as or otherwise has received the legal status of a public street prior to that time; or

(b) Corresponds with a street shown on the official master plan, with a street or subdivision plat approved by the planning commission, with a street on a street plat made by and adopted by the commission, or with a street accepted by the governing body in accordance with the provisions of section 31-23-217. Any building erected in violation of this section is an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated or have it removed.

Source: L. 75: Entire title R&RE, p. 1151, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-118 as it existed prior to 1975.

31-23-219. Status of existing statutes.

After the time when a municipal planning commission has control over subdivisions as provided in section 31-23-213, the jurisdiction of the planning commission over plats shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or

subdivisions of land granted by other statutes, insofar as in harmony with the provisions of this part 2, shall be deemed transferred to the planning commission of such municipality.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-119 as it existed prior to 1975.

31-23-220. Reservation for future acquisition.

(1) (a) Any commission is empowered, from time to time, after it has adopted a major street plan of the territory within its subdivision jurisdiction or of any major section or district thereof, to make or cause to be made surveys for the exact location of the lines of a street in any portion of such territory and to make a plat of the area or district thus surveyed showing the land which it recommends be reserved for future acquisition for public streets. The commission, before adopting any such plat, shall hold a public hearing thereon, notice of the time and place of which, with a general description of the district or area covered by the plat, shall be given not less than ten days previous to the time fixed therefor by one publication in a newspaper of general circulation in the municipality if the district or area is within the municipality or of general circulation in the county if the district or area is outside the municipality. After such a hearing the commission may transmit the plat, as originally made or modified, as may be determined by the commission, to the governing body together with the commission's estimate of the time within which the lands shown on the plat as street locations should be acquired by the municipality.

(b) The governing body, by resolution, may approve and adopt or reject such plat or may modify it with the approval of the planning commission or, in the event of the commission's disapproval, the governing body, by a favorable vote of not less than two-thirds of its entire membership, may modify such plat and adopt the modified plat. In the resolution of adoption of a plat, the governing body shall fix the period of time for which the street locations shown upon the plat shall be reserved for future taking or acquisition for public use. Upon such adoption the clerk shall transmit one attested copy of the plat to the county clerk and recorder of each county in which the platted land is located and retain one copy for the purpose of public examination and hearings of claims for compensation.

(2) (a) Such approval and adoption of a plat shall not, however, be deemed the opening or establishment of any street, nor the taking of any land for street purposes, nor for public use, nor as a public improvement but solely as a reservation of the street location shown therein for the period specified in the resolution for future taking or acquisition for public use. The commission at any time may negotiate for and secure from the owners of any such lands releases of claims for damages or compensation for such reservations or agreements indemnifying the municipality

from such claims by others, which releases or agreements shall be binding upon the owners executing the same and their successors in title.

(b) At any time after the filing of a plat with the county clerk and recorder and during the period specified for the reservation, the commission and the owner of any land containing a reserved street location may agree upon modification of the location of the lines of the proposed street. Such agreement shall include a release by said owner of any claim for compensation or damages by reason of such modification. Thereupon the commission may make a plat corresponding to the said modification and transmit the same to the governing body. If such modified plat is approved by the governing body, the clerk shall transmit an attested copy thereof to the county clerk and recorder and the modified plat shall take the place of the original plat. At any time the governing body, by resolution, may abandon any reservation and shall certify any such abandonment to the county clerk and recorder.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-120 as it existed prior to 1975.

31-23-221. Compensation for reservations.

(1) In the resolution of adoption of a plat, the governing body shall appoint a board of three appraisers and shall fix the time and place of meetings for hearings by said board upon the amounts of compensation to be paid for such reservations. Thereupon the clerk shall publish in at least two newspapers of general circulation in the municipality once a week for four consecutive weeks a notice which shall contain a general description of the land thus reserved as shown on the plat, the provisions of the resolution of the governing body, including the period of time for which such reservations are made, the time within which claims for compensation may be filed, which shall be not less than three nor more than six months from the date of notice, and the time and place of hearings by the board of appraisers. The first hearing shall not be set earlier than thirty days after the date of the first of such publications. Such notice shall also be posted in at least three public places in the neighborhood of or along the line of the location of the reservation.

(2) The board of appraisers shall fix the amounts of compensation to be paid, respectively, to the owners of lands reserved for the period of time as shown on the plat and in the resolution adopted by the governing body. When the clerk receives, within the period fixed for the same, any claim for such compensation, he shall transmit it to the board of appraisers. At the time and place fixed for such hearings, the board of appraisers shall hear and consider all claims presented to it in writing or in person, including all evidence which may be presented by the claimants or

other persons. The board of appraisers has the right on its own initiative to investigate and ascertain data or evidence relevant to the question of such compensation. In case of the abandonment of a reservation prior to the time fixed for payment of compensation, the municipality shall be liable to the owner of the land included within the abandoned reservation for the expenses, if any, incurred by such owner by reason of such reservation.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-121 as it existed prior to 1975.

31-23-222. Report of appraisers - action by the governing body.

(1) The board of appraisers, within ninety days after the time fixed for the filing of claims, shall file its tentative report with the clerk setting forth its findings as to the amounts of compensation to be paid the respective owners of the lands included within the lines of such reservations as located on the approved plat. Thereupon the clerk shall publish once a week for two consecutive weeks in at least two newspapers of general circulation in the municipality the fact of the filing of the report of the appraisers and specify a period of thirty days after the date of the first such publication within which objections to the report may be filed with the clerk. If objections are filed within said period, the clerk shall cause the board of appraisers to hold a meeting at which said objections shall be transmitted to the board, and the board may modify its report. The report in its original form or, if modified, in its modified form shall be transmitted to the governing body by the clerk.

(2) Before passing on the report, the governing body may return it to the board of appraisers for reconsideration, and the board, upon further consideration, may transmit its former or modified report to the governing body. The governing body may approve or disapprove the report. If the report is approved by the governing body, it shall provide for the payment of the amounts of compensation set forth in the report within ninety days after the filing of the report with the governing body. In the case of those property owners who file claims, payment shall be made through the clerk who shall notify the claimants at the addresses given upon the claims filed with him. Payments to all other persons shall be made through the clerk of the district court of the county in which the reserved location is situated by the payment to said clerk of the amounts awarded to such persons. Notice of distribution to such persons shall be given and made as may be provided by a rule or order of said court. Payments made to the clerk or clerk of the district court within said ninety days shall be deemed compliance with the above requirement for payment within ninety days.

(3) If the governing body disapproves the report or fails to provide for such payment within ninety days, such disapproval or failure shall be deemed a dismissal of the proceedings, a cancellation of the plat, and an abandonment of the reservations of the street locations as shown on the plat, with the same liability of the municipality for expenses as provided in the case of abandonment by resolution. Thereafter the clerk shall transmit to the county clerk and recorder an attested statement of such abandonment.

Source: L. 75: Entire title R&RE, p. 1152, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-122 as it existed prior to 1975.

31-23-223. Appeal from awards.

Within twenty days after the approval of any such report by the governing body, any person dissatisfied with the award of compensation may file with the clerk notice of appeal to the district court of the county in which the appellant's land is located. Within ten days of such notice, the clerk shall file with the clerk of the district court the report of the board of appraisers approved by the governing body, together with certified copies of the resolution thereof and of the notice of appeal. Thereafter the procedure shall be in accordance with the procedure specified by law.

Source: L. 75: Entire title R&RE, p. 1154, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-123 as it existed prior to 1975.

31-23-224. No compensation for buildings.

The reservation of a street location, as provided in section 31-23-220, shall not prohibit or impair in any respect the use of the reserved land by the owner or occupant thereof for any lawful purpose, including the erection of buildings thereon. No compensations, other than the compensation awarded in the final report of said board of appraisers as approved by the governing body, as provided in section 31-23-222 or, in the case of an appeal, as awarded on such appeal as provided in section 31-23-223, shall at any time be paid by the municipality or public to or recovered from the municipality or public by any person for the taking of or injury to any building or structure built or erected within the period fixed in the resolution of the

governing body upon any such reserved location. No compensation or damages for any such reservation shall be paid or recovered except as provided in sections 31-23-221 to 31-23-223.

Source: L. 75: Entire title R&RE, p. 1154, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-124 as it existed prior to 1975.

31-23-225. Major activity notice.

When a subdivision or commercial or industrial activity is proposed which will cover five or more acres of land, the governing body of the municipality in which the activity is proposed shall send notice to the state geologist and the board of county commissioners of the county in which the improvement is located of the proposal prior to approval of any zoning change, subdivision, or building permit application associated with such a proposed activity.

Source: L. 75: Entire title R&RE, p. 1154, § 1, effective July 1. **L. 2005:** Entire section amended, p. 669, § 7, effective June 1.

Editor's note: This section is similar to former § 31-23-125 as it existed prior to 1975.

Cross references: For duties of the state geologist upon receipt of a notice, see § 23-41-205.

31-23-226. Applicability.

This part 2 applies to municipalities, including home rule cities and towns, insofar as constitutionally permissible and except as limits are placed upon its application within the boundaries of home rule cities and towns by the charter or ordinance adopted pursuant thereto of said cities or towns.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-101 (4) as it existed prior to 1975.

31-23-227. Allocation of powers or duties.

(1) The governing body of a municipality may, by ordinance, assume and exercise any power granted to or duty placed upon the municipal planning commission by this part 2 and may, by ordinance, delegate to the municipal planning commission or other appropriate municipal body any power granted to or duty placed upon the municipal governing body by this part 2, providing that the right to appeal to the municipal governing body is retained in any such delegation; except that the power to impose fines and penalties may not be delegated.

(2) The governing body of a municipality may, by ordinance, enter into an intergovernmental agreement with the county or counties in which it is located for the purposes of joint participation in land use planning, subdivision procedures, and zoning for a specific area designated in the intergovernmental agreement. However, any action taken pursuant to the intergovernmental agreement that pertains to any land within the municipality is subject to final approval by the governing body of the municipality.

Source: L. 83: Entire section added, p. 1263, § 1, effective May 4. **L. 96:** Entire section amended, p. 575, § 1, effective April 25.

31-23-228. Equestrian map and signs.

(1) A municipality may publish a map showing the location of and character of existing or proposed equestrian infrastructure. The map may be published on the municipality's website. The map must include:

(a) Equestrian venues, including fairgrounds, equestrian parks, public arenas, and riding schools;

(b) Equestrian trail infrastructure, including trails, designated trailer parking, and access points to trails;

(c) Equestrian-designated road crossings; and

(d) Equestrian zones, as defined in section 31-23-206 (9)(a)(II).

(2) A municipality may post road signs bearing the universal equestrian sign symbol and the words "wide and slow" on roads determined to be equestrian zones in accordance with section 31-23-206 (9)(a)(II).

Source: L. 2025: Entire section added, (SB 25-149), ch. 266, p. 1376, § 7, effective August 6.

Cross references: For the legislative declaration in SB 25-149, see section 1 of chapter 266, Session Laws of Colorado 2025.

PART 3

ZONING

Cross references: For county planning and building codes, see article 28 of title 30.

Law reviews: For comment, "The King Can Do Wrong: Local Government Immunity from Zoning", see 57 U. Colo. L. Rev. 639 (1986); for article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to municipal zoning, see 15 Colo. Law. 1560 (1986); for article, "Land Use Decisionmaking: Legislative or Quasi-judicial Action", see 18 Colo. Law. 241 (1989); for article, "Substantive Due Process and Zoning Decisions", see 25 Colo. Law. 71 (March 1996).

31-23-301. Grant of power - definitions.

(1) Except as otherwise provided in section 34-1-305, C.R.S., for the purpose of promoting health, safety, morals, or the general welfare of the community, including energy conservation and the promotion of solar energy utilization, the governing body of each municipality is empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the height and location of trees and other vegetation, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Regulations and restrictions of the height, number of stories, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation. Such regulations shall provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules contained in such regulations. Subject to the provisions of subsection (2) of this section and to the end that adequate safety may be secured, said governing body also has power to establish, regulate, restrict, and limit such uses on or along any storm or floodwater runoff channel or basin, as such storm or floodwater runoff channel or basin has been designated and approved by the Colorado water conservation board, in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or floodwaters. Any ordinance enacted under authority of this part 3 shall

exempt from the operation thereof any building or structure as to which satisfactory proof is presented to the board of adjustment that the present or proposed situation of such building or structure is reasonably necessary for the convenience or welfare of the public.

(2) The power conferred by subsection (1) of this section for flood prevention and control shall not be exercised to deprive the owner of any existing property of its future use or maintenance for the purpose to which it was lawfully devoted on February 25, 1966, but provisions may be made for the gradual elimination of uses, buildings, and structures, including provisions for the elimination of such uses when the existing uses to which they are devoted are discontinued, and for the elimination of such buildings and structures when they are destroyed or damaged in major part.

(3) The governing body of any municipality or the board of adjustment thereof, in the exercise of powers pursuant to this section, may condition any zoning regulation, any amendment to such regulation, or any variance of the application thereof or the exemption of any building or structure therefrom upon the preservation, improvement, or construction of any storm or floodwater runoff channel designated and approved by the Colorado water conservation board.

(4) A statutory or home rule city or town or city and county shall not enact an ordinance prohibiting the use of a state-licensed group home for either persons with intellectual and developmental disabilities or behavioral or mental health disorders that serves not more than eight persons with intellectual and developmental disabilities or eight persons with behavioral or mental health disorders and appropriate staff as a residential use of property for zoning purposes. As used in this subsection (4), the phrase "residential use of property for zoning purposes" includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning.

(5) (a) As used in this subsection (5), unless the context otherwise requires:

(I) Repealed.

(II) "Equivalent performance engineering basis" means that by using engineering calculations or testing, following commonly accepted engineering practices, all components and subsystems will perform to meet health, safety, and functional requirements to the same extent as required for other single family housing units.

(b) (I) No municipality may have or enact zoning regulations, subdivision regulations, or any other regulation affecting development that exclude or have the effect of excluding homes or structures from the municipality that are:

(A) Factory-built structures, as defined in section 24-32-3302 (11) and certified by the division of housing created in section 24-32-704 or a party authorized to act on its behalf;

(B) Manufactured homes certified by the United States department of housing and urban development through its office of manufactured housing programs, a successor agency, or a party authorized to act on its behalf; or

(C) Homes that meet or exceed, on an equivalent performance engineering basis, standards established by the municipal building code.

(I.5) A municipality shall not impose more restrictive standards on factory-built structures than those the municipality applies to site-built homes in the same residential zones. As used in this subsection (5)(b)(I.5), "restrictive standards" means zoning regulations, subdivision regulations, and any other regulation affecting development, including standards related to:

(A) Home size or sectional requirements;

(B) Improvement location;

(C) Minimum floor space;

(D) Permanent foundations;

(E) Setback standards; and

(F) Side-yard standards.

(II) Nothing in this subsection (5) prevents a municipality from enacting any zoning, developmental, use, aesthetic, or historical standard, including, but not limited to, requirements relating to permanent foundations, minimum floor space, unit size or sectional requirements, and improvement location, side yard, and setback standards to the extent that such standards or requirements are applicable to existing similar housing or structures or new site-built housing within the specific use district of the municipality.

(III) Nothing in this subsection (5) precludes any municipality from enacting municipal building code provisions for unique public safety requirements such as snow load roof, wind shear, wildfire risk, and energy conservation factors, unless it is a factory-built structure certified by the division of housing created in section 24-32-704 or a party authorized to act on its behalf or a manufactured home certified by the United States department of housing and urban development through its office of manufactured housing programs, a successor agency, or a party authorized to act on its behalf. A municipality must comply with section 24-32-3318 when enacting building code provisions for a manufactured home as regulated by the United States department of housing and urban development, and it must also comply with the requirements established by the division of housing for factory-built structures.

(IV) Nothing in this subsection (5) shall be deemed to supersede any valid covenants running with the land.

Source: L. 75: Entire title R&RE, p. 1155, § 1, effective July 1; (4) added, p. 934, § 57, effective July 1. **L. 79:** (1) amended, p. 1163, § 13, effective January 1, 1980. **L. 84:** (5) added, p. 824, § 2, effective January 1, 1985. **L. 87:** (4) amended, p. 1217, § 2, effective July 1. **L. 2006:** (4) amended, p. 1408, § 76, effective August 7. **L. 2017:** (4) amended, (SB 17-242), ch. 263, p. 1379, § 300, effective May 25. **L. 2021:** (5)(a)(I) repealed and (5)(b)(I) and (5)(b)(III) amended, (HB 21-1019), ch. 122, p. 486, § 30, effective September 7. **L. 2022:** (5)(b)(I)(A) amended, (SB 22-212), ch. 421, p. 2982, § 72, effective August 10. **L. 2025:** IP(5)(b)(I), (5)(b)(I)(A), (5)(b)(I)(B), (5)(b)(II), and (5)(b)(III) amended and (5)(b)(I.5) added, (SB 25-002), ch. 172, p. 719, § 9, effective May 8.

Editor's note: This section is similar to former § 31-23-201 as it existed prior to 1975.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 25-002, see section 1 of chapter 172, Session Laws of Colorado 2025.

ANNOTATION

Law reviews. For article, "Colorado Needs a Constitutional and Effective Roadside Sign Law", see 36 Dicta 475 (1959). For note, "Spot Zoning", see 34 Rocky Mt. L. Rev. 231 (1962). For note, "Zoning Variances — The Colorado Position", see 34 Rocky Mt. L. Rev. 382 (1962). For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980). For article, "Winning the Rezoning", see 11 Colo. Law. 634 (1982). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For note, "Referendum and Rezoning", see 53 U. Colo. L. Rev. 745 (1982). For note, "The Permissible Scope of Compulsory Requirements for Land Development in Colorado", see 54 U. Colo. L. Rev. 447 (1983). For article, "The Antitrust Challenge to Local Government Protection of the Central Business District", see 55 U. Colo. L. Rev. 21 (1983). For article, "Judicial Review, Referral and Initiation of Zoning Decisions", see 13 Colo. Law. 387 (1984). For comment, "State and Local Regulation of Timesharing in Colorado", see 56 U. Colo. L. Rev. 289 (1985). For article, "Transferable Development Rights and Their Application in Colorado: An Overview", see 34 Colo. Law. 75 (Mar. 2005). For article, "Group Home Regulations Under State and Federal Law",

see 35 Colo. Law. 37 (Feb. 2006). For comment, "Boulder Is for People: Zoning Reform and the Fight for Affordable Housing", see 94 U. Colo. L. Rev. 857 (2023).

Annotator's note. Since § 31-23-301 is similar to former § 31-23-201 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

General assembly has power to legislate zoning regulations applicable to statutory cities, as distinguished from home rule cities. Glennon Heights, Inc. v. Cent. Bank & Trust, 658 P.2d 872 (Colo. 1983).

Subsection (4) constitutes a legitimate limitation on the legislative powers delegated to statutory cities. Glennon Heights, Inc. v. Cent. Bank & Trust, 658 P.2d 872 (Colo. 1983).

State has authority to enact legislation for the welfare of developmentally disabled citizens under its police powers. Glennon Heights, Inc. v. Cent. Bank & Trust, 658 P.2d 872 (Colo. 1983).

Exemption of municipal activities from zoning ordinances. Exemption from zoning ordinance must be pursuant to statutory procedure, and the governmental/proprietary distinction is rejected as a means for determining when a municipality must obey its zoning ordinances. Clark v. Town of Estes Park, 686 P.2d 777 (Colo. 1984).

Zoning is a matter of local and municipal concern. Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972); Nopro Co. v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972); City of Greeley v. Ells, 186 Colo. 352, 527 P.2d 538 (1974).

Zoning laws is an area which is best left to local government, and decisions which relate to the decided course of community development should be upheld, even though a reviewing court may disagree with the wiseness of the municipality's choice. Rademan v. City & County of Denver, 186 Colo. 250, 526 P.2d 1325 (1974).

City council did not abuse its discretion or exceed its jurisdiction in denying application to rezone property from residential to limited residential-commercial when there was competent evidence of a factual basis in support of the zoning decision. Christiansen v. Golden City Council, 757 P.2d 1121 (Colo. App. 1988).

Section does not make counties immune or exempt from municipal zoning requirements. La Plata County Comm'rs v. Bd. of Adjustment, 768 P.2d 1250 (Colo. App. 1988).

Board of county commissioners did not exceed its jurisdiction or abuse its discretion when it concluded that a pre-parole facility proposed use conformed to the PUD zone district since it was representative of the class "hospitals, nursing homes, and mental or physical rehabilitation center" allowed by ordinance in the district. Abbott v. Bd. of County Comm'rs of Weld County, 895 P.2d 1165 (Colo. App. 1995).

Zoning is a proper exercise of the state's police power. Rademan v. City &

County of Denver, 186 Colo. 250, 526 P.2d 1325 (1974).

The power and force of the police power attends in the regulations provided in zoning ordinances, and the rule is that the doctrine of estoppel does not apply. Flinn v. Treadwell, 120 Colo. 117, 207 P.2d 967 (1949); Witkin Homes, Inc. v. City & County of Denver, 31 Colo. App. 410, 504 P.2d 1121 (1972).

Certain rights yield to zoning regulations. Even though the right of freedom of association and of privacy are cherished rights, they must yield to valid zoning regulations. Rademan v. City & County of Denver, 186 Colo. 250, 526 P.2d 1325 (1974).

If necessary to protect compelling and substantial government interest. If a zoning ordinance impinges on fundamental rights, the ordinance may be sustained only upon a showing that the burden imposed is necessary to protect a compelling and substantial government interest. Rademan v. City & County of Denver, 186 Colo. 250, 526 P.2d 1325 (1974).

Such as to provide for the health, safety, and welfare of its citizens and the general public, a city has the power to classify land within its boundaries for specified uses. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

A zoning ordinance is presumed to be valid and one assailing it bears the burden of overcoming that presumption as the courts indulge in every intendment in favor of the validity of the ordinance. City & County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

Once the power to classify land to specified uses is exercised by a city, it is entitled to a presumption of validity and one assailing it bears the burden of overcoming that presumption, and courts indulge every intendment in favor of its validity. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

Zoning ordinances, like other legislative enactments, are presumed valid. Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

A home-rule city zoning code is a legislative enactment which is presumed to be valid. City of Greeley v. Ells, 186 Colo. 352, 527 P.2d 538 (1974).

And one challenging a zoning ordinance has the burden of proving beyond a reasonable doubt that it is invalid. Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

To overcome the presumption that a city has validly exercised its zoning powers, the one claiming invalidity must establish such invalidity beyond a reasonable doubt. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

In challenging the validity of a zoning ordinance, it is incumbent upon the aggrieved party to establish that as applied to this property, the ordinance is confiscatory and deprives him of the use of his land without due process of law. City & County of Denver v. Chuck Ruwart

Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

The presumption of validity which a zoning ordinance possesses imposes upon the litigant challenging the ordinance's validity the burden of proving that the ordinance is unconstitutional by "clear and convincing" evidence. City of Greeley v. Ells, 186 Colo. 352, 527 P.2d 538 (1974).

Substantial compliance with statutory provisions is required for lawful enactment of a zoning change and failure to comply with essential mandates of the statutes invalidates the proceeding. Wainwright v. City of Wheat Ridge, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Factors to be considered in construing ordinance. Because zoning laws should be given a fair and reasonable construction in light of the setting in which employed, the factors surrounding adoption of an ordinance should be considered. Wainwright v. City of Wheat Ridge, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Zoning, since it restricts an owner's right to use his property, constitutes a partial taking, but it is constitutionally permissible, however, so long as it is reasonable. Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972).

And a landowner need not be permitted to make the most profitable use of his land. The due process and just compensation clauses do not require that zoning ordinances permit a landowner to make the most profitable use of his property. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961); Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971); Nopro Co. v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

There is simply no constitutionally protected right under the federal or state constitutions to gain the maximum profit from the use of property. Nopro Co. v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

Right to gain maximum profit from use of property not constitutionally protected. There is simply no constitutionally protected right under the federal or state constitutions to gain the maximum profit from the use of property. City & County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

The validity of zoning ordinances has never been determined by the highest and best use concept or in terms of profitability. City & County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

The mere fact that the regulation deprives the property owner of the most profitable use of his property is not necessarily enough to establish the owner's right to compensation. Art Neon Co. v. City & County of Denver, 488 F.2d 118 (10th Cir. 1973).

If the land in question is susceptible to any reasonable or lawful use under the classification imposed by a city, the ordinance will be allowed to stand. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971); Trans-Robles Corp. v. City of Cherry Hills Vill., 30 Colo. App. 511, 497

P.2d 335 (1972), aff'd, 181 Colo. 356, 509 P.2d 797 (1973).

Zoning ordinance is unconstitutional if it deprives property owner of any reasonable use to which his land may be put. City of Cherry Hills Vill. v. Trans-Robles Corp., 181 Colo. 356, 509 P.2d 797 (1973).

A zoning ordinance is unconstitutional if it can be shown that the zoning ordinance precludes the use of property for any reasonable purpose. Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

In order for the courts to hold a zoning ordinance to be violative of the due process rights of a property owner or to interfere with the discretion of the zoning authorities in drawing zoning boundaries, the person challenging the zoning ordinance must establish beyond any reasonable doubt that the property cannot be devoted to any reasonable lawful use under the challenged ordinance. City & County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

Or if not substantially related to public health, safety, or welfare. A zoning ordinance is unconstitutional if it can be shown that it is not substantially related to the public health, safety, or welfare. Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

In a challenge to a general zoning ordinance, the outcome turns on the exercise of the police power as bearing a reasonable relation to the public health, safety, morals, or welfare. Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

Whether zoning provisions are reasonable and for promotion of public health, safety, and welfare, is to be determined by the court from facts, circumstances, and locality in the particular case. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

Group homes permitted in residential neighborhoods as matter of statewide concern. Group homes for developmentally disabled persons are permitted in residential neighborhoods as a matter of statewide concern. Roundup Found., Inc. v. Bd. of Adjustment, 626 P.2d 1154 (Colo. App. 1980).

The general assembly intended that group homes for the developmentally disabled be considered a residential use of property and that they be permitted in all residential zones, specifically including those zoned for single family dwellings. It is inconsistent with this intent for a city council to base its denial of a special use permit on the adverse effects of the group home on the single family characteristics of the neighborhood or on the peace and quiet of the neighborhood, in addition to the attitude of general hostility in the neighborhood towards this proposed facility. Adams County Ass'n for Retarded Citizens, Inc. v. City of Westminster, 196 Colo. 79, 580 P.2d 1246 (1978).

Although municipalities may regulate certain aspects of construction and location. The general assembly has expressly reserved to municipalities the right

to regulate several aspects of the construction and location of group homes in order to avoid adverse impacts on the neighborhood, as long as such regulation is not tantamount to prohibition of such homes within any residential district. Glennon Heights, Inc. v. Cent. Bank & Trust, 658 P.2d 872 (Colo. 1983).

Zoning not disturbed unless legislative body exceeds powers. Zoning determination cannot be disturbed by the courts unless it appears that the legislative body has exceeded its powers or has acted arbitrarily or unreasonably. City of Greeley v. Ells, 186 Colo. 352, 527 P.2d 538 (1974).

Proof that it is not possible to use land for any of the uses permitted in the intervening zones between the zone sought and the existing zone is a prerequisite to showing that the property has been unconstitutionally confiscated under existing zoning. Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

When a city annexes land from a county, the power to zone that land shifts to the city. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

For issuance of writ of mandamus to compel issuance of building permit where zoning ordinance is unconstitutional, see Hedgcock v. People ex rel. Arden Realty & Inv. Co., 98 Colo. 522, 57 P.2d 891 (1936).

Property owners have the right to rely on existing zoning regulations where there has been no material change in the character of the neighborhood which may require rezoning in the public interest. Roosevelt v. Beau Monde Co., 152 Colo. 567, 384 P.2d 96 (1963).

Applicability of estoppel. To invoke the doctrine of equitable estoppel in relation to a zoning ordinance, the plaintiff must show substantial reliance upon the zoning ordinance and mere procurement of a building permit is insufficient. Witkin Homes, Inc. v. City & County of Denver, 31 Colo. App. 410, 504 P.2d 1121 (1972).

Party seeking application of doctrine of equitable estoppel to government action must show reasonable reliance. Bentley v. Valco, Inc., 741 P.2d 1246 (Colo. App. 1987).

In order to invoke the doctrine of equitable estoppel against a city in relation to a zoning ordinance, the plaintiff must show as a factual predicate that there was a communication or action by the city by which he was unmistakably misled. LaFollette v. Bd. of Adj. of Lakewood, 741 P.2d 1262 (Colo. App. 1987).

A party cannot state a claim for relief under a theory of estoppel against a state or local government entity on the basis of an unauthorized action or promise. Lehman v. City of Louisville, 967 F.2d 1474 (10th Cir. 1992).

Zoning changes should be placed on map as soon as possible. As soon as reasonably possible after adoption by the board of county commissioners of changes in zoning, they should be placed upon an authorized copy of an original map or maps with the date of the action shown along with the type of change. Wainwright v. City of

Wheat Ridge, 38 Colo. App. 485, 558 P.2d 1005 (1976).

A zoning map merely reflects the effect of exercises of the zoning power. Wainwright v. City of Wheat Ridge, 38 Colo. App. 485, 558 P.2d 1005 (1976).

And changes made thereon do not of themselves constitute an exercise of that power. Wainwright v. City of Wheat Ridge, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Since there was no resolution by the board of county commissioners amending a zoning map, the inadvertent or erroneous change in the zoning map was without effect. Wainwright v. City of Wheat Ridge, 38 Colo. App. 485, 558 P.2d 1005 (1976).

Status of county zoning at time map incorporated governs. Inasmuch as zoning maps derive their effectiveness from the ordinance or resolution that adopts them, it is the status of the county zoning, at the time the city incorporated the map into its zoning ordinance, that governs. Wainwright v. City of Wheat Ridge, 38 Colo. App. 485, 558 P.2d 1005 (1976).

A zoning resolution may legally restrict the right of a landowner to extend or enlarge a nonconforming use. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

A city council, in the exercise of its police power, must afford procedural due process as it has been delineated in its zoning code. McArthur v. Zabka, 177 Colo. 337, 494 P.2d 89 (1972).

Zoning proceedings are informal in nature and do not require application of the rules of evidence used in judicial proceedings. The primary requirement is that the principles of fundamental fairness be observed in such proceedings. Nat'l Heritage, Inc. v. Pritza, 728 P.2d 737 (Colo. App. 1986).

Regulation of signs permitted. The powers granted to a statutory city by this section and § 31-15-103 are commodious enough to enable it to promote its safety and aesthetic interests by regulating the number and type of signs permitted in different zoning districts. City of Lakewood v. Colfax Unlimited Ass'n, 634 P.2d 52 (Colo. 1981).

Federal highway beautification act and Colorado highway sign act have not preempted cities in regulation of signs nor do they bind the cities by example or standard. Art Neon Co. v. City & County of Denver, 488 F.2d 118 (10th Cir. 1973).

Requirements for sustaining denial of special exception to floodplain ordinance. Where a city council is acting in an adjudicative capacity with respect to an application for a special exception to a floodplain ordinance, the following would be required to sustain a denial of the application: If there is a lack of evidence to show that certain of the required factors existed, or if the evidence is in dispute as to one or more of these factors, and the city council determines the application should be denied, then it would have to make specific findings of fact as to what factors were or were not established. Bauer v. City of Wheat Ridge, 182 Colo. 324, 513 P.2d 203 (1973).

And only factors which apply to all applicants may be considered. Where city enacted a floodplain ordinance, and the

ordinance establishes the criteria upon which a "special exception" will be granted, if the city council believes that other reasons should be used in denying an application for the exception, then the appropriate procedure is to amend the floodplain ordinance, for once an applicant applies under the ordinance, only those factors which apply generally to all applicants may be considered. Bauer v. City of Wheat Ridge, 182 Colo. 324, 513 P.2d 203 (1973).

Construction of ambiguous ordinance. The testimony of the zoning administrator, who dealt with a zoning ordinance on a day-to-day basis, is significant in construing ambiguous language in the ordinance. Humana, Inc. v. Bd. of Adjustment, 189 Colo. 79, 537 P.2d 741 (1975).

Meaning of "structure". A parking lot is a "structure" within the meaning of this section. Clark v. Town of Estes Park, 686 P.2d 777 (Colo. 1984).

Time limit for judicial review. Since the municipal zoning statutes do not specify a time limit for judicial review, the 30-day time frame in C.R.C.P. 106(b) is applicable. Norby v. City of Boulder, 195 Colo. 231, 577 P.2d 277 (1978).

Applied in Wood Bros. Homes v. City of Colo. Springs, 42 Colo. App. 15, 592 P.2d 1336 (1978).

31-23-302. Districts.

For any of the purposes enumerated in section 31-23-301, the governing body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this part 3, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-202 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "The Antitrust Challenge to Local Government Protection of the Central Business District", see 55 U. Colo. L. Rev. 21 (1983).

Annotator's note. Since § 31-23-302 is similar to former § 31-23-202 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases

construing those provisions have been included in the annotations to this section.

Establishment of zoning district boundary lines in a legislative function. Zoning necessarily requires the establishment of boundary lines between different districts and the selection of the boundary line is a legislative function with which courts should not interfere, and only where the determination of the zoning authority is so unreasonable, arbitrary, capricious, and unjustifiable as to amount to a violation of constitutional rights are the courts permitted to interfere. Nopro Co. v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

And having different classifications in different district does not deny equal protection. The fact that, under zoning laws, adjoining properties in other districts may be put to different and possibly more advantageous uses does not afford a basis for concluding there is a denial of equal protection of the laws. Nopro Co. v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972); City & County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

Applied in Wood Bros. Homes v. City of Colo. Springs, 42 Colo. App. 15, 592 P.2d 1336 (1978).

31-23-303. Legislative declaration.

(1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, floodwaters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote energy conservation; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

(2) (a) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of persons with intellectual and developmental disabilities, which homes are known as community residential homes as defined in section 25.5-10-202, C.R.S., is a matter of statewide concern and that a state-licensed group home for eight persons with intellectual and developmental disabilities is a residential use of property for zoning purposes. As used in this subsection (2), the phrase "residential use of property for zoning purposes" includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning. As used in this section, "persons with intellectual and developmental disabilities" has the same meaning as set forth in section 25.5-10-202, C.R.S.

(b) (I) (Deleted by amendment, L. 2001, p. 104, § 2, effective March 21, 2001.)

(II) The general assembly declares that the establishment of group homes for the aged for the exclusive use of not more than eight persons sixty years of age or older per home is a matter of statewide concern. The general assembly further finds and declares that it is the policy of this state to enable and assist persons sixty years of age or older who do not need nursing facilities, and who so elect, to live in normal residential surroundings, including single-family residential units. Group homes for the aged must be distinguished from nursing facilities, as defined in section 25.5-4-103, and institutions providing life care, as defined in section 11-49-101. Every municipality that adopts a zoning ordinance shall provide for the location of group homes for the aged. A group home for the aged established under this subsection (2)(b) must not be located within seven hundred fifty feet of another group home, unless otherwise provided for by the municipality. Nothing in this subsection (2)(b) shall be construed to exempt the group homes from compliance with any state, county, or municipal health, safety, and fire codes. On April 29, 1976, every person sixty years of age or older who resides in a skilled or intermediate health-care facility and who may be transferred or discharged therefrom to a group home for the aged shall not be so discharged or transferred unless he or she has received ninety days' advance written notice thereof or has agreed in writing to the proposed transfer or discharge.

(b.5) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of persons with behavioral or mental health disorders, as defined in section 27-65-102, is a matter of statewide concern and that a state-licensed group home for eight persons with behavioral or mental health disorders is a residential use of property for zoning purposes, as defined in section 31-23-301 (4). A group home for persons with behavioral or mental health disorders established pursuant to this subsection (2)(b.5) must not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the municipality. A person must not be placed in a group home without being screened by either a professional person, as defined in section 27-65-102 (27), or any other such mental health professional designated by the director of a facility approved by the commissioner of the behavioral health administration. Persons determined to be not guilty by reason of insanity to a violent offense must not be placed in such group homes, and any person who has been convicted of a felony involving a violent offense is not eligible for placement in such group homes. This subsection (2)(b.5) must be implemented, where appropriate, by the rules of the department of public health and environment concerning residential treatment facilities for persons with behavioral or mental health disorders. Nothing in this subsection (2)(b.5) exempts such group homes from compliance with any state, county, or municipal health, safety, and fire codes.

(b.7) The general assembly finds and declares that it is the policy of the state to encourage, promote, and assist persons who are in recovery from substance use disorders to live in residential neighborhoods. Further, the general assembly declares that the use of recovery residences, as defined in section 27-50-101, by persons in recovery from substance use disorders is a matter of statewide concern and that recovery residences are a residential use of property for zoning purposes and subject only to the regulations of like dwellings in the same zone.

(c) Nothing in this subsection (2) shall be construed to supersede the authority of municipalities and counties to regulate such homes appropriately through local zoning ordinances or resolutions, except insofar as such regulation would be tantamount to prohibition of such homes from any residential district. This section is specifically not to be construed to permit violation of the provisions of any zoning ordinance or resolution with respect to height, setbacks, area, lot coverage or external signage or to permit architectural designs substantially inconsistent with the character of the surrounding neighborhood. This section is also not to be construed to permit conducting of the ministerial activities of any private or public organization or agency or to permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. If reasonably related to the requirements of a particular home, a local zoning or other development regulations may, without violating the provisions of this section, also attach specific location requirements to the approval of the group home, including the availability of such services and facilities as convenience stores, commercial services, transportation, and public recreation facilities.

(3) The general assembly declares that the availability and affordability of housing for residents of this state is a matter of statewide concern. It is the purpose of section 31-23-301 (5) to promote the public health, safety, and welfare by allowing residents of this state an additional opportunity to be able to live in decent, safe, and affordable housing on a permanent basis by prohibiting the exclusion of manufactured homes on single site lots from municipalities where the manufactured homes meet or exceed on an equivalent performance engineering basis the standards established by the municipal building code.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1; entire section amended, p. 934, § 58, effective July 1. **L. 76:** (2)(a.5) added, p. 695, § 2, effective April 29. **L. 79:** (1) amended, p. 1164, § 14, effective January 1, 1980. **L. 84:** (3) added, p. 825, § 3, effective January 1, 1985. **L. 87:** (2)(b.5) added, p. 1217, § 3, effective July 1. **L. 90:** (2)(b) amended, p. 1477, § 2, effective July 1. **L. 91:** (2)(b)(II) amended, p. 1858, § 21, effective April 11. **L. 92:** (2)(b.5) amended, p. 2179, § 44, effective June 2. **L. 94:** (2)(b.5) amended, p. 2715, § 298, effective July 1. **L. 2001:** (2)(a), (2)(b), and (2)(b.5) amended, p. 104, § 2, effective March 21. **L. 2006:** (2)(b)(II) amended, p. 2022, § 116, effective July 1; (2)(b.5) amended, p. 1408, § 77, effective August 7. **L. 2010:** (2)(b.5) amended, (SB 10-175), ch. 188, p. 806, § 82, effective April 29. **L. 2013:** (2)(a) amended, (HB 13-1314), ch. 323, p. 1813, § 53, effective March 1, 2014. **L. 2017:** (2)(b.5) amended, (SB 17-242), ch. 263, p. 1379, § 301, effective May 25; (2)(b)(II) amended, (SB 17-226), ch. 159, p. 590, § 10, effective August 9. **L. 2022:** (2)(b.5) amended, (HB 22-1256), ch. 451, p. 3238, § 49, effective August 10. **L. 2024:** (2)(b.7) added, (SB 24-048), ch. 405, p. 2786, § 8, effective August 7. **L. 2025:** (2)(b)(II) amended, (HB 25-1184), ch. 210, p. 951, § 12, effective August 6. **L. 2026:** (2)(b.7) amended, (SB 26-113), ch. 302, p. 1732, § 10, effective August 12.

Editor's note: (1) This section is similar to former § 31-23-203 as it existed prior to 1975.

(2) Subsection (2) was renumbered on revision in 1977 for ease of location.

Cross references: (1) For the care and treatment of the persons with intellectual and developmental disabilities, see article 10.5 of title 27.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ANNOTATION

Law reviews. For note, "The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas", see 36 Dicta 414 (1959). For article, "Recent Developments in Zoning Law in Colorado", see 39 Dicta 211 (1962). For article, "The Antitrust Challenge to Local Government Protection of the Central Business District", see 55 U. Colo. L. Rev. 21 (1983). For article, "Group Home Regulations Under State and Federal Law", see 35 Colo. Law. 37 (Feb. 2006).

Annotator's note. Since § 31-23-303 is similar to former § 31-23-203 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Implicit in this authorization of zoning power is a broad legislative discretion of how to achieve the declared objectives, and as long as the zoning provisions are within the authorized purposes and conform to statutory guidelines, mere disagreement with zoning classifications and district regulations will not suffice as a reason to set them aside. Nopro Co. v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

Parking regulations are permissible under this section. Town of Grand Lake v. Lanzi, 937 P.2d 785 (Colo. App. 1996).

Requirements of this section are met where city council weighed elements enumerated in this section in light of facts presented at public meeting. Coates v. City of Cripple Creek, 865 P.2d 924 (Colo. App. 1993).

Group homes permitted in residential neighborhoods as matter of statewide concern. Group homes for developmentally disabled persons are permitted in residential neighborhoods as a matter of statewide concern. Roundup Found., Inc. v. Bd. of Adjustment, 626 P.2d 1154 (Colo. App. 1980).

The general assembly, by enacting this section and § 31-23-301 intended that group homes for the developmentally disabled be

considered a residential use of property and that they be permitted in all residential zones, specifically including those zoned for single family dwellings. It is inconsistent with this intent for a city council to base its denial of a special use permit on the adverse effects of the group home on the single family characteristics of the neighborhood or on the peace and quiet of the neighborhood, in addition to the attitude of general hostility in the neighborhood towards this proposes facility. Adams County Ass'n for Retarded Citizens, Inc. v. City of Westminster, 196 Colo. 79, 580 P.2d 1246 (1978).

Adoption of section permitting developmentally disabled persons to live in group homes reflects legislative intent to assist such persons to live in normal residential surroundings. Double D Manor v. Evergreen Meadows, 773 P.2d 1046 (Colo. 1989).

Reasonable means must be used to terminate nonconforming uses. Comprehensive zoning contemplates the existence of nonconforming uses and, to ultimately and effectively accomplish the end sought to be accomplished, it is inherent that reasonable means must be afforded to terminate nonconforming uses. Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972).

Reduction of nonconforming uses to conformity is favored. LaFollette v. Bd. of Adj. of Lakewood, 741 P.2d 1262 (Colo. App. 1987).

Specific authority necessary for city agency to expand nonconforming use. A nonconforming use cannot be expanded by the issuance of a license or permit or by an order from any city agency unless the agency is given specific authority to countermand or override the terms of the zoning ordinance by the charter or within the provisions of the zoning ordinance. City of Greeley v. Ells, 186 Colo. 352, 527 P.2d 538 (1974).

Applied in Wood Bros. Homes v. City of Colo. Springs, 42 Colo. App. 15, 592 P.2d 1336 (1978); Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

31-23-304. Method of procedure.

The governing body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts are determined, established, enforced, and, from time to time, amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing thereon at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-204 as it existed prior to 1975.

ANNOTATION

Quasi-judicial function subject to certiorari review. Enactment of a rezoning ordinance by the legislative body of a city, governed by both state zoning statutes as well as the municipal code, pursuant to statutory criteria, after notice and a public hearing, constitutes a quasi-judicial function subject to certiorari review. Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

This section expressly applies only to amendments made by municipalities of their own ordinances, and not to enactments of the general assembly. Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

Statutory city may not provide for automatic rezoning when plat not approved. While a statutory city may provide that property being rezoned may not be used until the plat of the rezoned property is approved, it may not provide for automatic rezoning to the prior classification if the plat is not approved. Spiker v. City of Lakewood, 198 Colo. 528, 603 P.2d 130 (1979).

31-23-305. Changes.

Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against changes in regulations or restrictions, or changes in the zone district applicable to particular land, which protest is filed with the municipal clerk at least twenty-four hours prior to the governing body's vote on the change and is signed by the owners of twenty percent or more of the area of land which is subject to the proposed change or twenty percent or more of the area of land extending a radius of one hundred feet from the land which is subject to the proposed change, disregarding intervening public streets and alleys, such changes shall not become effective except by the favorable vote of two-thirds of all the members of the governing body of the municipality. The provisions of section 31-23-304 relative to public hearings and official notice shall apply equally to all changes or amendments.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1. **L. 81:** Entire section amended, p. 1513, § 4, effective June 4.

Editor's note: This section is similar to former § 31-23-205 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-23-305 is similar to former § 31-23-205 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Due process provisions of notice and hearing are proper and must be followed when amending the zoning map by council action. City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972).

Due process may be satisfied by referendum. That due process requirements may be met in one manner when the change is by council action does not preclude other procedures from meeting due process requirements under a referendum. City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972).

Prime considerations in denying application. The maintenance of stability in zoning and resulting conservation of property values based upon existing zoning regulations are prime considerations in denying applications for zoning changes. Nopro Co. v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

Quasi-judicial function subject to certiorari review. Enactment of a rezoning ordinance by the legislative body of a city, governed by both state zoning statutes as well as the municipal code, pursuant to statutory criteria, after notice and a public hearing, constitutes a quasi-judicial function subject to certiorari review. Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

The real issues involved in a rezoning case focus on the reasonableness of a city council's application of the statutory criteria to the evidence presented. Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

Review for abuse of discretion and exceeding jurisdictional bounds. The determination of whether a council reasonably applied statutory criteria in exercising its statutory power to rezone involves a consideration of whether the council abused its discretion or exceeded the bounds of its jurisdiction and is properly resolved in a certiorari proceeding under rule 106(a)(4), C.R.C.P. Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

Statutory requirements do not apply to home-rule cities. The provisions of this statute which require a three-fourths majority vote of the council to pass a zoning request over a legal protest does not apply to home-rule cities. City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972).

This section expressly applies only to amendments made by municipalities of

their own ordinances, and not to enactments of the general assembly. Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

31-23-306. Zoning commission.

In order to avail itself of the powers conferred by this part 3, the governing body shall appoint a commission, known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body shall not hold its public hearings or take action until it has received the final report of such commission. Where a municipal planning commission already exists, it shall be appointed as the zoning commission.

Source: L. 75: Entire title R&RE, p. 1156, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-206 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Winning the Rezoning", see 11 Colo. Law. 634 (1982).

31-23-307. Board of adjustment.

(1) The governing body shall provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years, unless the governing body by ordinance establishes a different number of members or term of office. The governing body may provide by ordinance for filling vacancies on the board, for designation of alternate members, and for removal of members for inefficiency, neglect of duty, or malfeasance in office. The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of any ordinance adopted pursuant to this part 3. It shall also hear and decide all matters referred to it or upon which it is required to pass under such ordinance. Unless otherwise provided by ordinance, the concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. Every decision of such board shall be subject, however, to

review by certiorari by the district court of the county within which the municipality or any part thereof is located. Such appeal shall be filed not later than thirty days from the final action taken by the board of adjustment. Such appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the municipality.

(2) An appeal to the board of adjustment shall be taken within such time as prescribed by the board of adjustment by general rule by filing with the officer from whom the appeal is taken with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall at once transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by the district court on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide the same within a reasonable time. Upon hearing, any party may appear in person or by agent or attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment has the power, in passing upon appeals, to vary or modify the application of the regulations or provisions of such ordinance relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. The governing body by ordinance may eliminate the board of adjustment's authority to grant use variances or use modifications, or may transfer that authority to some other board, agency, or commission, or to the governing body of the municipality. Where feasible, the board of adjustment may vary or modify the application of the regulations for the purpose of considering access to sunlight for solar energy devices.

(5) The governing body of a municipality that has entered into an intergovernmental agreement with the county or counties within which it is located for the purposes of joint participation in land use planning, subdivision procedures, and zoning pursuant to the authority granted in section 31-23-227 (2) may, by ordinance, enter into an intergovernmental agreement with the county or counties within which it is located for the purpose of joint participation in the

establishment of a joint zoning board of adjustment for a specific area designated in the intergovernmental agreement.

Source: L. 75: Entire title R&RE, p. 1157, § 1, effective July 1. **L. 79:** (4) amended, p. 1164, § 15, effective January 1, 1980. **L. 81:** (1) and (2) amended, p. 877, § 2, effective April 24; (4) amended, p. 1514, § 5, effective June 4. **L. 98:** (5) added, p. 689, § 2, effective May 18.

Editor's note: This section is similar to former § 31-23-207 as it existed prior to 1975.

ANNOTATION

Law reviews. For note, "Zoning Variances — The Colorado Position", see 34 Rocky Mt. L. Rev. 382 (1962). For article, "Boards of Adjustment in the 1990s", see 20 Colo. Law. 487 (1991).

A board of adjustment has broad discretion in issuing an order pertaining to an appeal from an order, requirement, decision, or determination made by an administrative official charged with the enforcement of a zoning ordinance. Bd. of County Comm'rs of La Plata County v. Moga, 947 P.2d 1385 (Colo. 1997).

Authority to rehear variance application. A zoning board of adjustment has authority to rehear an application for variance based upon the allegation that it has granted a variance which it is not empowered to grant under a city code. Moschetti v. Bd. of Zoning Adjustment, 40 Colo. App. 156, 574 P.2d 874 (1977).

31-23-308. Remedies.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part 3 or of any ordinance or other regulation made under authority conferred by this part 3, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

Source: L. 75: Entire title R&RE, p. 1157, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-208 as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-23-308 is similar to former § 31-23-208 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision has been included in the annotations to this section.

Injunctive relief appropriate. Where city established that property was being used in violation of a zoning ordinance, and that lessee of property failed to present evidence constituting a defense, injunctive relief was appropriate. City & County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

Uses not in compliance with zoning may be enjoined. City of Englewood v. Kingsley, 178 Colo. 338, 497 P.2d 1004 (1972).

But even when permitted by zoning regulations, uses may be enjoined if they constitute a nuisance. City of Englewood v. Kingsley, 178 Colo. 338, 497 P.2d 1004 (1972).

31-23-309. Conflict with other laws.

When the regulations made under authority of this part 3 require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part 3 shall govern. Wherever the provisions of any other statute, local ordinance, or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose higher standards than are required by the regulations made under authority of this part 3, the provisions of such statute or local ordinance or regulation shall govern.

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-209 as it existed prior to 1975.

31-23-310. Racial restrictions.

This part 3 shall not be construed, in the case of any municipality, to confer or enlarge any authority or power to establish any restriction based upon race or color.

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-210 as it existed prior to 1975.

31-23-311. Telecommunications research facilities of the United States - inclusions in planning and zoning.

Any zoning plan, modification thereof, or variance therefrom adopted or granted under this part 3 or part 2 of this article on or after April 23, 1969, shall comply with the requirements of part 6 of article 11 of title 30, C.R.S.

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-211 as it existed prior to 1975.

31-23-312. Safety glazing materials.

The governing body of each municipality in this state shall adopt standards governing the use of safety glazing materials for hazardous locations within its jurisdiction. No building permit shall be issued for the construction, reconstruction, or alteration of any structure in such municipality unless such construction, reconstruction, or alteration conforms to the standards adopted pursuant to this section. The building inspection authority in such municipality shall inspect all places to determine whether such places are in compliance with the standards for the use of safety glazing materials.

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1. **L. 86:** Entire section amended, p. 502, § 123, effective July 1.

Editor's note: This section is similar to former § 31-23-212 as it existed prior to 1975.

31-23-313. Planned unit developments - ordinances.

Any municipality may authorize planned unit developments, as defined in section 24-67-103, C.R.S., by enacting an ordinance in accordance with the provisions of article 67 of title 24, C.R.S.

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1.

Editor's note: This section is similar to former § 31-23-213 as it existed prior to 1975.

31-23-314. Solid wastes disposal sites and facilities.

All applications for solid wastes disposal sites and facilities received by a municipality shall be processed, reviewed, and approved pursuant to the provisions of part 1 of article 20 of title 30, C.R.S.

Source: L. 91: Entire section added, p. 971, § 15, effective June 5.

31-23-315. Parking and electric vehicle charging stations - legislative declaration - conflict of law - definitions.

(1) (a) The general assembly finds that:

(I) Colorado has adopted economy-wide greenhouse gas emission goals of, at minimum, a twenty-six percent reduction by 2025, a fifty percent reduction by 2030, and a ninety percent reduction by 2050;

(II) The governor's "Colorado Greenhouse Gas Pollution Reduction Roadmap", released on January 14, 2021, identified transportation as a leading source of greenhouse gas pollution and identified vehicle electrification as a key strategy for reducing greenhouse gas pollution from the transportation sector;

(III) Motor vehicle pollution, including greenhouse gas emissions, does not stay within the geographic boundaries of the local government where it is emitted;

(IV) According to the United States department of energy, an electric vehicle produces an average of less than one-fourth of the emissions over its lifetime than the average emissions of a motor vehicle powered by an internal combustion engine;

(V) Sales of electric vehicles currently account for more than ten percent of all new vehicle sales in Colorado, and this market share is projected to increase to more than eighty percent by 2032;

(VI) Buildings constructed today will need to accommodate higher numbers of electric vehicles within the lifetime of these buildings;

(VII) People may forgo purchasing or driving an electric vehicle because they are concerned about the availability of charging stations;

(VIII) Local government provisions that set minimum requirements for parking may create a disincentive to install charging stations if a parking space served by a charging station is not counted toward meeting the minimum parking requirement; and

(IX) Fewer charging stations act as a disincentive to purchase or drive an electric vehicle.

(b) The general assembly declares that minimum parking requirements, to the degree that they lower the number of charging stations available to electric vehicle drivers, decrease electric vehicle use, which causes more pollutants to be emitted into the environment and lowers the air quality of other local government jurisdictions and Colorado as a whole. Therefore, minimum parking requirements are a matter of mixed local and statewide concern to the degree that they lower the number of charging stations available to electric vehicle drivers.

(2) For the purposes of any minimum parking requirement imposed by the governing body of a municipality:

(a) Any parking space served by an electric vehicle charging station or any parking space used to site electric vehicle charging equipment must be counted as at least one standard automobile parking space; and

(b) Any van-accessible parking space that is designed to accommodate a person in a wheelchair, is served by an electric vehicle charging station, and is not designated as parking reserved for a person with a disability under section 42-4-1208 must be counted as at least two standard automobile parking spaces.

(2.5) (a) For an electric vehicle charging station constructed or replaced on or after January 1, 2026, no fewer than five percent or one vehicle charging space should incorporate the standards from the access board until applicable regulations are issued by the federal department of justice or the federal department of transportation.

(b) As used in this subsection (2.5):

(I) "Access board" means the United States access board.

(II) "Electric vehicle charger" means a device with one or more charging ports and connectors for charging electric vehicles.

(III) "Electric vehicle charging station" or "charging station" means a common location with one or more electric vehicle chargers.

(IV) "Replaced" means substantially modified or substituted with another unit, as indicated by a change in the serial number, electric vehicle supply equipment ID, or EVSE ID, or model name.

(V) "Vehicle charging space" means a space to park an electric vehicle for charging.

(3) (a) Notwithstanding section 31-23-309, this section controls if there is a conflict between this section and another section in this part 3 or between this section and a regulation made under authority of this part 3.

(b) This section does not lower the protections provided for people with disabilities, including the number of parking spaces for people that are mobility impaired, than the protections provided by the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and parts 6 and 8 of article 34 of title 24.

Source: L. 2023: Entire section added, (HB 23-1233), ch. 245, p. 1322, § 7, effective May 23. **L. 2024:** (2.5) added, (HB 24-1161), ch. 322, p. 2148, § 4, effective June 3.

Cross references: For the legislative declaration in HB 23-1233, see section 1 of chapter 245, Session Laws of Colorado 2023.

31-23-316. Electric motor vehicle charging systems - municipal permitting procedures - permit application - approval process - definitions.

(1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Administrative review process" means a process:

(I) In which an EV charger permit is approved, approved with conditions, or denied by administrative staff of a municipal permitting agency based solely on the application's compliance with objective standards set forth in municipal zoning laws or other municipal laws; and

(II) That does not require a public hearing, a recommendation, or a decision by an elected or appointed public body or hearing officer except as provided in subsection (4)(d) of this section.

(b) "Colorado energy office" means the Colorado energy office created in section 24-38.5-101.

(c) "Disproportionately impacted community" has the meaning set forth in section 24-4-109 (2)(b)(II).

(d) "Electric motor vehicle charging system" or "charging system" has the meaning set forth in section 38-12-601 (6)(a).

(e) "EV charger permit" means the final approval of an application for installation of an electric motor vehicle charging system that a municipality may require to authorize an applicant to commence construction of the charging system and a permit application for an electrical permit established under article 115 of title 12 and issued by the state electrical board.

(f) (I) "Municipal permitting agency" means the entity or entities for a municipality that are responsible for issuing an EV charger permit for the construction of an electric motor vehicle charging system.

(II) "Municipal permitting agency" may include:

(A) A municipal building department or agency;

(B) A municipal planning department or agency; or

(C) A municipal public works or road and bridge department or agency.

(g) "Objective standard" means a standard that:

(I) Is uniformly verifiable and ascertainable by reference to an available external or uniform benchmark or criterion by the applicant and municipal permitting agency staff prior to the applicant's filing of an EV charger permit application; and

(II) Does not require municipal permitting agency staff to make a subjective determination concerning an EV charger permit application.

(2) (a) On or before December 31, 2025, the governing body of a municipality with a population of ten thousand or more according to the 2020 federal census shall do one of the following:

(I) Adopt an ordinance or resolution to incorporate the same standards and permitting process or less restrictive standards and permitting process as the standards and permitting process described in the EV charger permitting model code developed by the Colorado energy office pursuant to subsection (3) of this section;

(II) (A) Adopt an ordinance or resolution that establishes objective standards and an administrative review process to be used by the municipal permitting agency during the municipality's review of applications for EV charger permits in accordance with subsections (4) and (5) of this section.

(B) An ordinance or resolution adopted by the municipality pursuant to this subsection (2)(a)(II) shall be developed in consultation with the local fire department or fire district, any electric utilities serving the municipality, and other relevant stakeholders, as determined by the municipality.

(III) Adopt an ordinance or resolution that establishes that the municipality does not intend to adopt an ordinance or resolution in accordance with subsection (2)(a)(I) or (2)(a)(II) of this section and that the municipal permitting agency will continue to utilize the municipality's existing permitting review process for EV charger permit applications.

(b) On or before March 1, 2026, a municipality that is subject to the requirements of subsection (2)(a) of this section shall submit a report to the Colorado energy office describing the municipality's compliance with subsection (2)(a) of this section.

(c) On or before January 31, 2027, a municipality subject to the requirements of subsection (2)(a) of this section shall submit a report to the Colorado energy office regarding each application for an EV charger permit that was received by the municipal permitting agency between December 31, 2025, and December 1, 2026. The report must include:

(I) The final determination made by the municipal permitting agency for each EV charger permit application; and

(II) For each EV charger permit application submitted to the municipal permitting agency, the duration between the date that the EV charger permit application was deemed complete by the municipal permitting agency and the date that the municipal permitting agency made a final determination on the EV charger permit application.

(d) If the governing body of a municipality adopts the EV charger permitting model code pursuant to subsection (2)(a)(I) of this section or adopts an ordinance or resolution in accordance with subsection (2)(a)(III) of this section, the requirements of subsections (4) and (5) of this section do not apply to the municipality.

(3) (a) On or before March 31, 2025, the Colorado energy office shall publish an EV charger permitting model code that contains guidelines for the adoption of EV charger permit standards and permitting processes for municipalities.

(b) The EV charger permitting model code developed by the Colorado energy office pursuant to subsection (3)(a) of this section must be developed in consultation with municipalities, representatives from disproportionately impacted communities, public electric utilities, and other relevant stakeholders, as determined by the Colorado energy office.

(c) The EV charger permitting model code developed by the Colorado energy office in accordance with this subsection (3) shall only apply to a municipality's land use and zoning permitting processes and shall not contravene:

(I) State electrical permitting requirements or procedures;

(II) Municipal electrical permitting requirements or procedures;

(III) State electrical inspection requirements;

(IV) Municipal electrical inspection requirements; or

(V) National electric code requirements or regulations related to electric motor vehicle charging systems.

(d) The EV charger permitting model code developed by the Colorado energy office in accordance with this subsection (3) shall not contain required timelines that a municipal permitting agency must comply with for the review, approval, or denial of EV charger permit applications.

(4) (a) A municipal permitting agency shall approve, conditionally approve, or deny an application for an EV charger permit using the municipality's administrative review process to determine if the proposed electric motor vehicle charging system is in compliance with the municipality's objective standards.

(b) A municipal permitting agency shall not deny or place conditions on an EV charger permit application unless the denial or conditions are for the purpose of reasonably protecting public health or safety.

(c) If a municipal permitting agency denies an application for an EV charger permit, the municipal permitting agency shall make written findings that the proposed electric motor vehicle charging system would violate the municipality's objective standards or would not be reasonably protective of public health or safety and provide those written findings to the applicant within three business days after the date the municipal permitting agency denies the application.

(d) An applicant for an EV charger permit that is denied a permit or has conditions placed on the approval of an EV charger permit by a municipal permitting agency may appeal the municipal permitting agency's decision to the governing body of the municipality.

(e) The requirements of this subsection (4) do not apply to municipalities that adopt the EV charger permitting model code pursuant to subsection (2)(a)(I) of this section or adopt an ordinance or resolution in accordance with subsection (2)(a)(III) of this section.

(5) (a) The municipal permitting agency must make available to prospective applicants for EV charger permits a checklist of all requirements that must be included in an application for an EV charger permit.

(b) A municipal permitting agency shall review an application for an EV charger permit to confirm that the application sufficiently meets the requirements of the checklist described in subsection (5)(a) of this section.

(c) A municipal permitting agency shall consider an application for an EV charger permit that satisfies the requirements of the checklist described in subsection (5)(a) of this section a complete application.

(d) If an applicant for an EV charger permit submits an application that does not meet all the requirements of the checklist described in subsection (5)(a) of this section, the municipal permitting agency shall, within three business days after the date the municipal permitting agency determines the application is not sufficient, send a written notice to the applicant that details all of the deficiencies with the application and any additional information required for the application to be considered complete.

(e) The requirements of this subsection (5) do not apply to municipalities that adopt the EV charger permitting model code pursuant to subsection (2)(a)(I) of this section or adopt an ordinance or resolution in accordance with subsection (2)(a)(III) of this section.

(6) (a) The Colorado energy office shall provide technical assistance to municipalities to assist a municipality in complying with the requirements of this section, including providing:

(I) Support for the development and adoption of municipal codes; and

(II) Materials and support for training municipal permitting agency staff with interpreting and applying EV charger permit standards and processes.

(b) The Colorado energy office shall use money in the electric vehicle grant fund, created in section 24-38.5-103, to provide technical assistance to municipalities in accordance with this subsection (6).

(c) The Colorado energy office shall prioritize providing technical assistance to counties that have a significant number of disproportionately impacted communities.

(7) Regardless of the ordinance or resolution adopted by the governing body of a municipality in accordance with subsection (2)(a) of this section, a municipal permitting agency shall, within three business days after the date the municipal permitting agency makes the determination to approve, conditionally approve, or deny an application, send notice to an applicant for an EV charger permit that states the municipal permitting agency's determination on the applicant's EV charger permit application.

Source: L. 2024: Entire section added, (HB 24-1173), ch. 215, p. 1316, § 3, effective August 7.

Cross references: For the legislative declaration in HB 24-1173, see section 1 of chapter 215, Session Laws of Colorado 2024.

ARTICLE 25

Public Improvements

PART 1
URBAN RENEWAL

31-25-101. Short title.

31-25-102. Legislative declaration.

31-25-103. Definitions.

31-25-104. Urban renewal authority.

31-25-105. Powers of an authority.

31-25-105.5. Acquisition of private property by eminent domain by authority for subsequent transfer to private party - restrictions - exceptions - right of civil action - damages - definitions.

31-25-105.7. Condemnation actions by authorities - effect of other provisions.

31-25-106. Disposal of property in urban renewal area.

31-25-107. Approval of urban renewal plans by local governing body - renewable energy reinvestment areas - definitions.

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PART 1

URBAN RENEWAL

Cross references: For slum clearance and municipal housing authorities, see part 7 of article 32 of title 24, articles 55 and 56 of title 24, and article 4 of title 29.

Law reviews: For article, "A Brief Overview of Recent Changes in Colorado's Urban Renewal Law", see 33 Colo. Law. 99 (Sept. 2004).

31-25-101. Short title.

This part 1 shall be known and may be cited as the "Urban Renewal Law".

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-101 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Constitutional Law: The Validity of Urban Renewal in Colorado", see 39 Dicta 149 (1962). For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968). For article, "Governmental Issues Related to Real Estate Development", see 11 Colo. Law. 2527 (1982).

This part is general law uniform in its operation and applies to all similarly situated, and therefore is not local or special legislation. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Urban renewal is valid exercise of state's police power. James v. Bd. of Comm'rs, 42 Colo. App. 27, 595 P.2d 262

(1978), aff'd, 200 Colo. 28, 611 P.2d 976 (1980).

Urban blight is matter of both statewide and local concern. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

And both general assembly and local government can act to alleviate problem or urban blight provided the state and the local law do not conflict. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Applied in Vigoda v. Denver Urban Renewal Auth., 646 P.2d 900 (Colo. 1982).

31-25-102. Legislative declaration.

(1) The general assembly finds and declares that there exist in municipalities of this state slum and blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state in general and of the municipalities thereof; that the existence of such areas contributes substantially to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of public policy and statewide concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

(2) The general assembly further finds and declares that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this part 1, since the prevailing conditions therein may make impracticable the reclamation of the area by conservation or rehabilitation; that other slum or blighted areas, or portions thereof, through the means provided in this part 1, may be susceptible of conservation or rehabilitation in such a manner that the conditions and evils enumerated in this section may be eliminated, remedied, or prevented; and that salvable slum and blighted areas can be conserved and rehabilitated through appropriate public action, as authorized or contemplated in this part 1, and the cooperation and voluntary action of the owners and tenants of property in such areas.

(3) The general assembly further finds and declares that the powers conferred by this part 1 are for public uses and purposes for which public money may be expended and the police power exercised and that the necessity in the public interest for the provisions enacted in this part 1 is declared as a matter of legislative determination.

(4) The general assembly further finds and declares that:

(a) Urban renewal areas created for the purposes described in subsections (1) and (2) of this section shall not include agricultural land except in connection with the limited circumstances described in this part 1; and

(b) The inclusion of agricultural land within urban renewal areas is a matter of statewide concern.

Source: L. 75: Entire title R&RE, p. 1158, § 1, effective July 1. **L. 2010:** (4) added, (HB 10-1107), ch. 89, p. 298, § 1, effective June 1.

Editor's note: This section is similar to former § 31-25-102 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Current Trends in Business Real Estate Transactions", see 35 U. Colo. L. Rev. 131 (1962). For comment on Rabinoff v. District Court (145 Colo. 225, 360 P.2d 114 (1961)), see 35 U. Colo. L. Rev. 269 (1963). For article, "Governmental Issues Related to Real Estate Development", see 11 Colo. Law. 2527 (1982).

For there to be an unconstitutional "taking" under the U.S. constitution, it must be shown that no public purpose exists for the proposed urban renewal project. Oberndorf v. City & County of Denver, 696 F. Supp. 552 (D. Colo. 1988), aff'd, 900 F.2d 1434 (10th Cir. 1990).

Public purpose. The acquisition of properties and the elimination of their slum or blighted character constitutes a public purpose; that what is involved is an urban reclamation project; and the fact that when the redevelopment is achieved the properties are sold to private individuals for the purpose of development does not rob the taking of its public purpose. Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 114 (1961).

Private ownership does not defeat public purpose. Although the general assembly's method is to be accomplished not by public ownership of the land but rather through private endeavor and ownership under the direction of authorized officials. The acquisition and transfer to private parties is a mere incident of the chief purpose of the act which is rehabilitation of the area. The fact that the property would not continue to be owned by the city does not mean that the use was not a public one. Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 114 (1961).

The power of eminent domain may be exercised. The sale or leasing of property for redevelopment with restrictions to prevent blight are for public uses and purposes for which the power of eminent

domain may properly be exercised. Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 114 (1961).

An owner of property a city declared blighted has a property interest in its statutory cause of action to challenge the blight determination process for abuse of discretion. The right to challenge the blight determination is not just a right to a hearing for its own sake, but a right to overturn a blight determination that was an abuse of discretion pursuant to this Urban Renewal Law. M.A.K. Inv. Grp., LLC v. City of Glendale, 897 F.3d 1303 (10th Cir. 2018).

Due process requires a city to provide a property owner with direct notice of the adverse blight determination. In contemporary terms this means notice had to be mailed, emailed, or personally served. An owner's ability to preserve its property right in the statutory right of review depends on its knowledge of the simple fact the blight finding exists. M.A.K. Inv. Grp., LLC v. City of Glendale, 897 F.3d 1303 (10th Cir. 2018).

Even if owners can argue their property is not blighted if and when condemnation proceedings begin, that does not preserve the cause of action for immediate review of the blight determination itself. M.A.K. Inv. Grp., LLC v. City of Glendale, 897 F.3d 1303 (10th Cir. 2018).

While letting owners know they have only thirty days to challenge a blight finding may be a best practice, it is not constitutionally compelled. There is no need to require individualized notice of state law remedies that are established by published, generally available state statutes and case law. M.A.K. Inv. Grp., LLC v. City of Glendale, 897 F.3d 1303 (10th Cir. 2018).

Urban renewal is a substantial state interest that can justify taking property dedicated to religious uses. Pillar of Fire v. Denver Urban Renewal Auth., 181 Colo. 411, 509 P.2d 1250 (1973).

Applied in People v. Bailey, 41 Colo. App. 504, 595 P.2d 252 (1978).

31-25-103. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Agricultural land" means any one parcel of land or any two or more contiguous parcels of land that, regardless of the uses for which the land has been zoned, has been classified by the county assessor as agricultural land for purposes of the levying and collection of property tax pursuant to sections 39-1-102 (1.6)(a) and 39-1-103 (5)(a), C.R.S., at any time during the five-year period prior to the date of adoption of an urban renewal plan or any modification of such a plan.

(2) "Blighted area" means an area that, in its present condition and use and, by reason of the presence of at least four of the following factors, substantially impairs or arrests the sound

growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare:

(a) Slum, deteriorated, or deteriorating structures;

(b) Predominance of defective or inadequate street layout;

(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(d) Unsanitary or unsafe conditions;

(e) Deterioration of site or other improvements;

(f) Unusual topography or inadequate public improvements or utilities;

(g) Defective or unusual conditions of title rendering the title nonmarketable;

(h) The existence of conditions that endanger life or property by fire or other causes;

(i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;

(j) Environmental contamination of buildings or property;

(k) (Deleted by amendment, L. 2004, p. 1745, § 3, effective June 4, 2004.)

(k.5) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements; or

(l) If there is no objection by the property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, "blighted area" also means an area that, in its present condition and use and, by reason of the presence of any one of the factors specified in paragraphs (a) to (k.5) of this subsection (2), substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare. For purposes of this paragraph (l), the fact that an owner of an interest in such property does not object to the inclusion of such property in the urban renewal area does not mean that the owner has waived any rights of such owner in connection with laws governing condemnation.

(3) "Bonds" means any bonds (including refunding bonds), notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures, or other obligations.

(3.1) "Brownfield site" means real property, the development, expansion, redevelopment, or reuse of which will be complicated by the presence of a substantial amount of one or more

hazardous substances, pollutants, or contaminants, as designated by the United States environmental protection agency.

(3.3) "Business concern" has the same meaning as "business" as set forth in section 24-56-102 (1), C.R.S.

(3.5) "Displaced person" has the same meaning as set forth in section 24-56-102 (2), C.R.S., and for purposes of this part 1 shall also include any individual, family, or business concern displaced by the acquisition by eminent domain of real property by an authority.

(3.6) "Eligible project" has the meaning set forth in section 29-20-501 (6).

(3.7) "Governing body" means the governing body of the municipality within which an authority has been established in accordance with the requirements of this part 1.

(4) "Obligee" means any bondholder, agent, or trustee for any bondholder, or any lessor demising to an authority property used in connection with an urban renewal project of the authority, or any assignee of such lessor's interest or any part thereof, and the federal government when it is a party to any contract or agreement with the authority.

(5) "Public body" means the state of Colorado or any municipality, quasi-municipal corporation, board, commission, authority, or other political subdivision or public corporate body of the state.

(6) "Real property" means lands, lands under water, structures, and any and all easements, franchises, incorporeal hereditaments, and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(6.3) "Renewable energy reinvestment area" has the meaning set forth in section 29-20-501 (14).

(7) "Slum area" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and is detrimental to the public health, safety, morals, or welfare.

(7.5) "Urban-level development" means an area in which there is a predominance of either permanent structures or above-ground or at-grade infrastructure.

(8) "Urban renewal area" means a slum area, or a blighted area, or a combination thereof which the local governing body designates as appropriate for an urban renewal project.

(8.5) "Urban renewal authority" or "authority" means a corporate body organized pursuant to the provisions of this part 1 for the purposes, with the powers, and subject to the restrictions set forth in this part 1.

(9) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan conforms to a general or master plan for the physical development of the municipality as a whole and which is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(10) "Urban renewal project" means undertakings and activities for the elimination and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment, or rehabilitation, or conservation, or any combination or part thereof, in accordance with an urban renewal plan. Such undertakings and activities may include:

(a) Acquisition of a slum area or a blighted area or portion thereof;

(b) Demolition and removal of buildings and improvements;

(c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the objectives of this part 1 in accordance with the urban renewal plan;

(d) Disposition of any property acquired or held by the authority as a part of its undertaking of the urban renewal project for the urban renewal areas (including sale, initial leasing, or temporary retention by the authority itself) at the fair value of such property for uses in accordance with the urban renewal plan;

(e) Carrying out plans for a program through voluntary action and the regulatory process for the repair, alteration, and rehabilitation of buildings or other improvements in accordance with the urban renewal plan; and

(f) Acquisition of any other property where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise remove or prevent the spread of blight or deterioration or to provide land for needed public facilities.

Source: L. 75: Entire title R&RE, p. 1159, § 1, effective July 1. **L. 99:** (2) amended, p. 529, § 1, effective May 3. **L. 2004:** (2)(f), (2)(h), (2)(j), (2)(k), and (2)(l) amended and (2)(k.5), (3.3), (3.5), and (3.7) added, p. 1745, §§ 3, 2, effective June 4. **L. 2005:** IP(10) amended, p. 1264, § 3,

effective June 3. **L. 2010:** (1) amended and (3.1), (7.5), and (8.5) added, (HB 10-1107), ch. 89, p. 298, § 2, effective June 1. **L. 2026:** (3.6) and (6.3) added, (HB 26-1268), ch. 160, p. 957, § 3, effective August 12.

Editor's note: This section is similar to former § 31-25-103 as it existed prior to 1975.

ANNOTATION

Law reviews. For comment on Rabinoff v. District Court, appearing below, see 35 U. Colo. L. Rev. 269 (1963).

Basis for finding area blighted. The fact that there were not widespread violations of building and health ordinances does not of itself establish arbitrariness on the part of the responsible authorities in the finding that the area was slum and blighted. Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 114 (1961).

One well-kept building does not in itself defeat the determination of a blighted area. If the building owned by plaintiff, be, as claimed, a magnificent victorian type edifice such would not in itself defeat the determination that the area, taken as a whole, is a slum and blighted area. Interstate Trust Bldg. Co. v. Denver Urban Renewal Auth., 172 Colo. 427, 473 P.2d 978 (1970).

"Blighted area" construed. The definition of "blighted area" contained in subsection (2) is broad and not only encompasses those areas containing properties so dilapidated as to justify condemnation as nuisances, but also envisions the prevention of deterioration. The absence of widespread violations of building and health ordinances does not of itself establish arbitrariness on the part of a city council in finding blight. Tracy v. City of Boulder, 635 P.2d 907 (Colo. App. 1981).

Determination of "blighted area" by council is legislative question. A city council's determination as to whether an area is blighted, when such determination relates to the need for an ordinance, is a legislative question and scope of review by the judiciary is restricted. Tracy v. City of Boulder, 635 P.2d 907 (Colo. App. 1981).

If actual purpose behind a particular urban renewal plan is not the elimination or prevention of blight or slums, the urban renewal authority does not have the power to condemn land in furtherance of that plan because the determination of necessity is not supported by the record. City & County of Denver v. Block 173, 814 P.2d 824 (Colo. 1991).

Proper purpose for which a condemnation action may be instituted in the context of urban renewal is limited to plans adopted to remedy identified slum or blight conditions, and fact that such conditions were found to exist is not dispositive if the purpose in designating a large study area and in targeting block 173 as part of that area was to acquire block 173

for private purposes. City & County of Denver v. Block 173, 814 P.2d 824 (Colo. 1991).

Quarry lake property is no longer subject to municipality's 1981 blight determination, because the statutory procedures for removing blight were followed. The urban renewal authority disposed of the quarry lake property according to the terms of state's urban renewal law and certified the uses to which the lake was devoted comported with the urban renewal plan. After duly disposing of the lake property, certifying that the property was being used in accordance with the urban renewal plan, and having notice at all relevant times of the developer's efforts to incorporate the lake into its office park, the urban renewal authority cannot now claim that the lake has never been developed in accordance with the urban renewal plan. On the contrary, the quarry lake has been developed in accordance with the procedures laid out in the state's urban renewal law and, thus, can no longer be considered "blighted" under the municipality's 1981 blight determination. Arvada Urban Renewal Auth. v. Columbine Prof'l Plaza Ass'n, 85 P.3d 1066 (Colo. 2004).

Applied in Bailey v. People, 200 Colo. 549, 617 P.2d 549 (1980).

31-25-104. Urban renewal authority.

(1) (a) Any twenty-five registered electors of the municipality may file a petition with the clerk, setting forth that there is a need for an authority to function in the municipality. Upon the filing of such a petition, the clerk shall give notice of the time, place, and purpose of a public hearing, at which the local governing body will determine the need for such an authority in the municipality. Such notice shall be given at the expense of the municipality by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the municipality or, if there is no such newspaper, by posting such a notice in at least three public places within the municipality at least ten days preceding the day on which the hearing is to be held.

(b) Upon the date fixed for said hearing held upon notice as provided in this section, a full opportunity to be heard shall be granted to all residents and taxpayers of the municipality and to all other interested persons. After such a hearing, if the governing body finds that one or more slum or blighted areas exist in the municipality, and finds that the acquisition, clearance, rehabilitation, conservation, development, or redevelopment, or a combination thereof of such area is necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality, and declares it to be in the public interest that the urban renewal authority for such municipality created by this part 1 exercise the powers provided in this part 1 to be exercised by such authority, the governing body shall adopt a resolution so finding and declaring and shall cause notice of such resolution to be given to the mayor, who shall thereupon appoint, as provided in paragraph (a) of subsection (2) of this section, commissioners to act as an

authority. A certificate signed by such commissioners shall then be filed with the division of local government in the department of local affairs and there remain of record, setting forth that the governing body made the findings and declaration provided in this paragraph (b) after such hearing and that the mayor has appointed them as commissioners. Upon the filing of such certificate, the commissioners and their successors are constituted an urban renewal authority, which shall be a body corporate and politic. The boundaries of such authority shall be coterminous with those of the municipality.

(c) If the governing body, after a hearing, determines that the findings and declaration enumerated in paragraph (b) of this subsection (1) cannot be made, it shall adopt a resolution denying the petition. After six months have expired from the date of the denial of such petition, subsequent petitions may be filed and new hearings and determinations made thereon; except that there shall be at least six months between the time of filing of any subsequent petition and the denial of the last preceding petition.

(d) In any suit, action, or proceeding involving the validity or enforcement of any bond, contract, mortgage, trust indenture, or other agreement of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part 1 upon proof of the filing of said certificate. A copy of such certificate, duly certified by the director of the division of local government, shall be admissible in evidence in any such suit, action, or proceeding.

(2) (a) (I) Except as provided in subsection (2.5) of this section, an authority consists of thirteen commissioners, not fewer than ten of whom must be appointed by the mayor, who shall designate the chairperson for the first year. In order to represent the collective interests of the county and all taxing bodies levying a mill levy in one or more urban renewal areas managed by the authority, referred to in this part 1 as an "urban renewal authority area", other than the municipality, one such commissioner on the authority must be appointed by the board of county commissioners of the county in which the territorial boundaries of the urban renewal authority area are located, one such commissioner must also be a board member of a special district selected by agreement of the special districts levying a mill levy within the boundaries of the urban renewal authority area, and one commissioner must also be an elected member of a board of education of a school district levying a mill levy within the boundaries of the urban renewal authority area. If the urban renewal authority area is located within the boundaries of more than one county, the appointment is made by agreement of all of the counties in which the boundaries of the urban renewal authority area are located.

(II) If no county, special district, or school district appoints a commissioner to the authority, then the county, special district, or school district appointment remains vacant until such time as the applicable appointing authority makes the appointment pursuant to this paragraph (a).

(III) If the appointing county is a city and county, the requirements of this paragraph (a) pertaining to county representation on the authority board need not be satisfied.

(IV) All mayoral appointments and chair designations are subject to approval by the governing body of the municipality within which the authority has been established. Not more than one of the commissioners appointed by the mayor may be an official of the municipality.

(V) In the event that an official of the municipality is appointed as commissioner of an authority, acceptance or retention of such appointment is not deemed a forfeiture of his or her office, or incompatible therewith, and does not affect his or her tenure or compensation in any way. The term of office of a commissioner of an authority who is a municipal official is not affected or curtailed by the expiration of the term of his or her municipal office.

(b) The commissioners who are first appointed must be designated by the mayor to serve for staggered terms so that the term of at least one commissioner will expire each year. Thereafter, the term of office is five years. A commissioner holds office until his or her successor has been appointed and has qualified. Vacancies other than by reason of expiration of terms must be filled by the mayor for the unexpired term; except that, in the case of a commissioner on the authority who has been appointed by the board of commissioners of a county pursuant to paragraph (a) of this subsection (2), a vacancy on the authority board for the balance of the unexpired term must be filled by the board of commissioners of the county that made the original appointment, a vacancy of the special-district appointed seat must be filled by agreement of the affected special districts, and a vacancy of the school-district appointed seat must be filled by agreement of the affected school districts. A majority of the commissioners constitutes a quorum. The mayor shall file with the clerk a certificate of the appointment or reappointment of any commissioner, and such certificate is conclusive evidence of the due and proper appointment of such commissioner. A commissioner receives no compensation for his or her services, but is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

(c) When the office of the first chairman of the authority becomes vacant and annually thereafter, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, who shall be executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and it shall determine their qualifications, duties, and compensation. An authority may call upon the municipal counsel or chief legal officer of the municipality for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such duties as it deems proper.

(2.5) When the governing body of a municipality designates itself as the authority or transfers an existing authority to the governing body pursuant to section 31-25-115 (1), an authority consists of the same number of commissioners as the number of members of the governing body. In addition, in order to represent the collective interests of the county and all taxing bodies levying a mill levy within the boundaries of the urban renewal authority area other than the municipality, one additional commissioner on the authority must be appointed by the

board of county commissioners of the county in which the territorial boundaries of the urban renewal authority area are located, one additional commissioner must also be a board member of a special district selected by agreement of the special districts levying a mill levy within the boundaries of the urban renewal authority area, and one additional commissioner must also be an elected member of a board of education of a school district levying a mill levy within the boundaries of the urban renewal authority area. If the number of members of the governing body causes the authority to have an even number of commissioners, the mayor shall appoint an additional commissioner to restore an odd number of commissioners to the authority. As applicable, the appointment of the county, special district, and school district representatives on the authority pursuant to this subsection (2.5) must be made in accordance with the procedures specified in subsection (2) of this section.

(3) No commissioner, other officer, or employee of an authority nor any immediate member of the family of any such commissioner, officer, or employee shall acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any project. If any commissioner, other officer, or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any project, he shall immediately disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority. Upon such disclosure, such commissioner, officer, or other employee shall not participate in any action by the authority affecting the carrying out of the project planning or the undertaking of the project unless the authority determines that, in the light of such personal interest, the participation of such member in any such act would not be contrary to the public interest. Acquisition or retention of any such interest without such determination by the authority that it is not contrary to the public interest or willful failure to disclose any such interest constitutes misconduct in office.

(4) The mayor, with the consent of the governing body, may remove a commissioner for inefficiency or neglect of duty or misconduct in office but only after the commissioner has been given a copy of the charges made by the mayor against him and has had an opportunity to be heard in person or by counsel before the governing body. In the event of the removal of any commissioner, the mayor shall file in the office of the clerk a record of the proceedings, together with the charges made against the commissioner and findings thereon.

Source: L. 75: Entire title R&RE, p. 1161, § 1, effective July 1. **L. 76:** (1)(b) and (1)(d) amended, p. 597, § 11, effective July 1. **L. 2015:** (2)(a) and (2)(b) amended and (2.5) added, (HB 15-1348), ch. 261, p. 984, § 1, effective August 5.

Editor's note: This section is similar to former § 31-25-104 as it existed prior to 1975.

ANNOTATION

Standard on review. The reviewing court's task is to exercise an independent determination to insure that a city council's decisions are based on evidence presented at council hearings, that any ordinance is supported by fact findings, and that the council applied the legislative standards set out in this part. Tracy v. City of Boulder, 635 P.2d 907 (Colo. App. 1981).

Applied in James v. Bd. of Comm'rs, 42 Colo. App. 27, 595 P.2d 262 (1978).

31-25-105. Powers of an authority.

(1) Every authority has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part 1, including, but not limited to, the following powers in addition to others granted in this part 1:

(a) To sue and to be sued; to adopt and have a seal and to alter the same at pleasure; to have perpetual succession; to make, and from time to time amend and repeal, bylaws, orders, rules, and regulations to effectuate the provisions of this part 1;

(b) To undertake urban renewal projects and to make and execute any and all contracts and other instruments which it may deem necessary or convenient to the exercise of its powers under this part 1, including, but not limited to, contracts for advances, loans, grants, and contributions from the federal government or any other source;

(c) To arrange for the furnishing or repair by any person or public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities for or in connection with a project of the authority; to dedicate property acquired or held by it for public works, improvements, facilities, utilities, and purposes; and to agree, in connection with any of its contracts, to any conditions that it deems reasonable and appropriate under this part 1, including, but not limited to, conditions attached to federal financial assistance, and to include in any contract made or let in connection with any project of the authority provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(d) To arrange with the municipality or other public body to plan, replan, zone, or rezone any part of the area of the municipality or of such other public body, as the case may be, in connection with any project proposed or being undertaken by the authority under this part 1;

(e) To enter, with the consent of the owner, upon any building or property in order to make surveys or appraisals and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire any property by purchase, lease,

option, gift, grant, bequest, devise, or otherwise to acquire any interest in property by condemnation, including a fee simple absolute title thereto, in the manner provided by the laws of this state for the exercise of the power of eminent domain by any other public body (and property already devoted to a public use may be acquired in a like manner except that no property belonging to the federal government or to a public body may be acquired without its consent); except that any acquisition of any interest in property by condemnation by an authority must be approved as part of an urban renewal plan or substantial modification thereof, as provided in section 31-25-107, by a majority vote of the governing body of the municipality in which such property is located, and the acquisition of property by condemnation by an authority shall also satisfy the requirements of section 31-25-105.5; to hold, improve, clear, or prepare for redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of its property; and to insure or provide for the insurance of any property or operations of the authority against any risks or hazards; except that no provision of any other law with respect to the planning or undertaking of projects or the acquisition, clearance, or disposition of property by public bodies shall restrict an authority exercising powers under this part 1 in the exercise of such functions with respect to a project of such authority unless the general assembly specifically so states;

(f) (I) To invest any of its funds not required for immediate disbursement in property or in securities in which public bodies may legally invest funds subject to their control pursuant to part 6 of article 75 of title 24, C.R.S., and to redeem such bonds as it has issued at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled;

(II) To deposit any funds not required for immediate disbursement in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the authority may appoint, by written resolution, one or more persons to act as custodians of the funds of the authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the authority requires.

(g) To borrow money and to apply for and accept advances, loans, grants, and contributions from the federal government or other source for any of the purposes of this part 1 and to give such security as may be required;

(h) To make such appropriations and expenditures of its funds and to set up, establish, and maintain such general, separate, or special funds and bank accounts or other accounts as it deems necessary to carry out the purposes of this part 1;

(i) To make or have made and to submit or resubmit to the governing body for appropriate action the authority's proposed plans and modifications thereof necessary to the carrying out of the purposes of this part 1, such plan shall include, but not be limited to:

(I) Plans to assist the municipality in the latter's preparation of a workable program for utilizing appropriate private and public resources to eliminate and prevent the development or spread of slum and blighted areas, to encourage needed urban rehabilitation, to provide for the redevelopment of slum and blighted areas, or to undertake such activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program, which program may include, without limitation, provision for: The prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation or conservation of slum and blighted areas or portions thereof by replanning, removing congestion, providing public improvements, and encouraging rehabilitation and repair of deteriorated or deteriorating structures; and the clearance and redevelopment of slum and blighted areas or portions thereof;

(II) Urban renewal plans;

(III) Preliminary plans outlining proposed urban renewal activities for neighborhoods of the municipality to embrace two or more urban renewal areas;

(IV) Plans for the relocation of those individuals, families, and business concerns situated in the urban renewal area which will be displaced by the urban renewal project, which relocation plans, without limitation, may include appropriate data setting forth a feasible method for the temporary relocation of such individuals and families and showing that there will be provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the individuals and families so displaced, decent, safe, and sanitary dwellings equal in number to the number of and available to such individuals and families and reasonably accessible to their places of employment;

(V) Plans for undertaking a program of voluntary repair and rehabilitation of buildings and improvements and for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the repair, rehabilitation, demolition, or removal of buildings and improvements;

(VI) Financing plans, maps, plats, appraisals, title searches, surveys, studies, and other preliminary plans and work necessary or pertinent to any proposed plans or modifications;

(j) To make reasonable relocation payments to or with respect to individuals, families, and business concerns situated in an urban renewal area that will be displaced as provided in subparagraph (IV) of paragraph (i) of this subsection (1) for moving expenses and actual direct losses of property including, for business concerns, goodwill and lost profits that are reasonably related to relocation of the business, resulting from their displacement for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government;

(k) To develop, test, and report methods and techniques and to carry out demonstrations and other activities for the prevention and the elimination of slum and blighted areas within the municipality;

(l) To rent or to provide by any other means suitable quarters for the use of the authority or to accept the use of such quarters as may be furnished by the municipality or any other public body, and to equip such quarters with such furniture, furnishings, equipment, records, and supplies as the authority may deem necessary to enable it to exercise its powers under this part 1; and

(m) Pursuant to section 31-25-107 (9)(a)(II), to authorize the distribution of tax increment revenue to finance costs needed for one or more eligible projects sited in a renewable energy reinvestment area.

Source: L. 75: Entire title R&RE, p. 1163, § 1, effective July 1. **L. 79:** (1)(f) amended, p. 1619, § 21, effective June 8. **L. 89:** (1)(f)(I) amended, p. 1115, § 27, effective July 1. **L. 90:** (1)(e) amended, p. 1480, § 1, effective April 5. **L. 99:** (1)(j) amended, p. 530, § 2, effective May 3. **L. 2004:** (1)(e) amended, p. 1746, § 4, effective June 4. **L. 2026:** (1)(l) amended and (1)(m) added, (HB 26-1268), ch. 160, p. 957, § 4, effective August 12.

Editor's note: This section is similar to former § 31-25-105 as it existed prior to 1975.

ANNOTATION

Law reviews. For comment discussing church condemnation, see 46 U. Colo. L. Rev. 43 (1974). For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

No constitutional right to relocation benefits. Persons displaced by redevelopment project have no constitutional right to relocation benefits or assistance. Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth., 183 Colo. 441, 517 P.2d 845 (1974).

Federal statutes not determinative of right to recovery. In a condemnation action under the statutes and constitution of Colorado, a landowner's right to compensation and the extent thereof must be determined by the applicable law of Colorado, so the right to recovery is not dependent upon nor limited by federal statutes. Denver Urban Renewal Auth. v. Steiner Am. Corp., 31 Colo. App. 125, 500 P.2d 983 (1972).

No clear indication in subsection (1)(e) of an urban renewal authority's powers to place the decision to condemn in the hands of a private party. The Urban Renewal Law mentions many conventional matters that urban renewal authorities could

effectuate only through contracts with private parties. No provision, however, suggests that urban renewal authorities may, through contract, delegate to private parties the prerogative of taking property by eminent domain. Subsection (1)(e) speaks of exercising the power of eminent domain "in the manner provided by the laws of this state", none of which authorizes the delegation of that power by contract to private entities. Grants of power to exercise the sovereign right of eminent domain, in derogation of the common private rights of individuals, are generally strictly construed. Cornerstone Group XXII v. Wheat Ridge Urban Renewal Auth., 151 P.3d 601 (Colo. App. 2006), rev'd on other grounds, 176 P.3d 737 (Colo. 2007).

Because district court lacked authority to order the specific performance of a contractual obligation to exercise the core governmental power of eminent domain and urban renewal authority could not be estopped from abandoning its condemnation petitions, judgment of the court of appeals is reversed. However, because authority's agreement to acquire specific properties by condemnation, if necessary, does not render the contract void under reserved powers doctrine, case is remanded and district court directed to consider respondent's remaining claims, including breach of contract. Wheat Ridge Urban Renewal Auth. v. Cornerstone Group XXII, 176 P.3d 737 (Colo. 2007).

Purpose of subsection (1)(j) is to provide supplemental assistance for particular losses incurred by reason of dislocation, in an effort to reduce the burden falling on the property owner whose property is condemned. Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth., 183 Colo. 441, 517 P.2d 845 (1974).

Subsection (1)(j) does not create additional elements compensable under eminent domain laws. Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth., 183 Colo. 441, 517 P.2d 845 (1974).

Small businessmen not denied equal protection. Subsection (1)(j) of this section and §§ 24-56-103, 24-56-104, and 24-56-105 do not create discriminatory and unjustified classifications which deny small businessmen equal protection of the law. Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth., 183 Colo. 441, 517 P.2d 845 (1974).

Omission of supplemental payments for loss of goodwill and profit in subsection (1)(j) does not render it unconstitutional. Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth., 183 Colo. 441, 517 P.2d 845 (1974).

Owner entitled to value of land and improvements. When land occupied for business purposes is taken, the owner is entitled to compensation only for the value of the land and improvements. Denver Urban Renewal Auth. v. Cook, 186 Colo. 182, 526 P.2d 652 (1974).

But owner is not entitled to value of any business conducted on land that is taken. Denver Urban Renewal Auth. v. Cook, 186 Colo. 182, 526 P.2d 652 (1974).

And evidence of business profits inadmissible. On the theory that profits derived from a business are more a function of the entrepreneurial skills of management than the value of the land, evidence of business profits is not admissible as a determinant of the fair market value of the condemned property. Denver Urban Renewal Auth. v. Cook, 186 Colo. 182, 526 P.2d 652 (1974).

The business profit rule, long followed in Colorado, requires the exclusion of business profits generated by an enterprise on the property. Denver Urban Renewal Auth. v. Berglund-Cherne Co., 193 Colo. 562, 568 P.2d 478 (1977).

Except to show use of property. Under the business profits rule, evidence of the character and volume of business conducted on condemned property is admissible only for the limited purpose of showing a use for which the property may be utilized. Denver Urban Renewal Auth. v. Cook, 186 Colo. 182, 526 P.2d 652 (1974); Denver Urban Renewal Auth. v. Berglund-Cherne Co., 193 Colo. 562, 568 P.2d 478 (1977).

And evidence of gross sales falls within purview of the business profits rule and, therefore, is inadmissible as a determinant of a reasonable rental value. Denver Urban Renewal Auth. v. Cook, 186 Colo. 182, 526 P.2d 652 (1974).

Because gross sales, like profits, are more inextricably tied to management and administration of a business than to the value of the property upon which the business is situated, and thus, the same reasons that cause the amount of profits to be an inappropriate measure of the value of the land are applicable to the use of gross sales figures, albeit to a lesser degree. Denver Urban Renewal Auth. v. Cook, 186 Colo. 182, 526 P.2d 652 (1974).

Fixtures are a part of the realty for which compensation must be paid to the owner by the condemning authority. Denver Urban Renewal Auth. v. Steiner Am. Corp., 31 Colo. App. 125, 500 P.2d 983 (1972).

The foundation for the business profits rule is that (1) the business itself is not being condemned and can be relocated, and (2) business profits are more a function of the entrepreneurial skills of management than of the value of the land. Denver Urban Renewal Auth. v. Berglund-Cherne Co., 193 Colo. 562, 568 P.2d 478 (1977).

A crucial distinction must be made between "profits derived from a business conducted on the premises" and "profits derived from the land itself". Denver Urban Renewal Auth. v. Berglund-Cherne Co., 193 Colo. 562, 568 P.2d 478 (1977).

Only the first is inadmissible under the business profits rule. Denver Urban Renewal Auth. v. Berglund-Cherne Co., 193 Colo. 562, 568 P.2d 478 (1977).

Evidence of farm and rental income is admissible as "profit derived from the land itself". Denver Urban Renewal Auth. v. Berglund-Cherne Co., 193 Colo. 562, 568 P.2d 478 (1977).

The fair economic rental value of commercial property is also evidence of "profit derived from the land itself" and is therefore admissible as a determinant of

value in conjunction with the income approach. Denver Urban Renewal Auth. v. Berglund-Cherne Co., 193 Colo. 562, 568 P.2d 478 (1977).

The capitalization of income approach may be used to determine the value of owner-occupied property. Denver Urban Renewal Auth. v. Berglund-Cherne Co., 193 Colo. 562, 568 P.2d 478 (1977).

No purpose is served by limiting testimony to one approach or to the most appropriate method of attaining an opinion as to value. Recognition should be given to all relevant factors which tend to provide a means for arriving at a fair evaluation, and therefore, the better rule is to permit the use of capitalization of income method even if other methods are available. Denver Urban Renewal Auth. v. Berglund-Cherne Co., 193 Colo. 562, 568 P.2d 478 (1977).

Payment of relocation benefits to persons displaced by urban renewal project does not constitute unconstitutional expenditure of public funds in the aid of private persons. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Applied in Interstate Trust Bldg. Co. v. Denver Urban Renewal Auth., 172 Colo. 427, 473 P.2d 978 (1970).

31-25-105.5. Acquisition of private property by eminent domain by authority for subsequent transfer to private party - restrictions - exceptions - right of civil action - damages - definitions.

(1) Except as provided in this subsection (1) or subsection (2) of this section, no private property acquired by eminent domain by an authority pursuant to section 31-25-105 (1)(e) after June 4, 2004, shall be subsequently transferred to a private party unless:

(a) The owner of the property consents in writing to acquisition of the property by eminent domain by the authority;

(b) The governing body of the authority determines that the property is no longer necessary for the purpose for which it was originally acquired, and the authority first offers to sell the property to the owner from whom it was acquired, if the owner can be located, at a price not more than that paid by the authority and the owner of the property declines to exercise such right of first refusal;

(c) The property acquired by the authority has been abandoned; or

(d) The owner of the property requests or pleads in an eminent domain action that the authority acquiring the property also acquire property that is not essential to the purpose of the acquisition on the basis that acquiring less property would leave the owner of the property holding an uneconomic remnant.

(2) (a) Where a proposed transfer of private property acquired by an authority by eminent domain does not satisfy one of the requirements specified in subsection (1) of this section, such property acquired by eminent domain by an authority after June 4, 2004, may be subsequently transferred to a private party only upon satisfaction of each of the following conditions:

(I) The governing body has made a determination that the property is located in a blighted area or the property itself is blighted, and the urban renewal project for which the property is being acquired shall be commenced no later than seven years from the date the blight determination is made. For purposes of this section, the determination of whether a particular area or property is blighted shall be based upon reasonably current information obtained at the time the blight determination is made.

(II) Not later than the commencement of the negotiation of an agreement for redevelopment or rehabilitation of property acquired or to be acquired by eminent domain, the authority provides notice and invites proposals for redevelopment or rehabilitation from all property owners, residents, and owners of business concerns located on the property acquired or to be acquired by eminent domain in the urban renewal area by mailing notice to their last-known address of record. The authority may also at the same time invite proposals for redevelopment or rehabilitation from other interested persons who may not be property owners, owners of business concerns, or residents within the urban renewal area, and may provide public notice thereof by publication in a newspaper having a general circulation within the municipality in which the authority has been established.

(III) In the case of a set of parcels to be acquired by the authority in connection with an urban renewal project, at least one of which is owned by an owner refusing or rejecting an agreement for the acquisition of the entire set of parcels, the authority makes a determination that the redevelopment or rehabilitation of the remaining parcels is not viable under the urban renewal plan without the parcel at issue.

(b) Any owner of property located within the urban renewal area may challenge the determination of blight made by the governing body pursuant to subparagraph (I) of paragraph (a) of this subsection (2) by filing, not later than thirty days after the date the determination of blight is made, a civil action in district court for the county in which the property is located pursuant to C.R.C.P. 106 (a)(4) for judicial review of the exercise of discretion on the part of the governing body in making the determination of blight. Any such action shall be governed in accordance with the procedures and other requirements specified in the rule; except that the governing body shall have the burden of proving that, in making its determination of blight, it has neither exceeded its jurisdiction nor abused its discretion.

(c) Notwithstanding any other provision of law, any determination made by the governing body pursuant to paragraph (a) of this subsection (2) shall be deemed a legislative determination and shall not be deemed a quasi-judicial determination.

(d) Notwithstanding any other provision of this section, no transfer that satisfies the requirements of subsection (1) of this section shall be subject to the provisions of this subsection (2), subsection (3) or (4), or paragraph (a) of subsection (5) of this section.

(3) Any authority seeking to acquire property by eminent domain in accordance with the requirements of subsection (2) of this section shall reimburse the owner of the property for reasonable attorney fees incurred by the owner in connection with the acquisition where the owner is the prevailing party on a challenge brought under paragraph (b) of subsection (2) of this section.

(4) (a) Any authority that exercises the power of eminent domain to transfer acquired property to another private party as authorized in accordance with the requirements of this section shall adopt relocation assistance and land acquisition policies to benefit displaced persons that are consistent with those set forth in article 56 of title 24, C.R.S., to the extent applicable to the facts of each specific property, and, at the time of the relocation of the owner or the occupant, shall provide compensation or other forms of assistance to any displaced person in accordance with such policies. In addition, in the case of a business concern displaced by the acquisition of property by eminent domain, the authority shall make a business interruption payment to the business concern not to exceed the lesser of ten thousand dollars or one-fourth of the average annual taxable income shown on the three most recent federal income tax returns of the business concern.

(b) In any case where the acquisition of property by eminent domain by an authority displaces individuals, families, or business concerns, the authority shall make reasonable efforts to relocate such individuals, families, or business concerns within the urban renewal area, where such relocation is consistent with the uses provided in the urban renewal plan, or in areas within reasonable proximity of, or comparable to, the original location of such individuals, families, or business concerns.

(5) For purposes of this section, unless the context otherwise requires:

(a) "Blighted area" shall have the same meaning as set forth in section 31-25-103 (2); except that, for purposes of this section only, "blighted area" means an area that, in its present condition and use and, by reason of the presence of at least five of the factors specified in section 31-25-103 (2)(a) to (2)(l), substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare.

(b) "Private property" or "property" means, as applied to real property, only a fee ownership interest.

Source: L. 2004: Entire section added, p. 1742, § 1, effective June 4.

ANNOTATION

No clear indication in section of an urban renewal authority's powers to place the decision to condemn in the hands of a private party. The Urban Renewal Law mentions many conventional matters that urban renewal authorities could effectuate only though contracts with private parties. No provision, however, suggests that urban renewal authorities may, through contract, delegate to private parties the prerogative of taking property by eminent domain. Purpose of this section is to restrict eminent domain when used to acquire private property for transfer to another private party. Grants of power to exercise the sovereign right of eminent domain, in derogation of the common private rights of individuals, are generally strictly construed. Cornerstone Group XXII v. Wheat Ridge Urban Renewal Auth., 151 P.3d 601 (Colo. App. 2006), rev'd on other grounds, 176 P.3d 737 (Colo. 2007).

Because district court lacked authority to order the specific performance of a contractual obligation to exercise the core governmental power of eminent domain and urban renewal authority could not be estopped from abandoning its condemnation petitions, judgment of the court of appeals is reversed. However, because authority's agreement to acquire specific properties by condemnation, if necessary, does not render the contract void under reserved powers doctrine, case is remanded and district court directed to consider respondent's remaining claims, including breach of contract. Wheat Ridge Urban Renewal Auth. v. Cornerstone Group XXII, 176 P.3d 737 (Colo. 2007).

31-25-105.7. Condemnation actions by authorities - effect of other provisions.

Notwithstanding any other provision of law, any condemnation action commenced by an authority on or after June 6, 2006, shall satisfy the requirements specified in section 38-1-101, C.R.S. To the extent there is any conflict between the provisions of this part 1 and the provisions of section 38-1-101, C.R.S., the provisions of section 38-1-101, C.R.S., shall control.

Source: L. 2006: Entire section added, p. 1750, § 2, effective June 6.

31-25-106. Disposal of property in urban renewal area.

(1) An authority may sell, lease, or otherwise transfer real property or any interest therein acquired by it as a part of an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use in accordance with the urban renewal plan, subject to such covenants, conditions, and restrictions, including covenants running with the land (and

including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof), as it deems to be in the public interest or necessary to carry out the purposes of this part 1. The purchasers, lessees, transferees, and their successors and assigns are obligated to devote such real property only to the land uses, designs, building requirements, timing, or procedure specified in the urban renewal plan and may be obligated to comply with such other requirements as the authority may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, or otherwise transferred at not less than its fair value (as determined by the authority) for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, an authority shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. Real property acquired by an authority which, in accordance with the provisions of the urban renewal plan, is to be transferred shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban renewal plan. Any contract for such transfer and the urban renewal plan (or such part of such contract or plan as the authority may determine) may be recorded in the land records of the county in such manner as to afford actual or constructive notice thereof.

(2) An authority may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as provided in this subsection (2). An authority, by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the municipality, prior to the execution of any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, may invite proposals from and make available all pertinent information to any person interested in undertaking to redevelop or rehabilitate an urban renewal area or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that such further information as is available may be obtained at the office designated in the notice. The authority shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out and may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by the authority in the urban renewal area. The authority may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this part 1; except that a notification of intention to accept such proposal shall be filed with the governing body not less than fifteen days prior to any such acceptance. Thereafter, the authority may execute such contract in accordance with the provisions of subsection (1) of this section and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such contract.

(3) An authority may temporarily operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment without regard to the provisions of subsection (1) of this section for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan.

(4) Anything in subsection (1) of this section to the contrary notwithstanding, project real property may be set aside, dedicated, and devoted by the authority to public uses which are in accordance with the urban renewal plan or set aside, dedicated, and transferred by the authority to the municipality or to any other appropriate public body for public uses which are in accordance with such urban renewal plan, with or without compensation for such property and with or without regard to the fair value thereof as determined in subsection (1) of this section, upon or subject to such terms, conditions, covenants, restrictions, or limitations as the authority deems to be in the public interest and as are not inconsistent with the purposes and objectives and the other applicable provisions of this part 1.

Source: L. 75: Entire title R&RE, p. 1165, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-106 as it existed prior to 1975.

ANNOTATION

Trial court correctly held that plaintiff lacked standing to pursue claims alleging a violation of state Urban Renewal Law. A plaintiff has standing if he or she (1) incurred an injury in fact (2) to a legally protected interest, as contemplated by statutory or constitutional provisions. To satisfy the injury-in-fact prong of the controlling test for standing, the injury must be direct and palpable. A claimed injury that, as here, is presently speculative and that cannot be determined until a remote time in the future is not sufficiently direct and palpable to support a finding of injury in fact. To determine whether plaintiff has a legal interest that entitles her to judicial redress, court must consider whether Urban Renewal Law reflects a legislative purpose to confer such an interest. Court finds that general assembly did not intend to create a right in taxpayers to enforce the statute. Implying such a right in taxpayers is also inconsistent with the statutory scheme. Olson v. City of Golden, 53 P.3d 747 (Colo. App. 2002).

Urban renewal authority lacks statutory authority to condemn subject parcel of real property that is no longer subject to blight determination. Neither lake parcel nor Arvada marketplace parcel is subject to municipality's 1981 blight finding. Once the purpose of eliminating or preventing the spread of blight has been achieved, the urban renewal authority may

no longer rely on a municipality's initial blight determination to condemn property because it can no longer exercise its condemnation powers in furtherance of a valid public purpose. Thus, the statutory basis for the urban renewal authority's power to condemn, the elimination of blight, is no longer present. Accordingly, where blight has been eliminated from a parcel that lies within an urban renewal area, an urban renewal authority no longer has any statutory basis to exercise its condemnation power over or for the benefit of that parcel. Arvada Urban Renewal Auth. v. Columbine Prof'l Plaza Ass'n, 85 P.3d 1066 (Colo. 2004).

Applied in Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980); Thornton Development Auth. v. Upah, 640 F. Supp. 1071 (D. Colo. 1986).

31-25-107. Approval of urban renewal plans by local governing body - renewable energy reinvestment areas - definitions.

(1) (a) An authority shall not actually undertake an urban renewal project for an urban renewal area unless based on evidence presented at a public hearing the governing body, by resolution, has determined such area to be a slum, blighted area, or a combination thereof and designated such area as appropriate for an urban renewal project.

(b) Notwithstanding this part 1, and in addition to any other notice required by law, within thirty days of commissioning a study to determine whether an area is a slum, blighted area, or a combination thereof in accordance with the requirements of subsection (1)(a) of this section, the authority shall provide notice to any owner of private property located in the area that is the subject of the study by mailing notice to the owner by regular mail at the last-known address of record. The notice shall state that the authority is commencing a study necessary for making a determination as to whether the area in which the owner owns property is a slum or a blighted area. Within seven days of making such determination, the authority or the municipality, as applicable, shall also provide notice of the determination to any owner of private property located in the area that is the subject of the study by mailing notice to the owner by regular mail at the last-known address of record. For purposes of this subsection (1)(b), "private property" means, as applied to real property, only a fee ownership interest.

(c) (I) Except for urban renewal plans subject to section 31-25-103 (2)(l), the boundaries of an area that the governing body determines to be a blighted area shall be drawn as narrowly as the governing body determines feasible to accomplish the planning and development objectives of the proposed urban renewal area. The governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. An authority shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal plan in accordance with subsection (4) of this section. In making the determination as to whether a particular area is blighted pursuant to the provisions of this part 1, any particular

condition found to be present may satisfy as many of the factors referenced in section 31-25-103 (2) as are applicable to such condition.

(II) Notwithstanding any other provision of this part 1, no area that has been designated as an urban renewal area shall contain any agricultural land unless:

(A) The agricultural land is a brownfield site;

(B) Not less than one-half of the urban renewal area as a whole consists of parcels of land containing urban-level development that, at the time of the designation of such area, are determined to constitute a slum or blighted area, or a combination thereof, in accordance with the requirements of paragraph (a) of subsection (1) of this section and not less than two-thirds of the perimeter of the urban renewal area as a whole is contiguous with urban-level development as determined at the time of the designation of such area;

(C) The agricultural land is an enclave within the territorial boundaries of a municipality and the entire perimeter of the enclave has been contiguous with urban-level development for a period of not less than three years as determined at the time of the designation of the area;

(D) Each public body that levies an ad valorem property tax on the agricultural land agrees in writing to the inclusion of the agricultural land within the urban renewal area; or

(E) The agricultural land was included in an approved urban renewal plan prior to June 1, 2010.

(III) Notwithstanding any other provision of this part 1, for a period commencing on June 1, 2010, and concluding ten years from June 1, 2010, and in addition to the provisions of subparagraph (II) of this paragraph (c), no area that has been designated as an urban renewal area shall contain any agricultural land unless:

(A) The agricultural land is contiguous with an urban renewal area in existence as of June 1, 2010;

(B) The person who is the fee simple owner of the agricultural land as of June 1, 2010, is also the fee simple owner of land within the urban renewal area as of June 1, 2010, that is contiguous with the agricultural land; and

(C) Both the agricultural land and the land within the urban renewal area that is described in sub-subparagraph (B) of this subparagraph (III) will be developed solely for the purpose of creating primary manufacturing jobs, and any ancillary jobs necessary to support such manufacturing operations, for the duration of the period during which property tax revenues in excess of a base amount are paid into a special fund pursuant to subparagraph (II) of paragraph (a) of subsection (9) of this section for the purpose of financing an urban renewal project. For purposes of this subparagraph (III), "primary manufacturing jobs" means manufacturing jobs that

produce products that are in excess of those that will be consumed within the boundaries of the state and that are exported to other states and foreign countries in exchange for value.

(IV) An urban renewal plan or a substantial modification to an existing urban renewal plan approved pursuant to this section must include:

(A) A map depicting the boundaries of any renewable energy reinvestment area included in the urban renewal plan or substantial modification; and

(B) A description of the eligible projects and eligible project costs to be financed or reimbursed with tax increment revenue within each renewable energy reinvestment area included in the urban renewal plan or substantial modification.

(d) In the case of an urban renewal plan approved or substantially modified on or after June 1, 2010, the plan shall include a legal description of the urban renewal area, including the legal description of any agricultural land proposed for inclusion within the urban renewal area pursuant to the conditions specified in subparagraph (II) or (III) of paragraph (c) of this subsection (1).

(2) Prior to its approval of an urban renewal plan, the governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within said thirty days, without such recommendations, the governing body may proceed with the hearing on the proposed urban renewal plan prescribed by subsection (3) of this section.

(3) (a) The governing body shall hold a public hearing on an urban renewal plan or substantial modification of an approved urban renewal plan no less than thirty days after public notice thereof by publication in a newspaper having a general circulation in the municipality. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

(b) Where an authority intends to acquire private property by eminent domain within the urban renewal area to be subsequently transferred to a private party in accordance with the requirements of section 31-25-105.5 (2), the governing body, prior to the commencement of the acquisition of such property, shall first hold a public hearing on the use of eminent domain as a means to acquire such property after written notice of the time, date, place, and purpose of the hearing has been provided to each owner of property within the meaning of section 31-25-105.5 that is within the urban renewal area at least thirty days prior to the date of the hearing. In order to authorize the use of eminent domain as a means to acquire property, a governing body shall

base its decision on such authorization on a finding of blighted or slum conditions without regard to the economic performance of the property to be acquired.

(3.5) (a) At least thirty days prior to the hearing on an urban renewal plan or a substantial modification to such plan, regardless of when the urban renewal plan was first approved, the governing body or the authority shall submit such plan or modification to the board of county commissioners, and, if property taxes collected as a result of the county levy will be utilized, the governing body or the authority shall also submit an urban renewal impact report, which shall include, at a minimum, the following information concerning the impact of such plan:

(I) The estimated duration of time to complete the urban renewal project;

(II) The estimated annual property tax increment to be generated by the urban renewal project and the portion of such property tax increment to be allocated during this period to fund the urban renewal project;

(III) An estimate of the impact of the urban renewal project on county revenues and on the cost and extent of additional county infrastructure and services required to serve development within the proposed urban renewal area, and the benefit of improvements within the urban renewal area to existing county infrastructure;

(IV) A statement setting forth the method under which the authority or the municipality will finance, or that agreements are in place to finance, any additional county infrastructure and services required to serve development in the urban renewal area for the period in which all or any portion of the property taxes described in subparagraph (II) of paragraph (a) of subsection (9) of this section and levied by a county are paid to the authority; and

(V) Any other estimated impacts of the urban renewal project on county services or revenues.

(b) The inadvertent failure of a governing body or an authority to submit an urban renewal plan, substantial modification to the plan, or an urban renewal impact report, as applicable, to a board of county commissioners in accordance with the requirements of paragraph (a) of this subsection (3.5) shall neither create a cause of action in favor of any party nor invalidate any urban renewal plan or modification to the plan.

(c) Notwithstanding any other provision of this section, a city and county shall not be required to submit an urban renewal impact report satisfying the requirements of paragraph (a) of this subsection (3.5).

(3.7) Upon request of the governing body or the authority, each county that is entitled to receive a copy of the plan shall provide available county data and projections to assist the governing body or the authority in preparing the urban renewal impact report required pursuant to subsection (3.5) of this section.

(4) Following such hearing, the governing body may approve an urban renewal plan if it finds that:

(a) A feasible method exists for the relocation of individuals and families who will be displaced by the urban renewal project in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such individuals and families;

(b) A feasible method exists for the relocation of business concerns that will be displaced by the urban renewal project in the urban renewal area or in other areas that are not generally less desirable with respect to public utilities and public and commercial facilities;

(c) The governing body has taken reasonable efforts to provide written notice of the public hearing prescribed by subsection (3) of this section to all property owners, residents, and owners of business concerns in the proposed urban renewal area at their last-known address of record at least thirty days prior to such hearing. Such notice shall contain the same information as is required for the notice described in subsection (3) of this section.

(d) No more than one hundred twenty days have passed since the commencement of the first public hearing of the urban renewal plan pursuant to subsection (3) of this section;

(e) Except for urban renewal plans subject to section 31-25-103 (2)(l), if the urban renewal plan contains property that was included in a previously submitted urban renewal plan that the governing body failed to approve pursuant to this section, at least twenty-four months shall have passed since the commencement of the prior public hearing concerning such property pursuant to subsection (3) of this section unless substantial changes have occurred since the commencement of such hearing that result in such property constituting a blighted area pursuant to section 31-25-103;

(f) The urban renewal plan conforms to the general plan of the municipality as a whole;

(g) The urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and

(h) The authority or the municipality will adequately finance, or that agreements are in place to finance, any additional county infrastructure and services required to serve development within the urban renewal area for the period in which all or any portion of the property taxes described in subparagraph (II) of paragraph (a) of subsection (9) of this section and levied by a county are paid to the authority.

(4.5) In addition to the findings otherwise required to be made by the governing body pursuant to subsection (4) of this section, where an urban renewal plan seeks to acquire private property by eminent domain for subsequent transfer to a private party pursuant to section 31-25-105.5 (2), the governing body may approve the urban renewal plan where it finds, in connection with a hearing satisfying the requirements of subsection (3) of this section, that the urban

renewal plan has met the requirements of section 31-25-105.5 (2) and that the principal public purpose for adoption of the urban renewal plan is to facilitate redevelopment in order to eliminate or prevent the spread of physically blighted or slum areas.

(5) In case the urban renewal area consists of an area of open land which, under the urban renewal plan, is to be developed for residential uses, the governing body shall comply with the applicable provisions of this section and shall also determine that a shortage of housing of sound standards and design which is decent, safe, and sanitary exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas (including other portions of the urban renewal area); that the conditions of blight in the urban renewal area and the shortage of decent, safe, and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality.

(6) In case the urban renewal area consists of an area of open land which, under the urban renewal plan, is to be developed for nonresidential uses, the local governing body shall comply with the applicable provisions of this section and shall also determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and that the contemplated acquisition of the area may require the exercise of governmental action, as provided in this part 1, because of being in a blighted area.

(7) An urban renewal plan may be modified at any time; but, if modified after the lease or sale by the authority of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his successor in interest may be entitled to assert. Any proposed modification shall be submitted to the governing body for approval. If the modification will substantially change provisions of the urban renewal plan regarding land area, land use, authorization to collect incremental tax revenue, the extent of the use of tax increment financing, the scope or nature of the urban renewal project, the scope or method of financing, design, building requirements, timing, or procedure, as previously approved, or where such modification will substantially clarify a plan that, when approved, was lacking in specificity as to the urban renewal project or financing, then the modification is substantial and subject to all of the requirements of this section. For urban renewal plans in which a pledge of the revenues deposited into the special fund created pursuant to subsection (9) of this section was made by an indenture or other legally binding document that is separate from the plan itself prior to January 1, 2016, a pledge to secure the payment of refunding bonds is not a substantial modification and is not subject to the requirements of this subsection (7). Not less than thirty days prior to approving any modification of an urban renewal plan, the governing body or urban renewal authority shall provide a detailed written description of the proposed modification to each taxing entity that levies taxes on property located within the urban renewal area and a notice of the date and time of the meeting at which the governing body will consider

the modification. Any taxing entity that levies taxes on property located within the urban renewal area may file an action in the state district court exercising jurisdiction over the county in which the urban renewal area is located for an order determining, under a de novo standard of review, whether the modification is a substantial modification. Further, if requested by the taxing entity, the court shall enjoin any action by the authority pursuant to the modification until the court has determined whether the modification is a substantial modification and, if so, shall further enjoin any action by the authority until there has been compliance with subsection (9.5) of this section.

(7.3) An urban renewal plan or a substantial modification to an existing urban renewal plan may include one or more eligible projects located within a renewable energy reinvestment area regardless of whether the renewable energy reinvestment area is located within or is contiguous to the boundaries of the urban renewal area.

(7.5) No action may be brought to enjoin any undertaking or activity of the authority pursuant to an urban renewal plan, including the issuance of bonds, the incurrence of other financial obligations, or the pledge of revenue, unless the action is commenced within forty-five days after the date on which the authority provided notice of its intention regarding such undertaking or activity. The notice must describe the undertaking or activity proposed to be engaged in by the authority and specify that any action to enjoin the undertaking or activity must be brought within forty-five days from the date of the notice. The notice must be published one time in a newspaper of general circulation within the county. On or before the date of publication of the notice, the authority shall also mail a copy of the notice to each taxing entity that levies taxes on property within the urban renewal area.

(8) Upon the approval by the governing body of an urban renewal plan or a substantial modification thereof, the provisions of said plan with respect to the land area, land use, design, building requirements, timing, or procedure applicable to the property covered by said plan shall be controlling with respect thereto.

(9) (a) Notwithstanding any law to the contrary, any urban renewal plan, as originally approved or as later modified pursuant to this part 1, may contain a provision that the property taxes of specifically designated public bodies, if any, levied after the effective date of the approval of such urban renewal plan upon taxable property in an urban renewal area each year or that municipal sales taxes collected within said area, or both such taxes, by or for the benefit of the designated public body must be divided for a period not to exceed twenty-five years after the effective date of adoption of such a provision, as follows:

(I) That portion of the taxes which are produced by the levy at the rate fixed each year by or for each such public body upon the valuation for assessment of taxable property in the urban renewal area last certified prior to the effective date of approval of the urban renewal plan or, as to an area later added to the urban renewal area, the effective date of the modification of the plan, or that portion of municipal sales taxes collected within the boundaries of said urban renewal area in the twelve-month period ending on the last day of the month prior to the effective date of

approval of said plan, or both such portions, shall be paid into the funds of each such public body as are all other taxes collected by or for said public body.

(II) That portion of said property taxes or all or any portion of said sales taxes, or both, in excess of the amount of property taxes or sales taxes paid into the funds of each such public body in accordance with the requirements of subsection (9)(a)(I) of this section must be allocated to and, when collected, paid into a special fund of the authority to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, the authority for financing or refinancing, in whole or in part, an urban renewal project, or to make payments under an agreement executed pursuant to this section. Any excess municipal sales tax or property tax collections not allocated pursuant to this subsection (9)(a)(II) must be paid into the funds of the municipality or other taxing entity, as applicable. Unless and until the total valuation for assessment of the taxable property in an urban renewal area exceeds the base valuation for assessment of the taxable property in such urban renewal area, as provided in subsection (9)(a)(I) of this section, all of the taxes levied upon the taxable property in such urban renewal area must be paid into the funds of the respective public bodies. Unless and until the total municipal sales tax collections in an urban renewal area exceed the base year municipal sales tax collections in such urban renewal area, as provided in subsection (9)(a)(I) of this section, all such sales tax collections must be paid into the funds of the municipality. When such bonds, loans, advances, and indebtedness, if any, including interest thereon and any premiums due in connection therewith, have been paid, all taxes upon the taxable property or the total municipal sales tax collections, or both, in such urban renewal area must be paid into the funds of the respective public bodies, and all money remaining in the special fund established pursuant to this subsection (9)(a)(II) that has not previously been rebated and that originated as property tax increment generated based on the mill levy of a taxing body, other than the municipality, within the boundaries of the urban renewal area must be repaid to each taxing body based on the pro rata share of the prior year's property tax increment attributable to each taxing body's current mill levy in which property taxes were divided pursuant to this subsection (9). Any money remaining in the special fund not generated by property tax increment is excluded from any such repayment requirement. Notwithstanding any other provision of law, any additional revenues resulting because the voters have authorized the municipality, county, special district, or school district to retain and spend said revenues pursuant to section 20 (7)(d) of article X of the state constitution subsequent to the creation of the special fund pursuant to this subsection (9)(a)(II) or as a result of an increase in the property tax mill levy approved by the voters of the municipality, county, special district, or school district subsequent to the creation of the special fund, to the extent the total mill levy of the municipality, county, special district, or school district exceeds the respective mill levy in effect at the time of approval or substantial modification of the urban renewal plan, shall not be pledged by an authority for the payment of any bonds of, any loans or advances to, or any indebtedness incurred by the authority without the consent of the relevant municipality, county, special district, or school district. To the extent the authority has received

the notification specified in this subsection (9)(a)(II), such additional revenues shall then be promptly repaid by the authority to the municipality or other taxing entity. The authority shall be notified of the amount of additional revenues and the calculations used in computing the amount by the applicable municipality or other taxing entity prior to making repayment and, in any event, not later than February 1 in each fiscal year following the year in which a voter-approved revenue increase has taken effect. The authority and municipality or any other taxing entity may negotiate for the purpose of entering into an agreement on the issues of the amount of repayment, the mechanics of how repayment of the additional revenues will be accomplished, a method for resolving disputes regarding the amount of repayment, and whether the municipality or taxing entity will waive the repayment requirement, singularly or in combination, and may enter into an intergovernmental agreement regarding any of these issues.

(III) In calculating and making payments as described in subparagraph (II) of this paragraph (a), the county treasurer may offset the authority's pro rata portion of any property taxes that are paid to the authority under the terms of subparagraph (II) of this paragraph (a) and that are subsequently refunded to the taxpayer against any subsequent payments due to the authority for the urban renewal project. The authority shall make adequate provision for the return of overpayments in the event that there are not sufficient property taxes due to the authority to offset the authority's pro rata portion of the refunds. The authority may establish a reserve fund for this purpose or enter into an intergovernmental agreement with the municipal governing body in which the municipality assumes responsibility for the return of the overpayments. The provisions of this subparagraph (III) shall not apply to a city and county.

(b) The portion of taxes described in subparagraph (II) of paragraph (a) of this subsection (9) may be irrevocably pledged by the authority for the payment of the principal of, the interest on, and any premiums due in connection with such bonds, loans, advances, and indebtedness. This irrevocable pledge shall not extend to any taxes that are placed in a reserve fund to be returned to the county for refunds of overpayments by taxpayers; except that this limitation on the extension of the irrevocable pledge shall not apply to a city and county.

(c) As used in this subsection (9), the word "taxes" shall include, without limitation, all levies authorized to be made on an ad valorem basis upon real and personal property or municipal sales taxes; but nothing in this subsection (9) shall be construed to require any public body to levy taxes.

(d) In the case of urban renewal areas, including single- and multiple-family residences, school districts which include all or any part of such urban renewal area shall be permitted to participate in an advisory capacity with respect to the inclusion in an urban renewal plan of the provision provided for by this subsection (9).

(e) In the event there is a general reassessment of taxable property valuations in any county including all or part of the urban renewal area subject to division of valuation for assessment under paragraph (a) of this subsection (9) or a change in the sales tax percentage levied in any

municipality including all or part of the urban renewal area subject to division of sales taxes under paragraph (a) of this subsection (9), the portions of valuations for assessment or sales taxes under both subparagraphs (I) and (II) of said paragraph (a) shall be proportionately adjusted in accordance with such reassessment or change.

(f) Notwithstanding the twenty-five-year period of limitation set forth in paragraph (a) of this subsection (9), any urban renewal plan, as originally approved or as later modified pursuant to this part 1, may contain a provision that the municipal sales taxes collected in an urban renewal area each year or the municipal portion of taxes levied upon taxable property within such area, or both such taxes, may be allocated as described in this subsection (9) for a period in excess of twenty-five years after the effective date of the adoption of such provision if the existing bonds are in default or about to go into default; except that such taxes shall not be allocated after all bonds of the authority issued pursuant to such plan including loans, advances, and indebtedness, if any, and interest thereon, and any premiums due in connection therewith have been paid.

(g) Notwithstanding any other provision of this section, if one or more of the conditions specified in subparagraph (II), or all of the conditions specified in subparagraph (III), of paragraph (c) of subsection (1) of this section have been satisfied such that agricultural land is included within an urban renewal area, the county assessor shall value the agricultural land at its fair market value in making the calculation of the taxes to be paid to the public bodies pursuant to subparagraph (I) of paragraph (a) of this subsection (9) solely for the purpose of determining the tax increment available pursuant to subparagraph (II) of paragraph (a) of this subsection (9). Nothing in this section shall affect the actual classification, or require reclassification, of agricultural land for property tax purposes, and nothing in this section shall affect the taxes actually to be paid to the public bodies pursuant to subparagraph (I) of paragraph (a) of this subsection (9), which shall continue to be based on the agricultural classification of such land unless and until it has been reclassified in the normal course of the assessment process.

(h) The manner and methods by which the requirements of this subsection (9) are to be implemented by county assessors shall be contained in such manuals, appraisal procedures, and instructions, as applicable, that the property tax administrator is authorized to prepare and publish pursuant to section 39-2-109 (1)(e), C.R.S.

(i) Within the twelve-month period prior to the effective date of the approval or modification of the urban renewal plan requiring the allocation of moneys to the authority pursuant to paragraph (a) of this subsection (9), the municipality, county, special district, or school district is entitled to the reimbursement of any moneys that such municipality, county, special district, or school district pays to, contributes to, or invests in the authority for the project. The reimbursement is to be paid from the special fund of the authority established pursuant to paragraph (a) of this subsection (9).

(j) (I) A renewable energy reinvestment area included in an urban renewal plan pursuant to this section shall be deemed part of the urban renewal area for all purposes set forth in this part 1.

(II) An urban renewal authority may use tax increment revenue generated from any portion of the urban renewal area approved pursuant to this section to finance or reimburse costs incurred to carry out eligible projects within the urban renewal area, including within a renewable energy reinvestment area included in the urban renewal area.

(9.5) (a) Before any urban renewal plan containing any tax allocation provisions that allocates any taxes of any taxing entity other than the municipality may be approved by the municipal governing body pursuant to subsection (4) of this section, the authority shall notify the board of county commissioners of each county and the governing boards of each other taxing entity whose incremental property tax revenues would be allocated under such proposed plan. Representatives of the authority and the governing body of each taxing entity shall then meet and attempt to negotiate an agreement governing the sharing of incremental property tax revenue allocated to the special fund of the authority established in accordance with subparagraph (II) of paragraph (a) of subsection (9) of this section. The agreement must address, without limitation, estimated impacts of the urban renewal plan on county or district services associated solely with the urban renewal plan. The agreement may be entered into separately among the authority and each such taxing entity, or through a joint agreement among the authority and any taxing entity that has chosen to enter that agreement. Any such shared incremental tax revenues governed by any agreement are limited to all or any portion of the incremental revenue generated by the taxes levied upon taxable property by the taxing entity within the area covered by the urban renewal plan in addition to any incremental sales tax revenues generated within the area covered by the urban renewal plan by the imposition of the sales tax of the municipality and, at the option of any other taxing entity levying a sales tax in the area covered by the urban renewal plan, any incremental sales tax revenues of such other taxing entity that are included within the agreement.

(b) The agreement described in paragraph (a) of this subsection (9.5) may provide for a waiver of any provision of this part 1 that provides for notice to the taxing entity, requires any filing with or by the taxing entity, requires or permits consent from the taxing entity, or provides any enforcement right to the taxing entity.

(c) If, after a period of one hundred twenty days from the date of notice or such longer or shorter period as the authority and any taxing entity may agree, there is no agreement between the authority and any taxing entity as described in paragraph (a) of this subsection (9.5), the authority and any applicable taxing entity are subject to the provisions and limitations of paragraph (d) of this subsection (9.5).

(d) (I) In an absence of an agreement between the authority and any taxing entity as described in paragraph (a) of this subsection (9.5), the parties must submit to mediation on the issue of appropriate sharing of incremental property tax revenues and urban renewal project costs among the authority and any such taxing entities whose incremental property tax revenues will be allocated pursuant to an urban renewal plan and with whom an intergovernmental agreement with the authority has not been reached.

(II) The mediation required by subparagraph (I) of this paragraph (d) must be conducted by a mediator who has been jointly selected by the parties; except that, if the parties are unable to agree on the selection of a mediator, then the authority shall select one mediator, the other parties shall select a second mediator, and these two mediators shall then select a third mediator. In such circumstances, the mediation will be jointly conducted by the three mediators. Unless all parties otherwise agree, any mediator selected pursuant to this paragraph (d) must be an attorney licensed in the state for at least ten years and must be experienced in both land use and administrative law. Payment of the fees and costs for the mediation must be split equally between or among the parties.

(III) In making a determination of the appropriate sharing, the mediator must consider the nature of the project, the nature and relative size of the revenue and other benefits that are expected to accrue to the municipality and other taxing entities as a result of the project, any legal limitations on the use of revenues belonging to the authority or any taxing entity, and any capital or operating costs that are expected to result from the project. Within ninety days, the mediator must issue his or her findings of fact as to the appropriate sharing of costs and incremental property tax revenues, and shall promptly transmit such information to the parties. With respect to the use of incremental property tax revenues of each other taxing entity, following the issuance of findings by the mediator, the governing body of the municipality shall:

(A) Incorporate the mediator's findings on the use of incremental property tax revenues of any taxing body into the urban renewal plan and proceed to adopt the plan;

(B) Amend the urban renewal plan to delete authorization of the use of the incremental property tax revenues of any taxing body with whom an agreement has not been reached; or

(C) Direct the authority to either incorporate the mediator's findings into one or more intergovernmental agreements with other taxing entities or to enter into new negotiations with one or more taxing entities and to enter into one or more intergovernmental agreements with such taxing entities that incorporate such new or different provisions concerning the sharing of costs and incremental property tax revenues with which the parties are in agreement.

(e) Notwithstanding any other provision of law, no incremental property tax revenues may be allocated and paid into the special fund of the authority in accordance with subparagraph (II) of paragraph (a) of subsection (9) of this section unless the municipality or the authority has satisfied the requirements of this subsection (9.5).

(f) Notwithstanding any other provision of this section, a city and county is not required to reach an agreement with a county satisfying the requirements of this subsection (9.5).

(g) For purposes of this subsection (9.5), "taxing entity" means any county, special district, or other public body that levies an ad valorem property tax on property within the urban renewal area subject to a tax allocation provision.

(9.6) (a) Notwithstanding any other provision of law, the governing body of the municipality, as applicable, may provide in an urban renewal plan that the valuation attributable to the extraction of mineral resources located within the urban renewal area shall not be subject to the division that is otherwise required by subsection (9)(a) of this section. In such circumstances, the taxes levied on the valuation will be distributed to the public bodies as if the urban renewal plan was not in effect.

(b) For purposes of this subsection (9.6):

(I) "Mineral resources" has the same meaning as specified in section 36-1-100.3 (3).

(II) "Valuation attributable to the extraction of mineral resources" includes:

(A) The value of oil and gas leaseholds and land and subsurface oil and gas well equipment that is valued for assessment purposes as real property under sections 39-7-102 and 39-7-103; and

(B) Surface oil and gas well equipment and submersible pumps and sucker rods located on oil and gas leaseholds and land that is valued for assessment purposes as personal property under section 39-7-103.

(9.7) Notwithstanding any other provision of law:

(a) Nothing in subsection (9.5) of this section, as added by House Bill 15-1348, enacted in 2015, and as amended by Senate Bill 16-177, enacted in 2016, is intended to impair, jeopardize, or put at risk any existing bonds, investments, loans, contracts, or financial obligations of an urban renewal authority outstanding as of December 31, 2015, or the pledge of pledged revenues or assets to the payment thereof that occurred on or before December 31, 2015.

(b) The requirements of section 31-25-104 (2)(a), (2)(b), and (2.5), section 31-25-115 (1.5), the introductory portion of subsection (9)(a) of this section, subsections (9)(a)(II), (9)(i), and (9.5) of this section, as added by House Bill 15-1348, enacted in 2015, and as amended by Senate Bill 16-177, enacted in 2016, and the requirements of subsections (7) and (7.5) of this section as amended by Senate Bill 17-279, enacted in 2017, and the requirements of subsection (9)(a)(II) of this section as amended by Senate Bill 18-248, enacted in 2018, apply to municipalities, urban renewal authorities, and any urban renewal plans created on or after January 1, 2016, and to any substantial modification of any urban renewal plan where the modification is approved on or after January 1, 2016.

(10) The municipality in which an urban renewal authority has been established pursuant to the provisions of this part 1 shall timely notify the assessor of the county in which such authority has been established when:

(a) An urban renewal plan or a substantial modification of such plan has been approved that contains the provision referenced in paragraph (a) of subsection (9) of this section or a

substantial modification of the plan adds land to the plan, which plan contains the provision referenced in paragraph (a) of subsection (9) of this section;

(b) Any outstanding obligation incurred by such authority pursuant to the provisions of subsection (9) of this section has been paid off; and

(c) The purposes of such authority have otherwise been achieved.

(11) The governing body or the authority may enter into an agreement with any taxing entity within the boundaries of which property taxes collected as a result of the taxing entity's levy, or any portion of the levy, will be subject to allocation pursuant to subsection (9) of this section. The agreement may provide for the allocation of responsibility among the parties to the agreement for payment of the costs of any additional county infrastructure or services necessary to offset the impacts of an urban renewal project and for the sharing of revenues. Except with the consent of the governing body or the authority, any such shared revenues shall be limited to all or any portion of the taxes levied upon taxable property within the urban renewal area by the taxing entity. The agreement may provide for a waiver of any provision of this part 1 that provides for notice to the taxing entity, requires any filing with or by the taxing entity, requires or permits consent from the taxing entity, or provides any enforcement right to the taxing entity.

(12) (a) Except as provided in paragraph (e) of this subsection (12), the county may enforce the requirements of subparagraphs (III) and (IV) of paragraph (a) of subsection (3.5) and paragraph (h) of subsection (4) of this section by means of the arbitration process established by this subsection (12) where:

(I) Property located within such county is included within an urban renewal plan;

(II) The county has provided information requested pursuant to subsection (3.7) of this section; and

(III) The county has appeared at a public hearing held pursuant to paragraph (a) of subsection (3) of this section and presented evidence at such hearing that development within the urban renewal area will create a need for additional county infrastructure and services; except that the requirements of this subparagraph (III) shall not apply in the case of a county that did not receive an urban renewal plan, a substantial modification to the plan, or an urban renewal impact report, as applicable, pursuant to paragraph (a) of subsection (3.5) of this section.

(b) (I) A county objecting under the provisions of this section to an urban renewal plan approved under subsection (4) of this section that received on a timely basis an urban renewal plan, a substantial modification to the plan, or an urban renewal impact report, as applicable, pursuant to paragraph (a) of subsection (3.5) of this section shall file written notice of the objection with the authority as well as the governing body that has approved the plan within fifteen days of the date of the approval of the plan. A county objecting under the provisions of this section to an urban renewal plan approved under subsection (4) of this section that did not

receive on a timely basis an urban renewal plan, a substantial modification to the plan, or an urban renewal impact report, as applicable, pursuant to paragraph (a) of subsection (3.5) of this section shall file written notice of the objection with the authority as well as the governing body that has approved the plan within thirty days of the date of the approval of the plan or within five days of the date of the county's receipt of the plan, whichever date is later. The notice of objection shall include a statement of the grounds upon which the county asserts that the authority or the governing body has failed to comply with the requirements of subparagraphs (III) and (IV) of paragraph (a) of subsection (3.5) and paragraph (h) of subsection (4) of this section. The notice of objection shall also include the name of one attorney who has been licensed for a minimum of ten years in the state of Colorado, who is experienced in administrative and land use law, and who the board of county commissioners of the county believes to be qualified to serve as a member of the panel of arbitrators charged with resolving the county's objections in accordance with the requirements of this subsection (12).

(II) Within twenty days of receipt of the notice of objection, the governing body shall submit to the county the name of one additional person to serve as a member of the panel of arbitrators, which person shall also satisfy the requirements specified in subparagraph (I) of this paragraph (b). Within twenty days of such submission, the two members of the arbitration panel selected by the county and the governing body shall jointly select an additional person to serve as the third and final member of the panel of arbitrators, which person shall also satisfy the requirements specified in subparagraph (I) of this paragraph (b). The panel of three arbitrators selected pursuant to this paragraph (b) shall be charged with resolving the county's objections in accordance with the requirements of this subsection (12). Notwithstanding the provisions of this paragraph (b), the county, governing body, and authority may agree upon a single arbitrator to resolve the county's objections.

(III) If the county, governing body, and authority have not reached a written agreement resolving the county's objections within thirty days after the receipt by the governing body of the notice specified in subparagraph (I) of this paragraph (b), the objections specified in the notice shall be submitted to arbitration in accordance with the requirements of this subsection (12).

(c) The arbitration hearing, if any, shall commence within sixty days after the receipt by the governing body of the notice of objection. The parties to the arbitration shall be the county, governing body, and authority. At the arbitration hearing, the governing body or the authority, as applicable, shall have the burden of proving by a preponderance of the evidence that it submitted the urban renewal plan, a substantial modification to the plan, and an urban renewal impact report, as applicable, to the county pursuant to paragraph (a) of subsection (3.5) of this section and that it did not abuse its discretion in preparing the estimate or statement provided to the county pursuant to subparagraphs (III) and (IV) of paragraph (a) of subsection (3.5) of this section and that the governing body did not abuse its discretion in connection with the findings it has made under paragraph (h) of subsection (4) of this section. The decision of the arbitrators shall be based upon the objections contained in the notice filed pursuant to subparagraph (I) of

paragraph (b) of this subsection (12) and upon the record of the hearing held pursuant to subsection (3) of this section. In rendering a decision, the arbitrators shall take into consideration the goals and objectives of the urban renewal plan, information that has been submitted by the county as contained in the record of the hearing on the urban renewal plan and the impact report provided to the county pursuant to subsection (3.5) of this section, the reasonableness of the county's objections contained in the notice, the extent to which the urban renewal project will improve existing county infrastructure, the extent to which tax increment revenues, if any, to be generated by development within the urban renewal area and collected by the authority pursuant to paragraph (a) of subsection (9) of this section may reasonably be expected to defray the cost of the additional infrastructure and services requested by the county, and the debt service requirements of the authority. The arbitration hearing shall be concluded not later than seven days after its commencement, and the decision of the arbitrators shall be rendered not later than thirty days after the conclusion of the hearing. The order of the arbitrators shall be limited to either approving the urban renewal plan or, upon a finding of abuse of discretion, remanding the plan to the governing body for reconsideration of the county's objections. The order shall be final and binding on the parties and shall not be subject to judicial review except to enforce the order or to determine whether the order was procured by corruption, fraud, or other similar wrongdoing.

(d) Fifty percent of the necessary fees and necessary expenses of any arbitration conducted pursuant to this subsection (12), excluding all fees and expenses incurred by either party in the preparation or presentation of its case, shall be borne by the county, and fifty percent of such fees and expenses shall be borne by the governing body or the authority.

(e) Notwithstanding any other provision of this section, the provisions of this subsection (12) shall not apply to any urban renewal plan in which less than ten percent of the area identified in such plan:

(I) Has been classified as agricultural land for purposes of the levying and collection of property tax pursuant to section 39-1-103, C.R.S., at any time during the three-year period prior to the date of adoption of the plan; and

(II) Is currently identified for agricultural uses in a master plan adopted by the municipality pursuant to section 31-23-206 and has been so identified for more than one year prior to the date of adoption of the plan.

(f) Notwithstanding any other provision of law, the arbitration process established in this subsection (12) shall be the exclusive remedy available to a county for contesting the sufficiency of compliance by a governing body or an authority with the requirements of this section.

(13) Not later than thirty days after the municipality has provided the county assessor the notice required by paragraph (a) of subsection (10) of this section, the county assessor may provide written notice to the municipality if the assessor believes that agricultural land has been

improperly included in the urban renewal area in violation of subparagraph (II) or (III) of paragraph (c) of subsection (1) of this section. If the notice is not delivered within the thirty-day period, the inclusion of the land in the urban renewal area as described in the urban renewal plan shall be incontestable in any suit or proceeding notwithstanding the presence of any cause. If the assessor provides notice to the municipality within the thirty-day period, the municipality may file an action in state district court exercising jurisdiction over the county in which the land is located for an order determining whether the inclusion of the land in the urban renewal area is consistent with one of the conditions specified in subparagraph (II) or (III) of paragraph (c) of subsection (1) of this section and shall have an additional thirty days from the date it receives the notice in which to file such action. If the municipality fails to file such an action within the additional thirty-day period, the agricultural land shall not become part of the urban renewal area.

Source: L. 75: Entire title R&RE, p. 1167, § 1, effective July 1; (9) added, p. 1276, § 1, effective July 16. **L. 81:** (9)(a), (9)(c), and (9)(e) amended, p. 1516, § 1, effective July 1. **L. 93:** (9)(f) added, p. 435, § 1, effective April 19; (3.5) added, p. 1255, § 5, effective July 1. **L. 99:** (1), (3), and (4) amended and (10) added, p. 530, § 3, effective May 3. **L. 2004:** (3) amended and (4.5) added, p. 1746, § 5, effective June 4. **L. 2005:** (3.5) and (9)(a)(II) amended and (3.7), (4)(h), (11), and (12) added, pp. 1259, 1263, §§ 1, 2, effective June 3. **L. 2007:** (1) amended, p. 1004, § 1, effective September 1. **L. 2008:** (1)(b) amended, p. 1912, § 121, effective August 5; (9)(a)(III) added and (9)(b) amended, p. 1245, §§ 1, 2, effective August 5. **L. 2010:** (1)(c), IP(3.5)(a), (9)(a)(II), (10)(a), and (11) amended and (1)(d), (3.5)(c), (9)(g), (9)(h), and (13) added, (HB 10-1107), ch. 89, pp. 299, 302, 303, §§ 3, 4, 5, 6, effective June 1; (11) amended, (HB 10-1422), ch. 419, p. 2127, § 193, effective August 11. **L. 2013:** (9)(a)(I) amended, (HB 13-1295), ch. 314, p. 1656, § 12, effective July 1, 2014. **L. 2015:** IP(9)(a) and (9)(a)(II) amended and (9)(i) and (9.5) added, (HB 15-1348), ch. 261, p. 986, § 2, effective August 5. **L. 2016:** (9.5) amended and (9.7) added, (SB 16-177), ch. 178, p. 611, § 1, effective May 18. **L. 2017:**(7) and (9.7) amended and (7.5) added, (SB 17-279), ch. 249, p. 1046, § 1, effective May 25; (9.6) added, (HB 17-1016), ch. 20, p. 65, § 1, effective August 9. **L. 2018:** (9)(a)(II) and (9.7)(b) amended, (SB 18-248), ch. 339, p. 2027, § 1, effective May 30. **L. 2019:** (9)(a)(I) amended, (HB-1240), ch. 264, p. 2503, § 11, effective June 1; (1)(b) amended, (HB 19-1084), ch. 47, p. 158, § 1, effective September 1. **L. 2026:** (1)(c)(IV), (7.3), and (9)(j) added, (HB 26-1268), ch. 160, p. 958, § 5, effective August 12.

Editor's note: This section is similar to former § 31-25-107 as it existed prior to 1975.

Cross references: For the legislative declaration in the 2013 act amending subsection (9)(a)(I), see section 1 of chapter 314, Session Laws of Colorado 2013.

ANNOTATION

Subsection (9) does not violate § 1 of art. XI, Colo. Const. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Subsection (3.5), which requires submission of urban renewal plan to the board of county commissioners, does not grant the county authority to assume an advisory role, nor does it grant authority to take any action, to participate in the planning process, or to implement the plan in any way other than that granted to the general public to receive notice and participate in a public hearing. Boulder County Bd. of Comm'rs v. City of Broomfield, 7 P.3d 1033 (Colo. App. 1999).

Project's commencement requires concurrence. The local governing body must concur with an urban renewal authority's proposed project before the project can be commenced. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Statutory tax-allocation financing scheme provided in section is not improper delegation of power to the authority to supervise or interfere with the levying and collection of taxes. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Structure of tax allocation. The tax allocation structure provided by subsection (9)(e) has been carefully drafted so that there is a direct relationship between the increased valuation of property within the project area, and thus, increased ad valorem tax revenues, and the project financed by the bond issue. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980); Kaiser v. Aurora Urban Renewal Auth., 2024 CO 4, 541 P.3d 1181.

The property tax administrator is not precluded from differentiating direct benefits from indirect benefits when proportionately adjusting the base and increment values of property located in an urban renewal area. Kaiser v. Aurora Urban Renewal Auth., 2024 CO 4, 541 P.3d 1181.

City of Denver had standing to challenge validity of subsection (9). Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

School district, board of education, and board of county commissioners had standing to challenge enactment of urban renewal plan, where implementation of tax increment financing (TIF) could have caused plaintiffs to lose property tax revenues which would otherwise have been available to them. County had authority to sue to protect its interest in property taxes, and school district was entitled to participate in advisory capacity with respect to implementation of TIF. E. Grand Co. Sch. Dist. 2 v. Winter Park, 739 P.2d 862 (Colo. App. 1987).

Applicability of Sherman Antitrust Act to urban renewal plans. Actions of city and related parties involved in the adoption of an urban renewal plan were immune from liability under the Sherman Antitrust Act since the actions were taken pursuant to clearly articulated and affirmatively expressed state policy and there was no evidence of bribery or other illegal activity with respect to the adoption or implementation of the plan. Oberndorf v. City & County of Denver, 696 F. Supp. 552 (D. Colo. 1988), aff'd, 900 F.2d 1434 (10th Cir. 1990).

Existence of incidental public purpose does not prevent a court from finding bad faith and invalidating determination that a particular acquisition is necessary, if the primary purpose for the condemnation is to advance private interests. Denver W. Metro. District v. Geudner, 786 P.2d 434 (Colo. App. 1989); Block 173 Assocs. v. Denver, 797 P.2d 771 (Colo. App. 1990), aff'd, 814 P.2d 824 (Colo. 1991).

A finding of compliance with this section does not foreclose claims of bad faith and conspiracy to effect an unconstitutional taking of property. Block 173 Assocs. v. Denver, 797 P.2d 771 (Colo. App. 1990), aff'd, 814 P.2d 824 (Colo. 1991).

Requirement that the city council make a finding that the area in question is blighted or a slum is a prerequisite to adoption of an urban renewal plan but fact that three blocks dedicated to Centerstone were not blighted did not prevent those blocks from being included in urban renewal plan. City & County of Denver v. Block 173, 814 P.2d 824 (Colo. 1991).

Town council's submission of proposed urban renewal plan to electorate did not excuse town council, as the governing body, from complying with statute's requirement that it hold public hearing on plan and to make specific findings before it approved plan. E. Grand Co. Sch. Dist. 2 v. Winter Park, 739 P.2d 862 (Colo. App. 1987).

Remand necessary so trial court can independently examine the public purpose of the condemnation based on the record of proceedings before urban renewal authority and, without either deferring to the authority's blight determination or considering bad faith, make findings from the existing record reflecting that examination. Sheridan Redev. Agency v. Knightsbridge Land Co., 166 P.3d 259 (Colo. App. 2007).

Res judicata does not apply to bar state action where state and federal claims were based on different claims for relief, and state claims were not truly "available to the parties" in the prior federal action because state claims could only have been asserted in federal court as pendent to federal claims for relief, and federal claim was dismissed on motion for summary judgment, requiring dismissal of pendent state claims. City & County of Denver v. Block 173, 814 P.2d 824 (Colo. 1991).

Collateral estoppel. Findings of federal district court insufficient to support summary judgment on state claims where identity of issues necessary to invoke collateral estoppel was absent between

issues actually and necessarily decided by the federal district court and those necessary to preclude summary judgment on landowner's "bad faith" claims in state court. City & County of Denver v. Block 173, 814 P.2d 824 (Colo. 1991).

Metropolitan districts and a corporate party have constitutional standing in an action brought against an urban renewal authority addressing the financing of projects using TIF. The metropolitan district and corporate party alleged facts sufficient to demonstrate an injury in fact. Moreover, metropolitan districts and private interests are integral participants in the urban renewal process. They are part of the class of entities expressly acknowledged in the urban renewal law (URL). For this reason, their alleged injuries were to a legally protected interest as contemplated by statutory or constitutional provisions. Aurora Urban Renewal Auth. v. Kaiser, 2022 COA 5, 507 P.3d 1033, aff'd in part, rev'd in part on other grounds, 2024 CO 4, 541 P.3d 1181.

Subject real property is no longer subject to municipality's 1981 blight determination, because the statutory procedures for removing blight were followed. The urban renewal authority disposed of the quarry lake property according to the terms of state's urban renewal law and certified the uses to which the lake was devoted comported with the urban renewal plan. After duly disposing of the lake property, certifying that the property was being used in accordance with the urban renewal plan, and having notice at all relevant times of the developer's efforts to incorporate the lake into its office park, the urban renewal authority cannot now claim that the lake has never been developed in accordance with the urban renewal plan. On the contrary, the quarry lake has been developed in accordance with the procedures laid out in the state's urban renewal law and, thus, can no longer be considered "blighted" under the municipality's 1981 blight determination. Arvada Urban Renewal Auth. v. Columbine Prof'l Plaza Ass'n, 85 P.3d 1066 (Colo. 2004).

Urban renewal authority lacks statutory authority to condemn subject parcel of real property that is no longer subject to blight determination. Neither lake parcel nor Arvada marketplace parcel is subject to municipality's 1981 blight finding. Once the purpose of eliminating or preventing the spread of blight has been achieved, the urban renewal authority may no longer rely on a municipality's initial blight determination to condemn property because it can no longer exercise its condemnation powers in furtherance of a valid public purpose. Thus, the statutory basis for the urban renewal authority's power to condemn, the elimination of blight, is no longer present. Accordingly, where blight has been eliminated from a parcel that lies within an urban renewal area, an urban renewal authority no longer has any statutory basis to exercise its condemnation power over or for the benefit of that parcel. Arvada Urban Renewal Auth. v. Columbine Prof'l Plaza Ass'n, 85 P.3d 1066 (Colo. 2004).

Section does not require urban renewal authority to afford landowners any opportunity to redevelop their own land beyond participating in the developer selection process. Here, there is no basis for disturbing the trial court's extensive findings that respondents participated in a fundamentally fair developer selection process. Sheridan Redev. Agency v. Knightsbridge Land Co., 166 P.3d 259 (Colo. App. 2007).

Because TIF is a formula created by subsection (9)(a) and adopted by a city council in a renewal plan, court's review of the statute and renewal plan involves legal questions subject to de novo review. Northglenn Urban Renewal Auth. v. Reyes, 2013 COA 24, 300 P.3d 984.

Trial court erred in determining assessor had discretion to calculate revenue from TIF by removing property for which TIF was suspended from the total assessed value but including the suspended property in the base value. Assessor's calculation frustrates the legislative intent of the statute because it fails to give effect to the statutory requirement in subsection (9)(a)(II) that the portion of property tax in excess of the base amount be allocated to the authority. A calculation that creates an imbalance in an authority's TIF by including property in the base value while removing the same property from the new assessed value impedes the goals of addressing and financing renewal of blighted areas. Northglenn Urban Renewal Auth. v. Reyes, 2013 COA 24, 300 P.3d 984.

Trial court correctly concluded that the twenty-five year period specified in subsection (9)(a) did not increase the TIF provision in the renewal plan for those properties added after the effective date of the plan. Assessor and board of county commissioners correctly argue that the plain language of the statute and the renewal plan requires that the TIF period for all properties terminate in 2017, a date twenty-five years from the effective date of the original TIF provision, or 1992. Because the TIF provision was adopted in 1992 and no new TIF provision was adopted in 2004 or 2008 when new property was added to the urban renewal area, the twenty-five year period for the added property began in 1992. Northglenn Urban Renewal Auth. v. Reyes, 2013 COA 24, 300 P.3d 984.

Trial court correctly concluded that the failure to exhaust administrative remedies was not fatal. It would be unjust to require plaintiffs to litigate a controversy on the basis of a factual record compiled at a hearing conducted years before the damage constituting the alleged statutory violation occurred. Further, the issue of whether the TIF methodology in the Assessors' Reference Library (ARL) is consistent with the URL presents a question of statutory interpretation. Questions of statutory interpretation are questions of law. Whether the ARL is consistent with the URL is not a matter of agency discretion. Aurora Urban Renewal Auth. v. Kaiser, 2022 COA 5, 507 P.3d 1033, aff'd in part, rev'd in part on other grounds, 2024 CO 4, 541 P.3d 1181.

Arbitration under subsection (12) is not county's exclusive remedy for all

challenges to an urban renewal plan. The arbitration process is a county's exclusive remedy only with respect to challenges related to subsections (3.5)(a)(III), (IV), and (4)(b). Because the county assessor's interpretation of subsection (9)(a) is unrelated to compliance with subsections (3.5)(a)(III), (IV), and (4)(b), county's failure to arbitrate TIF issue does not bar assessor's defense to claims city asserted against him. City of Aurora v. Scott, 2017 COA 24, 410 P.3d 720.

Assessor's defense to city's claims is not barred by issue preclusion, collateral estoppel, or equitable estoppel. First, the assessor's claim is not precluded by issue preclusion (collateral estoppel) because the meaning of the statute and the question of whether the city had the power to delay the start of the TIF clock was not decided during public hearings. Nor is the assessor's defense barred by claim preclusion (res judicata) because he was not party to or in privity with a party to the public hearings in which the plans were approved. Finally the assessor's defense is not barred by equitable estoppel because the city could not have reasonably relied on the assessor's or the county's inaction in a public hearing where the law grants them no role. Neither the assessor nor the county played any role in the public approval process. City of Aurora v. Scott, 2017 COA 24, 410 P.3d 720.

A municipality's power to control the timing of an urban renewal plan under subsection (8) does not encompass the power of the municipality to write its own TIF timeline. The Urban Renewal Law (URL) does not permit a municipality to alter or evade the twenty-five year time limitation on TIF provisions by denominating parts of an urban renewal plan "effective" on a date years after the plan was actually approved. City of Aurora v. Scott, 2017 COA 24, 410 P.3d 720.

The twenty-five year period begins when the TIF provision is adopted. A TIF provision is adopted on the date the plan or modification containing such a provision was approved. By tying the TIF period to the TIF provisions rather than the plan, the legislature has allowed for TIF provisions to run from the date a provision was approved, even if it was added to a plan later. Where there is no subsequent modification of the plan or a modification does not include a new TIF provision, the TIF provision is "adopted" when the original plan was approved. City of Aurora v. Scott, 2017 COA 24, 410 P.3d 720.

Subsection (9)(a)(I) sets the date for the base valuation and subsection (9)(a)(II) requires taxes in excess of the base valuation to be allocated to the urban renewal fund. When read together these provisions require that TIF allocations begin on the effective date of approval of the urban renewal plan or modification containing the TIF provision. The common understanding of the phrase "effective date of adoption of such a provision" in subsection (9)(a) is the date on which a provision becomes enforceable or operational through a municipality's act of formally sanctioning or agreeing to the provision. To permit a city to define the "effective date of adoption of a [TIF] provision" would effectively allow the city

to circumvent the statutory time limit. Allowing a city to define the "effective date of adoption" as any convenient date, regardless of when the provision was actually approved, would divorce the TIF timeline from the date of adoption and create a TIF limit of twenty-five years from any date chosen by the municipality. The statutory language does not support such a result. City of Aurora v. Scott, 2017 COA 24, 410 P.3d 720.

Adopting an urban renewal plan is not a legislative act. Even if approving an urban renewal plan could be characterized as legislative, approving these plans would be beyond the city's powers because the plans conflict with the URL's TIF timeline. The public approval process includes notice and an opportunity to be heard for interested individuals, involves the application of existing standards to factors developed at a hearing, and affects specific individuals (as opposed to being generally applicable public policy). These are all factors that suggest a quasi-judicial decision. Moreover, even if approving an urban renewal plan could be characterized as legislative, approving these plans would be beyond the city's powers because the plan conflicts with the URL's TIF timeline. If a local ordinance conflicts with a state law in a matter of mixed state and local concern, the ordinance is superseded by state statute. The city plans' TIF provisions conflict with URL time limits. Therefore, even if the city's acts were legislative, they would nevertheless be invalid. City of Aurora v. Scott, 2017 COA 24, 410 P.3d 720.

Applied in Thornton Dev. Auth. v. Upah, 640 F. Supp. 1071 (D. Colo. 1986).

31-25-108. Disaster areas.

Notwithstanding any other provisions of this part 1, when the governing body certifies that an area within the municipality is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor has certified the need for disaster assistance under Public Law 875, Eighty-first Congress, or other federal law, such area shall be deemed a blighted area, and the authority situated in such municipality may prepare and submit to such governing body a proposed urban renewal plan and proposed urban renewal project for such area or for any portion thereof, and such governing body may, by resolution, approve such proposed urban renewal plan and urban renewal project with or without modifications without regard to the provisions of this part 1 requiring a general or master plan for the physical development of the municipality as a whole, review by the planning commission, or a public hearing.

Source: L. 75: Entire title R&RE, p. 1168, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-108 as it existed prior to 1975.

31-25-109. Issuance of bonds by an authority.

(1) An authority has power to issue bonds of the authority from time to time in its discretion to finance its activities or operations under this part 1, including but not limited to the repayment with interest of any advances or loans of funds made to the authority by the federal government or other source for any surveys or plans made or to be made by the authority in exercising its powers under this part 1 and also has power to issue refunding or other bonds of the authority from time to time in its discretion for the payment, retirement, renewal, or extension of any bonds previously issued by it under this section and to provide for the replacement of lost, destroyed, or mutilated bonds previously issued under this section.

(2) (a) Bonds which are issued under this section may be general obligation bonds of the authority to the payment of which, as to principal and interest and premiums (if any), the full faith, credit, and assets (acquired and to be acquired) of the authority are irrevocably pledged.

(b) Such bonds may be special obligations of the authority which, as to principal and interest and premiums (if any), are payable solely from and secured only by a pledge of any income, proceeds, revenues, or funds of the authority derived or to be derived by it from or held or to be held by it in connection with its undertaking of any project of the authority, including, without limitation, funds to be paid to an authority pursuant to section 31-25-107 (9) and including any grants or contributions of funds made or to be made by it with respect to any such project and any funds derived or to be derived by it from or held or to be held by it in connection with its sale, lease, rental, transfer, retention, management, rehabilitation, clearance, development, redevelopment, preparation for development or redevelopment, or its operation or other utilization or disposition of any real or personal property acquired or to be acquired by it or held or to be held by it for any of the purposes of this part 1 and including any loans, grants, or contributions of funds made or to be made to it by the federal government in aid of any project of the authority or in aid of any of its other activities or operations.

(c) Such bonds may be special obligations of the authority which, as to principal and interest and premiums (if any), are payable solely from and secured only by a pledge of any loans, grants, or contributions of funds made or to be made to it by the federal government or other source in aid of any project of the authority or in aid of any of its other activities or operations.

(d) Such bonds may be contingent special obligations of the authority which, as to principal and interest and premiums (if any), are payable solely from any funds available or becoming available to the authority for its undertaking of the project involved in the particular activities or operations with respect to which such contingent special obligations are issued but so payable only in the event such funds are or become available as provided in this subsection (2).

(3) Notwithstanding any other provisions of this section, any bonds which are issued under this section, other than the contingent special obligations covered by paragraph (d) of subsection (2) of this section, may be additionally secured as to the payment of the principal and interest and premiums (if any) by a mortgage of any urban renewal project, or any part thereof, title to which is then or thereafter in the authority or of any other real or personal property or interests therein then owned or thereafter acquired by the authority.

(4) Notwithstanding any other provisions of this section, general obligation bonds which are issued under this section may be additionally secured as to payment of the principal and interest and premiums (if any) as provided in either paragraph (b) or (c) of subsection (2) of this section, with or without being also additionally secured as to payment of the principal and interest and premiums (if any) by a mortgage as provided in subsection (3) of this section or a trust agreement as provided in subsection (5) of this section.

(5) Notwithstanding any other provision of this section, any bonds which are issued under this section may be additionally secured as to the payment of the principal and interest and premiums (if any) by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state of Colorado.

(6) Bonds which are issued under this section shall not constitute an indebtedness of the state of Colorado or of any county, municipality, or public body of said state other than the urban renewal authority issuing such bonds and shall not be subject to the provisions of any other law or of the charter of any municipality relating to the authorization, issuance, or sale of bonds.

(7) Bonds which are issued under this section are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(8) Bonds which are issued under this section shall be authorized by a resolution of the authority and may be issued in one or more series and shall bear such date, be payable upon demand or mature at such time, bear interest at such rate, be in such denomination, be in such form, either coupon or registered or otherwise, carry such conversion or registration privileges, have such rank or priority, be executed (in the name of the authority) in such manner, be payable in such medium of payment, be payable at such place, be subject to such callability provisions or terms of redemption (with or without premiums), be secured in such manner, be of such description, contain or be subject to such covenants, provisions, terms, conditions, and agreements (including provisions concerning events of default), and have such other characteristics as may be provided by such resolution or by the trust agreement, indenture, or mortgage, if any, issued pursuant to such resolution. The seal (or a facsimile thereof) of the authority shall be affixed, imprinted, engraved, or otherwise reproduced upon each of its bonds issued under this section. Bonds which are issued under this section shall be executed in the name of the authority by the manual or facsimile signatures of such of its officials as may be

designated in the said resolution or trust agreement, indenture, or mortgage; except that at least one signature on each such bond shall be a manual signature. Coupons, if any, attached to such bonds shall bear the facsimile signature of such official of the authority as may be designated as provided in this subsection (8). The said resolution or trust agreement, indenture, or mortgage may provide for the authentication of the pertinent bonds by the trustee.

(9) Bonds which are issued under this section may be sold by the authority in such manner and for such price as the authority, in its discretion, may determine, at par, below par, or above par, at private sale or at public sale after notice published prior to such sale in a newspaper having general circulation in the municipality, or in such other medium of publication as the authority may deem appropriate, or may be exchanged by the authority for other bonds issued by it under this section. Bonds which are issued under this section may be sold by it to the federal government at private sale at par, below par, or above par, and, in the event that less than all of the authorized principal amount of such bonds is sold by the authority to the federal government, the balance or any portion of the balance may be sold by the authority at private sale at par, below par, or above par, at an interest cost to the authority of not to exceed the interest cost to it of the portion of the bonds sold by it to the federal government.

(10) In case any of the officials of the authority whose signatures or facsimile signatures appear on any of its bonds or coupons which are issued under this section cease to be such officials before the delivery of such bonds, such signatures or facsimile signatures, as the case may be, shall nevertheless be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery.

(11) Any provision of any law to the contrary notwithstanding, any bonds which are issued pursuant to this section are fully negotiable.

(12) In any suit, action, or proceeding involving the validity or enforceability of any bond which is issued under this section or the security therefor, any such bond reciting in substance that it has been issued by the authority in connection with an urban renewal project or any activity or operation of the authority under this part 1 shall be conclusively deemed to have been issued for such purposes; and such urban renewal project or such operation or activity, as the case may be, shall be conclusively deemed to have been initiated, planned, located, undertaken, accomplished, and carried out in accordance with the provisions of this part 1.

(13) Pending the preparation of any definitive bonds under this section, an authority may issue its interim certificates or receipts or its temporary bonds, with or without coupons, exchangeable for such definitive bonds when the latter have been executed and are available for delivery.

(14) Persons retained or employed by an authority as advisors or consultants for the purpose of rendering financial advice and assistance may purchase or participate in the purchase or in the distribution of its bonds when such bonds are offered at public or private sale.

(15) No commissioner or other officer of an authority issuing bonds under this section and no person executing such bonds is liable personally on such bonds or is subject to any personal liability or accountability by reason of the issuance thereof.

Source: L. 75: Entire title R&RE, p. 1169, § 1, effective July 1; (2)(b) amended, p. 1277, § 2, effective July 16. **L. 76:** (9) and (14) amended, p. 699, § 1, effective April 3.

Editor's note: This section is similar to former § 31-25-109 as it existed prior to 1975.

ANNOTATION

Applied in James v. Bd. of Comm'rs, 42 Colo. App. 27, 595 P.2d 262 (1978).

31-25-110. Property of an authority exempt from taxes and from levy and sale by virtue of an execution.

(1) All property of an authority, including but not limited to all funds owned or held by it for any of the purposes of this part 1, shall be exempt from levy and sale by virtue of an execution, and no such execution or other judicial process shall issue against the same nor shall a judgment against the authority be a charge or lien upon such property; except that the foregoing provisions of this subsection (1) shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, trust agreement, indenture, or other encumbrance of the authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the authority pursuant to this part 1 on its rents, income, proceeds, revenues, loans, grants, contributions, and other funds and assets derived or arising from any project of the authority or from any of its operations or activities under this part 1.

(2) All property of an authority acquired or held by it for any of the purposes of this part 1, including but not limited to all funds of an authority acquired or held by it for any of said purposes, are declared to be public property used for essential public and governmental purposes, and such property and the authority shall be exempt from all taxes of the state of Colorado or any other public body thereof; except that such tax exemption shall terminate when the authority sells, leases, or otherwise disposes of the particular property to a purchaser, lessee, or other alienee which is not a public body entitled to tax exemption with respect to such property.

Source: L. 75: Entire title R&RE, p. 1171, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-110 as it existed prior to 1975.

31-25-111. Title of purchaser, lessee, or transferee.

Any instrument executed by an authority and purporting to convey any right, title, or interest of the authority in any property under this part 1 shall be conclusively presumed to have been made and executed in compliance with the provisions of this part 1 insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

Source: L. 75: Entire title R&RE, p. 1172, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-111 as it existed prior to 1975.

31-25-112. Cooperation by public bodies with urban renewal authorities.

(1) Any public body, within its powers, purposes, and functions and for the purpose of aiding an authority in or in connection with the planning or undertaking pursuant to this part 1 of any plans, projects, programs, works, operations, or activities of such authority whose area of operation is situated in whole or in part within the area in which such public body is authorized to act, upon such terms as such public body shall determine, may:

(a) Sell, convey, or lease any of such public body's property or grant easements, licenses, or other rights or privileges therein to such authority;

(b) Incur the entire expense of any public improvements made by such public body in exercising the powers mentioned in this section;

(c) Do all things necessary to aid or cooperate with such authority in or in connection with the planning or undertaking of any such plans, projects, programs, works, operations, or activities;

(d) Enter into agreements with such authority respecting action to be taken pursuant to any of the powers set forth in this part 1, including agreements respecting the planning or undertaking of any such plans, projects, programs, works, operations, or activities which such public body is otherwise empowered to undertake;

(e) Cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, garbage disposal, sewer, sewage, sewerage, or drainage facilities,

or any other public works, improvements, facilities, or utilities which such public body is otherwise empowered to undertake, to be furnished within the area in which such public body is authorized to act;

(f) Furnish, dedicate, accept dedication of, open, close, vacate, install, construct, reconstruct, pave, repave, repair, rehabilitate, improve, grade, regrade, plan, or replan public streets, roads, roadways, parkways, alleys, sidewalks, and other public ways or places within the area in which such public body is authorized to act to the extent that such items or matters are, under any other law, otherwise within the jurisdiction of such public body;

(g) Plan or replan and zone or rezone any part of the area under the jurisdiction of such public body or make exceptions from its building regulations; and

(h) Cause administrative or other services to be furnished to such authority.

(2) If at any time title to or possession of the whole or any portion of any project of the authority under this part 1 is held by any governmental agency or public body (other than such authority) which is authorized by any law to engage in the undertaking, carrying out, or administration of any such project (including any agency or instrumentality of the United States), the provisions of the agreements referred to in paragraph (d) of subsection (1) of this section shall inure to the benefit of and may be enforced by such governmental agency or public body.

(3) Any public body referred to as such in subsection (1) of this section may (in addition to its authority pursuant to any other law to issue its bonds for any purposes) issue and sell its bonds for any of the purposes of such public body which are stated in this section; except that any such bonds of such a public body which are issuable as provided in this subsection (3) may be issued only in the manner and otherwise in conformity with the applicable provisions and limitations prescribed by the state constitution and the laws of this state and, in the case of a home rule municipality, the applicable provisions of its home rule charter for the authorization and issuance by such public body of its general obligation bonds, revenue bonds, special assessment bonds, or special obligation bonds, accordingly as the bonds are general obligation bonds, revenue bonds, special assessment bonds, or special obligation bonds.

(4) Without limiting the generality of any of the provisions of this part 1, but within any limitations provided by the applicable provisions of the state constitution and, in the case of any home rule municipality, the applicable provisions of its home rule charter:

(a) Any public body may appropriate such of its funds and make such expenditures of its funds as it deems necessary for it to undertake any of its powers, functions, or activities mentioned in this part 1 including, particularly, its powers, functions, and activities mentioned in subsections (1) to (3) of this section; and

(b) Any municipality may levy taxes and assessments in order for it to undertake, carry out, or accomplish any of its powers, functions, or activities mentioned in this part 1, including,

particularly, its powers, functions, and activities mentioned in the provisions of subsections (1) to (3) of this section.

(5) For the advancement of the public interest and for the purpose of aiding and cooperating in the planning, acquisition, demolition, rehabilitation, construction, or relocation, or otherwise assisting the operation or activities of an urban renewal project located wholly or partly within the area in which it is authorized to act, a public body may enter into agreements which may extend over any period, notwithstanding any provision of law to the contrary, with an authority respecting action taken or to be taken pursuant to any of the powers granted by this part 1.

Source: L. 75: Entire title R&RE, p. 1172, § 1, effective July 1; (5) R&RE, p. 1278, § 3, effective July 16.

Editor's note: This section is similar to former § 31-25-112 as it existed prior to 1975.

ANNOTATION

Urban renewal authority does not have power to require a local governing body to enter into a tax-allocation financing scheme. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

31-25-112.5. Inclusion of unincorporated territory in urban renewal area.

(1) Notwithstanding any other provision of this part 1, an urban renewal plan, urban renewal project, or urban renewal area may include unincorporated territory that is outside the boundaries of a municipality but contiguous to a portion of the urban renewal area located within the municipality. No such territory shall be included in the plan, project, or area without the consent of the board of county commissioners exercising jurisdiction over the unincorporated territory proposed for inclusion and the consent of each owner of, and each holder of a recorded mortgage or deed of trust encumbering, real property within the unincorporated area proposed for inclusion.

(2) In addition to the procedures for approval of a proposed urban renewal plan by the governing body as required by section 31-25-107, the unincorporated territory may be included in the urban renewal plan, project, or area upon satisfaction of each of the following additional requirements:

(a) The board of county commissioners makes a determination that the urban renewal area proposed for inclusion in the plan is a slum or blighted area in accordance with the procedures set forth in section 31-25-107 (1).

(b) The board of county commissioners refers the urban renewal plan to the planning commission of the county for a determination as to the conformity of the urban renewal plan with the general plan for development for the county in accordance with the procedures specified in section 31-25-107 (2).

(c) The board of county commissioners conducts a public hearing and makes findings and a determination to approve inclusion of the unincorporated territory in the urban renewal plan, project, or area in accordance with the procedures set forth in section 31-25-107 (3), (4), (5), and (6).

(d) The board of county commissioners makes an additional finding, prior to approving the inclusion, that each owner of, and each holder of a recorded mortgage or deed of trust encumbering, real property in the unincorporated territory proposed for inclusion in the urban renewal plan, project, or area consents to the inclusion.

(e) The board of county commissioners determines whether the unincorporated territory shall be included in any provision for the division of taxes in the urban renewal area as authorized by section 31-25-107 (9), and, if so determined, the board notifies the county assessor of such inclusion as required by section 31-25-107 (10).

(3) Notwithstanding any other provision of this part 1, the requirements of section 31-25-107 (3.5) shall not apply to any urban renewal plan proposed and approved pursuant to this section.

(4) Any urban renewal plan approved in accordance with this section may be modified as provided in section 31-25-107 (3)(a); except that a modification shall be approved by the board of county commissioners, the governing body, and the authority.

(5) An authority, a municipality, and a county may, consistent with the requirements of this section, enter into an intergovernmental agreement to further effectuate the purposes of this section and to provide for the inclusion of unincorporated territory in an urban renewal area.

Source: L. 2008: Entire section added, p. 278, § 1, effective April 1.

31-25-113. Authorities to have no power of taxation.

No authority created by this part 1 has any power to levy or assess any ad valorem taxes, personal property taxes, or any other forms of taxes, including special assessments against any property.

Source: L. 75: Entire title R&RE, p. 1174, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-113 as it existed prior to 1975.

ANNOTATION

Applied in Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

31-25-114. Cumulative clause.

The powers conferred by this part 1 shall be in addition and supplemental to the powers conferred by any other law.

Source: L. 75: Entire title R&RE, p. 1174, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-114 as it existed prior to 1975.

31-25-115. Transfer - abolishment.

(1) Notwithstanding any other provision of this part 1, the governing body of a municipality may designate itself as the authority when originally establishing said authority. A transfer of an existing authority to the governing body may be accomplished only by majority vote at a regular election.

(1.5) When the governing body of a municipality designates itself as the authority or transfers an existing authority to the governing body pursuant to subsection (1) of this section, one such commissioner on the authority must be appointed by the board of county commissioners of the county in which the territorial boundaries of the urban renewal authority area are located, one such commissioner must also be a board member of a special district selected by agreement of the special districts levying a mill levy within the boundaries of the urban renewal authority area, and one commissioner must also be an elected member of a board of education of a school district levying a mill levy within the boundaries of the urban renewal authority area. Appointments made pursuant to this subsection (1.5) must be made in accordance with the procedures specified in section 31-25-104 (2).

(2) The governing body of a municipality may by ordinance provide for the abolishment of an urban renewal authority, provided adequate arrangements have been made for payment of any outstanding indebtedness and other obligations of the authority. Any such abolishment shall be effective upon a date set forth in the ordinance, which date shall not be less than six months from the effective date of the ordinance.

Source: L. 77: Entire section added, p. 1468, § 1, effective May 26. **L. 2007:** (1) amended, p. 1984, § 41, effective August 3. **L. 2015:** (1.5) added, (HB 15-1348), ch. 261, p. 989, § 3, effective August 5.

31-25-116. Regional tourism projects.

(1) An urban renewal authority that is designated as a financing entity pursuant to part 3 of article 46 of title 24, C.R.S., shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of part 3 of article 46 of title 24, C.R.S., including but not limited to the powers to receive state sales tax increment revenue generated within an approved regional tourism zone, as defined in section 24-46-303 (11), C.R.S., and disburse and otherwise utilize such revenue for all lawful purposes, including but not limited to financing of eligible costs and the design, construction, maintenance, and operation of eligible improvements, as such terms are defined in section 24-46-303, C.R.S., or otherwise incorporated into the commission's conditions of approval.

(2) Notwithstanding the provision of section 31-25-107 (7), authorization to receive state sales tax increment revenue pursuant to part 3 of article 46 of title 24, C.R.S., shall not be considered a material modification to the plan and corresponding changes to the plan may be made by the governing body of the authority to incorporate the use of state sales tax increment revenue without the requirement of submission to or approval by the governing body of a municipality that has established the authority pursuant to section 31-25-104 (1).

(3) Any urban renewal authority that receives state sales tax increment revenue, whether pursuant to designation as a financing entity pursuant to part 3 of article 46 of title 24, C.R.S., or pursuant to a contract entered into with any such financing entity, shall not use the state sales tax increment revenue to acquire property through the exercise of eminent domain.

(4) Nothing in this section shall be interpreted to eliminate the requirements for the authorization of a new urban renewal authority under this part 1.

Source: L. 2009: Entire section added, (SB 09-173), ch. 434, p. 2418, § 3, effective June 4.

31-25-117. Transit investment areas - definition.

(1) An urban renewal authority that is designated as a financing entity pursuant to part 4 of article 46 of title 24 has all of the powers necessary or convenient to carry out part 4 of article 46 of title 24, including the powers to receive state sales tax increment revenue generated within an approved transit investment area, as defined in section 24-46-402 (20), and disburse and otherwise use such revenue for all lawful purposes, including financing of eligible costs and the design, construction, maintenance, and operation of eligible improvements, as such terms are defined in section 24-46-402, or otherwise incorporated into the Colorado economic development commission's conditions of approval.

(2) Notwithstanding section 31-25-107 (7), authorization to receive state sales tax increment revenue, pursuant to part 4 of article 46 of title 24, is not a substantial modification to the plan and corresponding changes to the plan may be made by the governing body of the authority to incorporate the use of state sales tax increment revenue without the requirement of submission to or approval by the governing body of a municipality that has established the authority pursuant to section 31-25-104 (1).

(3) An urban renewal authority that receives state sales tax increment revenue, whether pursuant to designation as a financing entity pursuant to part 4 of article 46 of title 24, or pursuant to a contract entered into with any such financing entity, shall not use the state sales tax increment revenue to acquire property through the exercise of eminent domain.

(4) Nothing in this section obviates or overrides the requirements for the authorization of a new urban renewal authority under this part 1.

(5) As used in this section, unless the context otherwise requires, "state sales tax increment revenue" has the meaning set forth in section 24-46-402 (17).

Source: L. 2026: Entire section added, (HB 26-1065), ch. 157, p. 921, § 7, effective May 27.

Cross references: For the legislative declaration in HB 26-1065, see section 1 of chapter 157, Session Laws of Colorado 2026.

PART 2

PARKS - CITIES

Cross references: For recreational facilities districts, see article 7 of title 29.

31-25-200.3. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Interests in land" means all rights and interests in land less than the full fee interest, including but not limited to future interests, easements, covenants, and contractual rights.

Source: L. 2025: Entire section added, (SB 25-275), ch. 377, p. 2089, § 263, effective August 6.

31-25-201. Cities may establish parks - recreational facilities - conservation easements.

(1) Any city has authority, in the manner provided in this part 2, to establish, maintain, and acquire by gift, devise, purchase, or right of eminent domain such lands or interest in land, within or without the municipal limits of such city, as in the judgment of the governing body of such city may be necessary, suitable, or proper for boulevards, parkways, avenues, driveways, and roadways or for park or recreational purposes for the preservation or conservation of sites, scenes, open space, and vistas of scientific, historic, aesthetic, or other public interest. The power of eminent domain granted by this section, with respect to the acquisition of lands for parks or recreational purposes for the preservation or conservation of sites, scenes, open space, and vistas of scientific, historic, aesthetic, or other public interest may not be used by any city or city and county to condemn property lying five miles or further from its corporate limits, unless:

(a) The exercise of its power of eminent domain to condemn property outside its corporate limits is required as a condition of a state or federal permit for construction of a new public facility; or

(b) The use of the power of eminent domain to condemn property is necessary for the acquisition of conservation sites on or contiguous to reservoir sites owned by any city or city and county; or

(c) The use of the power of eminent domain to condemn property is predicated on the prior written approval of the board of county commissioners of the county or counties in which such property is located, in instances not covered by paragraph (a) or (b) of this subsection (1) when the city or city and county has notified such board or boards. The board has sixty days from such notification to deliver its approval or disapproval. If the board fails to take any action or fails to so notify the city or city and county, the city or city and county may proceed with the exercise of its power; or

(d) The land to be condemned is subject to a single comprehensive plan which includes provision of recreational facilities within the county and which has been adopted by both the county and the city seeking to condemn.

(2) Every such interest in land held pursuant to subsection (1) of this section, when recorded, shall run with the land to which it pertains for the benefit of the city holding such interest and may be protected and enforced by such city in any court of general jurisdiction by any proceeding at law or in equity.

(3) Any city may unite with any other similarly authorized political subdivision of this state in acquiring, establishing, and maintaining any property which a city is authorized to acquire, establish, or maintain pursuant to subsection (1) of this section.

Source: L. 75: Entire title R&RE, p. 1174, § 1, effective July 1. **L. 83:** (1) amended, p. 1264, § 2, effective July 1. **L. 2025:** (2) amended, (SB 25-275), ch. 377, p. 2089, § 264, effective August 6.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the legislative declaration contained in the 1983 act amending subsection (1), see section 1 of chapter 367, Session Laws of Colorado 1983.

ANNOTATION

Statute not applicable to extraterritorial condemnation action for stream fishing rights. City of Aurora v. Commerce Group Corp., 694 P.2d 382 (Colo. App. 1984).

31-25-202. Acquisition by purchase.

No land or interest in land shall be purchased for the purposes set forth in section 31-25-201 (1) until the governing body adopts an ordinance authorizing such purchase which states the location and legal description of the lands to be purchased, the price to be paid, and the manner of payment or unless the proposed purchase of such lands is submitted upon petition pursuant to section 31-25-203 and approved by the registered electors of such city.

Source: L. 75: Entire title R&RE, p. 1174, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-25-202 and 31-25-213 as they existed prior to 1975.

31-25-203. Acquisition by purchase - petition of electors - bonds - park bonds.

(1) No indebtedness shall be created nor shall any bonds be issued for acquiring such lands or interests in land unless the question of incurring such debt and issuing such bonds has been submitted at a regular election to a vote of those persons qualified to vote on authorization of other bonded indebtedness and approved as required by section 31-15-302 (1)(d).

(2) The governing body, upon petition of the registered electors of such city equal in number to at least one-tenth of the number of such registered electors voting at the last regular election of such city, shall submit at the next regular election either or both of the questions of acquisition or of incurring bonded indebtedness by separate ordinance. In the ordinance submitting the question of the acquisition of such lands or interests in land, the governing body shall state the location of the land or interests in land proposed to be acquired, describing the same by legal subdivisions, wherever practicable, and the consideration to be given for purchase and the manner of payment, and, in the ordinance submitting the question of incurring indebtedness, the governing body shall state the maximum net effective interest rate at which the bonds may be issued. If the only question to be submitted is the acquisition of such properties, the question may be submitted at a regular or special election. If the acquisition or incurring of indebtedness or both have been approved as required by section 31-15-302 (1)(d), the governing body shall acquire such lands or interests in land, incur said indebtedness, or both, pursuant to said authorization.

(3) The parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads established in any such city, or such part thereof as may be determined by the mayor and park commission, may be paid for in park bonds of the city of date and form prescribed by the park commission, bearing the name of the city, and payable to bearer at such times and in a sufficient period of years to cover the period of payments provided for, with interest annually at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, as may be determined by the commission. The bonds shall be signed by the mayor, countersigned by the auditor, treasurer, or finance director, and attested by the clerk and have the seal of the city with the approval of the president of the park commission, if such commission exists, endorsed thereon. The interest shall be evidenced by suitable coupons attested by a facsimile of the signature of the city clerk.

(4) For the purposes of this part 2, unless the context otherwise requires, "net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities. "Net interest cost" of a proposed issue of bonds means the total amount of interest to

accrue on said bonds from their date of issuance to their respective maturities plus the amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

Source: L. 75: Entire title R&RE, p. 1175, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-25-204. Acquisition by condemnation.

(1) For the purpose of acquiring lands for parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads, the park commission is authorized, with the approval of the mayor, to select and, by a suitable proceeding in the name of the city, without the passage of any ordinance, condemn real estate or, with the approval of the mayor, to purchase any real estate so selected for one or more parks, pleasure grounds, boulevards, parkways, avenues, driveways, or roads and to select routes and streets for the purpose of establishing and maintaining a system of connecting boulevards and pleasure ways or parkways therein. All such condemnation proceedings shall be in accordance with the general laws of the state insofar as the same are applicable, but the benefit to other lands shall be ascertained and assessed.

(2) Payment for any acquisition provided in subsection (1) of this section may be paid for by special assessments upon all the other real estate, except parks, pleasure grounds, avenues, boulevards, streets, and roads in such city or partly out of the proceeds of the sale of the general bonds of the city, in accordance with the powers conferred by this part 2, and partly by such assessments, as the same may be determined by the mayor and park commission.

Source: L. 75: Entire title R&RE, p. 1176, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-25-216 and 31-25-217 as they existed prior to 1975.

31-25-205. Bequests for park purposes.

Real or personal property may be granted, bequeathed, devised, or conveyed to the city for the purpose of the improvement or ornamentation of any park, pleasure ground, boulevard, parkway, avenue, driveway, or road or for the establishment or maintenance in parks or pleasure grounds of museums, zoological or other gardens, collections of natural history, observatories, libraries, monuments, or works of art upon such trusts or conditions as may be approved by the commission. All such property or the rents, issues, and profits thereof shall be subject to the exclusive management and control of the commission. Lands or interests in land given or devised to such city for the purposes mentioned in this section shall be accepted or refused by ordinance passed by the governing body.

Source: L. 75: Entire title R&RE, p. 1176, § 1, effective July 1.

Editor's note: This section is similar to former §§ 31-25-202 and 31-25-212 as they existed prior to 1975.

31-25-206. Park commissioners - vacancies.

(1) The care, custody, management, and control of the city parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads may be vested exclusively in a park commission which shall be composed of six members who shall be registered electors in said city and well-known for their ability, probity, and public spirit, one of whom shall be president of the commission. The mayor of the city shall appoint, with the consent of the governing body, for and on behalf of such city, such park commissioners who shall hold office one-half for one year and one-half for two years from the July 1 following their appointment. At their first regular meeting they shall cast lots for the respective terms. Annually thereafter and before July 1 of each year, the mayor, with the consent of the governing body, shall appoint three commissioners for the ensuing two years to take the place of the retiring commissioners. All vacancies in such park commission arising from any cause shall be filled by the mayor with the consent of the governing body.

(2) The governing body may, by ordinance, provide for abolishment of the park commission and consolidation of the functions and activities specified in this part 2 under the general control and administration of the city as provided by ordinance. The powers conferred upon the park commission as specified in this part 2 may be exercised by the city in the manner provided by ordinance. Any provision of this part 2 to the contrary notwithstanding, the governing body of a city may appoint one or more advisory commissions or boards with respect to parks, recreation, and other municipal functions.

Source: L. 75: Entire title R&RE, p. 1176, § 1, effective July 1. **L. 87:** (1) amended, p. 332, § 97, effective July 1.

Editor's note: This section is similar to former § 31-25-203 as it existed prior to 1975.

31-25-207. Members serve without compensation - no interest in contracts.

The commissioners shall serve without compensation except for their actual expenses which shall be approved by the mayor. No member of the commission shall have any interest, directly or indirectly, in any contract relating to the establishment or maintenance of any of the properties mentioned in section 31-25-201 or in any contract providing for the expenditure of any money in relation thereto. Any commissioner shall vacate his office upon the acceptance of any other public office.

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-204 as it existed prior to 1975.

31-25-208. Meetings - quorum.

The commission shall hold a regular meeting on the first Tuesday of each month and may by rule provide for special meetings and service of notice thereof. A majority of the members shall constitute a quorum. No action of the commission shall be binding unless authorized by a majority of the members at a regular or duly called special meeting.

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-208 as it existed prior to 1975.

31-25-209. Secretary - salary - duties.

The commission may employ a secretary at a salary not exceeding twelve hundred dollars per annum, to be fixed by the commission, payable out of the park fund. The secretary shall keep a record of all proceedings of the commission, have custody of and preserve all its records, and perform such other duties as may be prescribed by the commission.

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-205 as it existed prior to 1975.

31-25-210. Office of commission - supplies.

The city shall provide the commission with convenient offices, stationery, and the facilities necessary for the performance of its duties as the commission deems necessary and advisable.

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-206 as it existed prior to 1975.

31-25-211. Superintendent of parks - assistants - salaries.

The commission may appoint a superintendent of parks who shall be a practical landscape gardener who, under the direction of the commission, shall have active charge, control, and direction of all the parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads which are under the control of the commission and who shall perform such other duties as may be prescribed by the commission, with such other assistants and at such salaries payable out of the park fund as may be authorized by the commission, with the approval of the mayor.

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-207 as it existed prior to 1975.

31-25-212. Expenditures for park purposes.

The commission, with the approval of the mayor, shall have full, complete, and exclusive power and authority to expend, for and on behalf of the city, all sums of money that may be raised by general taxation for park purposes, all other sums of money appropriated by the governing body from the general revenues for the same purposes, and all moneys that may be realized by the commission from the sale of privileges in or near the parks of the city or realized from the sale of the general bonds of the city and set apart for park purposes or from the sale of the park bonds provided for in section 31-25-203 (2).

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-209 as it existed prior to 1975.

31-25-213. Fiscal year - annual report.

The fiscal year of the park commission shall end on December 31 of each year. During the month of January of each year the commission shall make an annual report to the mayor and the governing body of all moneys received and expended in the purchase, improvement, and maintenance of parks. The report shall show when, where, how, and in what manner the same were received and expended and what improvements have been made during the year preceding the report.

Source: L. 75: Entire title R&RE, p. 1177, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-210 as it existed prior to 1975.

31-25-214. Park fund - certified vouchers.

The park fund shall consist of moneys levied, collected, and appropriated therefor and coming into the fund by donation or otherwise. All moneys collected and credited to the park fund shall be used for the maintenance and improvement of parks, parkways, boulevards, avenues, driveways, and roads and shall be expended by the commission as in its judgment the needs of such property require. The same shall be drawn upon the proper officers of such city upon vouchers properly authenticated by the president and secretary of the park commission.

Source: L. 75: Entire title R&RE, p. 1178, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-214 as it existed prior to 1975.

31-25-215. Maximum tax levy - moneys credited.

(1) As a part of the annual levies authorized by law, the governing body shall annually levy, assess, and collect upon each dollar of taxable property within the city not more than one and one-half mills for the purposes of said park fund, the proceeds of which shall be collected in the same manner as other city taxes and shall be appropriated by the governing body for the park fund.

(2) All moneys collected, received, levied, or appropriated by the governing body for park purposes shall be deposited in the treasury of such city to the credit of the park fund and shall be kept separate and apart from other moneys of such city. Any portion thereof remaining unexpended at the end of any fiscal year or at any other time shall not in any event be converted into the general fund nor be subject to appropriation for general purposes.

Source: L. 75: Entire title R&RE, p. 1178, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-215 as it existed prior to 1975.

31-25-216. Cities control park grounds outside limits.

(1) In all cases in which any city, including any city or city and county organized under a special charter or created under the state constitution, has acquired lands outside its municipal limits for parks, open space and natural areas, parkways, boulevards, or roads, unless such acquired land is within the exterior boundaries of an Indian reservation, the city or city and county has full police power and jurisdiction and full municipal control and full power and authority in the management, control, improvement, and maintenance of and over any such lands so acquired whether or not the lands are open or closed to the public. Such a city or city and county has power and authority to provide by ordinance for the regulation and control of its lands so acquired, to prevent the commission of any acts which are or may be declared unlawful pursuant to the provisions of this part 2, and to prosecute and punish the violation of any ordinances in its municipal courts. Such city or city and county also has like power and

jurisdiction to prevent pollution of the water in all reservoirs, streams, and pipes which may be included within any such parks, parkways, boulevards, or roads and over the stream or source from which such water is taken as far as ten miles above the point from which it is diverted. Such a city or city and county has like power and jurisdiction to regulate and prevent the erection, construction, and maintenance, within three hundred feet of any such park, open space or natural area, parkway, boulevard, or road outside its municipal limits, of any advertisement or of any billboard or other structure for advertisements. Such a city or city and county also has like power and jurisdiction over the use of any public roads, boulevards, or parkways within such parks or open space and natural areas and running over or through or between such lands and any public roads, boulevards, or parkways between any such park, open space and natural areas, or pleasure ground and its municipal boundaries and not included within the municipal limits of any incorporated city or town.

(2) In all cases where the right to take private property for public use without the owner's consent or to acquire lands for parks, parkways, boulevards, or roads outside the municipal limits of any such city or city and county is conferred by general laws or by the charter of any such city or city and county, it is lawful for any such city or city and county, or the department or branch thereof having authority in the premises, to take, by right of eminent domain, the property so sought to be taken and appropriated, such condemnation proceedings to be in accordance with the general laws of the state, insofar as the same are applicable, relating to any such city or city and county. The power and authority to so acquire lands for such purposes outside the municipal limits of any such city or city and county by gift, devise, purchase, or right of eminent domain is granted by this section, subject to the limitation imposed by section 31-25-201 (1).

Source: L. 75: Entire title R&RE, p. 1178, § 1, effective July 1. **L. 83:** (2) amended, p. 1265, § 3, effective July 1. **L. 2025:** (1) amended, (HB 25-1029), ch. 31, p. 167, § 1, effective March 26.

Editor's note: This section is similar to former § 31-25-219 as it existed prior to 1975.

Cross references: For the legislative declaration contained in the 1983 act amending subsection (2), see section 1 of chapter 367, Session Laws of Colorado 1983.

31-25-217. Management - licenses - franchises.

(1) The commission shall have exclusive management and control of all parks, pleasure grounds, boulevards, parkways, avenues, driveways, and roads, as mentioned in section 31-25-

201, and exclusive power to lay out, regulate, and improve the same, to prohibit certain or heavy traffic therein and thereon, and to grant or refuse licenses to sell goods on the streets or sidewalks within three hundred feet of any park entrance and on the streets and sidewalks adjoining parks. The commission shall establish and maintain necessary rules and regulations for the proper supervision and government thereof and shall have such additional powers as may be prescribed by ordinance. The governing body shall provide, by ordinance, for the enforcement of the rules and orders of the commission.

(2) No franchise, license, or permit for the construction or maintenance of any railway shall ever be granted within the limits of any park or pleasure ground or lengthwise upon any boulevard, parkway, avenue, driveway, or road, nor shall any franchise for the maintenance of any other special privilege within any park or pleasure ground be granted.

Source: L. 75: Entire title R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-211 as it existed prior to 1975.

31-25-218. Conservation trust fund authorized.

Each city in this state, including home rule and special territorial charter cities, may create a conservation trust fund as provided in section 29-21-101, C.R.S.

Source: L. 75: Entire title R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 139-88-20 as it existed prior to 1975. (See L. 74, p. 434, § 5.) This section was renumbered on revision as § 31-25-220, but was never printed as such in C.R.S. 1973.

PART 3

PARKS - TOWNS

Cross references: For recreational facilities districts, see article 7 of title 29.

31-25-300.3. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Interests in land" means all rights and interests in land less than the full fee interest, including but not limited to future interests, easements, covenants, and contractual rights.

Source: L. 2025: Entire section added, (SB 25-275), ch. 377, p. 2090, § 265, effective August 6.

31-25-301. Town may establish parks - recreation facilities - conservation easements.

(1) Each town shall have authority to acquire, establish, and maintain, in the manner provided in section 31-25-302, public parks, pleasure grounds, boulevards, parkways, avenues, roads, and land or interests in land which may be necessary, suitable, or proper for the preservation or conservation of sites, scenes, open space, and vistas of recreational, scientific, historic, aesthetic, or other public interest.

(2) Every such interest in land held pursuant to subsection (1) of this section, when recorded, shall run with the land to which it pertains for the benefit of the town holding such interest and may be protected and enforced by such town in any court of general jurisdiction by any proceeding at law or in equity.

(3) Any town may unite with any other similarly authorized political subdivision of this state in acquiring, establishing, and maintaining any property which a town is authorized to acquire, establish, or maintain pursuant to this section.

Source: L. 75: Entire title R&RE, p. 1179, § 1, effective July 1. **L. 2025:** (2) amended, (SB 25-275), ch. 377, p. 2090, § 266, effective August 6.

Editor's note: This section is similar to former §§ 31-25-301 and 31-25-304 as they existed prior to 1975.

ANNOTATION

There are two separate and distinct procedures by which acquisition of land may be initiated: (1) Land may be acquired if the trustees on their own adopt an ordinance to authorize the acquisition; or (2) if a proposal to acquire such lands is

submitted upon petition and approved by the registered electors of such town, then the trustees must draft an ordinance, and submit the matter to the electors. Bristow v. Town of Castle Rock, 44 Colo. App. 82, 612 P.2d 1144 (1980).

31-25-302. Questions submitted to registered electors.

(1) Lands or interests in land which may be necessary, suitable, or proper for any of the purposes named in section 31-25-301, either within or without the municipal limits of such town, may be set aside by any such town and devoted to such purposes out of any lands or parcels of lands owned or possessed by any such town. Said lands may be acquired by gift, purchase, devise, or other transfer in the manner provided by law. No lands or interests in land shall be purchased for any such purpose unless the board of trustees of such town adopts an ordinance authorizing such acquisition and stating the location and legal description of the lands to be acquired and, in case of purchase, the price to be paid and the manner of payment or unless the proposal to acquire such lands is submitted upon petition pursuant to subsection (3) of this section and approved by the registered electors of such town.

(2) No indebtedness shall be created nor shall any bonds be issued for acquiring such parks or establishing such boulevards, parkways, or roads unless the question of incurring such debt and issuing such bonds has been submitted, at a regular election in such town, to a vote of those persons qualified to vote on authorization of other bonded indebtedness and approved as required by section 31-15-302 (1)(d).

(3) The board of trustees of such town shall submit, upon petition of the registered electors of such town equal in number to at least one-tenth of the number of such electors voting at the last regular election of such town, at the next regular election, the question of the acquisition of such lands and the establishment of such boulevards, parkways, and roads, or the question of incurring bonded indebtedness, or both such questions. The board of trustees shall state, in the ordinance submitting the question of the acquisition of lands and the establishment of boulevards, parkways, and roads, the location of the land proposed to be acquired, describing the same by legal subdivisions, and the price to be paid in case of purchase and the manner of payment. If the only question to be submitted is the acquisition of such properties, the question may be submitted at a regular or special election. If the majority of those voting upon the acquisition question at such election vote for the acquisition of such lands for such purposes, the board of trustees shall acquire such lands for those purposes. If the bonded indebtedness is approved as required by section 31-15-302 (1)(d), the board of trustees shall contract the necessary indebtedness and issue the necessary bonds therefor.

Source: L. 75: Entire title R&RE, p. 1180, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-302 as it existed prior to 1975.

ANNOTATION

There are two separate and distinct procedures by which acquisition of land may be initiated: (1) Land may be acquired if the trustees on their own adopt an ordinance to authorize the acquisition; or (2) if a proposal to acquire such lands is submitted upon petition and approved by the registered electors of such town, then the trustees must draft an ordinance, and submit the matter to the electors. Bristow v. Town of Castle Rock, 44 Colo. App. 82, 612 P.2d 1144 (1980).

31-25-303. Town may improve parks.

Any town establishing parks, boulevards, parkways, avenues, or roads under the provisions of this part 3 by its duly constituted authorities shall have full power to cultivate, plant, and otherwise improve the same and shall establish and maintain necessary rules and regulations for the proper supervision and government.

Source: L. 75: Entire title R&RE, p. 1180, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-303 as it existed prior to 1975.

31-25-304. Conservation trust fund authorized.

Each town in this state, including home rule towns, may create a conservation trust fund as provided in section 29-21-101, C.R.S.

Source: L. 75: Entire title R&RE, p. 1180, § 1, effective July 1.

Editor's note: This section is similar to former § 139-87-5, as it existed prior to 1975. (See L. 74, p. 434, § 4.) This section was to be renumbered on revision as § 31-25-305, but was never printed as such in C.R.S. 1973.

PART 4

PUBLIC MALL ACT OF 1970

31-25-401. Short title.

This part 4 shall be known and may be cited as the "Public Mall Act of 1970".

Source: L. 75: Entire title R&RE, p. 1181, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-401 as it existed prior to 1975.

31-25-402. Legislative declaration - powers.

(1) The general assembly finds and declares that, in certain areas in municipalities and particularly in retail shopping areas thereof, there is need to separate pedestrian travel from vehicular travel and that such separation is necessary to protect the public safety or otherwise to serve the public interest and convenience. The general assembly further finds and declares that such objective can be accomplished, in part, by the establishment of pedestrian malls.

(2) The powers granted in this subsection (2) shall be exercised by the governing body in accordance with the terms of this part 4 and in the same manner as is otherwise provided by law. The governing body of a municipality has the power:

(a) To establish pedestrian malls;

(b) To prohibit, in whole or in part, vehicular traffic on a pedestrian mall, which power shall be in addition to and not by way of a limitation upon the power granted or held by governing bodies under other laws, and this paragraph (b) is not intended to limit powers already held by governing bodies to deal with their public rights-of-way;

(c) To acquire, by gift, purchase, eminent domain, or otherwise, all types of interest in real property and rights-of-way, together with improvements, which will become part of a pedestrian mall or which will otherwise be used by the municipality as part of or for purposes connected with a pedestrian mall, and such land, real property, or rights-of-way may be improved in the same manner as municipal streets may be improved under paragraph (e) of this subsection (2); to retain title to the pedestrian mall or to convey, lease, or transfer the pedestrian mall, in whole or in part, on such terms as it deems advisable, to an improvement district or other body or agency; and to deal with it generally in any manner which it deems appropriate so long as it is used for public purposes and in the public interest;

(d) To construct or ensure the construction of, through an improvement district or other appropriate body or agency, on municipal streets which have been or will be established as a pedestrian mall or on all types of interest in real property and rights-of-way described under paragraph (c) of this subsection (2), improvements of any kind or nature necessary or convenient to the operation of such municipal streets or interests in real property and rights-of-way as a pedestrian mall;

(e) To make such improvements as are authorized under paragraph (d) of this subsection (2) on municipal streets adjacent to or near the pedestrian mall and other improvements as are necessary or convenient to the operation of the mall;

(f) To pay, from general funds of the municipality, from proceeds of general obligation bonds, from other moneys available to the municipality, from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, from funds raised through bonds issued thereagainst, or from any other source whatsoever, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall and to make adequate provisions to secure the payment of said moneys as provided in section 31-25-406;

(g) To pay, from general funds of the municipality, from proceeds of general obligation bonds, from other moneys available to the municipality, from the proceeds of assessments levied on property benefited by any such improvements, from funds raised through bonds issued payable from such assessments, or from any other source whatsoever, the whole or any portion of the cost of such improvements;

(h) To levy assessments against properties benefited by the proposed pedestrian mall in an amount no greater than the total damages or compensation paid to landowners or to assess such damages as part of the total cost of the improvements made in the mall area, so long as the amount assessed does not exceed the special benefits conferred;

(i) To issue special assessment bonds in anticipation of the collection of special assessments payable in installments or to be levied at annual intervals over a designated term and to additionally secure the payment of such bonds by or from a source otherwise provided by law;

(j) To do any and all other acts or things necessary or convenient for the accomplishment of the purposes of this part 4.

(3) The acquisitions and improvements authorized in paragraphs (c) and (e) of subsection (2) of this section shall be deemed improvements as such term or a related term is used in this part 4. The governing body shall also have the power to transfer, lease, and convey, on such terms as it deems advisable, all such improvements and interests in real property.

(4) This part 4 and all of its provisions shall be liberally construed to the end that its purposes may be effectuated. Any proceeding taken pursuant to this part 4 shall not be invalid for

failure to comply with the provisions of this part 4 if the acts done and proceedings taken are in substantial compliance with the terms and provisions set forth in this part 4.

Source: L. 75: Entire title R&RE, p. 1181, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-402 as it existed prior to 1975.

ANNOTATION

The establishment of a pedestrian mall does not constitute an unconstitutional taking without compensation of the respondents' rights of vehicular access. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

31-25-403. Definitions.

As used in this part 4, unless the context otherwise requires:

(1) "Improvements" means improvements of any kind or nature necessary or convenient to the operation of municipal streets as a pedestrian mall, including but not limited to paving, sidewalks, curbs, gutters, sewers, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, ponds, lakes, vehicular parking areas, retaining walls, landscaping, tree planting, statuaries, fountains, commercial buildings and facilities, decorative structures, benches, rest rooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works, or improvements necessary or convenient to serve members of the public using such pedestrian mall and including the reconstruction or relocation of existing municipally-owned works, improvements, or facilities on such municipal streets.

(2) "Intersecting street" means any street which meets or crosses a pedestrian mall at a mall intersection but includes only those portions thereof on either side of a mall intersection which lie between the mall intersection and the first intersection of the intersecting street with a municipal street or highway open to vehicular traffic. If any portion of a pedestrian mall terminates on a street at a place thereon other than a place of intersection with a municipal street or state highway open to vehicular traffic, "intersecting street" also includes that portion of any street which lies between such place of termination and the first intersection of such street with a municipal street or state highway open to vehicular traffic. "Intersecting street" also includes any other street or portion thereof which the governing body, in a measure duly adopted as provided in this part 4, declares to be such.

(3) "Mall intersection" means any intersection of a municipal street which constitutes a part of a pedestrian mall with any other street, which intersection is itself part of the pedestrian mall.

(4) "Municipal street" means a street which exists within the municipal boundaries of a municipality except those designated as state highways by a duly constituted authority. If a state highway is contemplated to be used as part of a pedestrian mall, the transportation commission is authorized to remove the classification of a state highway from such part to be used as a pedestrian mall and to cede complete jurisdiction to the municipality by resolution duly adopted if it is satisfied that satisfactory provisions for the routing of traffic through the municipality can be provided by an alternate route or that the part of the state highway proposed for a pedestrian mall is no longer necessary for state highway purposes.

(5) "Public mall", referred to in this part 4 as "pedestrian mall", means one or more municipal streets or portions thereof on which vehicular traffic is or is to be restricted in whole or in part and which is or is to be used exclusively or primarily for pedestrian travel, although such mall may have other improvements constructed upon it for appearance and utility.

(6) "Streets", as used in the definitions of the terms "municipal street", "mall intersection", and "intersecting street" in this section, means any public street, road, highway, alley, lane, sidewalk, right-of-way, court, way, or place of any nature open to the use of the public and held by the public for street and road purposes, whether the same was acquired in fee or by grant of dedication or easement or by adverse use.

Source: L. 75: Entire title R&RE, p. 1182, § 1, effective July 1. **L. 91:** (4) amended, p. 1069, § 42, effective July 1.

Editor's note: This section is similar to former § 31-25-403 as it existed prior to 1975.

31-25-404. Resolution of intention.

(1) When the governing body determines that the public interest and convenience require the establishment of a pedestrian mall and that vehicular traffic will not be unduly inconvenienced thereby, it may adopt a resolution declaring its intention to establish such pedestrian mall. Such resolution shall contain:

(a) The determination and declaration referred to in the introductory portion of this subsection (1);

(b) A general description of the municipality's streets or portions thereof which are proposed to be established as a pedestrian mall;

(c) A general description of the mall intersections;

(d) A general description of the intersecting streets;

(e) A statement that the governing body proposes to adopt an ordinance prohibiting, in whole or in part, vehicular traffic on such pedestrian mall. If vehicular traffic is proposed to be prohibited only in part, the resolution shall also contain a general statement of the exceptions proposed to be made. Such exceptions may include exceptions in favor of public, emergency, utility, and other classes of vehicles, may include exceptions in favor of all or certain classes of vehicles during certain days or during portions of days, and may include other exceptions of any kind or nature.

(f) A general statement of the source of moneys proposed to be used to pay damages, if any, allowed or awarded to any abutting property owner by reason of the establishment of the pedestrian mall and how and when it is anticipated that such sum will be paid;

(g) Provision for a notice fixing a day, hour, and place for a public hearing by the governing body relative to the establishment of the proposed pedestrian mall. The notice shall also contain a statement that oral presentations from abutting property owners and the public at large in favor of or opposing, objecting to, or protesting the proposed pedestrian mall will be considered by the governing body at the public hearing.

(h) A statement that any person owning or having any legal or equitable interest in any real property which might suffer legal damage by reason of the establishment of the proposed pedestrian mall shall file a written claim of damages, if any damages are to be considered or allowed, with the clerk at any time prior to the first reading of the ordinance establishing the pedestrian mall.

(2) In such resolution any street may be described by reference thereto by its lawful or official name or the name by which it is commonly known, and the pedestrian mall, the mall intersections, and the intersecting streets may be described by reference to a map or plat thereof on file in the office of the clerk in order that the description is sufficient for one to ascertain which streets and parts of streets are in fact within the proposed mall.

(3) If the governing body intends, at any time in the future, through appropriate action, to levy assessments on lands benefited by the establishment of the mall to help pay the compensation or damages allowed to property owners, a statement to such effect shall be included in the resolution.

(4) If the governing body, in connection with the initial establishment of a pedestrian mall, proposes improvements and a method for paying for the same, the resolution shall also contain statements to satisfy the requirements of applicable law for special assessment districts, improvement districts, or other governmental bodies or agencies or private nonprofit corporations selected to accomplish and pay for the improvements.

(5) If the governing body foresees improvements being made to the pedestrian mall in the future, a statement shall be included as to how the governing body anticipates the same shall be accomplished and paid for.

Source: L. 75: Entire title R&RE, p. 1183, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-404 as it existed prior to 1975.

31-25-405. Notice and hearing.

(1) The resolution of intention shall be published in a newspaper of general circulation published within the county or municipality as the case may be. It shall be published three times: Once less than seventy-five days but more than sixty days prior to the date of the hearing; once less than forty-five days but more than thirty days prior to the date of the hearing; and once less than fifteen days but more than ten days prior to the date of the hearing. In a municipality where no such newspaper is published, the resolution shall instead be so published in a newspaper of general circulation published in the county in which the municipality is located.

(2) Copies of the resolution shall be prepared for posting and for this purpose shall be headed "Notice of Intention to Establish a Pedestrian Mall", the heading to be in letters at least one-half inch in height. Such copies shall be posted not less than sixty days prior to the hearing, and good faith efforts shall be made to maintain the posted copies in existence to the hearing date. These copies of the resolution shall be posted approximately three hundred feet apart, located as follows:

(a) On or near all municipal streets or portions thereof proposed to be established as a pedestrian mall;

(b) On all intersecting streets;

(c) On all streets that are proposed to be left open and which lie within the mall area if, in fact, the area is to be circumscribed by streets to be closed.

(3) (a) A copy of the resolution shall be mailed by registered mail with return receipt requested, not less than sixty days prior to the hearing date, to each person owning of record all or any part of a fee interest or holding an encumbrance of record against any of such lands abutting the proposed mall and, if the mall closes, to all property owners of record and those who hold encumbrances of record within the area so circumscribed. The copies shall be sent to the last-known addresses of such owners and encumbrancers.

(b) The governing body may determine that such resolution shall also be mailed to such other persons as it deems should be notified in accordance with the procedures in this section.

(4) The governing body, not less than sixty days prior to the date of the hearing, shall cause to be filed in the office of the county clerk and recorder of the county in which the said properties are located a statement including the names of the parties to whom such notices have been sent and a general description of the property which the notice concerns so that any party receiving or acquiring an interest in such property between the date of the sending of the notice and the date of the hearing shall be put on notice as to the nature of the proceeding and that his claim or protest, if any, shall be filed with the governing body in accordance with the provisions of this part 4. A copy of the resolution shall be attached to the recorded document.

(5) At or before the hearing, any interested person may, severally or with others, file with the clerk a document in writing either supporting, opposing, objecting to, or protesting the establishment of the proposed pedestrian mall. The same may be withdrawn at any time by written notice of such withdrawal signed by the persons who signed the original document, or any person who signed the original document may have his name stricken from such document. Such notice of withdrawal shall be filed with the clerk within the time set forth in this subsection (5) with the same effect as if said written document had never been filed.

(6) (a) At the hearing the governing body shall receive the written objections and written protests to the establishment of the proposed pedestrian mall. The governing body shall also receive oral presentations from abutting property owners and the public at large in favor of or opposing, objecting to, or protesting the establishment of the proposed pedestrian mall. The hearing may be continued from time to time by order entered on the minutes.

(b) If the owners of lands abutting the proposed pedestrian mall representing a majority of the frontage on the proposed pedestrian mall have made written objection or written protest to the establishment of the proposed pedestrian mall, the governing body shall so find. In the event of such finding, the governing body may terminate the proceedings for such establishment or continue the proceedings in order to put the question of the establishment of the proposed pedestrian mall to a vote of the registered electors of the municipality. If such question is put to a vote of the registered electors of the municipality and a majority of those voting thereon vote in favor of establishing such proposed pedestrian mall, the governing body may go forward to establish the proposed pedestrian mall in accordance with the provisions of this part 4, but all costs and expenses of establishing the pedestrian mall shall be paid by the municipality, and no special assessment shall be levied against the owners of lands abutting the pedestrian mall unless levied against all real property within the municipality. If the majority of those voting thereon vote against establishing such proposed pedestrian mall, the governing body shall terminate the proceedings. In the event proceedings are terminated, no proceeding shall again be commenced for the establishment of the same or substantially the same pedestrian mall until the expiration of one year from the date of termination.

(7) In the event a majority written protest or written objection is not filed, the judgment of the governing body, if it establishes the proposed pedestrian mall, shall be final and conclusive. In the event a majority written protest or written objection is filed, the judgment of the governing body, if it establishes the proposed pedestrian mall, shall be final and conclusive only if an election is held and if the result thereof complies with the provisions of subsection (6) of this section.

(8) If it is determined to establish the pedestrian mall, a resolution to that effect shall be adopted by the governing body. If the governing body at that time or at a later time determines that the pedestrian mall shall not be established, no claim for damages or compensation shall be allowed to any extent whatsoever.

Source: L. 75: Entire title R&RE, p. 1184, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-405 as it existed prior to 1975.

31-25-406. Claims for damages or compensation.

(1) Any person owning, or having any legal or equitable interest in, any real property which might suffer legal damage by reason of the establishment of the proposed pedestrian mall shall file, prior to the first reading of the ordinance establishing the pedestrian mall, a written claim for damages with the clerk. Such written claim shall describe the real property as to which the claim is made, shall state the exact nature of the claimant's interest therein, shall state the exact nature of and grounds for the claimed damage thereto, and shall state the amount of damages claimed. The failure to file such written claim within the time provided in this subsection (1) is a waiver of any claim for damages or compensation and shall operate as a complete bar to any subsequent action seeking to prevent the establishment of said pedestrian mall or to recover damages on account of such establishment, and, in the event a claim is filed, such filing shall operate as a complete bar in any subsequent action for the recovery of any damages or compensation in excess of the amount stated in such claim. Any such claim may be withdrawn by the claimant at any time by written withdrawal with the same effect as if it had never been filed. The governing body shall receipt for the claims that have been filed in accordance with this section for damages or compensation from the establishment of the proposed mall.

(2) The governing body may allow any claim for damages made pursuant to this section. Any claim so allowed shall be for the full amount of damages claimed in the written claim; except that the governing body, with the written consent of the claimant, may allow a claim for a lesser amount. In the event the claim is not allowed in full, or a suitable lesser amount is not agreed upon between the claimant and the governing body, or the governing body refuses to

recognize the claim, the claimant or the governing body, through its legal counsel, may institute proceedings in court to ascertain the amount, if any, due the claimant; however, in no event shall an action be instituted later than two years after the date the claim has been denied. Any amount determined to be due to the claimant shall accrue interest at six percent per annum from the date that vehicular traffic is prohibited, in whole or in part, on the pedestrian mall, which closing in fact is the act from which the claimed damages arise.

(3) Before vehicular traffic is prohibited, in whole or in part, on the pedestrian mall, the governing body or another agency to which it is intended the mall will be conveyed shall pay the amounts allowed or enter into agreements with good and sufficient surety to pay the principal amounts allowed or, in the event the claim is to be litigated, an amount which the court determines is sufficient to pay the compensation in that behalf when ascertained. The required surety bond may be waived in writing by the claimant.

(4) Those lawsuits instituted to determine the amount of damages, if any, to be allowed shall be in the nature of a proceeding in eminent domain for the condemnation of the right in real property, the taking of which by the establishment of the pedestrian mall results in the damages claimed. The complaint shall in no way be construed as an admission that the rights in fact exist or that damages or compensation are due therefor. The court shall first determine the nature of the right in real property, if any, being taken. Such proceedings shall then be governed under the applicable statutes and proceedings of articles 1 to 7 of title 38, C.R.S., except as otherwise provided by this part 4.

(5) Nothing in this part 4 shall be construed or interpreted as creating any new right in any person to damages or compensation by reason of the establishment of a pedestrian mall, it being the intention of the general assembly in enacting this part 4 to provide an orderly method for the determination and payment only of such damages and compensation as are required under the constitutions of the state of Colorado and the United States. In this connection, the general assembly expressly declares that, to the extent to which the establishment of a pedestrian mall is justifiable as an exercise of the police power for which no compensation is constitutionally required, no damages or compensation shall be allowed in any action.

(6) The general assembly expressly declares that the establishment of a pedestrian mall and the prohibition of vehicular traffic, in whole or in part, is a legislative act and within the discretion of the governing body except to the extent which may otherwise be provided in this part 4.

(7) Once the pedestrian mall has been established in accordance with the provisions of this part 4, the nature of the title held by the governing body shall be deemed a fee simple.

(8) In the event the governing body vacates the pedestrian mall or any part thereof by official act and such pedestrian mall or part thereof is not designated by the governing body to revert to a

public street, the real property thereby vacated shall vest in abutting landowners in the same manner as if a public street were being vacated.

Source: L. 75: Entire title R&RE, p. 1186, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-406 as it existed prior to 1975.

Cross references: For vacation of public streets, see part 3 of article 2 of title 43.

ANNOTATION

Different but not unconstitutional compensation procedure. The compensation procedure under this section is different in its commencement than the usual condemnation suit. Difference in this procedure, however, does not reach a constitutional height. Nothing in the United States or Colorado constitutions proscribes the procedure prescribed by this section. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

Nature of taking not warranting compensation. The fact that a municipality may under its police power interfere to a certain extent with access to and from premises does not mean necessarily that such interference constitutes a "taking" for which under fifth and fourteenth amendments to the United States constitution and under §§ 15 and 25 of art. II, Colo. Const., there must be compensation. Rather, to constitute such a taking there must be an unreasonable or substantial deprivation of access. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

There is not a "taking" where pedestrians are deprived of the right to approach establishments after alighting from a vehicle on street in front of or near the establishments. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

31-25-407. Establishment of the mall.

(1) Not later than one hundred eighty days following the adoption of the resolution establishing the pedestrian mall as provided in this part 4, the governing body may adopt on first reading an ordinance finally establishing the pedestrian mall. Such ordinance shall contain:

(a) A general description of the pedestrian mall and a declaration and determination that the same is established. The mall as finally established shall be substantially the same as or any portion of that described in the resolution of intention.

(b) Rules and regulations prohibiting vehicular traffic on such pedestrian mall subject to such exceptions as the ordinance may provide. Such rules and regulations and such exceptions are to follow substantially those statements made in the resolution of intention.

(c) Such additional rules and regulations as the governing body may determine pertaining to the interpretation, operation, and enforcement of the rules and regulations promulgated under paragraph (b) of this subsection (1) and otherwise pertaining to the use, operation, maintenance, and control of the pedestrian mall;

(d) Such provisions as the governing body deems necessary pertaining to the effective date of any such rules or regulations.

(2) Such ordinance shall be adopted and published and shall take effect in the manner provided by law or charter for ordinances of the municipality.

(3) Such ordinance shall be subject to referendum in the same manner as other ordinances of the municipality. The pedestrian mall shall not be closed to vehicular traffic, in whole or in part, under such ordinance until all claims for damages have been paid or properly secured as provided in this part 4.

(4) Proceedings under this part 4 and the adoption of such ordinance notwithstanding, the municipality and its governing body shall retain its police powers and other rights and powers relating to the municipal streets and rights-of-way constituting a part of the pedestrian mall. No action taken pursuant to this part 4 shall be interpreted or construed to be a vacation or abandonment, in whole or in part, of any municipal street or any right therein, it being intended that the establishment of a pedestrian mall pursuant to this part 4 be a matter of appropriate additional regulation only.

(5) Nothing in this section shall be interpreted or construed to prevent the municipality and its governing body, at any time subsequent to the adoption of the ordinance provided for in this part 4, from abandoning the operation of the pedestrian mall, from changing the extent of the pedestrian mall, or from changing or repealing any of the rules and regulations pertaining to the pedestrian mall; but any substantial change made after the adoption of the ordinance provided for in this section will create potential liability for new or additional claims which could not have been foreseen prior to the date of the hearing on the original establishment of the pedestrian mall.

Source: L. 75: Entire title R&RE, p. 1188, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-407 as it existed prior to 1975.

Cross references: For validation and time for taking effect of ordinances and resolutions, see §§ 31-16-104 and 31-16-105.

31-25-408. Improvement of the pedestrian mall.

(1) The municipality and its governing body may provide for the construction of and payment for improvements on the pedestrian mall through an improvement district under part 6 of this article, or by creation of an improvement district which can levy special assessments under other authority, or by other lawful means. The cost of the improvements shall be the cost of construction and may include the damages or compensation paid to obtain the mall area. The municipality may also pay all or any part of the cost of improving a pedestrian mall from its general funds or from any other source of moneys available to it.

(2) A pedestrian mall established or to be established pursuant to this part 4 may be so improved either concurrently with the proceedings taken under this part 4 for the establishment of a pedestrian mall or at any time subsequent thereto, but no contract for the work or any improvement shall be awarded until the claims for damages or compensation for establishing the mall have been fully paid or properly secured as provided in this part 4.

(3) The governing body may combine any part of the proceedings taken pursuant to this part 4 with any part of the proceedings taken under any law allowing for the assessment of and payment of the damages and for the construction of and payment for improvements to the end that duplication of ordinances, resolutions, notices, hearings, and other acts or proceedings may be avoided.

Source: L. 75: Entire title R&RE, p. 1188, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-408 as it existed prior to 1975.

31-25-409. Special ad valorem assessments.

(1) As used in this section, "district" means the district within which lie the lands deemed by the governing body to be specially benefited by the establishment of the pedestrian mall even though assessments may not be levied to pay for improvements.

(2) Following the establishment of a pedestrian mall pursuant to this part 4 and annually on or before December 1 of each year, the governing body or other body or agency having jurisdiction or responsibility for the improvements may prepare and approve an estimate of the expenditures required during the ensuing fiscal year for the maintenance, operation, and repair of the pedestrian mall and shall deduct from such estimate the amount of revenues, if any, which the governing body estimates will accrue to the municipality during such year from the operation of the pedestrian mall.

(3) The said governing body or agency may then through the levying authority levy and collect in any year upon and against all of the taxable land and improvements within the district a special ad valorem assessment sufficient to raise a sum of money to provide the net amount as so determined, but in no event shall the rate of assessment in any one year exceed one-half mill against the valuation for assessment of each property in the district as shown on the assessment roll used by the county for the municipal taxation. The levy shall be made with notice and hearing to all owners affected thereby. The limitation as set forth in this subsection (3) shall not be construed to limit in any manner the financing of improvements which may be erected in the mall area.

(4) The special ad valorem assessment shall be levied, collected, and enforced at the same times, in the same manner, by the same officers, and with the same interest and penalties as in the case of general taxes levied by the municipality.

(5) The proceeds of the assessment shall be placed in a separate fund by the said governing body or agency and shall be expended only for the maintenance, operation, repair, or improvement of the pedestrian mall.

Source: L. 75: Entire title R&RE, p. 1189, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-409 as it existed prior to 1975.

PART 5

SPECIAL IMPROVEMENT DISTRICTS IN MUNICIPALITIES

Cross references: For public improvement districts, see article 20 of title 30.

Law reviews: For article, "Management and Mismanagement of Municipal Special Improvement Districts", see 22 Colo. Law. 2263 (1993); for article, "Improvement Districts for Colorado Counties, Cities, and Towns", see 30 Colo. Law. 53 (Jan. 2001).

31-25-500.2. Legislative declaration - energy efficiency and renewable energy production projects.

(1) The general assembly finds, determines, and declares that:

(a) The production and efficient use of energy will continue to play a central role in the future of this state and the nation as a whole; and

(b) The development, production, and efficient use of renewable energy will advance the security, economic well-being, and public and environmental health of this state, as well as contributing to the energy independence of our nation.

(2) The general assembly further finds, determines, and declares that the inclusion of energy efficiency and renewable energy production projects for residential and commercial use in special improvement districts, and powers conferred under this part 5, as well as the expenditures of public moneys made pursuant to this part 5, will serve a valid public purpose and that the enactment of this part 5 is expressly declared to be in the public interest.

Source: L. 2008: Entire section added, p. 1300, § 21, effective May 27.

31-25-501. Definitions.

As used in this part 5, unless the context otherwise requires:

(1) "Assessment unit" means an area within a district which is separately defined for determining assessments payable pursuant to this part 5.

(1.5) "District" means the geographical division of the municipality and, in accordance with the provisions of this part 5, the county in which such municipality is situated, or any other municipality within such county, within which any local improvement may be made or, when so declared by the governing body, may include the entire municipal area. One or more noncontiguous parts or sections of property may be included in one district.

(1.7) (a) "Elector of the district" means a person who, at the designated time or event, is registered to vote in the general election in this state and:

(I) Who is a resident of the district or the area to be included in the district; or

(II) Who or whose spouse or civil union partner owns taxable real or personal property within the district or the area to be included in the district whether or not said person resides within the district.

(b) Where the owner of taxable real or personal property specified in subparagraph (II) of paragraph (a) this subsection (1.7) is not a natural person, an "elector of the district" shall include a natural person designated by such owner to vote for such person. Such designation shall be in writing and filed with the clerk of the municipality. Only one such person may be designated by an owner.

(1.9) "Energy efficiency improvement" means an installation or modification that is designed to reduce energy consumption in residential or commercial buildings and includes, but is not limited to, the following:

(a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a residential or commercial building unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(g) Energy recovery systems;

(h) Daylighting systems; and

(i) Any other modification, installation, or remodeling approved as a utility cost-savings measure by the governing body; except that no renewable energy improvement shall be authorized that interferes with a right held by a public utility under a certificate issued by the public utilities commission under article 5 of title 40, C.R.S. The public utilities commission shall have primary jurisdiction to adjudicate disputes as to whether a renewable energy improvement interferes with such a right.

(2) "Owner", in reference to petitions, means only persons in whom the record fee title is vested, although subject to lien or encumbrance.

(3) "Property" means all land, whether platted or unplatted, regardless of improvements thereon and regardless of lot or land lines. The term also includes the franchise of any railroad whose tracks lie, either lengthwise or crosswise, within any street improved under this part 5. Lots may be designated in accordance with any recorded map or plat thereof, unplatted lands by any definite description thereof, and franchises by the name of the corporation owning the same.

(3.5) "Qualified community location" means:

(a) If the affected local electric utility is not an investor-owned utility, an off-site location of a renewable energy improvement that:

(I) Is wholly owned, through either an undivided or a fractional interest, by the owner or owners of the residential or commercial building or buildings that are directly benefited by the renewable energy improvement;

(II) Provides energy as a direct credit on the owner's utility bill; and

(III) Is an encumbrance on the property specifically benefited.

(b) If the affected local electric utility is an investor-owned utility, a community solar garden as that term is defined in section 40-2-127 (2), or a community geothermal garden as that term is defined in section 40-2-127.5 (2).

(4) (a) "Renewable energy improvement" means a fixture, product, system, device, or interacting group of devices that produces energy from renewable resources, including photovoltaic systems, solar thermal systems, small wind systems, biomass systems, hydroelectric systems, or geothermal systems, as may be authorized by the governing body, and that either:

(I) Is installed behind the meter of a residential or commercial building; or

(II) Directly benefits a residential or commercial building through a qualified community location.

(b) No renewable energy improvement shall be authorized that interferes with a right held by a public utility under a certificate issued by the public utilities commission under article 5 of title 40, C.R.S. Nothing in this part 5 limits the right of a public utility, subject to article 3 or 3.5 of title 40, C.R.S., or section 40-9.5-106, C.R.S., to assess fees for the use of its facilities, or modifies or expands the net metering limitations established in section 40-9.5-118, C.R.S. The public utilities commission has primary jurisdiction to adjudicate disputes as to whether a renewable energy improvement interferes with such a right.

Source: L. 75: Entire title R&RE, p. 1190, § 1, effective July 1. **L. 86:** (1) R&RE and (1.5) added, p. 1047, §§ 2, 3, effective July 1. **L. 90:** (1.5) amended, p. 1472, § 5, effective July 1. **L. 99:** (1.7) added, p. 518, § 16, effective April 30. **L. 2002:** (1.7) amended, p. 272, § 12, effective

August 7. **L. 2008:** (1.9) and (4) added, p. 1300, § 22, effective May 27. **L. 2010:** (3.5) added and (4) amended, (SB 10-100), ch. 207, p. 903, § 7, effective May 5. **L. 2016:** (1.7)(a) amended, (SB 16-142), ch. 173, p. 592, § 78, effective May 18. **L. 2022:** (3.5)(b) amended, (SB 22-118), ch. 335, p. 2379, § 14, effective August 10. **L. 2023:** (3.5)(b) amended, (HB 23-1301), ch. 303, p. 1840, § 73, effective August 7.

Editor's note: This section is similar to former § 31-25-501 as it existed prior to 1975.

ANNOTATION

No district power. A district has no governing body, no officers, no power to make contracts or to levy taxes; it collects no money and disburses none; it cannot sue or be sued, in short, it has no power, governmental or otherwise. City of Aurora v. Krauss, 99 Colo. 12, 59 P.2d 79 (1936).

31-25-502. Powers to make local improvements.

(1) A district may be formed in accordance with the requirements of this part 5 for the purpose of constructing, installing, or acquiring any public improvement so long as the municipality that forms the district is authorized to provide such improvement under the municipality's home rule charter or ordinance passed pursuant to such charter, if any, or the laws of this state. Public improvements shall not include any facility identified in section 30-20-101 (8) or (9), C.R.S.

(2) The improvements authorized by this part 5 may include, where so specified or generally provided for in the ordinance of the governing body forming the district, any renewable energy improvement or energy efficiency improvement to any residential or commercial property within the district.

(3) It is lawful for any municipality to construct any of the local improvements mentioned in this part 5 and to assess the cost thereof, wholly or in part, upon the property especially benefited by such improvements. The improvements shall be authorized by ordinance duly adopted and shall be constructed under the direction of the municipal engineer or other officer having similar duties or under the direction of the governing body in accordance with plans and specifications adopted by the governing body; except that, for districts formed for the purpose of encouraging, accommodating, and financing renewable energy improvements or energy efficiency improvements, the owner of property within a district may arrange improvements that qualify pursuant to the ordinance of the governing body authorizing improvements for the district and may obtain financing for said improvements from the district through the process set forth in the ordinance forming the district.

Source: L. 75: Entire title R&RE, p. 1190, § 1, effective July 1. **L. 2002:** Entire section amended, p. 273, § 13, effective August 7. **L. 2008:** Entire section amended, p. 1301, § 23, effective May 27.

Editor's note: This section is similar to former § 31-25-502 as it existed prior to 1975.

ANNOTATION

Law reviews. For note, "One Year Review of Constitutional Law", see 41 Den. L. Ctr. J. 77 (1964). For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968). For article, "An Engineering — Legal Solution to Urban Drainage Problems", see 45 Den. L.J. 381 (1968).

For constitutionality of similar prior section, see Gillum v. Town of Rifle, 70 Colo. 198, 197 P. 1017 (1921).

Town cannot condemn property beyond the corporate limits. The bare right of the town to construct and maintain sewers cannot be held to include the right to condemn property beyond its corporate limits in connection therewith. Mack v. Craig, 68 Colo. 337, 191 P. 101 (1920).

For municipal improvement not being a subject for declaratory judgment until ordinance is approved, see City & County of Denver v. Denver Land Co., 85 Colo. 198, 274 P. 743 (1929); City & County of Denver v. Widom, 90 Colo. 147, 7 P.2d 406 (1932).

31-25-503. What improvements may be made - conditions.

(1) A district may be created within the boundaries of a municipality and may also include any property in the unincorporated area of the county within which the municipality is situated if such county consents by resolution to such district and the construction or acquisition of improvements therein. In addition, such district may also include any property in another municipality within such county if such municipality consents by ordinance to such district and the construction or acquisition of the improvements therein. If a district includes property within a county by county consent or within another municipality by municipal consent, the municipality shall have full authority to construct or acquire improvements, to assess property within the county or such municipality benefited by such improvements, and to enforce and collect such assessments in the manner provided in this part 5; but:

(a) No improvement, except as provided in paragraph (d) of this subsection (1) and except for sidewalks, water mains, sewers, and sewage disposal works and their appurtenances, shall be

ordered under this part 5 unless a petition for the same is first presented. The petition shall be subscribed by the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed. Except as specified in this section, nothing in this part 5 shall restrict the right of such owners from securing any particular kind or variety of improvements petitioned for. In any case where a proposed improvement district includes two or more assessment units, the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed in each assessment unit shall petition as specified in this part 5.

(b) If the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed petition for any particular kind of improvement and for any particular materials to be used in the same, the improvement shall be ordered in accordance with the petition, and the materials so designated shall be used, except as otherwise provided in this section;

(c) If the material petitioned for by the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed does not encourage competition, the petitioners shall have the right to state in the petition the maximum price per square yard or linear foot or per unit at which the improvement is desired, and no contract shall be let for any such improvement at a price exceeding the maximum price fixed in said petition, excluding the cost of engineering, collection, inspection, incidentals, and interest;

(d) Any improvement may be initiated directly by the governing body by resolution declaring its intention to construct the improvements. If initiated by such resolution, the governing body shall make a preliminary order as required by subsection (3) of this section in the same manner as if the improvements had been requested by petition. Such preliminary order may be included in the resolution of intention to construct the improvements. However, if written protests are submitted prior to the hearing referred to in subsection (4) of this section subscribed by the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed, the governing body shall not proceed with such special improvement district, based on the preliminary order so protested. Such protests shall not prevent the governing body from adopting a subsequent preliminary order for such improvements, subject to notice, hearing, and protest, as provided in this part 5.

(2) The governing body shall encourage competition by advertising for and receiving bids for such construction and, insofar as possible within the limits of the petition, shall describe all materials by standard or quality in the specifications.

(3) Before contracting for or ordering any work to be constructed, a preliminary order shall be made by the governing body, adopting preliminary plans and specifications for the same, definitely describing the materials to be used or stating that one of several specified materials shall be chosen, determining the number of installments and the time in which the cost of the improvement shall be payable, and the property to be assessed for the same, as provided in this

part 5, and requiring an estimate of the cost to be made by the municipal engineer or any similar officer or employee, together with a map of the district in which the improvement is to be made and a schedule showing the approximate amounts to be assessed upon the several lots or parcels of property within the district. The cost estimates and approximate amounts to be assessed shall be formulated in good faith on the basis of the best information available to the governing body but shall not be binding.

(4) The clerk shall give notice of the hearing on the construction of the improvements by publication in one issue of a newspaper of general circulation in the municipality, the publication to be at least twenty days prior to the date of the hearing. In addition, notice shall be mailed by first-class mail to each property owner to be assessed for the cost of the improvements who is included within the district. The mailed notice shall be made on or about the date of the publication of the notice of hearing. The notice shall set forth the following information:

(a) The kind of improvements proposed;

(b) The number of installments;

(c) The time in which the cost shall be payable;

(d) Repealed.

(e) The extent of the district to be improved;

(f) The probable cost per front foot or other unit basis which, in the judgment of the governing body, reflects the benefits which accrue to the properties to be assessed, as shown by the estimates of the engineer;

(g) The time, not less than twenty days after the publication, when an ordinance authorizing the improvements will be considered;

(h) That said map and estimate and schedule showing the approximate amounts to be assessed and all resolutions and proceedings are on file and can be seen and examined by any interested person at the office of the clerk, or other designated place, at any time within said period of twenty days; and

(i) That all complaints and objections made in writing concerning the proposed improvement by the owners of any property to be assessed will be heard and determined by the governing body before final action is taken.

(4.5) If the petition for an improvement is signed by one hundred percent of the owners of property to be assessed and contains a request for such waiver, the governing body may, at its discretion, waive all or any of the requirements for notice, publication, and a hearing set forth in subsection (4) of this section.

(5) The finding by ordinance or resolution of the governing body that said improvements were duly ordered after notice duly given and after hearing duly held when such notice and hearing are required pursuant to this section, that such petition was presented, and that the petition was subscribed by all or the required number of owners shall be conclusive of the facts so stated in every court or other tribunal.

(6) Any resolution or order in the premises may be modified, confirmed, or rescinded at any time prior to the passage of the ordinance authorizing the improvements.

(7) The specifications for paving may include sidewalks, curbs, gutters, and grading, and sufficient culverts, sewers, or drains necessary to carry off the surface waters across or along the line of the street improved, and such other incidentals to paving as, in the judgment of the governing body, may be required. The specifications may also provide that bidders shall agree to enter into contract to do the work and maintain the same in good repair for a period of five years, and the contract may be entered into in accordance with such specifications.

(8) If, before any such improvements are made, any piece of real estate or any railway company to be assessed already has an improvement conforming to the general plan or satisfactory to the governing body, an allowance therefor may be made to the owner, and such allowance may be deducted from the owner's assessment and from the contract price.

(9) (a) Any other provision of this part 5 to the contrary notwithstanding, the governing body may create a district for the purpose of acquiring existing improvements of a character authorized by this part 5, in which case, the provisions of this part 5 concerning construction of improvements by the municipality, competitive bidding, and preliminary plans and specifications shall not apply.

(b) Any other provision of this part 5 notwithstanding, the governing body may create an improvement district for the purpose of encouraging, accommodating, and financing renewable energy improvements and energy efficiency improvements of a character authorized by section 31-25-502 (2). Any such district shall include only property for which the owner has executed a contract or agreement consenting to the inclusion of such property within the district, and such consent may occur subsequent to the adoption of the ordinance of the governing body forming the district. The inclusion of such property within the district subsequent to the adoption of the ordinance of the governing body forming the district may be made by the adoption of a supplemental or amending ordinance or resolution of the governing body. For districts formed for the purpose of encouraging, accommodating, and financing renewable energy improvements or energy efficiency improvements, the provisions of subsections (2) and (3) of this section concerning preliminary orders, competitive bidding, and preliminary plans and specifications, of section 31-25-516 concerning contracts for construction, and of section 31-25-518 concerning contract provisions shall not apply.

(c) The contract or agreement shall note the existence of any first priority mortgage or deed of trust on the property, the identity of the record holder thereof, and the penalty for default provided in section 31-25-530 clearly stating that default, like the penalties that exist for default on any mortgage or any other special assessment, may result in the loss of the applicant's home. Within thirty days of a person's submission of an application to the district, the governing body shall provide written notice to the record holder of any first priority mortgage or deed of trust on the real property that the person is participating in the district.

(10) The governing body is authorized to enter into contracts and agreements with any owner of property within the district or any other person concerning the construction or acquisition of improvements, the assessment of the cost thereof, the waiver or limitation of legal rights, or any other matter concerning the district.

(11) At or about the time of publication by the governing body of any ordinance creating a district, a copy of such ordinance shall be provided to the county assessor, the county treasurer, and the division of local government in the department of local affairs. The governing body shall make a good faith attempt to comply with this subsection (11), but failure to comply shall not affect or impair the organization of any district, the construction or acquisition of improvements therein, the levying and collection of assessments, or any other matter pursuant to the provisions of this part 5.

Source: L. 75: Entire title R&RE, p. 1190, § 1, effective July 1; (1)(a) and IP(4) amended and (1)(d) added, pp. 1279, 1280, §§ 1, 2, effective May 22. **L. 81:** IP(1) amended, p. 1456, § 4, effective May 27. **L. 84:** (4.5) added and (5) amended, p. 839, § 1, effective March 29. **L. 86:** (1), (3), IP(4), (4)(f), (4)(g), and (4)(i) amended, (4)(d) repealed, and (9) to (11) added, pp. 1044, 1062, §§ 1, 39, effective July 1. **L. 90:** IP(1) amended, p. 1472, § 6, effective July 1; (11) R&RE, p. 1473, § 7, effective October 1. **L. 2002:** IP(1) amended, p. 273, § 14, effective August 7. **L. 2008:** (9) amended, p. 1302, § 24, effective May 27. **L. 2010:** (9)(c) added, (SB 10-100), ch. 207, p. 904, § 8, effective May 5.

Editor's note: This section is similar to former § 31-25-503 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

This section must be strictly construed. Kaiser v. City of Lakewood, 33 Colo. App. 239, 517 P.2d 471 (1973).

This section includes "water mains" as a local improvement but nowhere does this or any other section of the act say anything about "supplying water". City of Aurora v. Krauss, 99 Colo. 12, 59 P.2d 79 (1936).

General assembly did not intend use of singular noun "street" to have special significance in subsection (1)(a). Kaiser v. City of Lakewood, 33 Colo. App. 239, 517 P.2d 471 (1973).

Separate streets not required to be considered noncontiguous units. Fact that the general assembly used the singular noun "street" instead of "streets" in subsection (1)(a) did not require that separate streets should be considered as noncontiguous units nor require that the owners of a majority of property abutting each street within the district sign a petition before the district could be created. Kaiser v. City of Lakewood, 33 Colo. App. 239, 517 P.2d 471 (1973).

Owners not burdened by inclusion of two streets in district. Inclusion of two streets in a single improvement district will not result in burdening the owners of property on one street with the substantial costs of creating the larger, undeveloped second street, because assessments are apportioned on the basis of benefit. Kaiser v. City of Lakewood, 33 Colo. App. 239, 517 P.2d 471 (1973).

Purpose of separate signatures from noncontiguous areas. Requirement of subsection (1)(a) that signatures be separately obtained from noncontiguous portions of a district is designed to insure that property owners, unlikely to use or benefit from improvements in one part of a district, need not have their streets improved based upon the desires of property owners from another isolated area. Kaiser v. City of Lakewood, 33 Colo. App. 239, 517 P.2d 471 (1973).

The purpose in requiring the city council to enter this preliminary order and the city clerk to give the preliminary notice, is to permit persons thereby affected to object, if they see fit, to the proposed improvement being made at all, and to settle, in the inception of the enterprise, the regularity of the preliminary steps antecedent to the passage of the ordinance authorizing the proposed improvement. Ellis v. Town of La Salle, 72 Colo. 244, 211 P. 104 (1922).

Under subsection (3) detailed matters may be left to the engineer in charge. Where the nature of a public improvement is such that an accurate predetermination of details in every respect cannot be made, like in the construction of a sewer, such matters as cannot be determined in advance with certainty may be left to the judgment of the engineer in charge under the direction of the lawfully constituted authorities. Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

Subsection (5) is constitutional. Gillum v. Town of Rifle, 70 Colo. 198, 197 P. 1017 (1921).

Statutory provisions respecting the manner in which protests against public improvements shall be made must be substantially followed in order to avail the

protestant. Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

There is no necessity for persons in response to the preliminary notice to object to the cost of the assessment against them. By failing to respond to the preliminary notice their right to object to the rate of assessment under § 31-25-504 is not affected, but they waive their right to be heard upon any objection they might have to the creation of the proposed improvement. Watson v. City of Ft. Collins, 86 Colo. 305, 281 P. 355 (1929).

Questions as to sufficiency of notice must be raised when objections are presented. Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

Subsection (5) did not preclude judicial review where the issue to be resolved was whether, under subsection (1)(a), city council properly applied the law in reaching its conclusion that a petition was in conformity with the law and signed by the requisite number of people, and was not a factual determination of whether a petition was properly signed by the requisite number of property owners. Kaiser v. City of Lakewood, 33 Colo. App. 239, 517 P.2d 471 (1973).

31-25-504. Municipality may establish sewer systems.

Any municipality may establish and maintain sewer systems and sewage disposal plants for sanitary or storm drainage.

Source: L. 75: Entire title R&RE, p. 1192, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-525 as it existed prior to 1975.

ANNOTATION

The city council in establishing the sewer district was exercising a legislative power for police purposes, such power being conferred upon it by § 7 of art. X, Colo. Const., and by this section. Denver v. Capelli, 4 Colo. 25 (1877); City of Pueblo v. Robinson, 12 Colo. 593, 21 P. 899 (1889); City of Denver v. Knowles, 17 Colo. 204, 30 P. 1041 (1892); Lewis v. Denver City Waterworks Co., 19 Colo. 236, 34 P. 993 (1893); Tebbetts v. People, 31 Colo. 461, 73 P. 869 (1903); Wolff v. City of Denver, 20 Colo. App. 135, 77 P. 364 (1904).

31-25-505. District sanitary sewers - contracts - contiguous towns.

When the governing body declares the same necessary for sanitary reasons, it may order the construction of district sanitary sewers in districts to be prescribed by ordinance so as to connect with any public or district sewer or with some natural drainage or disposal plant. Such districts, by like authority, may be divided into subdistricts or enlarged, diminished, or otherwise altered by ordinance at any time in accordance with the provisions of this part 5. The contract for district sewers may include all necessary manholes, inlets, and appurtenances and such mains of such reasonable extent outside the district as may be necessary to connect the district with a public sewer or some natural drainage or disposal plant. Contiguous municipalities may unite in the construction of a common sewer or cooperate in such construction or extend to each other the right to use any sewer constructed or to be constructed when such use may be deemed necessary for the discharge of the sewage of either, and such cooperation, common construction, or use shall be upon such terms as regards the apportionment of cost as may be agreed upon between the governing bodies of such contiguous municipalities.

Source: L. 75: Entire title R&RE, p. 1192, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-526 as it existed prior to 1975.

ANNOTATION

This section has intrusted to the judgment and discretion of city councils the determination of the boundaries of sewer districts, and the courts cannot review the judgment and discretion of the council in fixing such boundaries. Wolff v. City of Denver, 20 Colo. App. 135, 77 P. 364 (1904); Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

31-25-506. Private sewers - connection.

Private sanitary sewers connecting with public or district sanitary sewers may be constructed under such restrictions and subject to such regulations as may be prescribed by ordinance. No expense shall be incurred by the municipality in constructing or maintaining private sewers. The owner of any premises in any sewer district may be compelled by ordinance to connect the same with the district sewer at his own expense.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-527 as it existed prior to 1975.

31-25-507. Determination of special benefits - factors considered.

(1) The term "benefit", for the purposes of assessing a particular property within a district, includes, but is not limited to, the following:

(a) Any increase in the market value of the property;

(b) The provision for accepting the burden from specific dominant property for discharging surface water onto servient property in a manner or quantity greater than would naturally flow because the dominant owner made some of his property impermeable;

(c) Any adaptability of property to a superior or more profitable use;

(d) Any alleviation of health and sanitation hazards accruing to particular property or accruing to public property in the improvement district, if the provision of health and sanitation is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;

(e) Any reduction in the maintenance costs of particular property or of public property in the improvement district, if the maintenance of the public property is paid for wholly or partially out of funds derived from taxation of property owners of the improvement district;

(f) Any increase in convenience or reduction in inconvenience accruing to particular property owners, including the facilitation of access to and travel over streets;

(g) Recreational improvements accruing to particular property owners as a direct result of drainage improvement.

(2) As used in connection with any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 31-25-502 (2), the term "benefit" shall include, but not be limited to, any acknowledged value set forth in the contracts and agreements entered into by the owner of the assessed property.

Source: L. 75: Entire section added, p. 997, § 3, effective July 1. **L. 86:** IP(1) amended, p. 1046, § 4, effective July 1. **L. 2008:** (2) added, p. 1302, § 25, effective May 27.

Editor's note: This section was originally numbered as § 31-25-506.5 in Senate Bill 75-052 but was renumbered on revision in 1977 for ease of location.

31-25-508. Storm drainage sewers - districts.

The governing body may order the construction of district sewers for storm drainage in districts to be known as storm sewer districts, the same to be prescribed by ordinance. Such sewers may include the necessary manholes, inlets, and appurtenances and shall be so constructed as to connect with some other sufficient public sewer or some natural drainage. Such districts may be divided into subdistricts to be especially named or numbered in said ordinance.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-528 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-507 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

City is not bound to protect property below street level. It is a general doctrine in which the authorities almost universally concur, that a city is not bound to protect from surface waters those who may be so unfortunate as to own property which is below the general level of the street. City & County of Denver v. Stanley Aviation Corp., 143 Colo. 182, 352 P.2d 291 (1960).

The owner of a dominant estate has a legal as well as a natural easement for servitude on the lands downstream for drainage of surface water flowing in its natural course. Ambrosio v. Perl-Mack Constr. Co., 143 Colo. 49, 351 P.2d 803 (1960).

Thus, the city of Denver has a legal as well as a natural easement for servitude on the lands downstream for drainage of surface water flowing in its natural channel, and if not negligent in the installation of a drainage pipe and in failing to foresee probability of unusual flood occurring 20 years thereafter, no liability attended. City & County of Denver v. Stanley Aviation Corp., 143 Colo. 182, 352 P.2d 291 (1960).

31-25-509. Subdistricts in sewer districts.

At the time of ordering the construction of district sanitary or storm sewers or at any time thereafter, the construction may be ordered in like manner in subdistricts, in such manner as to connect the subdistricts, or such part thereof, with the district sanitary or storm sewer for the

purpose of sanitary or storm drainage. The cost of subdistrict sanitary or storm sewers in each subdistrict or part thereof, with the appurtenances, may be assessed upon all the land in the subdistrict or in the part improved in proportion as the area of each piece of land in the subdistrict or in the part improved is to the area of all the land in the subdistrict or in the part improved exclusive of public highways. Combined sewers for sanitary and storm drainage may be authorized and constructed in the same manner as provided for the construction of sanitary or storm sewers and the cost thereof assessed in the same manner and proportion.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-529 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-508 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-510. Improvements may be constructed under other laws.

Nothing in this part 5 shall prejudice or affect the right to construct local improvements by virtue of any other law of this state. No other act or law shall prejudice the right to construct local improvements under this part 5. If constructed in pursuance of this part 5, the same shall be made to appear in the original petition and in the ordinance authorizing the improvements.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-504 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-509 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

For city not being liable for faulty drainage system, see Malvernia Inv. Co. v. City of Trinidad, 123 Colo. 394, 229 P.2d 945 (1951).

31-25-511. Property of irregular form - assessment.

When any lot or parcel of land is V-shaped or of any irregular form, such allowance may be made by ordinance in any assessment as may be equitable and just, or any allowance may be refused, and, in case of any unusual area or proportion of intersections, the municipality may pay not exceeding one-half of the cost of any such intersection, and in such case the remainder only shall be assessed against the property improved.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-505 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-510 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-512. Cost assessed in proportion to area.

The costs of any district sanitary sewer, including inlets, manholes, connecting mains, and appurtenances, with interest, and of district storm sewers may be assessed by ordinance upon all the real estate in the district, in proportion as the area of each piece of real estate in the district bears to the area of all the real estate in the district, exclusive of public highways.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1.

Editor's note: (1) This section is similar to former §§ 31-25-506 and 31-25-512 as they existed prior to 1975.

(2) This section was originally numbered as § 31-25-511 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

This section is not unconstitutional because a general method has been prescribed by which to apportion upon the property of a district the expense of constructing a sanitary sewer. Parties whose property is thus assessed may still question the benefits accruing as the result of its construction. Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

For if an injustice results, relief may be granted. Building lots abutting a sanitary sewer system are prima facie presumed to be benefited as the result of its construction. The rule of apportionment according to area is, therefore, prima facie valid, but where any general method employed, though, prima facie, legal, would work an injustice, relief in proper circumstances may be granted. City of Denver v. Dumars, 33 Colo. 94, 80 P. 114 (1905); Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

31-25-513. Cost assessed in accordance with benefits.

(1) The cost of improvements constructed or acquired pursuant to this part 5, or such part thereof as may be assessed against the property specially benefited, including the intersections of streets and alleys except the share to be assessed against railway companies, may be assessed on property, without regard to lot or land lines, on a frontage, zone, or other equitable basis in accordance with benefits as the same may be determined by the governing body.

(2) When the governing body determines that the improvement of any street or alley, including the intersections of streets and alleys, or any other improvement authorized by this part 5 results in special benefits to both the municipality and the owners of property within the district, that portion of the cost of the improvement which results in a special benefit to the municipality may be assessed against the municipality and be payable in installments, as provided in this part 5. The determination by the governing body as to the property to be assessed and the amount of special benefits shall be conclusive of the facts stated therein.

(3) No cost of improvements to streets or alleys shall be assessed to any property where reasonable access to the street or alley is denied the owner of the property.

(4) Any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 31-25-502 (2) shall assess the costs of the improvements to each property whose owner has entered into a contract or agreement for the improvements. The contracts and agreements entered into with the owner of property, as authorized by the governing body, shall be conclusive regarding the special benefit to the property and the amount that may be assessed against the property.

Source: L. 75: Entire title R&RE, p. 1193, § 1, effective July 1. **L. 77:** Entire section amended, p. 1469, § 1, effective June 4. **L. 86:** (1) and (2) amended, p. 1047, § 5, effective July 1. **L. 2008:** (4) added, p. 1302, § 26, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-513 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-512 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Special improvement districts have as their objective improvement of the respective properties and are financed by a special assessment on each by reason of the relationship to the improvement bestowed. Ruberoid Co. v. North Pecos Water & San. Dist., 158 Colo. 498, 408 P.2d 436 (1965).

The theory upon which the owner of property abutting upon a city street may be required to pay the cost of paving the same is that the property is benefited in addition to the benefits received by the public at large. Watson v. City of Ft. Collins, 86 Colo. 305, 281 P. 355 (1929).

Owners not burdened by inclusion of two streets in district. Inclusion of two streets in a single improvement district will not result in burdening the owners of property on one street with the substantial costs of creating the larger, undeveloped second street, because assessments are apportioned on the basis of benefit. Kaiser v. City of Lakewood, 33 Colo. App. 239, 517 P.2d 471 (1973).

Front-foot, square-foot basis of attributing benefits and assessing costs has long been considered a valid method of apportionment. Orchard Court Dev. Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973).

An abutting landowner may not be assessed for paving land along railway. As abutting landowners in a street paving district are taxed for the improvement to the extent of the special benefit to their property, and any tax in addition thereto on account thereof is invalid, in an action to determine who should pay for paving the right-of-way of a municipally owned street railway, it is held that the abutting landowners may not be assessed for the cost of the paving of the strip of land along which the railway extends, nor for the paving at street intersections. Watson v. City of Ft. Collins, 86 Colo. 305, 281 P. 355 (1929).

31-25-514. Streets - railway companies subject to tax.

(1) Whenever any grading, paving, or other kind of street improvement district is created under this part 5, the governing body may include in the area to be paved, graded, or otherwise improved the entire width of street from curb to curb or any part thereof, including the portion of said street occupied by or required by franchise obligation to be paid by or chargeable or assessable to any railway company whose railroad runs through or across any street in said district, and shall charge to, assess, and collect the proper proportion of the cost of the improvement from such railway company in the same manner as is provided for in case of other

property, and shall issue bonds for the same, which bonds shall be issued and made payable in like manner as bonds issued for the improvement to be assessed against the real estate specially benefited.

(2) In the meaning of this section, in the absence of a franchise obligation to grade or pave or otherwise improve, a railway company shall be held to occupy and is liable for the grading, paving, or other improvement of that part of the street lying between the rails of each track and two feet outside of each rail, and every railway company, whether street railway or otherwise, shall be assessed for the cost of such improvement of any part of any street or alley occupied by or required by franchise obligation to be so improved. The assessment levied for the cost of said improvements chargeable to a railway company shall be a perpetual tax lien against the entire franchise and property of the company, both within and without said district but within the limits of the municipality where such improvement is made, superior to all other liens except general tax liens.

(3) All the terms, conditions, and provisions in this part 5 relative to the collection of the amounts chargeable against property specially benefited shall be applicable in the enforcement and collection of such assessment against such railway company, and the property of such railway company, in case of default in payment of such assessment, shall be sold as in cases of default in payment of general taxes levied thereon; but railway trackage shall not be considered or computed as assessable frontage in determining the sufficiency of petitions.

Source: L. 75: Entire title R&RE, p. 1194, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-508 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-513 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-514 is similar to former § 31-25-508 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Assessment against railroad is the same as for abutting property. From this section and the following section it appears that the proportionate amount of assessment which a railway company is required to pay for the cost of a special improvement for grading or paving is to be determined by the same method applicable to abutting property owners. House v. Bd. of Comm'rs, 89 Colo. 196, 300 P. 998 (1931).

Such assessment is against the railroad, and is not specific property within the improvement district. House v. Bd. of Comm'rs, 89 Colo. 196, 300 P. 998 (1931).

The procedure upon default in payment is the same as in default of the payment of its general taxes. House v. Bd. of Comm'rs, 89 Colo. 196, 300 P. 998 (1931).

31-25-515. Utility connections may be ordered before paving - costs - default.

Before paving in any district in pursuance of this part 5, the governing body may order the owners of the abutting property to connect their several premises with the gas or water mains or with any other utility in the street in front of their several premises. Upon default of any owner for thirty days after such order to make such connections, the municipality may contract for and make the connections at such distance, under such regulations, and in accordance with such specifications as may be prescribed by the governing body. The whole cost of each connection shall be assessed against the property with which the connection is made, and the cost shall be paid upon the completion of the work in one sum. The cost shall be assessed, shall become a lien, and shall be collected in the same manner as is provided in this part 5 for the assessment and collection of the cost of other special improvements. Upon default in the payment of any such assessment, the property shall be sold in like manner and with like effect.

Source: L. 75: Entire title R&RE, p. 1194, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-536 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-514 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-516. Contracts for construction - bond - default.

(1) Except as provided in this section, all local improvements made under the provisions of this part 5 shall be constructed by independent contract, and all contracts shall be let by the mayor with the approval of the governing body. All such contracts shall be let to the lowest reliable and responsible bidder after public advertisement once a week for three consecutive weeks in a newspaper of general circulation in such municipality; but, after such advertisement, if it is determined by the governing body that the bids are too high or that the proposed improvement can be made by the municipality for less than the bid of the lowest reliable and responsible bidder, such municipality is hereby empowered to provide for doing the work by hiring labor by the day or otherwise and to arrange for purchasing necessary material, all under the supervision of the governing body.

(2) Except when the municipality does the work, no contract shall be made without a surety bond for its faithful performance with sufficient sureties to be approved by the governing body. No surety shall be accepted or approved by the governing body or mayor, other than a corporate surety company, unless he is the owner of real estate in this state, free and clear of all encumbrances, in double the amount of his liability on all bonds upon which he may then be surety. Upon default in the performance of any contract, the governing body may advertise and relet the remainder of the work in like manner without further ordinance and deduct the cost from the original contract price or, with the approval of the governing body, advance any excess out of the funds of the municipality and recover the same by suit on the original bond. In all advertisements the right shall be reserved to reject any or all bids and, upon rejecting all bids, if deemed advisable by the governing body, other bids may be advertised for.

Source: L. 75: Entire title R&RE, p. 1195, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-534 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-515 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-517. Sidewalks - water mains - sewers.

In ordering the construction of sidewalks, water mains, or sewers, the procedure shall be as required in section 31-25-503 (2), (3), (4), (5), (6), and (8) but shall not be subject to section 31-25-503 (1)(a) to (1)(c) and (7).

Source: L. 75: Entire title R&RE, p. 1195, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-524 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-516 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-518. Provisions to be inserted.

Every contract shall provide that it is subject to the provisions of the laws under which the municipality exists and of the ordinance authorizing the improvement; that the aggregate

payment thereon shall not exceed the amount appropriated; that, upon ten days' written notice by the mayor to the contractor, the work under such contract, without cost or claim against the municipality, may be suspended for substantial cause; and that, upon complaint by any owner of land to be assessed for the improvement that the improvement is not being constructed in accordance with the contract, the governing body may consider the complaint and make such order in the premises as shall be just. Such order shall be final.

Source: L. 75: Entire title R&RE, p. 1195, § 1, effective July 1. **L. 86:** Entire section amended, p. 1048, § 6, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-535 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-517 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-519. Statement of expenses - apportionment.

Upon completion of any local improvement or upon completion from time to time of any part thereof and upon acceptance thereof by the governing body or when the total cost of any improvement or of any such part thereof can be reasonably ascertained, either prior to, during, or subsequent to the construction of the improvements, the governing body shall cause to be prepared a statement showing the whole cost of the improvement, including costs of inspection and collection, capitalized interest on any bonds for such period as the governing body may deem necessary, capitalized bond reserves, and all other incidental costs, the portion thereof, if any, to be paid by the municipality, and the portion thereof to be assessed upon each lot or tract of land to be assessed for the same, which statement shall be filed in the office of the clerk. If the governing body determines that the basis of assessment is inequitable in any case, a just and equitable assessment shall be made upon the basis of benefits accruing to the property assessed by reason of the improvements made.

Source: L. 75: Entire title R&RE, p. 1195, § 1, effective July 1. **L. 86:** Entire section amended, p. 1048, § 7, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-514 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-518 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-519 is similar to former § 31-25-514 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

Generally speaking, only such benefits are to be assessed as it is reasonably apparent the property will receive, other than the general benefit to the community, and nothing is to be considered a benefit which does not enhance the value of the property. Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

31-25-520. Notice of hearing on assessments.

(1) The clerk shall give notice that the assessment roll has been completed and of a hearing on the assessment roll by publication in an issue of a newspaper of general circulation in the municipality, the publication to be at least fifteen days prior to the date of hearing. The same notice of the hearing shall be mailed by first-class mail to each property owner to be assessed for the cost of the improvements who is included within the district. The mailed notice shall be made on or about the date of the publication of the notice of hearing. The notices shall specify: The whole cost of the improvement; the portion, if any, to be paid by such municipality; the share apportioned to each lot or tract of land; that any complaints or objections that may be made in writing by the property owners or any citizen to the governing body, and filed in writing on or prior to the date of the hearing, will be heard and determined by the governing body before the passage of any ordinance assessing the cost of said improvements; and the date when and the place where such complaints or objections will be heard.

(2) Any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 31-25-502 (2) shall not be required to provide a notice of the hearing on assessments by publication; rather, such notice, if any, may be provided in the time and manner set forth in the contract or agreement entered into by the owner for each property included in the district.

Source: L. 75: Entire title R&RE, p. 1196, § 1, effective July 1; entire section amended, p. 1280, § 3, effective May 22. **L. 2008:** Entire section amended, p. 1303, § 27, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-515 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-519 in House Bill 75-1089 and House Bill 75-1377 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

For necessity of giving landowner opportunity to be heard, see City & County of Denver v. State Inv. Co., 49 Colo. 244, 112 P. 789 (1910) (decided prior to L. 23, p. 634, § 17, the earliest source of former section).

31-25-521. Hearing on objections.

At the time specified in said notice or at some adjourned time, the governing body shall hear and determine all such complaints and objections and may make such modifications and changes as may seem equitable and just or may confirm the first apportionment. The governing body shall by ordinance assess the cost of said improvements, and the passage of such ordinance shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments and that such assessments have been lawfully levied.

Source: L. 75: Entire title R&RE, p. 1196, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-516 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-520 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-521 is similar to former § 31-25-516 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Effect of omission of property that should have been assessed. The omission of property which should have been assessed to pay the cost of a public improvement does not render the assessment or the proceedings void. All that could be claimed in such circumstances would be, that the assessment on property taxed for such improvement should be reduced to the extent it would have been had the omitted property been charged with its proportionate share of the expense. Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

Burden of proof. Granting the city the benefit of this statute puts upon the property owner the burden of showing that the property assessed was not benefited. The trial court correctly found that no benefit inured to the railroad from ample evidence in the record. Town of Fort Lupton v. Union P. R. R., 156 Colo. 352, 399 P.2d 248 (1965).

To overcome prima facie evidence. The passage of an ordinance of assessment for such improvements shall be prima facie evidence of the fact that the property assessed for such improvements is benefited and that such assessments have been lawfully levied. The burden is upon the plaintiff under said statute to overcome this presumption. Heron v. City of Englewood, 155 Colo. 480, 395 P.2d 356 (1964).

Time for objections. Objections to the assessment of cost for a municipal improvement need not be urged by property owners until after the assessments are made. Watson v. City of Fort Collins, 86 Colo. 305, 281 P. 355 (1929).

Right to relief in equity. Where the body having authority to correct errors and inequalities in the assessment renounces such authority and refuses to hear testimony, the proceeding cannot be regarded as a hearing, and the assessment is void. Equity will, at the suit of the property owner, annul the assessment, ascertain the just amount chargeable against the property, and, upon payment thereof into court, restrain the collection of the residue. City & County of Denver v. State Inv. Co., 49 Colo. 244, 112 P. 789 (1910).

31-25-522. Assessment of lien - filing with county clerk and recorder - corrections.

(1) All assessments made in pursuance of this part 5, together with all interest thereon and penalties for default in payment thereof and all costs in collecting the same, shall constitute, from the date of the final publication of the assessing ordinance, a perpetual lien in the several amounts assessed against each lot or tract of land and shall have priority over all other liens except general tax liens. As to any subdivisions of any land assessed in pursuance of this part 5, the assessment lien may be apportioned by the governing body in such manner, if any, as may be provided in the assessing ordinance.

(2) The clerk shall file copies of the assessing ordinance after its final adoption by the governing body with the county clerk and recorder of the county wherein each lot or tract of land assessed is located for recording on the land records of such lots or tracts of land, as provided in article 30, 35, or 36 of title 38, C.R.S. In addition, the clerk shall also file copies of such assessing ordinance after its adoption by the governing body with the county treasurer and the county assessor. The county assessor is authorized to create separate schedules for each lot or tract of land assessed within the municipality pursuant to the ordinance.

(3) No delays, mistakes, errors, or irregularities in any act or proceeding authorized or required by this part 5 shall prejudice or invalidate any final assessment; but the same may be

remedied by subsequent filings, amending acts, or proceedings, as the case may require. When so remedied, the same shall take effect as of the date of the original filing, act, or proceeding.

(4) To provide for unanticipated increases in the costs of improvements, the amount of any assessment imposed before the completion of the related improvements may be increased to a total amount not in excess of the special benefit conferred upon the affected property if, not more than ninety days following the completion of such improvements, the governing body gives notice of its intent to consider the amendment of such assessment, stating the time and place that a public hearing shall be held thereon, and holds such public hearing, in the same manner as provided for hearings held pursuant to sections 31-25-520 and 31-25-521. At the conclusion of such public hearing, the governing body may determine whether to amend one or more assessments within a district. Any such amendment shall take effect as of the date of the original assessment.

(5) If, as the result of any subdivision, resubdivision, vacation of right-of-way, or other action taken subsequent to the adoption of the assessment ordinance, any new lot or parcel is created within a district, the governing body may, without a public hearing and with the consent of the owner of the new lot or parcel, modify the assessment ordinance to reapportion all or any part of the total amount assessed in the district to such new lot or parcel.

Source: L. 75: Entire title R&RE, p. 1196, § 1, effective July 1. **L. 86:** Entire section amended, p. 1055, § 19, effective July 1. **L. 88:** (2) amended, p. 1432, § 18, effective June 11. **L. 90:** (2) amended, p. 1473, § 8, effective October 1. **L. 2008:** (4) and (5) added, p. 1303, § 28, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-511 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-521 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Law reviews. For note, "The Effect of a General Tax Sale on the Special Assessment Lien", see 20 Rocky Mt. L. Rev. 288 (1948). For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

Annotator's note. Since § 31-25-522 is similar to former § 31-25-511 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Under this section an assessment for storm drainage sewers became a lien against the property. The vendor of property

upon which the assessment had not been paid held liable for breach of warranty — the premises not being clear of all assessments. Wilson v. Barney, 90 Colo. 461, 9 P.2d 1058 (1932).

Parity between lien for general levies and lien for special assessment. Under the provisions of this section that the lien of a special improvement assessment shall be on a parity with a lien for general taxes, so long as the title to the land involved remains in the owner at the inception of the two different assessments, or in grantees through mesne conveyances, both liens continue in full force, and perpetually, as the 1923 statute provides, and by the payment of neither assessments may the owner avoid the effect of the lien of the other assessment. City Real Estate v. Sullivan, 116 Colo. 169, 180 P.2d 504 (1947).

And the issuance of a tax deed to the holder of a certificate of sale based on general levies extinguishes the lien of the special assessment, notwithstanding this section. City Real Estate v. Sullivan, 116 Colo. 169, 180 P.2d 504 (1947).

A city's tax lien for creation of a special improvement district is transferred, by operation of law, from defendant's real estate to the fund created by the payment of the award into court by the state highway department in a condemnation proceeding. Southworth v. Dept. of Hwys., 176 Colo. 82, 489 P.2d 204 (1971).

31-25-523. Assessment roll.

The clerk shall prepare a local assessment roll in book form showing in suitable columns each piece of land assessed, the total amount of assessment, the amount of each installment of principal and interest if, in pursuance of this part 5, the same is payable in installments, and the date when each installment will become due. The assessment roll shall have suitable columns for use in case of payment of the whole amount or of any installment or penalty. The clerk shall deliver the assessment roll, duly certified, under the corporate seal, to the municipal treasurer for collection.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-507 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-522 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-524. Payment - assessment roll returned.

(1) Payment may be made to the municipal treasurer at any time within thirty days after the final publication of the assessing ordinance.

(2) At the expiration of said thirty-day period, the municipal treasurer shall return the local assessment roll to the clerk, therein showing all payments made with the date of each payment. Said roll shall thereafter be certified by the clerk under the seal of the municipality and delivered by him to the county treasurer of the same county with his warrant for the collection of the same. The county treasurer shall receipt for the same, and all such rolls shall be numbered for convenient reference.

(3) If the municipal treasurer is directed by ordinance to collect assessment payments as provided in section 31-25-526 (1), in lieu of the procedure specified in subsection (2) of this section, the municipal treasurer may keep the assessment roll, numbered for convenient reference, in such a manner as to best facilitate the collection and recording of assessment payments.

(4) All special assessments for local improvements authorized in section 31-25-502 (2) may be due and payable at such alternate time or times as set forth in the assessing ordinance.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1. **L. 86:** Entitle section amended, p. 1049, § 9, effective July 1. **L. 90:** (1) amended, p. 1474, § 9, effective October 1. **L. 2008:** (4) added, p. 1304, § 29, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-520 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-523 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-525. Owner of interest may pay share.

The owner of any divided or undivided interest in the property assessed may pay his share of any assessment upon producing evidence of the extent of his interest satisfactory to the treasurer having charge of the roll.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-523 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-524 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-526. Collection of assessment payments - by municipal treasurer - by county treasurer.

(1) The governing body may, by ordinance, direct the municipal treasurer to collect any amount payable as an assessment pursuant to this part 5 or authorize the municipal treasurer or other appropriate municipal official to enter into contracts with third parties for assistance in the administration and collection of assessments. If the governing body does not direct, by ordinance, that assessment payments be collected by the municipal treasurer, then such payments shall be collected by the county treasurer.

(2) All collections made by the county treasurer upon an assessment roll in any calendar month shall be accounted for and paid over to the municipal treasurer on or before the tenth day of the next succeeding calendar month, with separate statements for all such collections for each improvement.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1. **L. 86:** Entire section amended, p. 1049, § 8, effective July 1. **L. 2008:** (1) amended, p. 1304, § 30, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-510 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-525 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-527. When assessments payable - installments.

All special assessments for local improvements shall be due and payable within thirty days after the final publication of the assessing ordinance without demand; but all such assessments may be paid, at the election of the owner, in installments with interest as provided in section 31-25-528. All special assessments for local improvements authorized in section 31-25-502 (2) may be due and payable at such alternate time or times as set forth in the assessing ordinance.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1. **L. 2008:** Entire section amended, p. 1304, § 31, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-509 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-526 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-528. How installments paid - interest.

In case of such election to pay in installments, the assessments shall be payable in two or more installments of principal with interest in all cases on the unpaid principal. The first installment shall be payable as prescribed by the governing body in not more than five years, and the last installment shall be payable in not more than twenty years. Except as otherwise provided in this section, the number, amounts, and times of payment of installments, the period of payment, and the rate and times of payment of interest shall be determined by the governing body and set forth in the assessing ordinance. If assessments are to be collected by the county treasurer, the times of payment of installments shall be the same as the times of payment of installments of property taxes as specified in section 39-10-104.5 (2), C.R.S.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1; entire section amended, p. 1280, § 4, effective May 22. **L. 86:** Entire section amended, p. 1050, § 11, effective July 1. **L. 90:** Entire section amended, p. 1474, § 10, effective October 1. **L. 92:** Entire section amended, p. 2184, § 64, effective June 2.

Editor's note: (1) This section is similar to former § 31-25-517 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-527 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-529. Effect of payment in installments.

Failure to pay the whole assessment within said period of thirty days shall be conclusively considered to be an election on the part of all persons interested, whether under disability or otherwise, to pay in installments. All persons so electing to pay in installments shall be conclusively considered to have consented to said improvements. Such election shall be conclusively considered to be a waiver of any right to question the power or jurisdiction of the municipality to construct the improvements, the quality of the work, the regularity or sufficiency of the proceedings, the validity or the correctness of the assessments, or the validity of the lien thereof; except that, with respect to local improvements authorized in section 31-25-502 (2), the

owner for each property included in the district shall retain all rights otherwise existing by contract or by law against parties other than the county with respect to the financed energy efficiency improvement or renewable energy improvement.

Source: L. 75: Entire title R&RE, p. 1197, § 1, effective July 1. **L. 2008:** Entire section amended, p. 1304, § 32, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-518 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-528 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-530. Penalty for default - payment of balance.

Failure to pay any installment, whether of principal or interest, when due shall cause the whole of the unpaid principal to become due and collectible immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate established pursuant to section 5-12-106 (2) and (3), C.R.S., until the day of sale; but, at any time prior to the day of sale, the owner may pay the amount of all unpaid installments, with interest at the penalty rate set by the assessing ordinance, and all penalties and costs of collection accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any property not in default as to any installment or payment may, at any time, pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal; except that any owner who pays the whole of the unpaid balance pursuant to this section may be assessed a prepayment premium not to exceed three percent of the unpaid principal, the amount of which premium shall be specified in the ordinance imposing the assessment.

Source: L. 75: Entire title R&RE, p. 1198, § 1, effective July 1. **L. 86:** Entire section R&RE, p. 1057, § 22, effective July 1. **L. 2002:** Entire section amended, p. 274, § 15, effective August 7.

Editor's note: (1) This section is similar to former § 31-25-519 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-529 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

31-25-531. Sale of property for nonpayment.

(1) The county treasurer or the municipal treasurer pursuant to section 31-25-526 shall receive payment of all assessments appearing upon the assessment roll with interest.

(2) In case of default in the payment of any installment of principal or interest on assessed property when due:

(a) The municipal treasurer, if collecting assessment payments pursuant to section 31-25-526, shall certify to the county treasurer the whole amount of the unpaid assessments; and

(b) The county treasurer shall advertise and sell all property concerning which such default is suffered for the payment of the whole of the unpaid assessments thereon, plus penalties and costs of collection.

(3) Said advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate in default of payment of the general property tax.

Source: L. 75: Entire title R&RE, p. 1198, § 1, effective July 1. **L. 86:** Entire section amended, p. 1049, § 10, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-521 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-530 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

Cross references: For the sale of tax liens, see article 11 of title 39.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

31-25-532. Municipality may purchase property on default.

(1) At any sale by the county treasurer of any property for the purpose of paying any special assessment for local improvements made under the provisions of this part 5, the municipal treasurer, having written authority from the governing body, may purchase any such property without paying for the same in cash and shall receive certificates of purchase therefor in the name of the municipality. The certificates shall be received and credited at their face value, with all interest and penalties accrued, on account of the assessments in pursuance of which the sale was made. The certificates may thereafter be sold by the municipal treasurer at their face value, with all interest and penalties accrued, and assigned by him to the purchaser in the name of the municipality. The proceeds of such sale shall be credited to the fund created by ordinance for the payment of such assessments respectively. In the event that all bonded indebtedness incurred in payment for said local improvements has been discharged in full, said certificates may be sold by the governing body for the best price obtainable at public sale, at auction, or by sealed bids in the same manner and under the same conditions as is provided in subsection (3) of this section. The proceeds shall be credited to the general fund of said municipality or to the special surplus and deficiency fund provided for by section 31-25-534 (2), as the circumstances may require. Such assignments shall be without recourse, and the sale and assignments shall operate as a lien in favor of the purchaser and assignee as is provided by law in the case of sale of real estate in default of payment of the general property tax.

(2) Any municipality as such purchaser has the right to apply for tax deeds on such certificates of purchase at any time after three years from the date of issuance of said certificates, and such deeds shall be issued as provided by law for issuance of tax deeds for the nonpayment of the general property tax.

(3) Cumulatively with all other remedies, any municipality which is the owner of property by virtue of a tax deed, or is the owner of property otherwise acquired, in satisfaction or discharge of the liens represented by such certificates of sale, may sell such property for the best price obtainable at public sale, at auction, or by sealed bids. Such sales shall be after public notice by the municipal treasurer or clerk to all persons having or claiming any interest in the property to be sold or in the proceeds of such sale by publication of such notice three times, a week apart, in a weekly or daily newspaper of general circulation within the county in which the property is located. Such notice shall describe the property and state the time, place, and manner of receiving bids; except that the time fixed for the sale shall not be less than ten days after the last publication. The municipality may reject any and all bids. Any interested party, at any time within ten days after the receipt of bids for the sale of property, may file with the municipality a written protest as to the sufficiency of the amount of any bid made or the validity of the

proceedings for the sale. If the protest is denied, such person, within ten days thereafter, shall commence an action in a court of competent jurisdiction to enjoin or restrain the municipality from completing the sale. If no such action is commenced, all protests or objections to the sale shall be waived and the municipality shall then convey the property to the successful bidder by quitclaim deed.

(4) In addition to all other remedies, any municipality which is a holder of certificates of purchase may bring a civil action for foreclosure thereof in accordance with article 38 of title 38, C.R.S., joining as defendants all persons holding record title, persons occupying or in possession of the property, persons having or claiming any interest in the property or in the proceeds of foreclosure sale, all governmental taxing units having taxes or other claims against said property, and all unknown persons having or claiming any interest in said property. Any number of certificates may be foreclosed in the same proceeding. In such proceeding the municipality, as plaintiff, is entitled to all relief provided by law in actions for an adjudication of rights with respect to real property, including actions to quiet title.

(5) The proceeds of any such sale of property shall be credited to the appropriate special assessment fund. The municipality shall deduct therefrom the necessary expenses in securing deeds and taking proceedings for the sale or foreclosure.

(6) When any municipality has sold or conveyed at a fair market value certificates of purchase or property which it has acquired in satisfaction or discharge of special assessment liens, such sales and conveyances are hereby validated and confirmed as against all parties having or claiming any interest in such property or the proceeds of such sale.

(7) It is hereby declared that the purpose of this section is to restore delinquent property to the tax rolls and to realize the greatest possible amount from such property for the benefit of all persons and taxing bodies having liens thereon.

Source: L. 75: Entire title R&RE, p. 1198, § 1, effective July 1. **L. 81:** (1) amended, p. 1615, § 17, effective July 1. **L. 86:** (1) amended, p. 1051, § 14, effective July 1. **L. 93:** (4) amended, p. 82, § 3, effective March 26.

Editor's note: (1) This section is similar to former § 31-25-522 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-531 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-533. Power of governing body to contract debt - question submitted to registered electors.

The governing body has power to contract an indebtedness on behalf of the municipality and upon the credit thereof by borrowing money or issuing the negotiable interest-bearing bonds of the municipality for the purpose of providing a fund to pay such part of the cost of said improvements as may be determined by the governing body. No such indebtedness shall be created except by ordinance subject to and otherwise in accordance with the provisions of section 31-15-302 (1)(d).

Source: L. 75: Entire title R&RE, p. 1199, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-530 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-532 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-533 is similar to former § 31-25-530 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

For necessity for maturity period of bonds to be within constitutional limitations of § 8 of art. XI, Colo. Const., see Deter v. City of Delta, 73 Colo. 589, 217 P. 67 (1923); Town of Aurora v. Krauss, 99 Colo. 12, 59 P.2d 79 (1936).

31-25-534. Issuing bonds - property specially benefited.

(1) For the purpose of paying all or such portion of the cost of any improvement constructed under this part 5 as may be assessed against the property specially benefited, special assessment bonds of the municipality may be issued of such date, in such form, and on such terms, including, without limitation, provisions for their sale, payment, and redemption, as may be prescribed by the governing body, bearing the name of the street, alley, or district improved and payable in a sufficient period of years after such date to cover the period of payment provided and in convenient denominations. All such bonds shall be issued upon estimates approved by the governing body, and the municipal treasurer shall preserve a record of the same in a suitable book kept for that purpose. All such bonds shall be subscribed by the mayor, countersigned by the municipal treasurer, with the corporate seal thereto affixed, and attested by the clerk. Such

bonds shall be payable out of the moneys collected on account of the assessments made for said improvements, from reserve accounts, if any, established to secure payment of such bonds, and from any other legally available moneys. Whenever three-fourths of the bonds for an improvement constructed under this part 5 have been paid and canceled and for any reason any remaining assessments are not paid in time to pay the remaining bonds for the district and the interest due thereon, the municipality may pay, from legally available moneys, the bonds when due and the interest due thereon and reimburse itself by collecting the unpaid assessments due the district. All moneys collected from such assessments for any improvement shall be applied to the payment of the bonds issued until payment in full is made of all the bonds, both principal and interest, or to fund or replenish reserve accounts, if any, established to secure the payment of such bonds. The bonds may be used in payment of the cost of the improvement as specified; or the governing body, upon advertisement published at least once in a newspaper of general circulation in such municipality and in such other newspapers as may be designated by the governing body, may sell a sufficient number of said bonds to pay such cost in cash for the best bid submitted in accordance with the terms of the notice of sale. All bids may be rejected at the discretion of the governing body. In addition, the bonds may be sold on such terms and conditions at a private sale if determined by the governing body to be in the best interests of the municipality.

(2) When all bonds of a district have been paid, any moneys remaining to the credit of such district may be transferred to a special surplus and deficiency fund, and, whenever there is a deficiency in any improvement district bond fund to meet the payment of outstanding bonds for other improvement districts and interest due thereon or to redeem such outstanding bonds in accordance with any estimated redemption schedule used in connection with the sale of such bonds, the deficiency may be paid from the moneys available therefor in the surplus and deficiency fund.

(3) In connection with the issuance of bonds payable solely from special assessments, the governing body of the municipality may provide by ordinance or resolution for the submission of the question of issuing such bonds to the electors eligible to vote on the question. The governing body of the municipality may provide by ordinance or resolution that all registered electors of the municipality shall be eligible to vote on the question or that only electors of the district shall be eligible to vote on the question.

(4) In connection with the issuance of bonds payable from special assessments which are additionally secured by a pledge of any other funds of the municipality, including the surplus and deficiency fund, the governing body of the municipality may provide by ordinance or resolution for the submission of the question of issuing the bonds to all registered electors of the municipality.

(5) Notwithstanding any other provision of this part 5, bonds issued in accordance with the requirements of this section may be payable from the assessments levied in one or more improvement districts.

(6) Notwithstanding any other provision of this part 5, any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 31-25-502 (2) may be authorized to issue one or more series of bonds, and bonds of any such district may be payable from the assessments levied pursuant to one or more assessment ordinances.

Source: L. 75: Entire title R&RE, p. 1200, § 1, effective July 1; entire section amended, p. 1281, § 5, effective May 22. **L. 77:** Entire section amended, p. 1470, § 2, effective June 4. **L. 86:** Entire section amended, p. 1050, § 13, effective July 1. **L. 94:** (3) and (4) added, p. 1193, § 95, effective July 1. **L. 99:** (3) amended, p. 518, § 17, effective April 30. **L. 2002:** (1) amended and (5) added, p. 274, § 16, effective August 7. **L. 2005:** (1) amended, p. 775, § 60, effective June 1. **L. 2008:** (1) amended and (6) added, p. 1305, § 33, effective May 27.

Editor's note: (1) This section is similar to former § 31-25-531 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-533 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-534 is similar to former § 31-25-531 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing a prior provision has been included in the annotations to this section.

For special improvement bonds not constituting a debt of a municipality in a constitutional sense, see Montgomery v. City & County of Denver, 102 Colo. 427, 80 P.2d 434 (1938).

Bondholder may sue municipality when its agent makes unlawful payments of a special improvement fund. Wangnild v. Town of Haxtun, 106 Colo. 180, 103 P.2d 474 (1940).

31-25-534.5. Issuing refunding bonds.

(1) The governing body of a municipality may issue one or more series of bonds to refund all or any portion of the outstanding bonds issued by one or more improvement districts pursuant to section 31-25-534. Any such bonds shall be issued in accordance with the provisions of article 56 of title 11, C.R.S. In such case, for purposes of complying with the requirements of article 56 of

title 11, C.R.S., any bonds issued to refund all or any portion of the outstanding bonds of one or more improvement districts shall be deemed to be revenue bonds, the refunded bonds shall be deemed to be revenue obligations, and the assessments shall be deemed to be revenue.

(2) Any bonds issued pursuant to this section may refund all or any portion of the outstanding bonds of one or more improvement districts and may be secured by a combination of assessments levied on all or a specifically identified portion of the assessed property located within such districts.

(3) Two or more series of bonds may be issued to refund the outstanding bonds of one or more districts, and each series may be secured by assessments levied on different portions of the assessed property located within the districts that have outstanding bonds.

(4) Except as otherwise provided in subsection (5) or (6) of this section, in connection with the issuance of refunding bonds pursuant to this section, the governing body may amend the ordinance imposing the assessment to modify all or any portion of the following terms describing the assessment as specified in the ordinance:

(a) The rate of interest the governing body charges on unpaid installments;

(b) Any penalty for prepayment of an assessment;

(c) The principal balance due and owing on the assessment;

(d) The dates upon which unpaid assessments are due;

(e) The number of years over which unpaid assessments are due; or

(f) Any other term specified in the ordinance as necessary to make the ordinance conform to the requirements of this section.

(5) Before the governing body may amend the ordinance imposing the assessment to increase the amount of principal and interest due and owing under the assessment, the number of years over which unpaid assessments are due, or the amount of any unpaid assessments, the governing body shall:

(a) Obtain consent in writing to the amendment to the ordinance from the owner of each tract of land that would be affected by the amendment; or

(b) (I) Set a place and time, not less than twenty days nor more than forty days after the date of such setting, for a hearing on the proposed amendment.

(II) Thereupon, the clerk of the governing body shall cause notice by publication to be made of the pendency of the proposed amendment, a summary of the terms of such amendment as described in subsection (4) of this section, and of the time and place of the hearing on the proposed amendment.

(III) All complaints and objections made in writing concerning the proposed amendment by the owners of any property in the district shall be heard and determined by the governing body before final action is taken. If the owners of the tracts upon which more than one-half of the affected assessments, measured by the unpaid assessment balance, submit written protests to the amendment to the governing body on or before the date specified in the notice, the governing body shall not adopt the proposed amendment. Any proposed amendment may be modified, confirmed, or rescinded prior to passage of the ordinance authorized under subsection (4) of this section.

(6) Notwithstanding any other provision of law, in order either to issue refunding bonds or to amend an ordinance of the governing body imposing an assessment pursuant to this section, the governing body shall make written findings that:

(a) The obligation of the municipality shall not be materially or adversely impaired with respect to any outstanding bond secured by the assessments; and

(b) The principal balance of any assessment shall not increase to an amount such that the aggregate amount that is assessed against any one particular tract of land exceeds the maximum benefit to the tract that is estimated to result from the project that is financed by the assessment and refunding of the outstanding bonds.

Source: L. 2002: Entire section added, p. 275, § 17, effective August 7.

31-25-535. Bonds negotiable - interest.

All such bonds shall be negotiable in form and bear interest as may be fixed by the governing body not exceeding a maximum net effective interest rate specified by the governing body prior to the use of said bonds in payment for improvements or the sale thereof pursuant to section 31-25-534.

Source: L. 75: Entire title R&RE, p. 1200, § 1, effective July 1. **L. 86:** Entire section amended, p. 1050, § 12, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-532 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-534 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-536. Manner of redemption. (Repealed)

Source: L. 75: Entire title R&RE, p. 1200, § 1, effective July 1. **L. 86:** Entire section amended, p. 1057, § 24, effective July 1. **L. 2002:** Entire section repealed, p. 278, § 22, effective August 7.

Editor's note: (1) This section was similar to former § 31-25-533 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-535 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-537. When mandamus will issue.

When any improvement authorized by this part 5 is petitioned for by the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed, it is the duty of the municipal officials whose duty it is to act to authorize said improvement, and an order in the nature of mandamus may issue out of any court of competent jurisdiction requiring said officials to take such action as is required by this part 5; but, if the material petitioned for is known to be worthless or of poor quality or would not make a good, substantial, and reasonable permanent improvement, the governing body may refuse to grant a petition for that reason. If a material petitioned for or designated in the specifications is a patented or proprietary article on which there can be but one bid, the governing body may refuse to award a contract if the entire bid is excessive as compared with improvements of equal value or may reject the bid or readvertise.

Source: L. 75: Entire title R&RE, p. 1200, § 1, effective July 1. **L. 86:** Entire section amended, p. 1052, § 15, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-538 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-536 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-538. No action maintainable - exception - grounds - limitations.

(1) No legal or equitable action shall be brought or maintained except to enjoin the collection of assessments levied under this part 5 upon the grounds:

(a) That notice of a hearing upon the amount of the assessment was not given as required in this part 5. Any person presenting objections to the governing body at or before the hearing on assessment shall be deemed to have waived this ground.

(b) That the hearing upon the amount of the assessment as provided in this part 5 was not held;

(c) That the improvement ordered was not one authorized by this part 5;

(d) That the assessment levied exceeds the benefits received by the property assessed.

(2) No action shall be brought on the grounds provided in paragraph (c) of subsection (1) of this section unless a hearing on the proposed improvements is required pursuant to section 31-25-503 and unless the objections on which such action is based have been presented to the governing body in writing prior to or at such hearing. No action shall be brought on the grounds provided in paragraph (d) of subsection (1) of this section unless the objections on which such action is based have been presented to the governing body in writing prior to or at the hearing on the assessment roll. Any action brought with respect to the ordering of any improvements, the creation of any district, the authorization or issuance of any bonds, the levying of any assessments, or any other action taken under this part 5 shall be commenced within thirty days after the passage of the ordinance or resolution ordering the improvements, creating the district, authorizing or issuing bonds, or levying assessments or within thirty days after performance of any other action complained of or else shall be forever barred.

Source: L. 75: Entire title R&RE, p. 1201, § 1, effective July 1. **L. 86:** (2) amended, p. 1052, § 16, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-539 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-537 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

ANNOTATION

Annotator's note. Since § 31-25-538 is similar to former § 31-25-539 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case

construing a prior provision has been included in the annotations to this section.

Right of appeal exists only by statute. Right to appeal to courts from a special assessment for public improvements does not exist except by statute. Orchard Court Dev. Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973).

Section does not specify nature of review to be taken. Although this section requires that court review must be brought within 30 days from the effective day of the ordinance in question, it does not specify the nature of the review that may be taken. Orchard Court Dev. Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973).

Time limitations for attacking assessments. Reasonable limitations regarding the time within which actions can be commenced attacking the validity of special assessments for public improvements are necessary. To meet the expenses of such improvements bonds must be negotiated, and unless there is some reasonable limit within which actions may be commenced to attack assessments levied for the purpose of liquidating such bonds when they mature, they could not be disposed of advantageously because parties purchasing would never know when an action might be commenced by some dissatisfied taxpayer; and on the other hand, after the lapse of the statutory period they would have the right to presume no such actions could be maintained, and their rights ought to be protected by a statute which fixes a time within which suits must be commenced, unless it is apparent that thereby some constitutional right of the taxpayer has been denied or invaded. Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

Determination of assessments is left to discretion of municipal authorities. Orchard Court Dev. Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973).

And conclusive unless fraudulent or unreasonable. Determination of assessments is conclusive on the courts unless it appears such was fraudulent or unreasonable. Orchard Court Dev. Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973).

When a formula designed to produce a reasonable approximation of assessments to benefits is prescribed, the results obtained should not be disturbed absent fraud or unreasonableness in the apportionment process. Satter v. City of Littleton, 185 Colo. 90, 522 P.2d 95 (1974).

Court's duty in reviewing assessment proceedings is to determine if the assessing tribunal abused its power. Orchard Court Dev. Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973).

De novo evidentiary hearing beyond court's power. A de novo evidentiary hearing for the purpose of making independent findings concerning a home-rule city's assessments would clearly be beyond the court's power and authority. Orchard Court Dev. Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973).

Presumption of validity inheres in council's determination that the benefits specially accruing to properties equal or exceed the assessments thereon. Satter v.

City of Littleton, 185 Colo. 90, 522 P.2d 95 (1974).

Burden of proof was upon objectors to assessments to affirmatively show that the result of the apportionment was not according to the benefits. Orchard Court Dev. Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973); Satter v. City of Littleton, 185 Colo. 90, 522 P.2d 95 (1974).

Benefit must be occasioned to premises assessed at least equal to burden imposed. Satter v. City of Littleton, 185 Colo. 90, 522 P.2d 95 (1974).

But standard of apportionment of costs to benefits received is not one of absolute equality, but rather one of reasonable approximation. Satter v. City of Littleton, 185 Colo. 90, 522 P.2d 95 (1974).

Front-foot, side-foot formula applied by city in determining amount of assessments has long been approved as an essentially fair method of apportionment of paving costs. Satter v. City of Littleton, 185 Colo. 90, 522 P.2d 95 (1974).

31-25-539. Effect of court order.

If in any court of competent jurisdiction any final assessment made in pursuance of this part 5 is set aside or if the governing body determines it to be necessary to alter any final assessment made pursuant to this part 5, the governing body, upon notice as required in the making of an original assessment, may make a new assessment in accordance with the provisions of this part 5.

Source: L. 75: Entire title R&RE, p. 1201, § 1, effective July 1. **L. 90:** Entire section amended, p. 1474, § 11, effective October 1.

Editor's note: (1) This section is similar to former § 31-25-511 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-538 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-540. Figures instead of words - when general description used.

In all proceedings and notices authorized by this part 5, figures may be used instead of words, and in districts of extended areas it is not necessary to designate each piece of land separately. In such case general descriptions and quantities may be used, except in the assessment rolls. Except in such rolls, the cost may be stated as being of probable or certain amount per front foot or per square foot or per lot of given size.

Source: L. 75: Entire title R&RE, p. 1201, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 31-25-537 as it existed prior to 1975.

(2) This section was originally numbered as § 31-25-539 in House Bill 75-1089 but was renumbered on revision in 1977 for ease of location.

31-25-541. Interim warrants.

The governing body, from time to time as work proceeds in a local improvement district, may authorize the issuance of interim warrants: For not to exceed ninety percent in value of the work theretofore done upon estimates of the engineer of the municipality; after completion of the work and acceptance thereof by the engineer of the municipality and by the governing body, for one hundred percent of the value of the work so completed; and, where improvements in the district require the acquisition of property, for an amount not exceeding the value of the property. The warrants may be issued to a contractor to apply at par value on the contract price for the improvements or to the owner of the property to apply at par value on the property price. The warrants may also be issued and sold at not less than par value in such manner as the governing body may determine, and the proceeds may be used to apply towards payment of the contract price and property price. Interim warrants shall bear interest from date of issue until paid at such rate as may be fixed by the governing body. Interest accruing on interim warrants shall be included as a cost of the improvements in the local improvement district. Interim warrants and interest thereon shall be paid by the issuance of or by proceeds from the sale of special improvement bonds issued or in cash received from the payment of assessments not pledged to the payment of the bonds or from any of such sources.

Source: L. 77: Entire section added, p. 1470, § 3, effective June 4.

31-25-542. County treasurer - policies and procedures.

The county treasurer may adopt policies and procedures which the county treasurer deems necessary and reasonable for the administration and collection of assessments which are to be collected by the county treasurer and which are imposed and payable pursuant to the provisions of this part 5 or pursuant to any home rule charter and any ordinances adopted pursuant thereto; however, prior to adoption, copies of such proposed policies and procedures shall be delivered to

all municipalities located in the county and, after giving notice to such municipalities, a public hearing shall be held by the county treasurer on such proposed policies and procedures.

Source: L. 90: Entire section added, p. 1474, § 12, effective October 1.

PART 6

IMPROVEMENT DISTRICTS IN MUNICIPALITIES (1949 ACT)

Cross references: For public improvement districts, see article 20 of title 30.

Law reviews: For article, "Improvement Districts for Colorado Counties, Cities, and Towns", see 30 Colo. Law. 53 (Jan. 2001).

31-25-601. Legislative declaration.

The general assembly hereby declares that the organization of public improvement districts, having the purposes and powers provided in this part 6, will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of said districts.

Source: L. 75: Entire title R&RE, p. 1201, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-601 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

The article is permissive but not mandatory if the improvement sought to be constructed is one of local and municipal concern. Davis v. Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

The article refers to improvement districts. Davis v. Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

And the provisions of this article do not apply to off-street parking revenue bonds;

the statute alluded to refers to improvement districts. Davis v. Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

31-25-602. Definitions.

As used in this part 6, unless the context otherwise requires:

(1) "District" means an improvement district that is a taxing unit and that may be created by any municipality in this state for the purpose of acquiring, constructing, installing, operating, or maintaining any public improvement or for the purpose of providing any service so long as the municipality that forms the district is authorized to perform such service or provide such improvement under the municipality's home rule charter, if any, or the laws of this state. "Public improvement" or "service" shall not include any facility identified in section 30-20-101 (8) or (9), C.R.S., nor shall the terms include services identified in section 30-15-401 (4) to (7.7), C.R.S., unless the district provides such services consistent with part 4 of article 15 of title 30, C.R.S. No such improvement or facility shall duplicate or interfere with any municipal improvement already constructed or planned to be constructed within the limits of such district.

(2) (a) "Elector of a district" means a person who, at the designated time or event, is qualified to register to vote in general elections in this state and:

(I) Has been a resident of the district or of the area to be included in the district for not less than thirty days; or

(II) Owns, or whose spouse owns, taxable real or personal property within the district or within the area to be included within the district, whether the person resides within the district or not.

(b) Where the owner of taxable real or personal property specified in subparagraph (II) of paragraph (a) of this subsection (2) is not a natural person, an "elector of a district" shall include a natural person designated by such owner to vote for such person. Such designation shall be in writing and filed with the clerk of the municipality. Only one such person may be designated by an owner.

(3) "Net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities.

(4) "Publication", if no manner is specified therefor, means publication once a week in three consecutive weekly editions of a newspaper of general circulation in the district. It shall not be necessary that publication be made on the same day of the week in each of the three weeks; but not less than fourteen days, excluding the day of first publication, shall intervene between the

first publication and the last publication, and publication shall be complete on the date of the last publication.

Source: L. 75: Entire title R&RE, p. 1202, § 1, effective July 1. **L. 84:** (1) amended, p. 839, § 2, effective March 29. **L. 92:** (2) amended, p. 2180, § 45, effective June 2. **L. 94:** (2)(a) amended, p. 1775, § 44, effective January 1, 1995. **L. 99:** (1) amended, p. 518, § 18, effective April 30. **L. 2002:** (2) amended, p. 277, § 18, effective August 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-25-603. Authority of governing body.

(1) The governing body of a municipality is hereby vested with jurisdiction, power, and authority to establish districts within the municipality in which the improvement is to be acquired, constructed, installed, operated, or maintained or the service is to be provided. The governing body of a municipality may establish a district partially within the boundaries of any other municipality or within the unincorporated territory of a county if such municipality or county consents by resolution to the establishment of such district. No such district may provide the same improvement or service as an existing special district within the territory of such existing special district unless the existing special district consents.

(2) If a municipality other than the municipality that established the district annexes or incorporates any territory within an established district, such territory shall remain in the district unless the municipality notifies the district's board of the municipality's intent to exclude the territory annexed or incorporated from the district. If the municipality notifies the board of its intent to exclude such territory, such exclusion shall take effect January 1 of the year following such notice. Any property excluded from the district under this subsection (2) shall remain subject to payment of its share of any indebtedness or bonds that are outstanding on the date of such exclusion.

Source: L. 75: Entire title R&RE, p. 1202, § 1, effective July 1. **L. 84:** Entire section amended, p. 840, § 3, effective March 29. **L. 99:** Entire section amended, p. 519, § 19, effective April 30.

Editor's note: This section is similar to former § 31-25-603 as it existed prior to 1975.

31-25-604. Organization petition - contents.

(1) The organization of a district shall be initiated by a petition filed in the office of the clerk of the governing body vested with jurisdiction. The petition shall be signed by not less than thirty percent or two hundred of the electors of the proposed district, whichever is less. After the filing of a petition, no signer shall be permitted to withdraw his or her name from the petition.

(2) The petition shall set forth:

(a) The name of the proposed district, which shall include the name of the municipality creating the district, a descriptive name or number, and the words "general improvement district";

(b) A general description of the improvements to be acquired, constructed, installed, operated, or maintained or the services to be provided within and for the district;

(c) The estimated cost of the proposed improvements or the estimated annual cost of providing the proposed services;

(d) A general description of the boundaries of the district or the territory to be included therein with such certainty as to enable a property owner to determine whether or not his or her property is within the district;

(e) The names of three persons of the district who shall represent the petitioners and who have the power to enter into agreements relating to the organization of the district, which agreements shall be binding on the district, if created;

(f) A request for the organization of the district; and

(g) A statement that either:

(I) The boundaries of the proposed district include at least one hundred electors of the district;

(II) The boundaries of the proposed district include at least one elector of the district for each five acres of land included within the proposed district; or

(III) The petition is signed by one hundred percent of the owners of taxable real property to be included in the proposed district.

(3) No petition with the requisite signatures shall be declared void on account of alleged defects. The governing body, at any time, may permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district

may be filed and together shall be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the governing body the same as though included with the first petition placed on file.

Source: L. 75: Entire title R&RE, p. 1202, § 1, effective July 1. **L. 84:** (2)(b) amended, p. 840, § 4, effective March 29. **L. 99:** (1) and (2) amended, p. 519, § 20, effective April 30. **L. 2002:** (2)(e) amended, p. 277, § 19, effective August 7.

Editor's note: This section is similar to former § 31-25-604 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "An Engineering-Legal Solution to Urban Drainage Problems", see 45 Den. L.J. 381 (1968).

31-25-605. Bond of petitioners.

At the time of filing the petition or at any time prior to the time of hearing on said petition, a bond shall be filed, with security approved by the governing body, or a cash deposit made sufficient to pay all expenses connected with the proceedings in case the organization of the district is not effected. If at any time during the organization proceedings the governing body is satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days thereafter, and, upon failure of the petitioners to file or deposit the same, the petition shall be dismissed.

Source: L. 75: Entire title R&RE, p. 1203, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-605 as it existed prior to 1975.

31-25-606. Notice of hearing.

(1) Except as provided in section 31-25-607 (3.5), as soon as possible after the filing of such petition, the governing body shall fix by order a place and time, not less than twenty days nor more than forty days after the petition is filed, for a hearing thereon. Thereupon the clerk of the

governing body shall cause notice by publication to be made of the pendency of the petition, of the purposes and boundaries of the proposed district, and of the time and place of hearing thereon. The clerk shall also cause a copy of said notice to be mailed to each elector of the district at the elector's last-known address, as disclosed by the tax and official voter registration records of the counties in which said district is proposed to be located.

(2) No member of a governing body shall be disqualified to perform any duty imposed by this part 6 by reason of ownership of property within any proposed district.

(3) The notice of hearing on the petition shall set forth the fact that all the property in the district is subject to the lien of the indebtedness, if any, and shall set forth the amount of the proposed indebtedness, if any.

Source: L. 75: Entire title R&RE, p. 1203, § 1, effective July 1. **L. 84:** (1) amended, p. 840, § 5, effective March 29. **L. 99:** (1) and (3) amended, p. 520, § 21, effective April 30.

Editor's note: This section is similar to former § 31-25-606 as it existed prior to 1975.

ANNOTATION

This section is not violative of due process. Anderson v. Town of Westminster, 125 Colo. 408, 244 P.2d 371 (1952).

31-25-607. Hearing - dismissal - findings - declaration - when action barred.

(1) On the day fixed for such hearing or at any adjournment thereof or, if the hearing is waived under subsection (3.5) of this section, at any meeting at which an ordinance creating a district is considered, the governing body shall ascertain from the tax rolls of the counties in which the district is located, from the last official registration list and from such other evidence which may be adduced, the total number of electors of the district and the total valuation for assessment of the real and personal property therein.

(2) If it appears that said petition is not signed by at least the number of electors required under section 31-25-604 (1) or if it is shown that the proposed improvement or service will not confer a general benefit on the district or that the cost of the improvement or service would be excessive as compared with the value of the property in the district, the governing body shall dismiss the petition and adjudge the cost against those executing the bond filed to pay such costs. No appeal or other remedy shall lie from an order dismissing said proceeding. Nothing in this

section shall prevent the filing of subsequent petitions for similar improvements or services or for a similar district. The right so to renew such proceeding is hereby expressly granted and authorized.

(3) The finding of the governing body upon the question of the genuineness of the signatures and all matters of fact incident to such determination shall be final and conclusive on all parties in interest, whether appearing or not.

(3.5) If the petition for organizing a district is signed by one hundred percent of the owners of taxable real property to be included in the district and contains a request for such waiver, the governing body may, at its discretion, waive all or any of the requirements for notice, publication, and a hearing set forth in this section and in section 31-25-606.

(4) (a) Upon the hearing if required, or without a hearing pursuant to subsection (3.5) of this section, if it appears that a petition for the organization of a district has been duly signed and presented in conformity with this part 6 and that the allegations of the petition are true, the governing body, by ordinance duly adopted and made effective, shall adjudicate all questions of jurisdiction and may order that the question of the organization of the district and such other matters as the governing body deems appropriate including, but not limited to, the issuance of bonds or other matters for which voter approval is required under section 20 of article X of the Colorado constitution, be submitted to the electors at an election to be held for that purpose in accordance with the provisions of articles 1 to 13 of title 1, C.R.S., or article 10 of this title. Unless provided otherwise in section 20 of article X of the Colorado constitution, such election may be held either at a special election held not less than sixty days but not more than one hundred eighty days after the governing body adopts the ordinance or in conjunction with a regular municipal election, general election, ballot issue, or ballot question election.

(b) At an election held under paragraph (a) of this subsection (4), the electors of the district shall vote for or against the organization of the district and such other matters as the governing body deems appropriate including, but not limited to, the issuance of bonds or matters for which voter approval is required under section 20 of article X of the Colorado constitution. If a majority of the votes cast at the election are in favor of the organization, the governing body shall adopt an ordinance declaring the district organized.

(c) If a petition filed with the governing body complies with subsection (3.5) of this section, the governing body may adopt an ordinance declaring the district organized without any notice, hearing, election, or filing of a bond.

(d) If the governing body adopts an ordinance in accordance with paragraph (b) or (c) of this subsection (4), the governing body shall give the district the corporate name specified in the petition by which, in all proceedings, it shall thereafter be known. The district shall be a public or quasi-municipal subdivision of this state and a body corporate with the limited proprietary powers set forth in this part 6.

(e) Nothing in this subsection (4) authorizes a governing body to waive an election otherwise required under section 20 of article X and section 6 of article XI of the Colorado constitution or to hold an election inconsistent with the election requirements in said section 20.

(5) If an ordinance is adopted establishing the district, such ordinance shall finally and conclusively establish the regular organization of the district against all persons unless an action attacking the validity of the organization is commenced in a court of competent jurisdiction within thirty days after the adoption of such ordinance. Thereafter, any such action shall be perpetually barred. The organization of said district shall not be directly or collaterally questioned in any suit, action, or proceeding.

Source: L. 75: Entire title R&RE, p. 1204, § 1, effective July 1. **L. 84:** (3.5) added and (4) amended, p. 840, § 6, effective March 29. **L. 99:** (1), (2), (3.5), and (4) amended, p. 521, § 22, effective April 30.

Editor's note: This section is similar to former § 31-25-607 as it existed prior to 1975.

31-25-608. Recording of ordinance.

Within thirty days after the district has been declared duly organized, the clerk of the governing body shall transmit for recording to the county clerk and recorder in each of the counties in which the district or a part thereof extends a copy of the ordinance establishing said district.

Source: L. 75: Entire title R&RE, p. 1204, § 1, effective July 1. **L. 83:** Entire section amended, p. 1227, § 9, effective July 1.

Editor's note: This section is similar to former § 31-25-608 as it existed prior to 1975.

31-25-609. Governing body constitutes board - duties.

The governing body of the municipality in which the district is located shall constitute ex officio the board of directors of the district. The presiding officer of the governing body shall be ex officio the presiding officer, the clerk of the governing body shall be ex officio the secretary, and the treasurer of the municipality shall be ex officio the treasurer of the board and district. The secretary and the treasurer may be one person. Such board shall adopt a seal. The secretary

shall keep in a visual text format that may be transmitted electronically a record of all its proceedings, minutes of all meetings, certificates, contracts, and all corporate acts, which shall be open to inspection of all owners of property in the district, as well as to all other interested parties. The treasurer shall keep permanent records containing accurate accounts of all money received by and disbursed for and on behalf of the district.

Source: L. 75: Entire title R&RE, p. 1205, § 1, effective July 1. **L. 2009:** Entire section amended, (HB 09-1118), ch. 130, p. 562, § 7, effective August 5.

Editor's note: This section is similar to former § 31-25-609 as it existed prior to 1975.

ANNOTATION

The general assembly almost made it impossible for two political subdivisions to exercise the same functions at the same time, by providing that the directors of the district created for a special and limited purpose should be the same persons as the trustees of the municipal corporation having the broad general powers. Here is an almost automatic assurance that the trustees of the town would not allow a quasi-municipal corporation to come into existence to function within their territory, unless the town government itself was either unable to act or, in fact, refused to function in the field proposed to be occupied by the quasi-municipal organization. Anderson v. Town of Westminster, 125 Colo. 408, 244 P.2d 371 (1952).

31-25-610. Meetings.

The board shall hold meetings, on notice to each member of the board, which shall be open to the public in a place to be designated by the board as often as the needs of the district require. A quorum of the governing body shall constitute a quorum at any meeting.

Source: L. 75: Entire title R&RE, p. 1205, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-610 as it existed prior to 1975.

31-25-611. General powers of district.

(1) The district has the following limited powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued and be a party to suits, actions, and proceedings;

(d) To enter into contracts and agreements, except as otherwise provided in this part 6, affecting the affairs of the district, including contracts with the United States and any of its agencies or instrumentalities. Except in cases in which a district receives aid from an agency of the federal government, a notice shall be published for bids on all construction contracts for work or material or both involving an expense of one thousand dollars or more. The district may reject any and all bids, and, if it appears that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do.

(e) To borrow money and incur general obligation indebtedness and evidence the same by bonds, certificates, warrants, notes, and debentures and to issue revenue bonds or special assessment bonds in accordance with the provisions of this part 6;

(f) To acquire, construct, install, operate, and maintain the improvements or provide the services contemplated by this part 6, as described in the petition or as later authorized by the voters of the district, including improvements located outside the boundaries of the district, and all property, rights, or interests incidental or appurtenant thereto and to dispose of real and personal property and any interest therein, including leases and easements in connection therewith;

(g) To refund any general obligation indebtedness, revenue bonds, or special assessment bonds of the district without an election; otherwise, the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds of the district;

(h) To have the management, control, and supervision of all the business and affairs of the district and of the acquisition, construction, installation, operation, and maintenance of district improvements or the provision of services;

(i) To exercise the power of eminent domain and dominant eminent domain and, in the same manner provided by law for the condemnation of private property for public use, to take any property necessary to the exercise of the powers granted in this part 6;

(j) To construct and install improvements across or along any public street, alley, or highway and to construct works across any stream of water or watercourses. However, the district shall promptly restore any such street or highway to its former state of usefulness as nearly as possible and shall not use the same in such manner as completely or unnecessarily to impair the usefulness thereof. The use and occupation of streets, alleys, and highways and the construction

or installation of improvements by any district shall be in accordance with the provisions of all applicable municipal ordinances and with such reasonable rules and regulations as may be prescribed by the governing body of the municipality affected. Plans and specifications of proposed improvements shall be approved by the governing body of the municipality before construction or installation of improvements is commenced.

(k) To fix and from time to time to increase or decrease rates, tolls, or charges for any revenue-producing services or facilities furnished by the district and to pledge such revenue for the payment of any indebtedness of the district. Until paid, all rates, tolls, or charges shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens. With respect to revenue-producing services or facilities, the board shall shut off or discontinue service for delinquencies in the payment of such rates, tolls, or charges or for delinquencies in the payment of taxes levied pursuant to this part 6 and shall prescribe and enforce rules and regulations for connecting with and disconnecting from such services and facilities.

(l) To adopt and amend bylaws not in conflict with the constitution and laws of the state or with the ordinances of the municipality affected for carrying on the business, objects, and affairs of the board and of the district;

(m) To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 6. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 6.

(n) To conduct an election in accordance with articles 1 to 13 of title 1, C.R.S., or article 10 of this title for any purpose the board deems necessary or required.

Source: L. 75: Entire title R&RE, p. 1205, § 1, effective July 1. **L. 84:** (1)(h) amended, p. 840, § 7, effective March 29. **L. 99:** (1)(e) to (1)(h) amended and (1)(n) added, p. 522, § 23, effective April 30. **L. 2004:** (1)(f) amended, p. 952, § 9, effective May 21.

Editor's note: This section is similar to former § 31-25-611 as it existed prior to 1975.

31-25-611.5. Special improvement districts - authority to establish.

In order to defray all or any portion of the costs of the improvements or services provided by the district, the board may establish special improvement districts within the boundaries of the district in accordance with part 5 of this article. Such special improvement districts may be established whenever the board determines that property in the district will be especially

benefitted by such improvements or services. The method of creating special improvement districts, making the improvements or providing the services, and assessing the costs thereof shall be as provided in part 5 of this article. However, the electors eligible to vote on any question under this section shall either be electors of the district or electors within the local improvement district, as determined by the board. In addition, the board shall perform the duties of the governing body set forth in part 5 of this article, and the secretary of the district shall perform the duties of the clerk set forth in part 5 of this article. The improvements that the special improvement district may construct and the services that the special improvement district may provide shall be the improvements and services that the district may provide pursuant to this part 6.

Source: L. 99: Entire section added, p. 523, § 24, effective April 30.

31-25-612. Power to levy taxes.

In addition to the other means of providing revenue for such districts, the board has the power to levy and collect ad valorem taxes on and against all taxable property within the district. Such power shall not prevent the issuance of obligations payable solely from the income of revenue-producing facilities.

Source: L. 75: Entire title R&RE, p. 1206, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-612 as it existed prior to 1975.

ANNOTATION

Section 8 of art. XI, Colo. Const., concerning municipalities is not applicable to the districts created by this section. Anderson v. Town of Westminster, 125 Colo. 408, 244 P.2d 371 (1952).

31-25-613. Determining and fixing rate of levy.

The board shall determine the amount of money necessary to be raised by a levy on the taxable property in the district, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of the valuation for assessment of taxable property within the district and with other revenues, shall raise the amount required by

the district during the ensuing fiscal year to supply funds for paying expenses of organization and the costs of acquiring, constructing, installing, operating, and maintaining the improvements or works of the district or providing the services of the district and promptly to pay in full when due all interest on and principal of general obligation bonds, indebtedness, and other obligations of the district. In the event of accruing defaults or deficiencies, additional levies may be made as provided in section 31-25-614. In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board shall certify to the board of county commissioners of each county in which the district or a portion thereof lies the rate so fixed in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the district.

Source: L. 75: Entire title R&RE, p. 1206, § 1, effective July 1. **L. 87:** Entire section amended, p. 1407, § 3, effective April 4. **L. 99:** Entire section amended, p. 523, § 25, effective April 30.

Editor's note: This section is similar to former § 31-25-613 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "An Engineering-Legal Solution to Urban Drainage Problems", see 45 Den. L.J. 381 (1968).

31-25-614. Levies to cover deficiencies.

The board, in certifying annual levies, shall take into account the maturing indebtedness for the current and ensuing year as provided in its contracts, maturing bonds, and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient to punctually pay the annual installments on its contracts or bonds and interest thereon and to pay defaults and deficiencies, the board, from year to year, shall make such additional levies of taxes as may be necessary for such purposes, and, notwithstanding any limitations, such taxes shall be made and continue to be levied until the indebtedness of the district is fully paid.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-614 as it existed prior to 1975.

31-25-615. County officers to levy and collect taxes - lien.

It is the duty of the body having authority to levy taxes within such county to levy the taxes certified to it as provided in this part 6. It is the duty of all officials charged with the duty of collecting taxes to collect and enforce such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and, when collected, to pay the same to the district ordering its levy and collection. The payment of such collections shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district. All taxes levied under this part 6, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute a lien, until paid, on and against the property taxed, and such lien shall be a lien as for all other general taxes.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-615 as it existed prior to 1975.

31-25-616. Property sold for taxes.

The taxes provided in this part 6 shall be included as a part of general taxes and shall be paid accordingly. Upon sale of properties for delinquencies, sales shall be in the manner provided by the statutes of this state for selling property for nonpayment of taxes.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-616 as it existed prior to 1975.

Cross references: For the sale of tax liens, see article 11 of title 39.

31-25-617. Reserve fund.

When any indebtedness has been incurred by a district, it is lawful for the board to levy taxes and collect revenue for the purpose of creating a reserve fund in such amount as the board may determine which may be used to meet the obligations of the district for operating charges and depreciation and to provide extensions of and betterments to the improvements of the district.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-617 as it existed prior to 1975.

31-25-618. Inclusion or exclusion - petition - notice - hearing - order.

(1) The boundaries of any district organized under the provisions of this part 6 may be changed in the manner prescribed in this section, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges whatsoever nor shall it affect or impair or discharge any contract, obligation, lien, or charge for or upon which the district might be liable or chargeable had any such change of boundaries not been made. The owners of property proposed to be included or excluded may file with the board a petition, in writing, requesting that such property be included in or excluded from the district. The petition shall describe the property owned by the petitioners and shall be verified. The petition shall be accompanied by a deposit of moneys sufficient to pay all costs of the inclusion or exclusion proceedings. The secretary of the board shall cause notice of filing of such petition to be given and published, which notice shall state the filing of such petition, names of petitioners, descriptions of property sought to be included or excluded, and the request of said petitioners.

(2) Such notice shall notify all persons having objections to appear at the office of the board at the time stated in said notice and show cause why the petition should not be granted. The board, at the time and place mentioned or at such times to which the hearing may be adjourned, shall proceed to hear the petition and all objections thereto which may be presented by any person showing cause why said petition should not be granted. The failure of any person interested to show cause shall be deemed as an assent on his part to the inclusion or exclusion of such property as requested for in the petition. If the petition is granted, the board shall adopt an ordinance to that effect and file a certified copy of the same with the county clerk and recorder of the county in which the property is located. Thereupon said property shall be included or excluded from the district.

Source: L. 75: Entire title R&RE, p. 1207, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-618 as it existed prior to 1975.

31-25-619. Liability of property.

All property included within or excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of inclusion or exclusion.

Source: L. 75: Entire title R&RE, p. 1208, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-619 as it existed prior to 1975.

31-25-620. Board can issue bonds - form.

(1) To carry out the purposes of this part 6, the board is hereby authorized pursuant to a duly adopted ordinance to issue bonds of the district. Such bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable at such times as determined by the board, and shall be due and payable in installments at such times as determined by the board extending not more than twenty years from date of issuance. The form and terms of said bonds, including provisions for their sale, payment, and redemption, shall be determined by the board. To the extent required by section 20 of article X of the Colorado constitution, such bonds shall not be issued unless first approved at an election held for that purpose in accordance with articles 1 to 13 of title 1, C.R.S., or article 10 of this title. If the board so determines, such bonds may be redeemable prior to maturity, with or without payment of a premium, but no premium shall exceed three percent of the principal thereof. The bonds shall be executed in the name of and on behalf of the district and signed by the presiding officer of the board with the seal of the district affixed thereto and attested by the secretary of the board. Such bonds shall be in such denominations as the board shall determine. Interest coupons, if any, shall bear the original or facsimile signature of the presiding officer of the board. Under no circumstances shall any of said bonds be held to be an indebtedness, obligation, or liability of the municipalities or counties in which the district is located, and bonds issued pursuant to the provisions of this part 6 shall contain a statement to that effect.

(2) (a) As used in this part 6, "net effective interest rate" means the net interest cost of securities divided by the sum of the products derived by multiplying the principal amount of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(b) For the purpose of determining the net effective interest rate, "net interest cost" means the total amount of interest to accrue on securities from their date to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said bonds are being or have been sold. In all cases net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

Source: L. 75: Entire title R&RE, p. 1208, § 1, effective July 1. **L. 84:** (1) amended, p. 841, § 8, effective March 29. **L. 99:** (1) amended, p. 524, § 26, effective April 30. **L. 2002:** (1) amended, p. 277, § 20, effective August 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

31-25-621. Submission of debt question - ordinance. (Repealed)

Source: L. 75: Entire title R&RE, p. 1209, § 1, effective July 1. **L. 81:** (1) amended, p. 1616, § 18, effective July 1. **L. 99:** Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was similar to former § 31-25-621 as it existed prior to 1975.

31-25-622. Notice of election. (Repealed)

Source: L. 75: Entire title R&RE, p. 1209, § 1, effective July 1. **L. 99:** Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was similar to former § 31-25-622 as it existed prior to 1975.

31-25-623. Conduct of election - canvass. (Repealed)

Source: L. 75: Entire title R&RE, p. 1209, § 1, effective July 1. **L. 81:** Entire section amended, p. 1616, § 19, effective July 1. **L. 99:** Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was similar to former § 31-25-623 as it existed prior to 1975.

31-25-624. Effect - subsequent elections. (Repealed)

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1. **L. 81:** Entire section amended, p. 1616, § 20, effective July 1. **L. 84:** Entire section amended, p. 841, § 9, effective March 29. **L. 99:** Entire section repealed, p. 526, § 28, effective April 30.

Editor's note: This section was similar to former § 31-25-624 as it existed prior to 1975.

31-25-625. Procedure.

Any district organized pursuant to this part 6 may be dissolved after notice is given and a hearing held in the manner prescribed by sections 31-25-606 and 31-25-607. After hearing any protests against or objections to dissolution, if the board determines that it is for the best interests of all concerned to dissolve the district, it shall so provide by an effective ordinance, a certified copy of which shall be filed in the office of the county clerk and recorder in each of the counties in which the district or part thereof is located. Upon such filing, the dissolution shall be complete. However, no district shall be dissolved until it has satisfied or paid in full all of its outstanding indebtedness, obligations, and liabilities or until funds are on deposit and available therefor.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-625 as it existed prior to 1975.

31-25-626. Correction of faulty notices.

In any case where a notice is provided for in this part 6, if the governing body finds for any reason that due notice was not given, the governing body shall not thereby lose jurisdiction and the proceeding in question shall not thereby be void or be abated, but the governing body, in that case, shall order due notice given and shall continue the proceeding until such time as notice is properly given and thereupon shall proceed as though notice had been properly given in the first instance.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-626 as it existed prior to 1975.

31-25-627. Early hearings.

All actions in which there arises a question of the validity of the organization of a district or a question of the validity of any proceeding under this part 6 shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-627 as it existed prior to 1975.

31-25-628. Construction.

This part 6, being necessary to secure and preserve the public health, safety, convenience, and welfare, shall be liberally construed to effect its purposes.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-628 as it existed prior to 1975.

31-25-629. Municipal jurisdiction unimpaired.

Nothing in this part 6 shall affect or impair the control and jurisdiction which a municipality has over all property within its boundaries. All powers granted by this part 6 shall be subject to such control and jurisdiction.

Source: L. 75: Entire title R&RE, p. 1210, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-629 as it existed prior to 1975.

31-25-630. Method not exclusive.

No part of this part 6 shall repeal or affect any other law or any part thereof, it being intended that this part 6 shall provide a separate method of accomplishing its objects and not an exclusive one.

Source: L. 75: Entire title R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 31-25-630 as it existed prior to 1975.

31-25-631. Confirmation of board actions and powers.

(1) In its discretion, the board may file a petition at any time in the district court in any county in which the district or a portion thereof is located for a judicial examination and determination of any power conferred, any securities issued by the district or authorized to be issued by the district, any taxes, assessments, or service charges levied or otherwise made by the district or contracted to be levied by the district or otherwise made by the district, or of any other act, proceeding, or contract of the district whether or not such act, proceeding, or contract has been taken or executed, including proposed contracts for any improvement, proposed securities of the district to defray in whole or in part the cost of the project, the proposed acquisition, improvement, equipment, maintenance, operation, or disposal of any property pertaining thereto, or any combination thereof.

(2) A petition filed under subsection (1) of this section shall set forth the facts upon which the validity of such power, securities, taxes, assessments, charges, act, proceeding, or contract is founded. The presiding officer of the district shall verify the petition before it is filed with the district court by signing said petition.

(3) Any action filed under this section shall be in the nature of a proceeding in rem. The district court shall have jurisdiction over all parties interested in the proceeding upon the publication and posting of a notice in accordance with this part 6.

(4) The clerk of the district court in which a petition is filed shall provide notice of such filing. The notice shall include a brief outline of the contents of the petition; the time, date, and location of the hearing; and the location where a complete copy of any documents at issue in the petition may be examined. The clerk shall serve the notice by:

(a) Publishing the notice at least once a week for five consecutive weeks by five weekly insertions in a newspaper of general circulation in the municipalities and counties in which the district is located; and

(b) Posting the notice in the office of the district at least thirty days prior to the date of the hearing on the petition.

(5) Any owner of property within the boundaries of the district or any other person interested in the petition filed by the board may appear at the hearing by either filing a motion to dismiss or an answer to the petition at least five days prior to the hearing date or within such time as the court may allow. The petition shall be taken as confessed by all persons who fail to appear.

(6) The petition and notice shall be sufficient to give the district court jurisdiction, and, upon hearing, the district court shall examine and determine all matters affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants.

(7) Unless otherwise specified in this part 6, the Colorado rules of civil procedure shall govern any actions filed under this section in matters of pleading and practice.

(8) Costs may be divided or apportioned among any contesting parties in the discretion of the district court.

(9) Review of the judgment of the district court may be had as in other similar cases; except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days.

(10) The district court shall disregard any error, irregularity, or omission that does not affect the substantial rights of the parties.

(11) All cases in which there may arise a question of validity of any matter provided for under this section shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 99: Entire section added, p. 524, § 27, effective April 30.

31-25-632. Exemption from taxation - securities laws.

The income or other revenues of the district, any property owned by the district, any bonds issued by the district, and the transfer of and any income from any bonds issued by the district shall be exempt from all taxation and assessments by the state. In the resolution authorizing the bonds, the district may waive the exemption from federal income taxation for any interest on the bonds.

Source: L. 99: Entire section added, p. 524, § 27, effective April 30.

31-25-633. Limitation of actions.

Any legal or equitable action brought with respect to any acts or proceedings of the district, the creation of a district, the authorization of any bonds, or any other action taken under this part 6 shall be commenced within thirty days after the performance of such action or else shall be thereafter perpetually barred.

Source: L. 99: Entire section added, p. 524, § 27, effective April 30. **L. 2002:** Entire section amended, p. 278, § 21, effective August 7.

PART 7

CEMETERIES

31-25-701. Definitions.

As used in this part 7, unless the context otherwise requires:

(1) "Burial space" means a lot or portion thereof in any cemetery designed and intended for the interment of a human body but not used for such purpose.

(2) "Cemetery" means any cemetery owned, managed, or controlled by any municipality in this state.

(3) "Owner" means any person owning or possessing the privilege, license, or right of interment in any burial space.

Source: L. 75: Entire title R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-601 as it existed prior to 1975.

31-25-702. Power to establish cemeteries.

The governing body of any municipality has power to establish and regulate cemeteries within or without the municipality, to acquire lands therefor, by purchase or otherwise, and to cause cemeteries to be removed and prohibit their establishment within one mile of the municipality.

Source: L. 75: Entire title R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-101 (32) as it existed prior to 1975.

ANNOTATION

Annotator's note. Since § 31-25-702 is similar to former § 31-12-101 (32) prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, a relevant case construing a prior provision has been included in the annotations to this section.

The statutory right to establish cemeteries is to be found in this section. Town of Eaton v. Bouslog, 133 Colo. 130, 292 P.2d 343 (1956).

But not required. The power to establish and regulate cemeteries by incorporated towns does not impose a duty to establish or maintain a cemetery, and a finding of board of trustees that enlargement of cemetery was necessary does not place it in the category of matters required for the public health and safety or the exercise of a governmental function, and the constitutional right of eminent domain for the taking of private property has not been extended to the taking thereof for cemetery purposes. Town of Eaton v. Bouslog, 133 Colo. 130, 292 P.2d 343 (1956).

No implied authority. Authority of an incorporated town to condemn land for use

as a cemetery, being against the common law right to own and keep property, must be given expressly or by clear implication and is never implied from doubtful language. Town of Eaton v. Bouslog, 133 Colo. 130, 292 P.2d 343 (1956).

The general assembly has given incorporated towns express power to condemn private lands for public uses, and such uses are designated in this section, and are such as are necessary to the governmental functions of the city; however, in granting this special power and authority the general assembly carefully protected the rights of the individual property owner. Town of Eaton v. Bouslog, 133 Colo. 292 P.2d 343 (1956).

31-25-703. Foreclosure proceedings.

(1) When, pursuant to section 31-25-702, a municipality has established a cemetery, and the ordinance establishing the same requires the owners of burial spaces to pay annual assessments for or provide for the care and maintenance of such spaces, and the owner of any burial space has failed and neglected for a period of five years or more to pay such annual assessments for or to provide for the care and maintenance of such space, and no other provisions have been made in the ordinance, deed, or contract for the case of such a default, the governing body or the other official having jurisdiction over such cemetery may institute proceedings for the forfeiture, termination, or foreclosure of the rights and interests of such owner. When the governing body or other official determines there has been such failure and neglect, a resolution reciting such determination shall be duly adopted, and a certified copy shall be served on the owner personally by any competent person over the age of eighteen years or shall be sent by registered mail to the owner's last-known address.

(2) If compliance with said ordinances, rules, and regulations is not effected or provisions made therefor within a period of thirty days, the governing body may file a petition in the district court in and for the county in which said cemetery is located. The petition shall set forth the facts relating to the sale and ownership of such burial space as revealed by the records of said municipality and cemetery, a description of the burial space described in the same manner as such burial space is known and described on the books and records of the municipality and cemetery, and the failure and neglect to comply with the ordinances, rules, and regulations for the care and maintenance of said burial space. The petition shall ask for the forfeiture, termination, or foreclosure of all right, title, and interest of such owner in said burial space and that title thereto be vested in the municipality. The proceeding provided for in this section is deemed and held to be a proceeding in rem, and the procedure for forfeiture, termination, or foreclosure under this part 7 shall conform to the Colorado rules of civil procedure for the courts of record except as otherwise provided in this part 7. A copy of said petition with a notice of hearing thereon shall be served upon said owner in such manner and form as may be provided for the service of process by the Colorado rules of civil procedure. Thereupon it is the duty of such owner to appear and answer the allegations of said petition. If the owner fails to appear and

answer on or prior to the day set for hearing, his default may be entered in the same manner as is provided by the Colorado rules of civil procedure for the entering of defaults generally.

Source: L. 75: Entire title R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-602 as it existed prior to 1975.

31-25-704. Hearing and decree.

On the day set for hearing of the petition or on any subsequent day to which the hearing of the cause is continued, the proofs and allegations of the parties shall be presented to the court. If the court determines that the owner has failed and neglected for a period of five years next prior to the filing of said petition to comply with the ordinances, rules, and regulations relating to the maintenance and care of said burial space, a decree shall be entered accordingly forfeiting, terminating, or foreclosing the right, title, and interest of such owner in and to said burial space, subject to the provisions of this part 7. The decree shall fix a reasonable attorney fee for and recite the costs of said proceeding and shall further provide that title to said burial space shall be vested in the municipality, which municipality shall have the right to resell said burial space and to use the proceeds derived from such sale in the manner and for the purposes provided by law or ordinance for funds derived from sale of burial lots or spaces.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-603 as it existed prior to 1975.

31-25-705. Fees and costs.

The docket fees, court costs, and other fees and costs charged and collected for the proceeding provided for by this part 7 shall be the same as the fees and costs that are provided for by law in actions concerning title to real property. Any municipality has the right to pay all costs, attorney's fees, and expenses of such proceeding under this part 7 from any funds available.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-604 as it existed prior to 1975.

31-25-706. Used burial space proviso.

Nothing in this part 7 shall authorize the forfeiture, termination, or foreclosure of rights or interests in and to any burial space that has been used for interment nor shall any such space be subject to resale under the provisions of this part 7.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-605 as it existed prior to 1975.

31-25-707. Joint proceedings.

Any number of separate burial spaces or lots and any number of separate owners may be joined in one proceeding under this part 7.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-12-606 as it existed prior to 1975.

31-25-708. Abandoned burial sites - right to reclaim.

(1) If there is a burial space in a cemetery in which no remains have been interred, no burial memorial has been placed, and no other improvement has been made for a continuous period of no less than seventy-five years, the governing body of the municipality may initiate the process of reclaiming title to the burial space in accordance with this section.

(2) The governing body of a municipality seeking to reclaim a burial space shall:

(a) Send written notice of the municipality's intent to reclaim title to the burial space to the owner's last-known address by first-class mail; and

(b) Publish a notice of the municipality's intent to reclaim title to the burial space in a newspaper of general circulation in the area in which the cemetery is located once per week for four weeks.

(3) The notice required by subsection (2) of this section shall clearly indicate that the municipality intends to terminate the owner's rights and title to the burial space and include a recitation of the owner's right to notify the municipality of the owner's intent to retain ownership of the burial space.

(4) If the governing body of the municipality does not receive from the owner of the burial space a letter of intent to retain ownership of the burial space within sixty days after the last publication of the notice required by paragraph (b) of subsection (2) of this section, all rights and title to the burial space shall transfer to the municipality. The municipality may then sell, transfer, or otherwise dispose of the burial space without risk of liability to the prior owner of the burial space.

(5) A municipality that reclaims title to a burial space in accordance with this section shall retain in its records for no less than one year a copy of the notice sent pursuant to paragraph (a) of subsection (2) of this section and a copy of the notice published pursuant to paragraph (b) of subsection (2) of this section.

(6) If a person submits to the governing body of a municipality a legitimate claim to a burial space that the governing body has reclaimed pursuant to this section, the governing body shall transfer to the person at no charge a burial space that, to the extent possible, is equivalent to the reclaimed burial space.

(7) Notwithstanding any provision of law to the contrary, on and after August 7, 2006, the governing body of a municipality shall not convey title to the real property surveyed as a lot in a cemetery for use as a burial space. The governing body of a municipality may grant interment rights to a burial space in a cemetery.

Source: L. 2006: Entire section added, p. 444, § 4, effective August 7.

Editor's note: Section 5 of chapter 128, Session Laws of Colorado 2006, provides that the act enacting this section applies to cemetery lots, grave spaces, niches, and crypts purchased before, on, or after August 7, 2006.

PART 8

DOWNTOWN DEVELOPMENT AUTHORITIES

31-25-801. Legislative declaration.

(1) The general assembly declares that the organization of downtown development authorities having the purposes and powers provided in this part 8 will serve a public use; will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; will halt or prevent deterioration of property values or structures within central business districts, will halt or prevent the growth of blighted areas within such districts, and will assist municipalities in the development and redevelopment of such districts and in the overall planning to restore or provide for the continuance of the health thereof; and will be of especial benefit to the property within the boundaries of any authority created pursuant to the provisions of this part 8.

(2) The general assembly determines, finds, and declares that because of a number of atypical factors and special conditions concerning downtown development unique to each locality, the rule of strict construction shall have no application to this part 8, but it shall be liberally construed to effect the purposes and objects for which it is intended.

Source: L. 76: Entire part added, p. 701, § 1, effective April 26. **L. 77:** (1) amended, p. 1472, § 1, effective June 19. **L. 81:** (1) amended, p. 1517, § 2, effective July 1.

ANNOTATION

Law reviews. For article, "Governmental Issues Related to Real Estate Development", see 11 Colo. Law 2527 (1982). For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

31-25-802. Definitions.

As used in this part 8, unless the context otherwise requires:

(1) "Authority" means a downtown development authority created pursuant to the provisions of this part 8 in any municipality of this state and any successor to its functions, authority, rights, and obligations.

(1.5) "Blighted area" means an area within the central business district which, by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility,

or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, unusual topography, defective or unusual conditions of title rendering the title nonmarketable, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the central business district, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(2) "Board" means the board of the authority.

(3) "Central business district" means the area in a municipality which is and traditionally has been the location of the principal business, commercial, financial, service, and governmental center, zoned and used accordingly.

(3.5) "Development project" or "project" means undertakings and activities of an authority or municipality as authorized in this part 8 in a plan of development area for the development or redevelopment of said area in accordance with a plan of development.

(4) "Director" means the chief executive officer of the authority.

(4.5) "District" means the authority or the area within which the authority may exercise its powers.

(5) "Downtown" means a specifically defined area of the municipality in the central business district, established by the governing body of the municipality pursuant to this part 8.

(5.5) "Governing body" means the city council, town council, board of trustees, or other governing board of any municipality of this state.

(6) "Landowner" means the owner in fee of any undivided interest in real property or any improvement permanently affixed thereto within the district. As used in this part 8, "owner in fee" includes a contract purchaser obligated to pay general taxes, an heir, and a devisee under a will admitted to probate and does not include a contract seller of property with respect to which the contract purchaser is deemed to be the owner in fee for purposes of this subsection (6).

(6.2) "Lessee" means the holder of a leasehold interest in real property within the district. As used in this part 8, "leasehold interest" does not include a license or mere contract right to use real property within the district.

(6.4) "Planning board" means the agency designated by the governing body of the municipality which is chiefly responsible for planning in the municipality; and, if no separate agency exists, "planning board" means the governing body of the municipality.

(6.6) "Plan of development" means a plan, as it exists from time to time, for the development or redevelopment of a downtown development area, including all properly approved amendments thereto.

(6.8) "Plan of development area" means an area in the central business district which the board and the governing body designate as appropriate for a development project.

(7) "Public body" means the state of Colorado or any municipality, quasi-municipal corporation, board, commission, authority, or other political subdivision or public corporate body of the state.

(8) "Public facility" includes but is not limited to any streets, parks, plazas, parking facilities, playgrounds, pedestrian malls, rights-of-way, structures, waterways, bridges, lakes, ponds, canals, utility lines or pipes, and buildings, including access routes to any of the foregoing, designed for use by the public generally or used by any public agency with or without charge, whether or not the same is revenue-producing.

(9) "Qualified elector" means a resident, a landowner, or a lessee as said terms are defined in this section. Any landowner or lessee which is not a natural person may vote only if it designates by some official action a representative thereof to cast its ballot. This subsection (9) shall not be construed so as to permit any qualified elector to cast more than one vote, even though any person qualified or lawfully designated may be entitled to cast the vote of more than one qualified elector.

(10) "Resident" means one who is a citizen of the United States and a resident of the state of Colorado, eighteen years of age or older, who makes his primary dwelling place within the district.

Source: L. 76: Entire part added, p. 701, § 1, effective April 26. **L. 77:** (3.5), (4.5), (5.5), (6.2), (6.4), (6.6), and (6.8) added and (6), (9), and (10) amended, p. 1472, § 2, effective June 19. **L. 81:** (1.5) added and (3.5) and (6.4) amended, p. 1518, § 3, effective July 1. **L. 2009:** (6.4), (6.6), (6.8), and (7) amended, (SB 09-292), ch. 369, p. 1978, § 108, effective August 5.

31-25-803. Powers of governing body.

The governing body of every municipality in this state may create and establish a downtown development authority, pursuant to the provisions of this part 8, which authority shall have all the powers provided in this part 8 that are authorized by the ordinance, or any amendment thereto, authorizing such authority and which, when established, shall be a body corporate and capable of being a party to suits, proceedings, and contracts, the same as municipalities in this state. Any such authority may be dissolved by ordinance of the governing body, if there is no outstanding indebtedness of the authority or if adequate provision for the payment of such indebtedness has been provided.

Source: L. 76: Entire part added, p. 702, § 1, effective April 26.

31-25-804. Organizational procedure - election.

(1) When the governing body of a municipality determines it is necessary to establish a downtown development authority for the public health, safety, prosperity, security, and welfare and to carry out the purposes of an authority as stated in section 31-25-801, it shall by ordinance submit, at the next regular election or at a special election called for that purpose, the question of the establishment of a downtown development authority. In the ordinance submitting said question, the governing body shall state the boundaries of the downtown development district within which the authority shall exercise its powers and may provide for submission to the voters of any local government matters arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4), C.R.S. If any such matters are to be submitted to the voters, the election shall be conducted at the time and in the manner required by section 20 of article X of the state constitution. If a majority of the qualified electors voting at the election vote for the establishment of a downtown development authority, the authority shall be established pursuant to the provisions of this part 8.

(2) Any ordinance creating a downtown development authority shall provide that any ordinance or resolution by which bonds are issued pursuant to this part 8 shall specify the maximum net effective interest rate of such bonds.

Source: L. 76: Entire part added, p. 702, § 1, effective April 26. **L. 77:** Entire section amended, p. 1473, § 3, effective June 19. **L. 81:** (1) amended, p. 1518, § 4, effective July 1. **L. 94:** (1) amended, p. 1193, § 96, effective July 1.

ANNOTATION

Law reviews. For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

31-25-805. Board - membership - term of office.

(1) The affairs of the authority shall be under the direct supervision and control of a board consisting of not less than five nor more than eleven members appointed by the governing body; except that for any twenty-year extension period pursuant to section 31-25-807 (3)(a)(V), the affairs of the authority shall be under the direct supervision and control of a board consisting of not less than nine and no more than thirteen members, with two members appointed by the

entities identified in subsection (2)(a)(II) of this section and all remaining members appointed by the governing body. A majority of the members appointed shall reside or own property in the authority district.

(2) The board shall be constituted as follows:

(a) (I) At least one member shall be a member of the governing body, appointed to serve at the pleasure of the governing body; and

(II) For any twenty-year extension period pursuant to section 31-25-807 (3)(a)(V), one member shall be a member of the board of county commissioners of the county in which the authority district is located, appointed to serve at the pleasure of the board of county commissioners. If the authority district is located in more than one county, the appointment is by an agreement of all the counties in which the authority district is located. If the appointing county is a city and county, the requirement for a county-appointed board member pursuant to this subsection (2)(a)(II) does not apply. In addition, one member shall be a member of the of the school district board of education of the school district in which the authority district is located, appointed to serve at the pleasure of the school district board of education. If a county or school district does not appoint a member of the board, then the county or school district appointment remains vacant until the applicable appointing authority makes the appointment pursuant to this subsection (2)(a)(II).

(b) Two members shall be appointed for terms expiring June 30 of the year following the date of the ordinance adopted by the governing body establishing the authority.

(c) Two members shall be appointed for terms expiring June 30 of the second year following the date of the ordinance adopted by the governing body establishing the authority.

(d) Two members, if the board consists of seven or more members, shall be appointed for terms expiring June 30 of the third year following the date of the ordinance adopted by the governing body establishing the authority.

(e) All other members shall be appointed for terms expiring June 30 of the fourth year following the date of the ordinance adopted by the governing body establishing the authority.

(3) A member shall hold office until his successor has been appointed and qualified. After the terms of the initial members of the board have expired, the terms of all members (except any member who is a member of the governing body) shall expire four years from the expiration date of the terms of their predecessors. Appointments to fill vacancies shall be for the unexpired term. In any municipality in which the charter provides that the appointive authority is the mayor, the mayor shall make appointments to the board.

Source: L. 76: Entire part added, p. 703, § 1, effective April 26. **L. 2023:** (1) and (2)(a) amended, (SB 23-175), ch. 331, p. 1983, § 1, effective August 7.

31-25-806. Board membership - qualifications - nominations - rules - removal.

(1) Each appointed member of the board, except any member from the governing body, shall reside, be a business lessee, or own real property in the downtown development district within the municipality in which the authority is located. A manager, as that term is defined in section 7-90-102, C.R.S., an agent, or an employee of an entity, as that term is defined in section 7-90-102, C.R.S., having its place of business in the downtown development district shall be eligible for appointment to the board. No officer or employee of the municipality where the authority is located, other than any appointee from the governing body, shall be eligible for appointment to the board. Within thirty days after the occurrence of a vacancy, the governing body, except as provided in section 31-25-805 (3), shall appoint a successor.

(2) Before assuming the duties of the office, each appointed member shall qualify by taking and subscribing to the oath of office required of officials of the municipality.

(3) The board shall adopt and promulgate rules governing its procedure, including election of officers, and said rules shall be filed in the office of the clerk. The board shall hold regular meetings in the manner provided in the rules of the board. Special meetings may be held when called in the manner provided in the rules of the board. All meetings of the board shall be open to the public except those dealing with land acquisition or sales, personnel matters, or legal matters. Members of the board shall serve without compensation, but they may be reimbursed for actual and necessary expenses.

(4) After notice and an opportunity to be heard, an appointed member of the board may be removed for cause by the governing body.

Source: L. 76: Entire part added, p. 703, § 1, effective April 26. **L. 2009:** (1) amended, (HB 09-1248), ch. 252, p. 1136, § 22, effective May 14.

31-25-807. Powers - duties.

(1) The board, subject to the provisions of this part 8 and subject to other applicable provisions of law, shall have all powers customarily vested in the board of directors of a corporation. It shall exercise supervisory control over the activities of the director and the staff of the authority in carrying out the functions authorized by this part 8.

(2) In addition to the powers granted by subsection (1) of this section, the board may:

(a) Appoint and remove a director and other staff members, who shall be employed upon recommendation of the director, and prescribe their duties and fix their compensation which shall be paid from funds available to the authority;

(b) At the request of the governing body, prepare an analysis of economic changes taking place in the central business district of the municipality;

(c) Study and analyze the impact of metropolitan growth upon the central business district;

(d) Plan and propose, within the downtown development area, plans of development for public facilities and other improvements to public or private property of all kinds, including removal, site preparation, renovation, repair, remodeling, reconstruction, or other changes in existing buildings which may be necessary or appropriate to the execution of any such plan which in the opinion of the board will aid and improve the downtown development area;

(e) To implement, as provided in this part 8, any plan of development, whether economic or physical, in the downtown development area as is necessary to carry out its functions;

(f) In cooperation with the planning board and the planning department of the municipality, develop long-range plans designed to carry out the purposes of the authority as stated in section 31-25-801 and to promote the economic growth of the district and may take such steps as may be necessary to persuade property owners and business proprietors to implement such plans to the fullest extent possible;

(g) Retain and fix the compensation of legal counsel to advise the board in the proper performance of its duties;

(h) Make and enter into all contracts necessary or incidental to the exercise of its powers and the performance of its duties.

(3) (a) Notwithstanding any law to the contrary and subject to subsections (3)(a)(IV) and (3)(a)(V) of this section, any plan of development as originally adopted by the board or as later modified pursuant to this part 8 may, after approval by the governing body of the municipality, contain a provision that taxes, if any, levied after the effective date of the approval of the plan of development by the governing body upon taxable property within the boundaries of the plan of development area each year or that municipal sales taxes collected within said area, or both such taxes, by or for the benefit of any public body shall be divided for a period not to exceed thirty years or a longer period as provided for in subsections (3)(a)(IV) and (3)(a)(V) of this section after the effective date of approval by the governing body of such a provision, as follows:

(I) That portion of the taxes which are produced by the levy at the rate fixed each year by or for each such public body upon the valuation for assessment of taxable property within the boundaries of the plan of development area last certified prior to the effective date of approval by said governing body of the plan, or, as to an area later added to the boundaries of the plan of development area, the effective date of the modification of the plan, or that portion of municipal

sales taxes collected within the boundaries of said development area in the twelve-month period ending on the last day of the month prior to the effective date of approval of said plan, or both such portions, shall be paid into the funds of each such public body as are all other taxes collected by or for said public body.

(II) The portion of property taxes or all or any portion of sales taxes, or both, in excess of the amount specified in subsection (3)(a)(I) of this section shall be allocated to and, when collected, paid into a special fund of the municipality for the payment of the principal of, the interest on, and any premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, the municipality for financing or refinancing, in whole or in part, a development project within the boundaries of the plan of development area. Any excess municipal sales tax collection not allocated pursuant to this subsection (3)(a)(II) shall be paid into the funds of the municipality. Unless and until the total valuation for assessment of the taxable property within the boundaries of the plan of development area exceeds the base valuation for assessment of the taxable property within such boundaries, as provided in subsection (3)(a)(I) of this section, all of the taxes levied upon the taxable property in such boundary area shall be paid into the funds of the respective public bodies. Unless and until the total municipal sales tax collections in the plan of development area exceed the base year municipal sales tax collections in such area, as provided in subsection (3)(a)(I) of this section, all such sales tax collections shall be paid into the funds of the municipality. When such bonds, loans, advances, and indebtedness, if any, including interest thereon and any premiums due in connection therewith, and including any refunding securities therefor, have been paid, all taxes upon the taxable property or the total municipal sales tax collections, or both, in such boundary area shall be paid into the funds of the respective public bodies. Pursuant to an intergovernmental agreement between a municipality and an authority, the governing body may delegate to the board the power to incur loans or indebtedness or obtain advances and to pledge money in the special fund created pursuant to this subsection (3)(a)(II) for the payment of any loans, advances, or indebtedness. The intergovernmental agreement shall be approved by an ordinance adopted by the governing body and a resolution adopted by the board and shall include terms, conditions, or limitations on the power of the board as agreed to by the governing body and board.

(III) In calculating and making payments as described in subparagraph (II) of this paragraph (a), the county treasurer may offset the authority's pro rata portion of any property taxes that are paid to the authority under the terms of subparagraph (II) of this paragraph (a) and that are subsequently refunded to the taxpayer against any subsequent payments due to the authority for the plan of development area. The authority shall make adequate provision for the return of overpayments in the event that there are not sufficient property taxes due to the authority to offset the authority's pro rata portion of the refunds. The authority may establish a reserve fund for this purpose or enter into an intergovernmental agreement with the governing body of the municipality that established the authority in which the municipality assumes responsibility for

the return of the overpayments. The provisions of this subparagraph (III) shall not apply to a city and county.

(IV) (A) Except as otherwise provided in subsection (3)(a)(V) of this section, during the final ten years of the thirty-year period during which a portion of the property taxes or sales taxes, or both, may be allocated to and, when collected, paid into the special fund of the municipality in accordance with the requirements of subsection (3)(a)(II) of this section, the governing body may by ordinance extend the period during which property taxes shall be allocated for one additional extension of twenty years, which extension shall commence upon the expiration of the original thirty-year period, if on the first day of the twenty-year extension period the established base year for the allocation of property taxes pursuant to subsection (3)(a)(II) of this section is advanced forward by ten years and, subsequent to the completion of the first ten years of the twenty-year extension, the base year is advanced forward by one year for each additional year through the completion of the twenty-year extension. The governing body may also by ordinance extend the period during which sales taxes shall be allocated for one additional extension of twenty years with no change to the established sales tax base year. Notwithstanding any other provision of this subsection (3)(a)(IV), any extension authorized pursuant to this subsection (3)(a)(IV) may only be considered by the governing body during the final ten years of the original thirty-year period.

(B) In connection with an extension implemented pursuant to subsection (3)(a)(IV)(A) of this section, on an annual basis fifty percent of the property taxes levied, or such greater amount as may be set forth in an agreement negotiated by the municipality and the respective public bodies, and allocated in accordance with the requirements of subsection (3)(a)(II) of this section shall be paid into the special fund of the municipality and the balance of such taxes shall be paid into the funds of the other public bodies by or for which such taxes are collected. Not later than August 1 of each calendar year, the governing body shall certify to the county assessor an itemized list of the property tax distribution percentages attributable to the special fund of the municipality pursuant to this subsection (3)(a)(IV)(B) from the mill levies to be certified by each public body. When certifying values to taxing entities pursuant to sections 39-1-111 (5), 39-5-121 (2), and 39-5-128, the assessor shall certify only the percentage of increment value attributable to the special fund pursuant to this subsection (3)(a)(IV)(B) as certified by the governing body.

(V) (A) If a governing body extends, pursuant to subsection (3)(a)(IV) of this section, the period during which a portion of the property taxes may be allocated to the special fund of the municipality in accordance with the requirements of subsection (3)(a)(II) of this section, the governing body may, by ordinance, extend the period during which property taxes shall be allocated for one or more additional twenty-year periods as specified in this subsection (3)(a)(V). The governing body must adopt a separate ordinance for each additional twenty-year period in accordance with subsection (3)(a)(V)(C) of this section. A twenty-year extension for the period during which property taxes shall be allocated to the special fund of the municipality commences

upon the expiration of the previous twenty-year extension period, whether such period was pursuant to subsection (3)(a)(IV) of this section or pursuant to this subsection (3)(a)(V). On the first day of a twenty-year extension period pursuant to this subsection (3)(a)(V), the established base year for the allocation of property taxes pursuant to subsection (3)(a)(II) of this section must be advanced forward by one year, and the established base year must be advanced forward for each additional year through the completion of the twenty-year extension.

(B) In connection with an extension implemented pursuant to this subsection (3)(a)(V), on an annual basis fifty percent of the property taxes levied, or a greater amount as may be set forth in an agreement negotiated by the municipality and the respective public bodies, and allocated in accordance with the requirements of subsection (3)(a)(II) of this section, shall be paid into the special fund of the municipality and the balance of the taxes shall be paid into the funds of the other public bodies by or for which such property taxes are collected. Not later than August 1 of each calendar year, the governing body shall certify to the county assessor an itemized list of the property tax distribution percentages attributable to the special fund of the municipality pursuant to this subsection (3)(a)(V)(B) from the mill levies to be certified by each public body. When certifying values to taxing entities pursuant to sections 39-1-111 (5), 39-5-121 (2), and 39-5-128, the assessor shall certify only the percentage of increment value attributable to the special fund pursuant to this subsection (3)(a)(V)(B) as certified by the governing body.

(C) Before August 1 of the last year of a twenty-year extension period pursuant to subsection (3)(a)(IV) or (3)(a)(V)(A) of this section, the governing body may adopt an ordinance to extend the period during which a portion of property tax may be collected and allocated to the special fund of the municipality pursuant to subsection (3)(a)(II) of this section.

(b) The special fund described in subparagraph (II) of paragraph (a) of this subsection (3) and the tax moneys paid into such fund may be irrevocably pledged by the municipality for the payment of the principal of, the interest on, and any premiums due in connection with such bonds, loans, advances, or indebtedness if the question of issuing such bonds or otherwise providing for such loans, advances, or indebtedness and the question of any such intended pledge are first submitted for approval to the qualified electors of the district at a special election to be held for that purpose. Any such election required by this paragraph (b) shall be called by resolution of the board adopted at a regular or special meeting thereof and approved by the governing body by a vote of a majority of the members thereof at least thirty days prior to such election. Except with respect to the qualifications of electors, such election together with all attendant preparations therefor and proceedings thereafter shall be held and conducted in the manner prescribed by law for the holding and conducting of other regular or special elections in the municipality. This irrevocable pledge shall not extend to any taxes that are placed in a reserve fund to be returned to the county for refunds of overpayments by taxpayers; except that this limitation on the extension of the irrevocable pledge shall not apply to a city and county.

(c) As used in this subsection (3), "taxes" shall include, but not be limited to, all levies authorized to be made on an ad valorem basis upon real and personal property or municipal sales taxes; but nothing in this subsection (3) shall be construed to require any public body to levy taxes.

(d) In the case of such plan of development areas, school districts which include all or any part of such plan of development area shall be permitted to participate in an advisory capacity with respect to the inclusion in a plan of development of the provision provided for by this subsection (3).

(e) In the event there is a general reassessment of taxable property valuations in any county including all or part of the plan of development area subject to division of valuation for assessment under paragraph (a) of this subsection (3) or a change in the sales tax percentage levied in any municipality including all or part of the downtown development area subject to division of sales taxes under paragraph (a) of this subsection (3), the portions of valuations for assessment or sales taxes under both subparagraphs (I) and (II) of paragraph (a) of this subsection (3) shall be proportionately adjusted in accordance with such reassessment or change.

(f) The manner and method by which the requirements of subparagraph (IV) of paragraph (a) of this subsection (3) are to be implemented by the county assessors shall be contained in such manuals, appraisal procedures, and instructions, as applicable, that the property tax administrator is authorized to prepare and publish pursuant to section 39-2-109 (1)(e), C.R.S.

(4) (a) An authority shall not actually undertake a development project for a plan of development area unless the governing body, by resolution, has first approved the plan of development which applies to such development project.

(b) Prior to its approval of a plan of development, the governing body shall submit such plan to the planning board of the municipality, if any, for review and recommendations. The planning board shall submit its written recommendations with respect to the proposed plan of development to the governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning board or, if no recommendations are received within said thirty days, without such recommendations, the governing body may proceed with the hearing on the proposed plan of development prescribed by paragraph (c) of this subsection (4).

(c) The governing body shall hold a public hearing on a plan of development or substantial modification of an approved plan of development after public notice thereof by publication once by one publication during the week immediately preceding the hearing in a newspaper having a general circulation in the municipality. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the plan of development area covered by the plan, and shall outline the general scope of the development project under consideration.

(d) Following such hearing, the governing body may approve a plan of development if it finds that there is a need to take corrective measures in order to halt or prevent deterioration of property values or structures within the plan of development area or to halt or prevent the growth of blighted areas therein, or any combination thereof, and if it further finds that the plan will afford maximum opportunity, consistent with the sound needs and plans of the municipality as a whole, for the development or redevelopment of the plan of development area by the authority and by private enterprise.

Source: L. 76: Entire part added, p. 704, § 1, effective April 26. **L. 77:** (3) and (4) added, p. 1474, § 4, effective June 19. **L. 81:** (2)(d), (2)(f), (3)(a), (3)(c), (3)(e), and (4)(d) amended, p. 1518, § 5, effective July 1. **L. 82:** (3)(a)(II) amended, p. 627, § 36, effective April 2. **L. 2002:** IP(3)(a) amended, p. 1943, § 1, effective August 7. **L. 2008:** IP(3)(a) amended and (3)(a)(IV) and (3)(f) added, pp. 974, 975, §§ 1, 2, effective August 5; (3)(a)(III) added and (3)(b) amended, p. 1246, §§ 3, 4, effective August 5. **L. 2013:** IP(3)(a) amended, (HB 13-1295), ch. 314, p. 1656, § 13, effective July 1, 2014. **L. 2019:** IP(3)(a) amended, (HB 19-1240), ch. 264, p. 2503, § 12, effective June 1. **L. 2023:** IP(3)(a), (3)(a)(II), and (3)(a)(IV) amended and (3)(a)(V) added, (SB 23-175), ch. 331, p. 1984, § 2, effective August 7.

Cross references: For the legislative declaration in the 2013 act amending the introductory portion of subsection (3)(a), see section 1 of chapter 314, Session Laws of Colorado 2013.

31-25-808. Additional and supplemental powers.

(1) In addition and supplemental to the other powers granted by this part 8, the authority shall have all powers, except as limited in the ordinance or any amendments thereto, establishing such authority, necessary or convenient to carry out and effectuate the purposes and provisions of this part 8, including but not limited to the following powers:

(a) To acquire by purchase, lease, license, option, gift, grant, devise, or otherwise any property or any interest therein;

(b) In connection with public facilities, to improve land and to construct, reconstruct, equip, improve, maintain, repair, and operate buildings and other improvements, whether on land of the authority or otherwise;

(c) To lease or sublease as lessor any property owned or leased by it or under its control on such terms and conditions as may be established by the board for residential, recreational, commercial, industrial, or other uses or for public use in accordance with the plan of development;

(d) To sell or otherwise dispose of property of the authority or any interest therein, subject to such covenants, conditions, and restrictions as it may deem necessary or desirable to carry out the purposes and objectives of the authority for residential, recreational, commercial, industrial, or other uses or for public use in accordance with the plan of development;

(e) To fix, charge, and collect fees, rates, tolls, rents, and charges for the use of any property of the authority or any property under its control and to pledge any such revenues in support of any bonds or other obligations of the authority;

(f) To cooperate with the municipality in which the authority is located and any other governmental agency or other public body and to enter into contracts with any such agency or body;

(g) To make to or receive from the municipality or the county in which the authority is located conveyances, leasehold interests, grants, contributions, loans, and any other rights and privileges;

(h) (I) To invest any funds of the authority not required for immediate disbursement in property or in securities in which public bodies may invest funds subject to their control pursuant to part 6 of article 75 of title 24, C.R.S., and to redeem any bonds it has issued at the redemption price established therein or to purchase such bonds at less than the redemption price, all such bonds so redeemed or purchased to be canceled;

(II) To deposit any funds not required for immediate disbursement in any depository authorized in section 24-75-603, C.R.S. For the purpose of making such deposits, the board may appoint, by written resolution, one or more persons to act as custodians of the funds of the authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

(i) To borrow money on such terms and conditions as the board may approve and to issue bills, notes, bonds, or other evidence of indebtedness therefor and to pledge and hypothecate any property or revenue in support of any such debt;

(j) To demolish and remove buildings and improvements located on, and to install, construct, or reconstruct improvements and facilities, including public facilities, on or about, any land owned by an authority or a municipality, in preparation for conveyance to purchasers or lessees, or otherwise.

(2) Any sale or letting of property by the authority shall be at not less than its fair value (as determined by the authority and the governing body) for uses in accordance with the plan of development. In determining the fair value of real property for such uses, an authority shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee; and the objectives of such plan.

Source: L. 76: Entire part added, p. 705, § 1, effective April 26. **L. 77:** (1)(c) amended, p. 1476, § 5, effective June 19. **L. 79:** (1)(h) amended, p. 1619, § 22, effective June 8. **L. 81:** (1)(b) to (1)(d) amended and (1)(j) and (2) added, pp. 1520, 1521, §§ 6, 7, effective July 1. **L. 89:** (1)(h)(I) amended, p. 1116, § 28, effective July 1.

31-25-809. Authorization of bonds.

(1) By ordinance adopted by the governing body at a regular or special meeting, by a vote of a majority of the members of the governing body, the municipality may issue bonds, payable solely from revenues or from taxes pledged pursuant to section 31-25-807 (3)(b) or from both such revenues and taxes, to pay all or any part of the cost of any project or for furthering any purpose of this part 8.

(2) The governing body, in determining such costs, may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; any discount on the sale of the bonds; the cost of any financial, professional, or other expert advice; contingencies; any administrative, operating, or other expenses of the municipality incurred pursuant to the issuance of such bonds, as may be determined by the governing body; all such other expenses as may be necessary or incident to the financing, acquisition, improvement, equipment, and completion of any development project or for furthering any purpose of this part 8; sufficient provision of reserves for working capital, operation, or maintenance or replacement expense or for payment or security of principal of or interest on any bonds during or after an acquisition or improvement and equipment as the governing body may determine; and reimbursements to any governmental agency or instrumentality for any moneys expended pursuant to agreement on any project or for furthering any purpose of this part 8.

(3) In each such project financed by the proceeds of bonds issued under this part 8, the governing body shall determine the costs of, and may budget a percentage therefrom for, operation and administration of the total cost of the actual project.

(4) The proceeds of the bonds may be expended by the municipality or, with the consent of the municipality, by the authority as agent for, and on behalf of, the municipality. If the proceeds of the bonds are applied for the acquisition of real or personal properties, the governing body may:

(a) Retain title to such properties in its own name and lease or grant licenses or privileges in such properties to the authority in order that the authority may, as principal or agent, exercise its powers with respect to such properties; or

(b) Convey title to such properties to the authority for such consideration and subject to such terms and conditions as the governing body may prescribe without regard to any restriction,

limitation, or condition otherwise imposed by statute on the sale or disposition of such properties by a municipality.

Source: L. 76: Entire part added, p. 705, § 1, effective April 26. **L. 77:** Entire section amended, p. 1476, § 6, effective July 1. **L. 81:** (4) added, p. 1521, § 8, effective July 1.

31-25-810. Bond provisions.

(1) Bonds issued pursuant to this part 8 shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually or annually, and evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the municipality; except that the first coupon appertaining to any bond may evidence interest not in excess of one year. The ordinance authorizing the issuance of such bonds shall specify the maximum net effective interest rate. Such bonds may be issued as term or serial bonds, in one or more series, may bear such date, may mature at such time not exceeding twenty years' duration, may be in such denomination or denominations, may be payable in such medium of payment at such place or places within or without the state (including but not limited to the office of any county treasurer in which the municipality is located wholly or in part), may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denomination, may be so reissued, without modification of maturities and interest rates, and may be in such form, either bearer coupon or registered, with such recitals, terms, covenants, conditions, and other details as may be provided by the governing body, subject to the provisions of this part 8.

(2) (a) The governing body may provide for preferential security for any bonds, both principal and interest, to be issued pursuant to this part 8 to the extent deemed feasible and desirable by such governing body over any bonds that may be issued thereafter.

(b) Said bonds may be sold at, above, or below the principal amounts thereof, but they may not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(c) Said bonds may be sold at public or private sale as determined by the governing body to be in the best interest of the issuer.

(3) Bonds may be issued with privileges for conversion or registration, or both, for payment as to principal or interest, or both; and, where interest accruing on the bonds is not represented by interest coupons, the bonds may provide for the endorsing of payments of interest thereon.

(4) Subject to the payment provisions of this part 8, said bonds, any interest coupons attached thereto, and any temporary bonds shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., except as the governing body may otherwise provide; and each holder of each such security, by accepting such security, shall be conclusively deemed to have agreed that such security, except as otherwise provided, is and shall be fully negotiable within the meaning and for all purposes of article 8 of title 4, C.R.S.

(5) Notwithstanding any other provision of law, the governing body in any proceedings authorizing bonds pursuant to this part 8:

(a) May provide for the initial issuance of one or more bonds, referred to in this subsection (5) as "bond", aggregating the amount of the entire issue;

(b) May make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) May provide for the making of any such bond, payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bonds;

(d) May further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

(6) If lost or completely destroyed, any security authorized by this part 8 may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing, to the satisfaction of the governing body, proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new security.

(7) Any officer authorized to execute any bond, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed, with a facsimile signature in lieu of his manual signature, any bond authorized in this part 8, if such a filing is not a condition of execution with a facsimile signature of any interest coupon, and if at least one signature required or permitted to be placed on each such bond, excluding any interest coupon, is manually subscribed. An officer's facsimile signature shall have the same legal effect as his manual signature.

Source: L. 76: Entire part added, p. 706, § 1, effective April 26. **L. 77:** (1) amended, p. 1476, § 7, effective June 19.

31-25-811. Refunding bonds.

(1) By ordinance adopted by the governing body at a regular or special meeting, by vote of a majority of the members of the governing body, any bonds issued under this part 8 may be refunded by the municipality without an election, subject to the provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise relating thereto.

(2) Any bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided in this part 8 for the sale of other bonds.

(3) No bonds may be refunded under this part 8 unless the holders thereof voluntarily surrender them for exchange or payment or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds within said period of time. No maturity of any bonds refunded may be extended over fifteen years. The rate of interest on such refunding bonds shall be determined by the authority. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded, except to the extent any interest on the bonds refunded in arrears or about to become due is capitalized with the proceeds of the refunding bonds. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds refunded so long as provision is duly and sufficiently made for their payment.

(4) The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow or in trust to be applied to the payment of the bonds refunded upon their presentation therefor. Any proceeds held in escrow or in trust, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such proceeds and investments in escrow or in trust, together with any interest or other gain to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent or trustee payable therefrom to pay the bonds refunded as they become due at their respective maturities or due at designated prior redemption dates upon which the authority shall be obligated to call the refunded bonds for prior redemption.

(5) The relevant provisions pertaining to bonds generally shall be equally applicable in the authorization and issuance of refunding bonds, including their terms and security, the bond resolution, trust indenture, taxes, and revenues, and other aspects of the bonds.

Source: L. 76: Entire part added, p. 707, § 1, effective April 26. **L. 77:** (1) amended, p. 1477, § 8, effective June 19. **L. 89:** (4) amended, p. 1116, § 29, effective July 1.

31-25-812. Tax exemption.

The bonds and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

Source: L. 76: Entire part added, p. 708, § 1, effective April 26.

31-25-813. No municipal liability on bonds.

Bonds issued pursuant to this part 8 shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitations. Each bond issued pursuant to this part 8 shall recite in substance that said bond, including interest thereon, is payable solely from the revenues or special funds pledged to the payment thereof and that said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitations.

Source: L. 76: Entire part added, p. 708, § 1, effective April 26. **L. 77:** Entire section amended, p. 1477, § 9, effective June 19.

31-25-813.5. Limitation of actions.

After the expiration of thirty days from the effective date of any ordinance or resolution authorizing the issuance of bonds pursuant to this part 8, all actions or suits attacking its findings, determinations, or contents or challenging the validity of the bonds shall be perpetually barred.

Source: L. 77: Entire section added, p. 1477, § 10, effective June 19.

31-25-814. Remedies of bondholders.

(1) Subject to any contractual limitations binding upon the holders of any issue of bonds or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds or trustee therefor has the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) By an action in the nature of mandamus or other suit, action, or proceeding at law or in equity to enforce his rights against the municipality and to require and compel the governing body to perform its duties and obligations under this part 8 and its covenants and agreements with the bondholders;

(b) By action or suit in equity to require the governing body to account as if they were the trustees of an express trust;

(c) By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(d) To bring suit upon the bonds.

(2) No right or remedy conferred by this part 8 upon any holder of bonds or any trustee therefor is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part 8 or by any other law.

Source: L. 76: Entire part added, p. 708, § 1, effective April 26. **L. 77:** (1)(a) and (1)(b) amended, p. 1478, § 11, effective June 19.

31-25-815. Employees - duties - compensation.

(1) The board shall employ and fix the compensation, subject to the approval of the governing body, of the following, who shall serve at the pleasure of the board:

(a) A director, who shall be a person of good moral character and possessed of a reputation for integrity, responsibility, and business ability. No member of the board shall be eligible to hold the position of director. The director shall take an oath or affirmation in accordance with section 24-12-101. The director shall be the chief executive officer of the authority. Subject to the approval of the board and directed by it when necessary, the director shall have general supervision over and be responsible for the preparation of plans and the performance of the functions of the authority in the manner authorized by this part 8. The director shall attend all meetings of the board and shall render to the board and to the governing body a regular report covering the activities and financial condition of the authority. In the absence or disability of the director, the board may designate a qualified person to perform the duties of the office as acting director. The director shall furnish the board with such information or reports governing the operation of the authority as the board may from time to time require.

(b) A treasurer, who shall keep the financial records of the authority and who, together with the director, shall approve all vouchers for the expenditure of funds of the authority. He shall perform such other duties as may be delegated to him by the board.

(c) A secretary, who shall maintain custody of the official seal and of all records, books, documents, or other papers not required to be maintained by the treasurer. He shall attend all meetings of the board and keep a record of all its proceedings. He shall perform such other duties as may be delegated to him by the board.

(d) Upon recommendation of the director, such clerical, technical, and professional assistants, including but not limited to persons in the fields of engineering, planning, and economic research, as shall, in the opinion of the board, be necessary to provide for the efficient performance of the functions of the board.

(2) Any provision of this section and section 31-25-807 to the contrary notwithstanding and subject to any limitations in the ordinance creating the authority or in any amendments thereto, the board may by resolution establish alternate administrative provisions relating to the administrative organization and structure of the authority and responsibilities of board members, officers, and employees.

Source: L. 76: Entire part added, p. 709, § 1, effective April 26. **L. 2018:** (1)(a) amended, (HB 18-1138), ch. 88, p. 698, § 28, effective August 8; (1)(a) amended, (HB 18-1140), ch. 41, p. 465, § 9, effective August 8.

Editor's note: Amendments to subsection (1)(a) by HB 18-1138 and HB 18-1140 were harmonized.

Cross references: (1) For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

(2) For the legislative declaration in HB 18-1140, see section 1 of chapter 41, Session Laws of Colorado 2018.

31-25-816. Funding - budget.

(1) The authority shall adopt a budget for each fiscal year, shall maintain accounts, and shall cause an annual audit to be made pertaining to the fiscal affairs of the authority. Administrative review of the proposed budget shall be in accordance with the policies of each municipality, prior to submission of the proposed budget to the governing body for approval.

(2) The operations of the authority shall be principally financed from the following sources and such other sources as may be approved by the governing body:

(a) Donations to the authority for the performance of its functions;

(b) Proceeds of an ad valorem tax, not exceeding five mills on the valuation for assessment of property in the downtown development area designated by the governing body;

(c) Moneys borrowed and to be repaid from other funds received under the authority of this part 8.

Source: L. 76: Entire part added, p. 710, § 1, effective April 26.

31-25-817. Ad valorem tax.

The governing body may impose and levy an ad valorem tax on all real and personal property in the downtown development district not exceeding five mills on the valuation for assessment of such property for the purposes set forth in section 31-25-807, nondebt funded expenditures allowed under section 31-25-808 (1)(a) and (1)(b), and budgeted operations of the authority. This levy shall be in addition to the regular ad valorem taxes and special assessments for improvements imposed by the governing body. The tax collector shall transmit funds so collected to the appropriate officer of the municipality responsible for the handling of the public money who shall deposit same in the municipal treasury to the credit of the authority. Such funds shall be used for no purpose other than those purposes authorized by this part 8 and upon approval of the board, pursuant to vouchers signed by the designated officer of the authority. The funds of the authority shall be secured as other public funds are secured. Other moneys received by the authority shall forthwith be deposited in the municipal treasury to the credit of the authority, subject to disbursement as authorized by this part 8.

Source: L. 76: Entire part added, p. 710, § 1, effective April 26.

31-25-818. Assessments.

The governing body shall have the power to assess against the funds of the authority for the use and benefit of the general fund of the municipality a reasonable pro rata share of such funds for the cost of handling and auditing, which assessment when made shall be paid annually by the board pursuant to an appropriate item in its budget.

Source: L. 76: Entire part added, p. 710, § 1, effective April 26.

31-25-819. Conflict of interest.

No board member nor any employee of the board shall vote or otherwise participate in any matter in which he has a specific financial interest, defined as a matter in which the member or employee would receive a benefit or incur a cost substantially greater than other property owners within the district. When such interest appears, it is the duty of the board member or employee to make such interest known, and he shall thenceforth refrain from voting on or otherwise participating in the particular transaction involving such interest. Willful violation of the provisions of this section constitutes malfeasance on the part of a member of the board and is grounds for instant dismissal of any employee. The governing body may by ordinance provide for automatic forfeiture of office by a board member for violation of this section.

Source: L. 76: Entire part added, p. 710, § 1, effective April 26.

31-25-820. Construction.

All powers conferred upon municipalities by this part 8 are and shall be cumulative and in addition to those conferred by any other general or special law or municipal charter or ordinance and shall be liberally construed to effectuate the purposes of this part 8. This part 8 is an alternative method of accomplishing its purposes independent of and in addition to any other powers conferred upon municipalities electing to exercise the authority granted by this part 8.

Source: L. 76: Entire part added, p. 711, § 1, effective April 26.

31-25-821. Property subject to debt.

Subject to section 31-25-807, all real and personal property located within the district shall continue to be subject to ad valorem taxes levied by the municipality to pay the principal and interest on all existing general obligation debts of the municipality and any future debts which may be authorized by law.

Source: L. 76: Entire part added, p. 711, § 1, effective April 26. **L. 77:** Entire section amended, p. 1478, § 12, effective June 19.

31-25-822. Inclusion of additional property.

Subsequent to the organization of an authority, additional property may be included in the district. Proceedings for inclusion shall be initiated by petition to the board of the authority signed by the owner or owners in fee of each parcel of land adjacent to the existing district sought to be included. Any such petition shall include evidence satisfactory to the board concerning title to the property and an accurate legal description thereof. If the board approves said application, it shall then submit the same to the governing body of the municipality. If the governing body also approves said application, it shall then, at a regular or special meeting by amendment to the ordinance treating the authority, redescribe the district so as to include the additional property as described in the petition. From the effective date of said amendment such additional property shall be included within the district and shall be subject to any taxes thereafter imposed by the municipality for the use and benefit of the authority.

Source: L. 77: Entire section added, p. 1478, § 13, effective June 19.

PART 9

ESTABLISHMENT OF PUBLIC AUTHORITIES BY MUNICIPALITIES - ENERGY RESOURCES

31-25-901. Legislative declaration.

(1) The general assembly hereby declares that decreasing supplies of energy resources and the increasing cost thereof is causing severe financial burdens and constitutes a threat to the health and welfare of the citizens of this state and that it is in the public interest that the development of alternative sources of energy proceed expeditiously to avert energy shortages and threats to the public health and welfare.

(2) To encourage the use and development by municipalities of alternate energy resources in the form of unconventional gas supplies for the use of the inhabitants of the municipalities of this state and for all citizens as alternate fuels for use by municipal utilities and others, the powers of municipalities are hereby expanded to authorize the formation of authorities for the purpose of financing municipal operations for the exploration, development, and production of unconventional gas, the use thereof for the purposes of municipal utilities, and the marketing and sale thereof to others.

Source: L. 80: Entire part added, p. 658, § 1, effective July 1.

31-25-901.5. Definitions.

As used in this part 9, unless the context otherwise requires:

(1) "Authority" means a municipal energy finance authority formed pursuant to this part 9.

(2) "Board" means the board of an authority.

(3) "Governing body" means the governing board of any municipality.

(4) "Unconventional gases" means gases that are predominantly methane, not obtained from ordinary, porous sands; and that generally are said to be in tight sands and shales where permeability is low, in coal beds where pressure is low, and in geopressured sediments, or gas from all sources other than sandstone or limestone with permeability less than one millidarcy. "Unconventional gases" also includes gases that are predominantly methane obtained from or in connection with wastewater treatment operations.

Source: L. 2025: Entire section added, (SB 25-275), ch. 377, p. 2090, § 267, effective August 6.

31-25-902. Duties of authority - development and financing of unconventional gas supplies.

An authority formed pursuant to this part 9 shall be known as a municipal energy finance authority. The authority's duties shall include the financing of municipal operations for the exploration, development, and production of unconventional gas for the purposes specified in section 31-25-901.

Source: L. 80: Entire part added, p. 659, § 1, effective July 1. **L. 2025:** Entire section amended, (SB 25-275), ch. 377, p. 2090, § 268, effective August 6.

31-25-903. Formation of authority by municipality.

The governing body of a municipality may create and establish an authority by the passage of an ordinance therefor. The authority shall have all the powers provided in this part 9 that are authorized by the ordinance, or any amendment thereto, authorizing such authority. When established, the authority shall be a body corporate and capable of being a party to suits, proceedings, and contracts, the same as municipalities in this state. Any such authority may be dissolved by ordinance of the governing body if there are no outstanding bonds or other

obligations of the authority or if adequate provision for the payment of such bonds or obligations has been provided.

Source: L. 80: Entire part added, p. 659, § 1, effective July 1. **L. 2025:** Entire section amended, (SB 25-275), ch. 377, p. 2091, § 269, effective August 6.

31-25-904. Board - membership - term of office.

(1) The affairs of the authority shall be under the direct supervision and control of a board consisting of five members appointed by the governing body.

(2) The board shall be constituted as follows:

(a) At least one member shall be a member of the governing body, appointed to serve at the pleasure of the governing body.

(b) Two members shall be appointed for terms expiring June 30 of the year following the date of the ordinance adopted by the governing body establishing the authority.

(c) Two members shall be appointed for terms expiring June 30 of the second year following the date of the ordinance adopted by the governing body establishing the authority.

(3) A member shall hold office until his successor has been appointed and qualified. After the terms of the initial members of the board have expired, the terms of all members, except any member who is a member of the governing body, shall expire four years from the expiration date of the terms of their predecessors. Appointments to fill vacancies shall be for the unexpired term. In any municipality in which the charter provides that the appointive authority is the mayor, the mayor shall make appointments to the board.

Source: L. 80: Entire part added, p. 659, § 1, effective July 1. **L. 2025:** (1) amended, (SB 25-275), ch. 377, p. 2091, § 270, effective August 6.

31-25-905. Board membership - qualifications - nominations - rules - removal.

(1) Each appointed member of the board, except any member from the governing body, shall be a registered elector of the municipality. No officer or employee of the municipality where the authority is located, other than any appointee from the governing body, shall be eligible for appointment to the board. Within thirty days after the occurrence of a vacancy, the governing body, except as provided in section 31-25-904 (3), shall appoint a successor.

(2) Before assuming the duties of the office, each appointed member shall qualify by taking and subscribing to the oath of office required of officials of the municipality.

(3) The board shall adopt and promulgate rules governing its procedure, including election of officers, and said rules shall be filed in the office of the municipal clerk. The board shall hold regular meetings in the manner provided in the rules of the board. Special meetings may be held when called in the manner provided in the rules of the board. All meetings of the board shall be open to the public except those dealing with land acquisition or sales, personnel matters, or legal matters.

(4) After notice and an opportunity to be heard, an appointed member of the board may be removed for cause by the governing body.

Source: L. 80: Entire part added, p. 660, § 1, effective July 1. **L. 87:** (1) amended, p. 332, § 98, effective July 1.

31-25-906. Powers - duties of board.

(1) Subject to the provisions of this part 9 and subject to other applicable provisions of law, the board shall have all powers customarily vested in the board of directors of a corporation. It shall appoint a director, who shall recommend the hiring of such staff as may be required. The board shall exercise supervisory control over the activities of the director and the staff of the authority in carrying out the functions authorized by this part 9.

(2) In addition to the powers granted by subsection (1) of this section, the board, acting on behalf of the authority, shall also have the power:

(a) To conduct investigations for the purposes of locating reserves of unconventional gas and the means and methods of exploring, developing, and producing such gas;

(b) To take over, by purchase, lease, or otherwise, any project undertaken by any government or by the municipality; except that such takeover shall not interfere with the normal use of any real property, or other property appurtenant thereto, which is devoted or dedicated to a public utility use;

(c) To act as agent for the federal government in connection with the acquisition, construction, operation, or management of the project or any part thereof.

(3) To the extent authorized by the governing body, the board may provide, out of project funds, for the compensation and the reimbursement of actual and necessary expenses of the board of the authority.

Source: L. 80: Entire part added, p. 660, § 1, effective July 1.

31-25-907. Powers of authority to effect purposes specified.

(1) To accomplish the purposes specified in sections 31-25-901 and 31-25-902, authorities are granted the following additional powers:

(a) To acquire, hold, use, transfer, and convey any real property or any interest therein, in fee or a leasehold interest, for purposes of initiating projects involving unconventional gas exploration, production, and development;

(b) To engage in any and all activities respecting the exploration, development, production, distribution, marketing, and sale of unconventional gas to any person or public or private entity or for municipal uses;

(c) To issue revenue bonds authorized by action of the governing body, without the approval of the qualified electors of the municipality, for purposes of financing the exploration, development, production, distribution, and marketing of unconventional gas.

Source: L. 80: Entire part added, p. 660, § 1, effective July 1.

31-25-908. Provisions relating to revenue bonds.

(1) Revenue bonds issued by the authority shall be issued in the manner provided in part 4 of article 35 of this title for the issuance of revenue bonds by municipalities; except that such revenue bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the authority, in its discretion, shall determine.

(2) Revenue bonds issued by the authority and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the municipality within the meaning of any provision or limitation of the state constitution, statutes, or home rule charter and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers.

(3) Revenue bonds and the income issued by the authority therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(4) Revenue bonds issued by the authority shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized.

Source: L. 80: Entire part added, p. 661, § 1, effective July 1.

31-25-909. Contracts with federal government.

(1) In addition to the powers conferred upon the authority by section 31-25-907, the authority, with regard to its relations with the federal government, is empowered:

(a) To borrow money from the federal government to finance any project and to borrow from private sources when such borrowing is guaranteed by the federal government;

(b) To take over any land offered by the federal government for the construction of a project; and

(c) To take over, lease, or manage any project so constructed or owned by the federal government and, to that end, to enter into any such contracts, leases, or other agreements as the federal government may require in such connection; except that such takeover shall not interfere with the normal use of any real property, or other property appurtenant thereto, which is devoted or dedicated to a public utility use.

(2) Such contract, lease, or other agreements may provide that the federal government has the right to supervise and approve the construction, maintenance, and operation of such project.

(3) It is the purpose and intent of this section to authorize such authority to accept the cooperation of the federal government in the construction, maintenance, and operation and in the financing of the construction of any project which the authority is empowered to undertake. Such authority has the full power to do all things necessary in order to secure such aid, assistance, and cooperation.

Source: L. 80: Entire part added, p. 661, § 1, effective July 1.

31-25-910. Colorado energy research institute - report. (Repealed)

Source: L. 80: Entire part added, p. 662, § 1, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1985. (See L. 80, p. 662.)

PART 10

FUNDING DEFICIENCIES

31-25-1001 to 31-25-1004. (Repealed)

Source: L. 86: Entire part repealed, p. 1062, § 39, effective July 1.

Editor's note: This part 10 was added in 1981 and was not amended prior to its repeal in 1986. For the text of this part 10 prior to 1986, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 11

FORECLOSURE PROCEEDINGS

Editor's note: Prior to the enactment of this part 11 in 1981, the substantive provisions of this part were contained in part 5 of article 1 of title 32.

Cross references: For the authority of a county to sell property for nonpayment and purchase property on default, see § 30-20-617; for sale of tax liens, see article 11 of title 39.

31-25-1101. Legislative declaration.

This part 11 is intended to provide a summary method for the collection of delinquent assessments and shall be liberally construed in favor of the taxing authority and the grantee in any deed issued pursuant to its provisions. No collateral attack whatsoever shall be permitted by any court or tribunal upon the title thus acquired, whether said title is acquired by the taxing authority itself or by any other purchaser. All taxing authorities within the state of Colorado authorized to levy any special tax or assessment are hereby specifically authorized to take advantage of the provisions of this part 11 and to take, hold, and convey title to the property sold. Conveyances shall be authorized by order of the governing body of the taxing authority, without any other further formality or proceeding.

Source: L. 81: Entire part added, p. 1618, § 21, effective July 1.

31-25-1102. Definitions.

As used in this part 11, unless the context otherwise requires:

(1) "Costs" means all costs associated with the foreclosure of any lien for special assessments levied upon any property. "Costs" includes, but is not limited to, publication costs; costs of sale; service of process fees; title insurance costs including costs for foreclosure certificates or litigation guarantee certificates; if such special assessment had been certified to the county treasurer, a fee for the county treasurer equal to the amount specified in section 30-1-102 (1)(c), C.R.S.; and any general taxes due or past due on such property, all interest and penalties thereon, and any fees and costs associated therewith.

(1.5) "Property" means any property which is, by the laws of the state of Colorado or the charter of any municipal corporation organized under the constitution of the state of Colorado, subject to the levy of assessments for local improvements within any city, town, or other taxing district in the state of Colorado.

(2) "Taxing authority" means the Colorado new energy improvement district created in section 32-20-104 (1), C.R.S., and any municipal corporation or taxing district organized under the constitution and laws of the state of Colorado with power to make local improvements therein and pay for the same by means of special assessments based upon benefits accruing to property within the municipality or taxing district by reason of such local improvement.

Source: L. 81: Entire part added, p. 1618, § 21, effective July 1. **L. 83:** (1) and (2) amended, p. 1249, § 2, effective March 17. **L. 90:** (1) R&RE, p. 1475, § 13, effective July 1; (1.5) added, p. 1475, § 14, effective October 1. **L. 2010:** (2) amended, (HB 10-1328), ch. 426, p. 2223, § 4, effective June 11.

31-25-1103. Property in default.

Whenever any property in this state is in default in the payment of any special assessment levied to pay the cost of any local improvement or any installment thereof or any interest thereon, the taxing authority which has levied said assessment may in its discretion foreclose the lien thereof by an administrative proceeding in the manner provided in this part 11.

Source: L. 81: Entire part added, p. 1618, § 21, effective July 1.

31-25-1104. Action in rem - lien against property.

(1) In any case of default as provided in section 31-25-1103, the taxing authority may institute a proceeding in the nature of an action in rem, in the district court of the county in which the property is situate, denominated "in the matter of the foreclosure of special assessments for (here insert the nature of the assessment)". In such proceeding, it shall not be necessary to name any property owner or other person.

(2) The petition, when verified by any officer of the taxing authority, shall be deemed sufficient if it includes the following: The nature of the assessment, a list of the property in default, the amount of the delinquent assessment including accrued interest and penalties for nonpayment against each particular lot or tract, and a request that a date of hearing be fixed not less than twenty nor more than forty days after the filing of the complaint and that, unless good cause be shown to the contrary, the court will then enter an order fixing the amount of the delinquency and costs and authorizing the sale of the property for the payment of the amount so fixed.

(3) In such proceeding, the taxing authority may act against all or any part of the property so in default and may elect to proceed with respect to any installment or installments in default or with respect to the entire assessment if the same is in default. The sale for any installment shall not extinguish the lien of any installment subsequently becoming due.

Source: L. 81: Entire part added, p. 1618, § 21, effective July 1.

31-25-1105. Form of notice of hearing to authorize sale.

In any proceeding authorized by section 31-25-1104, upon filing of the petition, the clerk of the district court in which such petition is filed shall issue under the seal of the court a notice which shall be in substantially the following form:

"STATE OF COLORADO	)	
	)	
	ss.	
County of	)	IN THE DISTRICT COURT. NOTICE
In the Matter of the Foreclosure of Special	)	

Assessments

for (here insert the nature of the assessment))

)

)

To all Persons having any Interest

in the premises hereinafter described:

Take notice that (here insert name of taxing authority) has instituted a proceeding in this court for the purpose of foreclosing the lien of certain special assessments for (here insert nature of assessment) upon the following properties, situate, lying, and being in the County of ....., State of Colorado, the amount of the assessment for each separate parcel being set opposite the description of the various lots or tracts, to wit:

Description of Property: (insert description) Amount Due: (insert amount)

You will further take notice that on the ..... day of ....., A.D., 20....., at the hour of ..... o'clock .... M., at the Court House in the County of ....., Colorado, any person having any right, title, interest, claim, or demand in or to any of the above described property or any part thereof may appear and show cause, if any, why the court should not enter an order fixing the amount of the delinquency against each such piece of property in default, together with costs, and authorizing the sale of said property for such delinquency.

WITNESS the signature of the clerk of said court with the seal thereof hereunto affixed at his office in the County of ....., State of Colorado, this ..... day of ....., A.D., 20....

.....

Clerk.

By .....

Deputy Clerk."

Source: L. 81: Entire part added, p. 1619, § 21, effective July 1.

31-25-1106. Publication of notice - copy mailed.

The notice required by section 31-25-1105 shall be published twice in a newspaper of general circulation in the county in which the proceeding is instituted. The fact of such publication shall be conclusively established by the publisher's affidavit of publication. The first publication of

such notice shall be more than ten days and the last publication within five days before the date set for the hearing. In addition to such published notice, the clerk of the court shall mail a copy of such notice to each record owner of the property described in such notice and to every mortgagee, lien claimant, or other person having any right, title, or interest in or to said property as disclosed by the records on file in the office of the county clerk and recorder of the particular county. Copies of such notice shall be sent to such owners and persons at their last-known addresses. If addresses of such owners and persons are unknown to the clerk, notices shall be directed to the post office nearest to the property described in said notice. Also, the clerk of the district court shall cause a copy of the notice to be served on some person occupying the property described in such notice, if there are any. The mailing and serving of notices shall be completed at least ten days before the date of the hearing specified in the notice. Affidavit thereof shall be filed in the clerk's office, which affidavit shall be prima facie evidence of the fact of such mailing and service.

Source: L. 81: Entire part added, p. 1620, § 21, effective July 1.

31-25-1107. Objections.

Any interested person may file written objections to the foreclosure of such assessment lien, setting forth the grounds relied upon to prevent the sale of any specific property subject to the lien of such assessment.

Source: L. 81: Entire part added, p. 1620, § 21, effective July 1.

31-25-1108. Procedure in court.

At the time specified in the notice, the court shall proceed to hear and determine all issues raised. If there are no objections, the petitioner shall only be required to establish that the assessment has been made, certified, and extended and that the payment of the same, or any portion thereof, is in default.

Source: L. 81: Entire part added, p. 1620, § 21, effective July 1.

31-25-1109. Court to direct sale of property.

With respect to property concerning which there is no appearance or concerning which all objections presented are overruled, the court shall forthwith enter a final order fixing the amount of the delinquency and costs and directing the treasurer of the taxing authority to sell such property at a date not more than ten days after the entry of such order for the purpose of satisfying the same. No proceeding to review any order of the district court entered under the provisions of this part 11 for the sale of any property shall be commenced after thirty days from the entry of the order sought to be reviewed. No proceeding to review such order shall be permitted to interrupt or delay the sale of any property with respect to which no such proceeding has been commenced. The provisions of this section shall not apply to any person in interest who has not been given actual notice. No sale shall be stayed unless the applicant for review files a bond in the supreme court in a penal sum not less than the amount of the delinquent assessment, with the condition that the amount of said tax, together with costs, shall be summarily forfeited to the taxing authority if the ruling of the trial court is sustained, in which event payment under the bond shall constitute a payment of the delinquent tax. If order of sale is denied by the district court, the taxing authorities shall have the right to a review of the proceedings in the supreme court and shall not be required to file a bond therefor.

Source: L. 81: Entire part added, p. 1620, § 21, effective July 1.

31-25-1110. Notice of sale.

Notice of sale shall be given by one publication in a newspaper of general circulation in such county, which notice shall be in substantially the following form:

"Notice of Sale of Property for Delinquent Special

Assessments (here insert nature of assessment).

The undersigned, Treasurer of the ..... of ....., in the State of Colorado, pursuant to an order of the District Court of the ..... Judicial District of the State of Colorado, within and for the County of ....., authorizing the sale of property for the nonpayment of special assessments levied for (here insert nature of assessment) in the amounts set opposite the description of the various lots and tracts, will on the ..... day of ....., A.D., 20....., at the

hour of ..... M., sell at public auction at his office in ..... County, Colorado, the following described property, to wit: (here insert description of property and amount of assessment)

Description Amount

.....

Treasurer of .....

County, Colorado.

Dated ....., 20....."

Source: L. 81: Entire part added, p. 1621, § 21, effective July 1.

31-25-1111. Liens may be paid prior to sale.

At any time prior to the day of sale, any person having any right, title, or interest in or lien upon any delinquent property may pay the amount of all unpaid past-due installments with interest at the rate of one percent per month, or fraction of a month, on the amount delinquent, together with all penalties and costs, whereupon the owner of such property shall be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered.

Source: L. 81: Entire part added, p. 1621, § 21, effective July 1.

31-25-1112. Sale - certificate of purchase - filing.

(1) At the time and place fixed in such notice, the treasurer of the taxing authority shall proceed to sell the property described in the notice and shall sell the same to the person who pays the amount fixed by the court and who further offers to accept the lowest rate of interest upon the amount so paid, which rate shall not exceed one percent per month. The treasurer may adjourn any such sale or cause the same to be adjourned from time to time by announcement at the time and place appointed for such sale. Without further notice or publication, such sale may be made at the time and place to which the same is so adjourned.

(2) Upon the completion of any sale, the treasurer of the taxing authority shall execute and deliver to the purchaser a certificate of purchase in substantially the following form:

"Certificate of Purchase.

THIS IS TO CERTIFY that on the ..... day of ....., A.D., 20....., the following described property, to wit:

(Description of Property)

was sold to ..... for the nonpayment of a special assessment for (nature of assessment) in the sum of $ ..... . If such property is not redeemed within three years from the above date, a deed to said property will issue to said ....., or his heirs, executors, administrators, or assigns.

If redemption is made, the holder hereof shall be entitled to interest on said amount at the rate of one percent per month from the date of said sale to the date of redemption.

IN WITNESS WHEREOF, I have hereunto set my hand at ....., Colorado, this ..... day of ....., A.D., 20.... .

.....

Treasurer of ....."

(3) Certificates of purchase shall be filed in the office of the county clerk and recorder of the county where the property is situated.

Source: L. 81: Entire part added, p. 1621, § 21, effective July 1. **L. 91:** (3) amended, p. 709, § 7, effective July 1.

31-25-1113. Bonds applied to purchase price.

At any such sale, the purchaser, for the purpose of making settlement or payments for property purchased, shall be entitled to turn in or apply toward the payment of the purchase price any of the bonds or other securities which are made payable out of the proceeds of the assessments for the collection of which such sale is made, together with any matured and unpaid coupons, and shall be entitled to be credited therefor to the extent of the par value of such bonds and coupons. Such bonds and coupons so applied in payment by the purchaser shall be deemed to be paid to the extent of the amount so turned in.

Source: L. 81: Entire part added, p. 1622, § 21, effective July 1.

31-25-1114. Treasurer may reject bids.

If at any such sale a sufficient bid is not made, the treasurer shall strike off the property to the taxing authority at the conclusion of the sale, issuing a single certificate of purchase therefor, describing therein all the property so stricken off.

Source: L. 81: Entire part added, p. 1622, § 21, effective July 1.

31-25-1115. Property redeemable within three years - certificate.

Any person having any right, title, or interest in or lien upon any property sold has the right to redeem the property within three years after any such sale by paying the amount of the delinquent assessment with interest thereon at the rate of one percent per month or fraction thereof. Upon such redemption the treasurer shall issue a certificate therefor and shall call in and cancel the certificate of purchase theretofore issued. Certificates of redemption shall be filed in the office of the county clerk and recorder of the county where the property is situated.

Source: L. 81: Entire part added, p. 1622, § 21, effective July 1. **L. 91:** Entire section amended, p. 710, § 8, effective July 1.

31-25-1116. Treasurer may issue deed - form.

Upon the expiration of the period of redemption, the treasurer shall issue deeds to purchasers or to the taxing authority. Any one deed may convey one or more parcels of land, whether the same are contiguous or not. The deed shall be in form substantially as follows:

"KNOW ALL MEN BY THESE PRESENTS: That I, ..., Treasurer of ..... in and for the County of ....., State of Colorado, did on the ..... day of ....., A.D., 20...., sell at public auction unto ....., the following described property in the County of ....., State of Colorado, to wit:

(Description of Property)

WHEREFORE, in full conformity with law, I do bargain, sell, convey, and quitclaim unto said ....., the aforesaid property.

TO HAVE AND TO HOLD the same unto the said ....., his heirs and assigns forever.

IN WITNESS WHEREOF, I have subscribed these presents this ..... day of ....., 20.... .

.....

Treasurer of ....."

Source: L. 81: Entire part added, p. 1622, § 21, effective July 1.

31-25-1117. Effect of deed.

All such deeds shall be duly acknowledged and when recorded shall be prima facie evidence in favor of the grantee named therein and of any person claiming by, through, or under him of the regularity of the assessment and the court proceedings, sale, and title of the grantee and after recording shall be prima facie evidence of the ownership by the grantee named therein of the property therein described, free and clear of all liens and encumbrances whatsoever, except the lien of general taxes or special assessments outstanding and unpaid at the time of issuing such deed and except the lien of any special assessment installment subsequently becoming due.

Source: L. 81: Entire part added, p. 1623, § 21, effective July 1.

31-25-1118. Procedure not mandatory.

The proceeding authorized by this part 11 shall not be obligatory upon any taxing authority. Such taxing authority, at its election, may pursue any other remedy provided by law for the collection of delinquent assessments.

Source: L. 81: Entire part added, p. 1623, § 21, effective July 1.

31-25-1119. Fifteen-year limitation.

No action shall be commenced to foreclose the lien created by any bonds or warrants issued pursuant to the making of any public improvement, including the establishment, widening, grading, paving, or other improvement of any alley, street, or road, special districts for internal improvement, local improvements by cities or towns, streets, sewers, district sanitary sewers, storm sewers, or subdistricts thereof, municipal special assessment, conservancy districts, or any other such improvement for which taxing authority is authorized by law to make assessments and

collect taxes for the purpose of retiring said bonds or warrants, unless the action is commenced within fifteen years from the date of maturity of the last issue of said bonds.

Source: L. 81: Entire part added, p. 1623, § 21, effective July 1.

PART 12

BUSINESS IMPROVEMENT DISTRICTS

Law reviews: For article, "Improvement Districts for Colorado Counties, Cities, and Towns", see 30 Colo. Law. 53 (Jan. 2001).

31-25-1201. Short title.

This part 12 shall be known and may be cited as the "Business Improvement District Act".

Source: L. 88: Entire part added, p. 1128, § 1, effective May 6.

31-25-1202. Legislative declaration.

(1) The general assembly declares that the organization of business improvement districts within municipalities of the state, having the purposes and powers provided in this part 12, will serve a public purpose; will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof, the property owners therein, and all the people of the state; will promote the continued vitality of commercial business areas within municipalities; and will be of special benefit to the property within the boundaries of any district created pursuant to this part 12.

(2) The general assembly further declares that the creation of business improvement districts pursuant to this part 12 implements section 18 (1)(d) of article XIV of the state constitution and is essential to the continued economic growth of the state.

Source: L. 88: Entire part added, p. 1128, § 1, effective May 6.

31-25-1203. Definitions.

As used in this part 12, unless the context otherwise requires:

(1) "Board" means the board of directors of a business improvement district.

(2) "Commercial property" means any taxable real or personal property which is not classified for property tax purposes as either residential or agricultural.

(3) "District" means a business improvement district formed by a municipality pursuant to this part 12.

(4) (a) "Elector" means a natural person who is a citizen of the United States and a resident of the State of Colorado, who is eighteen years of age or older, and who:

(I) Makes his primary dwelling place in the district; or

(II) Owns taxable real or personal property within the boundaries of the district; or

(III) Is the holder of a leasehold interest in taxable real or personal property within the boundaries of the district; or

(IV) Is the natural person designated by an owner or lessee of taxable real or personal property in the district which is not a natural person to vote for such owner or lessee. Such designation must be in writing and filed with the secretary of the district. Only one such person may be designated by an owner or lessee.

(b) Nothing in this subsection (4) shall permit an elector to cast more than one vote.

(5) "Improvements" means public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, streetlights, drainage facilities, landscaping, decorative structures, statuaries, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, rest rooms, information booths, public meeting facilities, and all necessary, incidental, and appurtenant structures and improvements. "Improvements" also includes the relocation and improvement of existing utility lines.

(6) "Net effective interest rate" means the net interest cost of securities divided by the sum of the products derived by multiplying the principal amount of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, "net effective interest rate" shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(7) "Net interest cost" means the total amount of interest to accrue on securities from their date to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said bonds are being or have been sold. In all cases, "net interest cost" shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(8) "Operating plan" means the operating plan approved by the municipality pursuant to section 31-25-1211.

(9) "Publication" has the same meaning as that set forth in section 32-1-103 (15), C.R.S.

(10) "Service area" means the area within the municipality which is described in the ordinance creating a district pursuant to this part 12, no less than fifty percent of which area shall have been developed and used as commercial property prior to the adoption of such ordinance and, at the time of the adoption of such ordinance, shall be used primarily as commercial property. Notwithstanding any provision in this subsection (10) to the contrary, the service area may include a location designated by the municipality, after public notice and hearing, as a location for new business or commercial development. Property which is not commercial property and which is within the "service area" of a district shall not be subject to the revenue-raising powers of the district until it becomes commercial property and is included within the district's boundaries, as provided in section 31-25-1208.

(11) "Services" means the services described in section 31-25-1212 (1)(f).

Source: L. 88: Entire part added, p. 1128, § 1, effective May 6. **L. 91:** (10) amended, p. 758, § 1, effective May 20.

Editor's note: Section 9 of chapter 128, Session Laws of Colorado 1991, provides that section 1 of the act amending subsection (10) does not apply to any business improvement district formed prior to May 20, 1991, pursuant to part 12 of article 25 of title 31, unless the board of directors of such district adopts a resolution directing that said section 1 applies to such district.

31-25-1204. Authority of governing body.

The governing body of every municipality is hereby vested with jurisdiction to create and establish one or more districts within the boundaries of the municipality pursuant to the provisions of this part 12, and such districts shall have all the powers provided in this part 12 which are authorized by the ordinance creating the district, or any amendment to the ordinance, adopted by the governing body. When the approval of the municipality is required by this part 12, such approval shall be given by the governing body or such other board or official of the municipality as may be designated by the charter or ordinances of the municipality unless the approval of the municipality is expressly required by this part 12.

Source: L. 88: Entire part added, p. 1130, § 1, effective May 6.

ANNOTATION

Law reviews. For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

31-25-1205. Organizational procedure.

(1) The organization of a district shall be initiated by a petition filed in the office of the clerk of the governing body.

(2) The petition shall be signed by persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent, or such greater amount as the governing body may provide by ordinance, of the valuation for assessment of all real and personal property in the service area of the proposed district and who own at least fifty percent, or such greater amount as the governing body may provide by ordinance, of the acreage in the proposed district. The petition shall set forth:

(a) The name of the proposed district, which shall include a descriptive name and the words "business improvement district";

(b) A general description of the boundaries and service area of the proposed district;

(c) A general description of the types of services or improvements or both to be provided by the proposed district;

(d) The names of three persons to represent the petitioners, who have the power to enter into agreements relating to the organization of the district; and

(e) A request for the organization of the district.

(3) The petition shall be accompanied by a bond with security approved by the governing body or a cash deposit sufficient to cover all expenses connected with the proceedings in case the organization of the district is not effected. If at any time during the organization proceedings the governing body determines that the bond first executed or the amount of the cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days thereafter, and, upon failure of the petitioners to file or deposit the same, the petition shall be dismissed.

Source: L. 88: Entire part added, p. 1130, § 1, effective May 6.

ANNOTATION

Validity of petitions not dependent upon existence of operating plan and budget so subsequent amendment of operating plan and budget circulated with petitions had no effect. Jensen v. City and County of Denver, 806 P.2d 381 (Colo. 1991).

31-25-1206. Notice of hearing.

The governing body, as soon as possible after the filing of the petition, shall fix by order the place and time, not less than twenty days nor more than forty days thereafter, for a hearing thereon. Thereupon, the clerk of the governing body shall cause notice by publication to be made of the pendency of the petition, of the service area, boundaries, improvements, and services of the proposed district, and of the time and place of hearing thereon. The clerk shall also cause a copy of said notice to be mailed by first-class mail to each property owner within the service area and boundaries of the proposed district at his last-known address, as disclosed by the tax records of the county or counties in which the municipality is located. No member of the governing body shall be disqualified to perform any duty imposed by this part 12 by reason of direct or indirect ownership of property within the service area or boundaries of any proposed district, by reason of relationship to any person who owns property within the proposed district or service area, or by reason of ownership of or employment by any entity which owns property within the proposed district or service area.

Source: L. 88: Entire part added, p. 1131, § 1, effective May 6. **L. 91:** Entire section amended, p. 758, § 2, effective May 20.

Editor's note: Section 9 of chapter 128, Session Laws of Colorado 1991, provides that section 2 of the act amending this section does not apply to the organization of any proposed district for which a petition for organization is filed prior to May 20, 1991, pursuant to § 31-25-1205.

31-25-1207. Hearing - findings - when action barred.

(1) On the date fixed for such hearing or at any adjournment thereof, the governing body shall ascertain, from the tax rolls of the county or counties in which the district is located, the total valuation for assessment of the taxable real and personal property in the service area and the classification of taxable property. If it appears that said petition is not signed in conformity with this part 12, the governing body shall dismiss the petition and adjudge the cost against those

executing the bond or depositing the cash filed to pay such costs. Nothing in this section shall prevent the filing of a subsequent petition for a similar district.

(2) The findings of the governing body upon the question of the genuineness of the signatures and all matters of fact incident to such determination shall be final and conclusive.

(3) (Deleted by amendment, L. 91, p. 759, § 3, effective May 20, 1991.)

(4) Prior to the organization of the district, the governing body may exclude property from the service area or boundaries of the district if it deems such exclusion to be in the best interests of the district or required by section 31-25-1208.

(5) If it appears that an organization petition has been duly signed and presented in conformity with this part 12, that the allegations of the organization petition are true, and that the types of services or improvements to be provided by the proposed district are those services or improvements which best satisfy the purposes set forth in this part 12, the governing body, upon the completion of the hearing, shall, by ordinance, adjudicate all questions of jurisdiction and may, in its sole discretion, declare the district organized, describe the boundaries and service area of the district, and give it the corporate name specified in the petition by which, in all subsequent proceedings, it shall thereafter be known. The district shall be a quasi-municipal corporation and political subdivision of the state with all powers and responsibilities thereof.

(6) Such ordinance shall finally and conclusively establish the regular organization of the district against all persons unless an action, including an action for certiorari review, attacking the validity of the district is commenced in a court of competent jurisdiction within sixty days after the effective date of such ordinance. Thereafter, any such action shall be perpetually barred. The organization of said district shall not be directly or collaterally questioned in any suit, action, or proceeding, except as provided in this subsection (6).

Source: L. 88: Entire part added, p. 1131, § 1, effective May 6. **L. 91:** Entire section amended, p. 759, § 3, effective May 20.

Editor's note: Section 9 of chapter 128, Session Laws of Colorado 1991, provides that section 3 of the act amending this section does not apply to the organization of any proposed district for which a petition for organization is filed prior to May 20, 1991, pursuant to § 31-25-1205.

ANNOTATION

City council complied with procedures set forth in this section once percentage of representation based upon petition signatures was adjusted to reflect current

property owners within proposed business improvement district. Jensen v. City and County of Denver, 806 P.2d 381 (Colo. 1991).

31-25-1208. Boundaries - exclusion proviso.

(1) The boundaries of a district may consist of contiguous or noncontiguous tracts or parcels of commercial property. No property shall be included within the boundaries of the district which is not commercial property. No district may be organized wholly or partly within an existing district.

(2) Notwithstanding any provision of this part 12 to the contrary, no tract of land which is classified for property tax purposes as residential or agricultural shall be included in the boundaries of any district organized pursuant to this part 12. No personal property which is situated upon real estate not included in the boundaries of a district shall be included within such district. If, contrary to the provisions of this section, any such tract, parcel, or personal property is included in the boundaries of any district, the owners thereof, on petition to the governing body, shall be entitled to have such property excluded from such district free and clear of any contract, obligation, lien, or charge to which it may be liable as a part of such district.

(3) If the property tax classification of any tract of land lying within the service area of any district organized under the provisions of this part 12 has been or is changed from residential or agricultural to any other classification, such lands and the personal property thereon shall no longer be excluded from the boundaries of said district and shall be subject to all obligations, liens, or charges of such district on and after January 1 of the year following such change.

Source: L. 88: Entire part added, p. 1132, § 1, effective May 6.

ANNOTATION

Law reviews. For article, "Economic Development Incentives for Colorado Municipalities", see 19 Colo. Law. 239 (1990).

31-25-1209. Board of directors - duties.

(1) (a) Except as otherwise provided in this subsection (1), the governing body of the municipality which creates the district shall constitute ex officio the board of directors of the district. In such event, the presiding officer of the governing body shall be ex officio the presiding officer of the board, the clerk of the governing body shall be ex officio the secretary of

the board, and the treasurer of the municipality shall be ex officio the treasurer of the board. A quorum of the governing body shall constitute a quorum of the board.

(b) The governing body of the municipality may, at any time, provide by ordinance for the creation of a board of directors of the district consisting of not fewer than five members. Each member shall be an elector of the district appointed by the governing body or, if designated by the governing body, by the mayor of the municipality; except that, if possible, no more than one-half of the members of the board may be affiliated with one owner or lessee of taxable real or personal property in the district. Each member shall serve at the pleasure of the municipality. Within thirty days after a vacancy occurs, a successor shall be appointed in the same manner as the original appointment. Within thirty days after his appointment, except for good cause shown, each member shall appear before an officer authorized to administer oaths and take an oath that he will faithfully perform the duties of his office as required by law and will support the constitution of the United States, the state constitution, and laws made pursuant thereto. A majority of the members shall constitute a quorum of the board. The board shall elect one of its members as presiding officer, one of its members as secretary, and one of its members as treasurer. The office of both secretary and treasurer may be filled by one person.

(c) If more than one-half of the property located within the district is also located within an urban renewal area, a downtown development authority, or a general improvement district, the governing body of the municipality may, at any time, provide by ordinance that the governing body of the urban renewal authority, downtown development authority, or general improvement district created by the municipality shall constitute ex officio the board of directors of the district. In such event, the officers of such entity shall be ex officio the officers of the board. A quorum of the board of directors of such entity shall constitute a quorum of the board.

(d) If the petition initiating the organization of the district or any subsequent petition signed by persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent, or such greater amount as the governing body may provide by ordinance, of the valuation for assessment of all real and personal property in the service area of the proposed district and who own at least fifty percent, or such greater amount as the governing body may provide by ordinance, of the acreage in the proposed district so specifies, the members of the board of the district shall be elected by the electors of the district. If such a petition is approved, the terms of members of the board must be specified by ordinance of the governing body and shall be the same as the terms of directors of special districts pursuant to article 1 of title 32, C.R.S. The initial election for members of the board must be held within ninety days after approval of the ordinance organizing the district or the filing of any subsequent petition. All subsequent elections for members of the board must be on the regular election date specified in article 1 of title 32, C.R.S., for special districts. The number of directors, the quorum requirements, and the oaths of office shall be the same as those provided for directors of special districts pursuant to article 1 of title 32, C.R.S. Any vacancy on the board must be filled in the same manner as provided in paragraph (b) of this subsection (1). Until the

members of the board are elected and qualified, the governing body shall serve as the board of the district. Elections pursuant to this paragraph (d) must be held in accordance with the provisions of part 8 of article 1 of title 32, C.R.S. The cost of any election held pursuant to this paragraph (d) must be borne by the district.

(e) The governing body of the municipality may remove a member of the board of a district or the entire board thereof for inefficiency or neglect of duty or misconduct in office, but only after the member or the board has been given a copy of the charges made by the governing body against such member or such board and has had an opportunity to be heard in person or by counsel before the governing body. In the event of the removal of any member of the board or of the board pursuant to this paragraph (e), the governing body shall file in the office of the clerk thereof a record of the proceedings, together with the charges made against the member or the board and the findings thereon.

(f) Ten percent of the electors of a district may petition the governing body of the municipality for the removal of a member of the board of the district or of the entire board thereof for inefficiency or neglect of duty or misconduct in office, and the governing body may remove the member or the board, but only after the member or the board has been given a copy of the charges made against such member or such board and has had an opportunity to be heard in person or by counsel before the governing body. In the event of the removal of the member or of the board pursuant to this paragraph (f), the governing body shall file in the office of the clerk thereof a record of the proceedings, together with the charges made against the member or the board and the findings thereon.

(2) The board shall adopt a seal. The secretary shall keep in a visual text format that may be transmitted electronically a record of all proceedings, minutes of meetings, certificates, contracts, and corporate acts of the board, which shall be open to inspection by the electors of the district and other interested parties. The treasurer shall keep permanent records containing accurate accounts of all money received by and disbursed for and on behalf of the district and shall make such annual or other reports to the municipality as it may require. All budgets and financial records of the district, whether governed by a separate board or by the governing body of the municipality, shall be kept in compliance with parts 1 and 5 of article 1 of title 29, C.R.S.

(3) Each member of the board of a district or the governing body of the municipality or other entity acting ex officio as the board of a district is required to disclose any potential conflicting interest in any transaction of the district pursuant to section 18-8-308, C.R.S. A board member with a potential conflicting interest in a district transaction may not participate in the considerations of and vote on the transaction, may not attempt to influence any of the contracting parties, and may not act directly or indirectly for the board in the inspection, operation, administration, or performance of any contract related to the transaction. Ownership, in and of itself, by a board member of property within the district shall not be considered a potential conflicting interest.

(4) When the governing body of the municipality establishes a board of directors pursuant to paragraph (b), (c), or (d) of subsection (1) of this section, it may set such conditions, limitations, procedures, duties, and powers under which the board shall conduct its business. Such conditions and limitations may be in the form of a binding contract on both the governing body of the municipality and the board and may include provisions requiring the dissolution of the board after a specified length of time, at which time the governing body of the municipality shall assume all powers and duties of the district, including the payment of any outstanding indebtedness.

Source: L. 88: Entire part added, p. 1132, § 1, effective May 6. **L. 91:** (1)(b) amended, p. 760, § 4, effective May 20. **L. 2009:** (2) amended, (HB 09-1118), ch. 130, p. 562, § 8, effective August 5. **L. 2014:** (1)(d) amended, (HB 14-1164), ch. 2, p. 69, § 28, effective February 18.

Editor's note: Section 9 of chapter 128, Session Laws of Colorado 1991, provides that section 4 of the act amending subsection (1)(b) does not apply to any business improvement district formed prior to May 20, 1991, pursuant to part 12 of article 25 of title 31, unless the board of directors of such district adopts a resolution directing that said section 4 applies to such district.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

31-25-1210. Meetings.

Upon notice to each member of the board, the board shall hold meetings, which shall be held in a place to be designated by the board as often as the needs of the district require. The meetings of the board shall be subject to the provisions of part 4 of article 6 of title 24, C.R.S. The board shall act by resolution or motion.

Source: L. 88: Entire part added, p. 1134, § 1, effective May 6. **L. 91:** Entire section amended, p. 821, § 7, effective June 1.

31-25-1211. Approval of actions by municipality.

No district created under the provisions of this part 12 shall issue bonds, levy taxes, fees, or assessments or provide improvements or services unless the municipality has approved an

operating plan and budget for the district. The operating plan or budget shall specifically identify the services or improvements to be provided by the district, the taxes, fees, or assessments to be imposed by the district, the estimated principal amount of bonds to be issued by the district, and such additional information as the municipality may require. The district shall file an operating plan and its proposed budget for the next fiscal year with the clerk of the municipality no later than September 30 of each year. All of the business records of the district shall be considered public records, as defined in section 24-72-202 (6), C.R.S., and shall promptly be made available to the municipality upon request. For the purposes of this section, the business records of the district shall not include the business records of the owners of property in the district. The municipality may require the district to supplement the district's operating plan or budget where necessary. The municipality shall approve or disapprove the operating plan and budget within thirty days after receipt of such operating plan and budget and all requested documentation relating thereto, but not later than December 5 of the year in which such documents are filed. Thereafter, the services, improvements, and financial arrangements of the district shall conform so far as practicable to the operating plan and the budget. The operating plan and the budget may, from time to time, be amended by the district with the approval of the municipality in substantially the same manner as the process for formulating the operating plan and budget for each year. Any material departure from the operating plan and the budget, as originally approved or amended from time to time, may be enjoined by an order of the municipality filed with the board.

Source: L. 88: Entire part added, p. 1135, § 1, effective May 6. **L. 91:** Entire section amended, p. 760, § 5, effective May 20.

31-25-1212. General powers of district.

(1) The district has the following powers, except as limited by the operating plan:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued and be a party to suits, actions, and proceedings;

(d) To enter into contracts and agreements, except as otherwise provided in this part 12, affecting the affairs of the district, including contracts with the United States and any of its agencies or instrumentalities;

(e) To borrow money and incur indebtedness for the purposes of the district and evidence the same by certificates, warrants, notes, and debentures and to issue negotiable bonds in accordance with the provisions of this part 12;

(f) To provide any of the following services within the district:

(I) Consulting with respect to planning or managing development activities;

(II) Maintenance of improvements, by contract, if it is determined to be the most cost-efficient;

(III) Promotion or marketing of district activity;

(IV) Organization, promotion, marketing, and management of public events;

(V) Activities in support of business recruitment, management, and development;

(VI) Security for businesses and public areas located within the district;

(VII) Snow removal or refuse collection, by contract, if it is determined to be the most cost-efficient;

(VIII) Providing design assistance;

(g) To acquire, construct, finance, install, and operate the improvements contemplated by this part 12 and all property, rights, or interests incidental or appurtenant thereto and to dispose of real and personal property and any interest therein, including leases and easements in connection therewith;

(h) To refund any bonds of the district pursuant to article 56 of title 11, C.R.S.;

(i) To have the management, control, and supervision of all the business and affairs of the district and of the acquisition, construction, financing, installation, and operation of district improvements and the financing and operation of district services therein;

(j) To construct and install improvements across or along any public street, alley, or highway and to construct works across any stream of water or watercourse. The district shall promptly restore any such street or highway to its former state of usefulness as nearly as possible and shall not use the same in such manner as completely or unnecessarily to impair the usefulness thereof. The use and occupation of streets, alleys, and highways and the construction or installation of improvements by any district shall be in accordance with the provisions of all applicable municipal ordinances and state law and with such reasonable rules and regulations as may be prescribed by either the municipality affected or the department of transportation. Plans and specifications of proposed improvements shall be approved by the municipality before construction or installation of improvements is commenced. Plans and specifications of proposed district improvements across or along any street or highway which is part of the state highway system for which the department of transportation has jurisdiction shall be approved in writing by the department of transportation before such improvements may be constructed or installed. Such approval by the department of transportation, if granted, shall not relieve the district of any responsibility for such improvements.

(k) To fix, and from time to time increase or decrease, rates, tolls, or charges for any services or improvements furnished by the district. The board may pledge such revenue for the payment of any bonds of the district. Until paid, all rates, tolls, or charges shall constitute a perpetual lien on and against the commercial property served within the boundaries of the district, and any such lien on personal property or any such lien on real property may be foreclosed in the same manner as provided in article 20 of title 38, C.R.S., or article 22 of title 38, C.R.S., respectively. The board may shut off or discontinue service for delinquencies in the payment of such rates, tolls, or charges or for delinquencies in the payment of taxes levied pursuant to this part 12 and shall prescribe and enforce rules and regulations for connecting with and disconnecting from such services and facilities.

(l) To appoint an advisory board of owners of property within the boundaries of the district and provide for the duties and functions thereof;

(m) To hire employees or retain agents, engineers, consultants, attorneys, and accountants;

(n) To adopt and amend bylaws not in conflict with the constitution and laws of the state or with the ordinances of the municipality affected for carrying on the business, objects, and affairs of the board and of the district; and

(o) To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 12. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 12.

Source: L. 88: Entire part added, p. 1135, § 1, effective May 6. **L. 91:** (1)(k) amended, p. 761, § 6, effective May 20; (1)(j) amended, p. 1070, § 43, effective July 1.

31-25-1212.5. Improvements - railroad quiet zones.

A district has the power to construct, maintain, and operate safety measures that are necessary to allow the municipality to restrict the sounding of locomotive horns at highway-rail grade crossings in compliance with 49 U.S.C. sec. 20153, as amended, and the applicable rules of the federal railroad administration. The district shall construct, maintain, and operate the safety measures in accordance with the provisions of section 40-4-106, C.R.S., and the standards of safety prescribed by the public utilities commission pursuant to section 40-29-110, C.R.S.

Source: L. 2006: Entire section added, p. 348, § 4, effective August 7.

31-25-1213. Power to levy taxes.

In addition to any other means of providing revenue for a district, the board has the power to levy and collect ad valorem taxes on and against all taxable commercial property, as defined in section 31-25-1203 (2), within the boundaries of the district. Such taxes shall be specified in the petition organizing the district pursuant to section 31-25-1205. If such taxes are not so specified in the petition, then an election prior to the levying of such taxes must be held within the district. Elections held pursuant to this section shall be held in accordance with the provisions of part 8 of article 1 of title 32, C.R.S. The cost of any election held pursuant to this section shall be borne by the district. Such taxes shall be levied in accordance with the provisions of part 3 of article 1 of title 29, C.R.S.

Source: L. 88: Entire part added, p. 1137, § 1, effective May 6.

ANNOTATION

Exclusion of apartments and boarding houses from levy and collection of ad valorem taxes on taxable commercial property by business improvement district pursuant to this section does not violate uniformity requirement of section 3 (1)(a) of article X of state constitution as legislature's classification of apartments and boarding houses as residential property is reasonable. Jensen v. City and County of Denver, 806 P.2d 381 (Colo. 1991).

31-25-1214. Determining and fixing rate of levy.

The board shall determine the amount of money necessary to be raised by a levy on the taxable property in the district, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of the valuation for assessment of taxable property within the district together with other revenues, shall raise the amount required by the district during the ensuing fiscal year to supply funds for paying the expenses of organization and the costs of providing the services of the district and acquiring, constructing, installing, and operating the improvements or works of the district and promptly to pay in full when due all interest on and principal of bonds and other obligations of the district. In the event of accruing defaults or deficiencies, additional levies may be made as provided in section 31-25-1215. In accordance with the time schedule provided in section 39-5-128, C.R.S., the board shall certify to the board of county commissioners of each county in which the district or a portion thereof lies the rate so fixed in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the district.

Source: L. 88: Entire part added, p. 1137, § 1, effective May 6.

31-25-1215. Levies to cover deficiencies.

The board, in certifying annual levies, shall take into account the maturing indebtedness for the current and ensuing year as provided in its contracts, maturing bonds, and interest on bonds and the deficiencies and defaults of prior years and shall make ample provisions for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient to pay punctually the annual installments on its contracts or bonds and interest thereon and to pay defaults and deficiencies, the board, from year to year, shall make such additional levies of taxes as may be necessary for such purposes, and, notwithstanding any limitations, such taxes shall be levied and shall continue to be levied until the indebtedness of the district is fully paid.

Source: L. 88: Entire part added, p. 1137, § 1, effective May 6.

31-25-1216. County officers to levy and collect taxes - lien.

It is the duty of the body having authority to levy taxes within such county to levy the taxes certified to it as provided in this part 12. It is the duty of all officials charged with the duty of collecting taxes to collect and enforce such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and, when collected, to pay the same to the district ordering its levy and collection. The payment of such collections shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district. All taxes levied under this part 12, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute a lien, until paid, on and against the property taxed, and such lien shall be considered the same type of lien as that for all other general taxes.

Source: L. 88: Entire part added, p. 1138, § 1, effective May 6.

31-25-1217. Property sold for taxes.

The taxes provided for in this part 12 shall be included as a part of general ad valorem taxes and shall be paid and collected accordingly. The sale of properties for delinquencies shall be

conducted in the manner provided by the statutes of this state for selling property for nonpayment of other ad valorem taxes.

Source: L. 88: Entire part added, p. 1138, § 1, effective May 6.

31-25-1218. Reserve fund.

When any indebtedness has been incurred by a district, it is lawful for the board to levy taxes and collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the district for operating charges and depreciation and to provide extensions of and betterments for the improvements of the district.

Source: L. 88: Entire part added, p. 1138, § 1, effective May 6.

31-25-1219. Special assessments.

(1) In order to defray all or any portion of the costs of the improvements provided by the district, the board may establish special improvement districts within the boundaries of the district. Such special improvement districts may be established whenever in the opinion of the board property in the district will be especially benefited by such improvements. The method of creating special improvement districts, making the improvements, and assessing the costs thereof shall be as provided in part 5 of this article; except that the electors eligible to vote on the question shall be electors as defined in section 31-25-1203 (4) of the district or the special improvement district, as determined by the board, the board shall perform the duties of the governing body, the secretary of the district shall perform the duties of the clerk, and the improvements which may be constructed shall be the improvements which the district is permitted to provide pursuant to this part 12.

(2) (a) In order to defray all or any portion of the costs of providing services, the board may impose special assessments wholly or in part upon real property located within the boundaries of the district. Prior to imposing a special assessment, the board shall adopt a resolution setting a date, which shall be not less than twenty days nor more than forty days after the adoption of the resolution, a time, and a location for a hearing on the question of the imposition of such special assessment and the benefit to be derived by the property upon which such special assessment will be imposed. The resolution shall include a form of notice, which shall describe the property on which the assessment shall be levied, the purposes for which the assessment is to be levied, the proposed method of assessment and the manner of payment thereof, and the right of the owners of the property to be assessed to file a remonstrance petition. Thereupon, the board shall

give the notice by publication and cause a copy of said notice to be mailed by first-class mail to each owner of the property to be assessed at his last-known address, as disclosed by the tax records of the county or counties in which the district is located.

(b) On the date and at the time and place specified in the notice, the board shall conduct a hearing for the purpose of considering the desirability of and the need for providing the service and imposing the assessment therefor and determining the special benefits to be received by the properties to be assessed. No assessment shall be imposed if a remonstrance petition objecting to the assessment and signed by the owners of the property which would bear more than one-half of the proposed assessment is filed with the board prior to or at the hearing. After the hearing, the board shall adopt a resolution either approving or disapproving the proposed assessment. The resolution shall apportion the relative benefits to the real properties benefited by the service. Thereafter, the board shall cause to be prepared a local assessment roll. All assessments shall be due and payable at the time and place specified in the assessing resolution and said assessments shall become delinquent if not paid with thirty days of such due date.

(c) The board shall cause to be mailed by first-class mail to each owner of property specified on the assessment roll a notice of the amount of the assessment, the due date, and a statement that the assessment shall constitute a perpetual lien from the date of mailing of the notice in the amount assessed against each lot or tract of land, and a statement that such lien shall have priority over all other liens except general tax liens. As to any subsequent subdivision of any lot or tract of land assessed, the assessment may be apportioned by the board in such manner, if any, as may be provided in the assessing resolution. If any court of competent jurisdiction sets aside any assessment for irregularity in the proceedings, the board may make a new assessment in accordance with the provisions of this subsection (2). If an assessment is not paid within thirty days after its due date, penalty interest on the amount of the assessment shall accrue at the rate established pursuant to section 5-12-106 (2) and (3), C.R.S., until the date of sale or payment.

(d) The assessments imposed by this section shall be collected by the officer of the district designated in the assessment resolution or, by agreement with the municipality, by the municipal treasurer. In the case of a default in the payment of any assessment, the collection officer shall certify to the county treasurer the whole amount of the unpaid assessments. The county treasurer shall advertise and sell all property concerning which such a default has occurred for the payment of the whole of the unpaid assessment, plus penalties and costs of collection. Such advertisement and sale shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate and default of payment of the general property tax.

Source: L. 88: Entire part added, p. 1138, § 1, effective May 6. **L. 96:** (1) amended, p. 1770, § 70, effective July 1.

31-25-1220. Inclusion or exclusion - petition - notice - hearing.

(1) The boundaries of any district organized under the provisions of this part 12 may be changed in the manner prescribed in this section, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges whatsoever, nor shall it affect or impair or discharge any contract, obligation, lien, or charge for or upon which the district might be liable or chargeable had any such change of boundaries not been made. The owners of property proposed to be included or excluded may file with the governing body a petition, in writing, requesting that such property be included in or excluded from the district. The petition shall describe the property owned by the petitioners and shall be verified. The petition shall be accompanied by a deposit of moneys sufficient to pay all costs of the inclusion or exclusion proceedings. The clerk of the governing body shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition, the names of the petitioners, descriptions of the property sought to be included or excluded, and the request of said petitioners.

(2) Such notice shall inform all persons having objections to appear at the time and place stated in said notice and show cause why the petition should not be granted. The governing body, at the time and place mentioned or at any time to which the hearing may be adjourned, shall proceed to hear the petition and all objections thereto which may be presented by any person showing cause why said petition should not be granted. The failure of any interested person to show cause shall be deemed as an assent on his part to the inclusion or exclusion of such property as requested for in the petition. If the change of boundaries of the district does not adversely affect the district and if the petition is granted, the governing body shall adopt an ordinance to that effect and file a certified copy of the same with the county clerk and recorder of the county in which the property is located. Thereupon, said property shall be included or excluded from the district.

(3) All property included within or excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of inclusion or exclusion.

Source: L. 88: Entire part added, p. 1139, § 1, effective May 6. **L. 91:** (2) amended, p. 761, § 7, effective May 20.

31-25-1221. Board can issue bonds - form.

To carry out the purposes of this part 12, the board, with the approval of the municipality if the board is appointed pursuant to section 31-25-1209 (1)(b) or (1)(c), is hereby authorized to issue

bonds of the district. Such bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable at such times as determined by the board, and shall be due and payable in installments at such times as determined by the board extending not more than twenty years from the date of issuance. The form and terms of said bonds, including provisions for their sale, payment, and redemption, shall be determined by the board. If such bonds are payable from the general ad valorem taxes of the district, such bonds shall not be issued unless first approved at an election held pursuant to section 31-25-1222. Bonds payable solely from revenues derived from sources other than the district's general ad valorem tax may be issued without an election. If the board so determines, such bonds may be redeemable prior to maturity, with or without payment of a premium, but no premium shall exceed three percent of the principal thereof. The bonds shall be executed in the name of and on behalf of the district and signed by the presiding officer of the board with the seal of the district affixed thereto and attested by the secretary of the board. Such bonds shall be in such denominations as the board shall determine. Interest coupons, if any, shall bear the original or facsimile signature of the presiding officer of the board. Under no circumstances shall any of said bonds be held to be an indebtedness, an obligation, or a liability of the municipality in which the district is located, and bonds issued pursuant to the provisions of this part 12 shall contain a statement to that effect.

Source: L. 88: Entire part added, p. 1140, § 1, effective May 6.

31-25-1222. Submission of debt question.

(1) When any board determines that the interest of said district and the public interest or necessity demand the acquisition, construction, installation, or completion of any improvements or the provision of any service within the district or the making of any contract with the United States or with any person or corporation to carry out the objects or purposes of said district requiring the creation of an indebtedness, said board shall order the submission to the electors of the proposition of issuing such obligations or bonds or creating other indebtedness at an election held for that purpose. Such election shall be held and conducted and the results thereof declared in the manner provided in part 8 of article 1 of title 32, C.R.S. Any such election may be held, on any date selected by the board, separately or may be consolidated or held concurrently with any other regular or special election. The declaration of public interest or necessity required and the provisions for the holding of such election may be included within one and the same resolution, which, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of the principal of the indebtedness to be incurred therefor, and the maximum net effective interest rate to be paid on such indebtedness.

(2) Such resolution shall also fix the date upon which such election shall be held and the manner of holding the same and the method of voting for or against the incurring of the proposed indebtedness or the making of the proposed contract. Such resolution shall appoint a designated election official and provide for the duties thereof.

(3) (Deleted by amendment, L. 96, p. 1771, § 71, effective July 1, 1996.)

Source: L. 88: Entire part added, p. 1141, § 1, effective May 6. **L. 96:** (2) and (3) amended, p. 1771, § 71, effective July 1.

31-25-1223. Effect - subsequent elections.

If any such proposition is approved at such election in the manner required by part 8 of article 1 of title 32, C.R.S., the district is authorized to incur such indebtedness or obligation, enter into such contract, or issue and sell such bonds of the district, as the case may be, all for the purposes and objects specified in the proposition submitted, in the amount so provided, and at a rate of interest such that the maximum net effective interest rate specified in the proposal is not exceeded. The bonds may be sold at public or private sale, as determined by the board to be in the best interests of the district. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent elections called for such purpose.

Source: L. 88: Entire part added, p. 1141, § 1, effective May 6.

31-25-1224. Confirmation of contract proceedings.

(1) In its discretion, the board may file a petition at any time in the district court in and for any county in which the district is located, praying for a judicial examination and determination of any power conferred, or of any securities issued or merely authorized to be issued, or of any taxes, assessments, or service charges levied or otherwise made or contracted to be levied or otherwise made, or of any other act, proceeding, or contract of the district, whether or not such act, proceeding, or contract has been taken or executed, including proposed contracts for any improvement, proposed securities of the district to defray wholly or in part the cost of the project, and the proposed acquisition, improvement, equipment, maintenance, operation, or disposal of any property pertaining thereto (or any combination thereof).

(2) Such petition shall:

(a) Set forth the facts whereon the validity of such power, securities, taxes, assessments, charges, act, proceeding, or contract is founded; and

(b) Be verified by the presiding officer of the district.

(3) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting, as provided in this part 12.

(4) Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any proceeding or contract therein mentioned may be examined.

(5) The notice shall be served:

(a) By publication at least once a week for five consecutive weeks by five weekly insertions in a newspaper of general circulation in the municipality in which the district is located;

(b) By posting in the office of the district at least thirty days prior to the date fixed in the notice for the hearing on the petition.

(6) Jurisdiction shall be complete after such publication and posting.

(7) Any owner of property within the boundaries of the district or any other person interested in the proceeding or contract or proposed proceeding or proposed contract or in the premises may appear and move to dismiss or answer the petition no less than five days prior to the date fixed for the hearing or within such further time as may be allowed by the court. The petition shall be taken as confessed by all persons who fail so to appear.

(8) The petition and notice shall be sufficient to give the court jurisdiction, and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants.

(9) Costs may be divided or apportioned among any contesting parties in the discretion of the trial court.

(10) Review of the judgment of the court may be had as in other similar cases; except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days.

(11) The Colorado rules of civil procedure shall govern in matters of pleading and practice where not otherwise specified in this part 12.

(12) The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

(13) All cases in which there may arise a question of the validity of any matter provided for under this section shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

Source: L. 88: Entire part added, p. 1141, § 1, effective May 6.

31-25-1225. Dissolution procedure.

Any district organized pursuant to this part 12 may be dissolved after notice is given, publication is made, and a hearing is held in the manner prescribed by sections 31-25-1206 and 31-25-1207. The dissolution of the district may be initiated by filing in the office of the clerk of the governing body either a petition signed by the persons described in section 31-25-1205 (2) or, in the case of a district which has not filed an operating plan and budget as required by section 31-25-1211 for two years, a resolution of the governing body. After hearing any protests against or objections to dissolution and if the governing body determines that it is for the best interests of all concerned to dissolve the district, it shall so provide by an effective ordinance, a certified copy of which shall be filed in the office of the county clerk and recorder in each of the counties in which the district or any part thereof is located. Upon such filing, the dissolution shall be complete. However, no district shall be dissolved until it has satisfied or paid in full all of its outstanding indebtedness, obligations, and liabilities or until funds are on deposit and available therefor. Notwithstanding any other provision of this section, upon petition of persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent, or such greater amount as the governing body may provide by ordinance, of the valuation for assessment of all real and personal property in the service area of the proposed district and who own at least fifty percent, or such greater amount as the governing body may provide by ordinance, of the acreage in the proposed district, the district shall be prohibited from incurring any new or increased financial obligations, shall impose its existing taxes, fees, and assessments solely to meet any existing financial obligations, and shall be dissolved as soon as the district has no outstanding financial obligations.

Source: L. 88: Entire part added, p. 1143, § 1, effective May 6. **L. 91:** Entire section amended, p. 762, § 8, effective May 20.

31-25-1226. Correction of faulty notices.

In any case that a notice is provided for in this part 12 in which the governing body finds for any reason that due notice was not given, the governing body shall not thereby lose jurisdiction,

and the proceeding in question shall not thereby be void or be abated; but the governing body, in that case, shall order due notice given and shall continue the proceeding until such time as notice is properly given and thereupon shall proceed as though notice had been properly given in the first instance.

Source: L. 88: Entire part added, p. 1143, § 1, effective May 6.

31-25-1227. Department of transportation and municipal jurisdiction unimpaired.

Nothing in this part 12 shall affect or impair the control and jurisdiction which the department of transportation has over streets and highways which are part of the state highway system or which a municipality has over all property within its boundaries. All powers granted by this part 12 shall be subject to such control and jurisdiction.

Source: L. 88: Entire part added, p. 1143, § 1, effective May 6. **L. 91:** Entire section amended, p. 1070, § 44, effective July 1.

31-25-1228. Method not exclusive.

Nothing in this part 12 shall repeal or affect any other law or any part thereof, it being intended that this part 12 shall provide a separate method of accomplishing its objects and not an exclusive one.

Source: L. 88: Entire part added, p. 1143, § 1, effective May 6.

PART 13

PUBLIC IMPROVEMENT - MUNICIPAL CONTRACTS

31-25-1301. Short title.

This part 13 shall be known and may be cited as the "Integrated Delivery Method for Municipal Public Improvements Act".

Source: L. 2007: Entire part added, p. 1814, § 3, effective August 3.

31-25-1302. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) It is the policy of the state of Colorado to encourage public contracting procedures that encourage competition, openness, and impartiality to the maximum extent possible.

(b) Competition exists not only in the costs of goods and services, but in the technical competence of the providers and suppliers in their ability to make timely completion and delivery and in the quality and performance of their products and services.

(c) Timely and effective completion of public projects can be achieved through a variety of methods when procuring goods and services for public projects.

(d) In enacting this part 13, the general assembly intends to establish for municipalities and agencies of municipalities an optional alternative public project delivery method.

Source: L. 2007: Entire part added, p. 1814, § 3, effective August 3.

31-25-1303. Definitions.

As used in this part 13, unless the context otherwise requires:

(1) "Agency" means any home rule or statutory city, town, territorial charter city, city and county, or any other political subdivision that a municipality may create pursuant to state law that is a budgetary unit exercising construction contracting authority or discretion.

(2) "Contract" means any agreement for designing, building, altering, repairing, improving, demolishing, operating, maintaining, or financing a public project.

(3) "Cost-reimbursement contract" means a contract under which a participating entity is reimbursed for costs that are allowable and allocable in accordance with the contract terms and provisions of this part 13.

(4) "Integrated project delivery" or "IPD" means a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these services, for a public project.

(5) "IPD contract" means a contract using an integrated project delivery method.

(6) "Participating entity" means a partnership, corporation, joint venture, unincorporated association, or other legal entity that provides appropriately licensed planning, architectural,

engineering, development, construction, operating, or maintenance services as needed in connection with an IPD contract.

(7) "Public project" means any lands, buildings, structures, works, machinery, equipment, or facilities suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public welfare, or public education, to the extent the boundaries of an agency and a school district are coterminous, or for the conservation of natural resources, including the planning of any such lands, buildings, improvements, structures, works, machinery, equipment, or facilities. "Public project" shall also include existing lands, buildings, improvements, structures, works, and facilities, as well as improvements, renovations, or additions to any such lands, buildings, improvements, structures, works, or facilities and any operation or maintenance programs for the operation and upkeep of such projects.

(8) "Public purposes" includes, but is not limited to, the supplying of public water services and facilities, public sewer services and facilities, and lands, buildings, improvements, equipment, and facilities for public education, to the extent the boundaries of the agency and the school district are coterminous.

Source: L. 2007: Entire part added, p. 1815, § 3, effective August 3.

31-25-1304. Integrated project delivery contracts - authorization - effect of other laws.

(1) Notwithstanding any other provision of law, any agency may award an IPD contract for a public project under the provisions of this part 13 upon the determination by such agency that integrated project delivery represents a timely or cost-effective alternative for a public project.

(2) Nothing in this part 13 shall be construed as exempting any agency or participating entity from applicable federal, state, or local laws, regulations, or ordinances governing labor relations, professional licensing, public contracting, or other related laws, except to the extent that an exemption is created under such legal authority or is granted by necessary implication from such legal authority.

Source: L. 2007: Entire part added, p. 1816, § 3, effective August 3.

31-25-1305. Integrated project delivery contracting process - prequalification of participating entities - apprentice training.

(1) An agency may prequalify participating entities for an IPD contract by public notice of its request for qualifications prior to the date set forth in the notice. A request for qualifications may contain the following elements and such additional information as may be requested by the agency:

(a) A general description of the proposed public project;

(b) Relevant budget considerations;

(c) Requirements of the participating entity, including:

(I) If the participating entity is a partnership, limited partnership, limited liability company, joint venture, or other association, a listing of all of the partners, general partners, members, joint venturers, or association members known at the time of submission of qualifications;

(II) Evidence that the participating entity, or the constituent entities or members thereof, has completed or has demonstrated the experience, competency, capability, and capacity, financial and otherwise, to complete projects of similar size, scope, or complexity;

(III) Evidence that the proposed personnel of the participating entity have sufficient experience and training to completely manage and complete the proposed public project; and

(IV) Evidence of all applicable licenses, registrations, and credentials required to provide the proposed services for the public project, including but not limited to information on any revocation or suspension of any such license, registration, or credential.

(d) The criteria for prequalification.

(2) From the participating entities responding to the request for qualifications, the agency shall prepare and announce a short list of participating entities that it determines to be most qualified to receive a request for proposal.

(3) Where an apprentice program as defined in section 8-15.7-101 (4) or certified by the office of apprenticeship in the employment and training administration in the United States department of labor exists in a county in which all or any portion of the municipality is located, or a comparable program for the training of apprentices is available in such county:

(a) Each participating entity shall demonstrate to the agency that it has access to either the certified program or a comparable alternative; and

(b) Each participating entity shall demonstrate that each of its subcontractors, at any tier, selected to perform work under a contract with a value of two hundred fifty thousand dollars or more has access to either the certified program or a comparable alternative.

Source: L. 2007: Entire part added, p. 1816, § 3, effective August 3. **L. 2021:** IP(3) amended, (HB 21-1007), ch. 309, p. 1893, § 14, effective July 1.

31-25-1306. Requests for proposals - evaluation and award of integrated project delivery contracts.

(1) An agency shall prepare and publish a request for proposals for each IPD contract that may contain the following elements and such other elements as may be requested by the agency:

(a) The procedures to be followed for submitting proposals;

(b) The criteria for evaluation of a proposal, which criteria may provide for selection of a proposal on a basis other than solely the lowest costs estimates submitted;

(c) The procedures for making awards;

(d) Required performance standards as defined by the participating entity;

(e) A description of the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and the acceptable level of completion of the drawings, specifications, or submittals;

(f) Relevant budget considerations or, for an IPD contract that includes operation or maintenance services, the life-cycle cost analysis for the contract;

(g) The proposed project scheduling; and

(h) The stipend, if any, to be paid to participating entities responding to the request for proposals who appear on the agency's short list pursuant to section 31-25-1305 (2) but whose proposals are not selected for award of the IPD contract.

(2) After obtaining and evaluating proposals according to the criteria and procedures set forth in the request for proposals in accordance with the requirements of subsection (1) of this section, an agency may accept the proposal that, in its estimation, represents the best value to the agency. Acceptance of a proposal shall be by written notice to the participating entity that submitted the accepted proposal.

(3) With respect to performance under each IPD contract, the participating entity shall comply with all laws applicable to public projects.

(4) Notwithstanding any other provision of law, a participating entity selected for award of an IPD contract is not required to be licensed or registered to provide professional services as defined in section 24-30-1402 (6), C.R.S., if the person or firm actually performing any such professional services on behalf of the participating entity is appropriately licensed or registered

and if the participating entity otherwise complies with applicable state licensing laws and requirements related to such professional services.

Source: L. 2007: Entire part added, p. 1817, § 3, effective August 3.

31-25-1307. Supplemental provisions.

The governing body of an agency may establish supplemental provisions that are designed to implement the provisions of this part 13.

Source: L. 2007: Entire part added, p. 1818, § 3, effective August 3.

ARTICLE 30

Fire - Police

PART 1
FIRE, POLICE, OR STREET DEPARTMENT - PAID - CIVIL SERVICE

31-30-101. Authority to provide for classified departments.

31-30-102. Civil service commission - withdrawal.

31-30-103. Purpose.

31-30-104. Contract for conducting examination.

31-30-105. Ordinance - violation.

31-30-106. Police to provide identification cards to retired peace officers upon request - definitions.

31-30-107. Disclosure of knowing misrepresentation by a peace officer required - disclosure waivers - reports - definitions.

31-30-108. Peace officer hiring - required use of waiver - definitions.

31-30-109. Behavioral health professionals - grant applications encouraged - definition - repeal.

PART 2
FIREFIGHTERS' CIVIL SERVICE

31-30-201. Authorization - petition - election.

31-30-202. Commissioners appointed - terms - vacancies - expenses allowed.

31-30-203. Merit.

31-30-204. Removal - public hearings.

31-30-205. Commission to make rules.

31-30-206. Positions retained.

31-30-207. Commission to make inquiries - record - report.

31-30-208. Fee of applicants.

31-30-209. Powers of commission.

31-30-210. Qualifications - notice of examination.

PART 3
PENSION - POLICE - GENERAL

31-30-301 to

31-30-325. (Repealed)

PART 4
PENSION - FIREFIGHTERS' - GENERAL

31-30-401 to

31-30-418. (Repealed)

PART 5
FIREFIGHTERS' PENSIONS - CITIES OF OVER 100,000

31-30-501 to

31-30-523. (Repealed)

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PART 1

FIRE, POLICE, OR STREET DEPARTMENT - PAID - CIVIL SERVICE

31-30-101. Authority to provide for classified departments.

The governing body of any city or town may provide by ordinance for a paid fire department, a paid police department, or a paid street department or all of same and may fix, define, and classify the various grades of employment in such departments, which grades and classifications shall be based upon the nature of the services to be rendered and the duties to be performed and shall also fix uniform wages and salaries to be paid to all employees in each particular class, which wages may be lowered or increased uniformly for each class from time to time.

Source: L. 75: Entire title R&RE, p. 1212, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-101 as it existed prior to 1975.

31-30-102. Civil service commission - withdrawal.

The governing body of any city or town in the state maintaining a paid police department, a paid fire department, or a paid street department may establish a commission which shall be known as "the city (town) of .... fire and police and street department civil service commission". Said governing body shall not have the authority to withdraw said departments from operation of such system unless and until the withdrawal thereof has been submitted to the registered electors of said city or town at a special or regular election held in said city or town pursuant to an ordinance properly passed submitting the same to said electors and has been approved by not less than a majority vote of said electors voting on such proposition.

Source: L. 75: Entire title R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-102 as it existed prior to 1975.

31-30-103. Purpose.

It is the intent of this part 1 to enable the governing body of any city or town within this state to adopt by ordinance such civil service system for fire, police, or street departments as may be

adaptable to the size and type of city or town involved and consist of a comprehensive civil service system as in the sound discretion of said governing body may be for the best interests of the public service in said city or town. The provisions of this part 1 shall not apply to or in any way annul, repeal, or set aside the civil service provisions in force on or before May 17, 1939, in any city or town.

Source: L. 75: Entire title R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-103 as it existed prior to 1975.

31-30-104. Contract for conducting examination.

The governing body of any city or town may contract with the governing body of any municipality or county within this state or with any department of the state for the conducting of competitive examinations to ascertain the fitness of applicants for positions and employment in the fire, police, or street department or all of same and for the performance of any other service in connection with personnel selection and administration.

Source: L. 75: Entire title R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-104 as it existed prior to 1975.

31-30-105. Ordinance - violation.

(1) Any ordinance adopted by the governing body of any city or town under the provisions of this part 1 shall include the following provisions and penalty for violation thereof: No person holding an office or place in a fire, police, or street department placed by the governing body under a civil service system pursuant to the provisions of this part 1 shall seek or accept election, nomination, or appointment as an officer of a political club or organization; take an active part in a county or municipal political campaign; serve as a member of a committee of such club, organization, or circle; seek signatures to any petition provided for by any law; act as a worker at the polls; or distribute badges, pamphlets, dodgers, or handbills of any kind favoring or opposing any candidate for election or for nomination to a public office, whether county or municipal. Nothing in this part 1 shall prevent any such officer or employee from becoming or continuing to

be a member of a political club or organization, attending a political meeting, or enjoying entire freedom from all interference in casting his vote.

(2) Any willful violation of this section or violation through culpable negligence is sufficient grounds to authorize the discharge of any firefighter, police officer, or street department employee.

Source: L. 75: Entire title R&RE, p. 1213, § 1, effective July 1. **L. 97:** (2) amended, p. 1027, § 58, effective August 6.

Editor's note: This section is similar to former § 31-30-105 as it existed prior to 1975.

31-30-106. Police to provide identification cards to retired peace officers upon request - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Peace officer" means a certified peace officer described in section 16-2.5-102, C.R.S.

(b) "Photographic identification" means a photographic identification that satisfies the description at 18 U.S.C. sec. 926C (d).

(2) Except as described in subsection (3) of this section, on and after August 7, 2013, if a police department of a city or town has a policy, on August 7, 2013, of issuing photographic identification to peace officers who have retired from the police department, and the police department discontinues said policy after August 7, 2013, the police department shall continue to provide such photographic identification to peace officers who have retired from the police department if:

(a) The peace officer requests the identification;

(b) The peace officer retired from the police department before the date upon which the police department discontinued the policy; and

(c) The peace officer is a qualified retired law enforcement officer, as defined in 18 U.S.C. sec. 926C (c).

(3) Before issuing or renewing a photographic identification to a retired law enforcement officer pursuant to this section, a law enforcement agency of the state shall complete a criminal background check of the officer through a search of the national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act", Pub.L. 103-159, the relevant portion of which is codified at 18 U.S.C. sec. 922 (t), and a search of the state

integrated criminal justice information system. If the background check indicates that the officer is prohibited from possessing a firearm by state or federal law, the law enforcement agency shall not issue the photographic identification.

(4) The police department may charge a fee for issuing a photographic identification to a retired peace officer pursuant to subsection (2) of this section, which fee shall not exceed the direct and indirect costs assumed by the police department in issuing the photographic identification.

(5) Notwithstanding any provision of this section to the contrary, a police department shall not be required to issue a photographic identification to a particular peace officer if the chief administrative officer of the police department elects not to do so.

(6) If a police department denies a photographic identification to a retired peace officer who requests a photographic identification pursuant to this section, the police department shall provide the retired peace officer a written statement setting forth the reason for the denial.

Source: L. 2013: Entire section added, (HB 13-1118), ch. 81, p. 259, § 4, effective August 7.

31-30-107. Disclosure of knowing misrepresentation by a peace officer required - disclosure waivers - reports - definitions.

(1) Subject to the limitations of this section, a municipal police department or town marshal's office that employs, employed, or deputized on or after January 1, 2010, a peace officer who applies for employment with another Colorado law enforcement agency shall disclose to the hiring agency information, if available, indicating whether the peace officer's employment history included any instances in which the peace officer had a sustained violation for making a knowing misrepresentation:

(a) In any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to the peace officer or to the peace officer's employment history; or

(b) During the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct, as described in section 18-8-404 or 18-8-405, C.R.S.; or use of excessive force, regardless of whether the alleged criminal conduct, official misconduct, or use of excessive force occurred while the peace officer was on duty, off duty, or acting pursuant to a service contract to which the peace officer's employing agency is a party.

(2) The disclosure described in subsection (1) of this section is required only upon the presentation of a written waiver to a municipal police department or town marshal's office, which waiver explicitly authorizes the municipal police department or town marshal's office to disclose

the information described in said subsection (1), has been signed by the applicant peace officer, and identifies the Colorado law enforcement agency that is considering the applicant peace officer for employment. A municipal police department or town marshal's office that receives such a waiver shall provide the disclosure to the Colorado law enforcement agency that is considering the applicant peace officer for employment not more than seven days after such receipt.

(3) A municipal police department or town marshal's office is not required to provide the disclosure described in subsection (1) of this section if the police department or town marshal's office is prohibited from providing such disclosure pursuant to a binding nondisclosure agreement to which the police department or town marshal's office is a party, which agreement was executed before August 5, 2015.

(4) (a) A municipal police department or town marshal's office shall notify the local district attorney whenever the municipal police department or town marshal's office learns that any peace officer of the municipal police department or town marshal's office has made a knowing misrepresentation:

(I) In any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to the peace officer or to the peace officer's employment history; or

(II) During the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct, as described in section 18-8-404 or 18-8-405, C.R.S.; or use of excessive force, regardless of whether the alleged criminal conduct, official misconduct, or use of excessive force occurred while the peace officer was on duty, off duty, or acting pursuant to a service contract to which the peace officer's employing agency is a party.

(b) A municipal police department or town marshal's office shall provide the notice described in paragraph (a) of this subsection (4) not more than seven days after the municipal police department or town marshal's office learns that a peace officer of the municipal police department or town marshal's office has made a knowing misrepresentation, as described in said paragraph (a).

(5) A municipal police department or town marshal's office is not liable for complying with the provisions of this section.

(6) As used in this section, unless the context requires otherwise, "state or local law enforcement agency" means:

(a) The Colorado state patrol created pursuant to section 24-33.5-201, C.R.S.;

(b) The Colorado bureau of investigation created pursuant to section 24-33.5-401, C.R.S.;

(c) A county sheriff's office;

(d) A municipal police department;

(e) The division of parks and wildlife within the department of natural resources created pursuant to section 24-1-124, C.R.S.; or

(f) A town marshal's office.

Source: L. 2015: Entire section added, (SB 15-218), ch. 209, p. 763, § 4, effective August 5.

Cross references: For the legislative declaration in SB 15-218, see section 1 of chapter 209, Session Laws of Colorado 2015.

31-30-108. Peace officer hiring - required use of waiver - definitions.

(1) A municipal police department or town marshal's office shall require each candidate that it interviews for a peace officer position who has been employed by another law enforcement agency or governmental agency to execute a written waiver that explicitly authorizes each law enforcement agency or governmental agency that has employed the candidate to disclose the applicant's files, including internal affairs files, to the municipal police department or town marshal's office interviewing the candidate and releases the interviewing agency and each law enforcement agency or governmental agency that employed the candidate from any liability related to the use and disclosure of the files. A law enforcement agency or governmental agency may disclose the applicant's files by either providing copies or allowing the municipal police department or town marshal's office to review the files at the law enforcement agency's office or governmental agency's office. A candidate who refuses to execute the waiver shall not be considered for employment by the department or office. The department or office interviewing the candidate shall, at least twenty-one days prior to making the hiring decision, submit the waiver to each law enforcement agency or governmental agency that has employed the candidate. A state or local law enforcement agency or governmental agency that receives such a waiver shall provide the disclosure to the municipal police department or town marshal's office that is interviewing the candidate not more than twenty-one days after such receipt.

(2) A state or local law enforcement agency is not required to provide the disclosures described in subsection (1) of this section if the agency is prohibited from providing the disclosure pursuant to a binding nondisclosure agreement to which the agency is a party, which agreement was executed before June 10, 2016.

(3) A state or local law enforcement agency or governmental agency is not liable for complying with the provisions of this section or participating in an official oral interview with an investigator regarding the candidate.

(4) As used in this section, unless the context otherwise requires:

(a) "Files" means all performance reviews, any other files related to job performance, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, and all complaints, early warnings, and commendations, but does not include nonperformance or conduct-related data, including medical files, schedules, pay and benefit information, or similar administrative data or information.

(b) "State or local law enforcement agency" means:

(I) The Colorado state patrol created pursuant to section 24-33.5-201, C.R.S.;

(II) The Colorado bureau of investigation created pursuant to section 24-33.5-401, C.R.S.;

(III) A county sheriff's office;

(IV) A municipal police department;

(V) The division of parks and wildlife within the department of natural resources created pursuant to section 24-1-124, C.R.S.; or

(VI) A town marshal's office.

Source: L. 2016: Entire section added, (HB 16-1262), ch. 339, p. 1384, § 4, effective June 10.

31-30-109. Behavioral health professionals - grant applications encouraged - definition - repeal.

(1) Each municipal police department is encouraged to adopt a policy whereby mental health professionals, to the extent practicable, provide:

(a) On-scene response services to support officers' handling of persons with mental health disorders; and

(b) Counseling services to officers of the police department.

(2) In implementing a policy as described in subsection (1) of this section, a municipal police department shall not require a mental health professional to counsel both a person with a mental health disorder and an officer if, in the judgment of the mental health professional, doing so would constitute a conflict of interest or a breach of a professional code of ethics.

(3) For the purposes of this section, each municipal police department is encouraged to apply annually for a grant from the peace officers behavioral health support and community partnerships grant program created in section 24-32-3501.

(4) As used in this section, "mental health professional" means a mental health professional licensed to practice medicine pursuant to article 240 of title 12 or a person licensed as a mental health professional pursuant to article 245 of title 12.

(5) This section is repealed, effective September 1, 2027.

Source: L. 2017: Entire section added, (HB 17-1215), ch. 150, p. 507, § 2, effective August 9. **L. 2019:** (4) amended, (HB 19-1172), ch. 136, p. 1719, § 218, effective October 1. **L. 2021:** (3) amended, (HB 21-1030), ch. 354, p. 2306, § 4, effective September 7.

Cross references: For the legislative declaration in HB 21-1030, see section 1 of chapter 354, Session Laws of Colorado 2021.

PART 2

FIREFIGHTERS' CIVIL SERVICE

31-30-201. Authorization - petition - election.

(1) All cities or towns organized under the general laws of this state which have paid fire departments are authorized to adopt civil service regulations pertaining to such departments in the following manner:

(a) The governing body may, and upon the petition of registered electors in number not less than fifteen percent of the last preceding vote for mayor shall, submit the question of accepting civil service provisions relative to such fire department to a vote of the registered electors at the next regular election. If a petition is submitted, the signatures to such petition shall be acknowledged before a notary public and need not be all on one paper. The ordinance or resolution calling for submission of the question shall provide for classification of all members of the fire department.

(b) The election notice shall state that the question is submitted for the purpose of ascertaining whether or not the city or town will adopt civil service regulations relative to said fire department. The election shall be conducted as nearly as may be in accordance with the provisions of the "Colorado Municipal Election Code of 1965". The ballots or voting machine tabs shall contain the words "For the Merit System" and "Against the Merit System".

(c) If, upon the official determination of the result of such election, it appears that a majority of all the votes cast are for the adoption of the merit system under civil service regulations, this

part 2 and all rules made under this part 2 shall immediately be in full force and effect in said city or town.

Source: L. 75: Entire title R&RE, p. 1214, § 1, effective July 1. **L. 87:** (1)(a) amended, p. 333, § 99, effective July 1.

Editor's note: This section is similar to former § 31-30-201 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-30-202. Commissioners appointed - terms - vacancies - expenses allowed.

Immediately upon the adoption of the merit system under civil service regulations, the governing body shall appoint three persons as civil service commissioners who shall be known and designated as the board of civil service commissioners or board of public safety to serve for six years, four years, and two years, respectively, from the date of their appointment and until their successors are appointed and qualified. Every alternate year the governing body shall appoint one person, as the successor of the commissioner whose term shall expire, to serve for the term of six years from the date of the appointment and until a successor is appointed and qualified. Any vacancy may be filled for the unexpired term by appointment by the governing body. At no time shall more than two commissioners be members of the same political party. Said commissioners shall serve without compensation but shall be paid their necessary expenses actually incurred in the discharge of their official duties.

Source: L. 75: Entire title R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-202 as it existed prior to 1975.

31-30-203. Merit.

Appointments and employment in and promotion to said fire department and said classified civil service shall be made according to merit and fitness, to be ascertained by competitive tests of competency except as provided in section 31-30-206.

Source: L. 75: Entire title R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-203 as it existed prior to 1975.

31-30-204. Removal - public hearings.

The classified civil service of the said city or town shall comprise all members of the fire department. Persons in the classified civil service shall hold their respective positions and be graded according to their competency, which shall be the same for all persons having like duty; except that the members of any paid fire department holding positions on the same at the time said city or town adopts the provisions of this part 2 shall retain their respective positions until removed after a public hearing for good cause shown, as provided in this section. They shall be removed or discharged only upon written charges which shall be filed by the head of the department or by any citizen of the city or town acting for the good of the service, to be promptly acted upon by the commission. All hearings before the commission shall be open to the public. No person shall be discharged for a political or religious reason. In case of emergency, the commission shall authorize the temporary appointment of members to the fire department without competitive tests for a period of not to exceed ninety days.

Source: L. 75: Entire title R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-204 as it existed prior to 1975.

31-30-205. Commission to make rules.

The making or enforcement of rules to carry out the purpose of the classified civil service of such city or town, the alteration and discharge of such rules, the conducting of all competitive tests and determination of all removals or discharge cases, and the standardization in such classified civil service shall be vested in the commission. No person in the classified civil service shall be paid until a certificate is made by the commission that his appointment is made pursuant to law.

Source: L. 75: Entire title R&RE, p. 1215, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-205 as it existed prior to 1975.

31-30-206. Positions retained.

All persons holding regular positions in the classified civil service, as defined by this part 2, at the time of the adoption of the civil service provision, as provided in this part 2, shall retain their respective positions without examination or further appointment. In all other respects said persons shall be subject to the provisions and rules of this part 2.

Source: L. 75: Entire title R&RE, p. 1215, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-206 as it existed prior to 1975.

31-30-207. Commission to make inquiries - record - report.

(1) It is the duty of the commission to investigate alleged breaches of this part 2 and its rules, and in the course of such investigations they, or any of them, may subpoena witnesses, administer oaths, and compel the testimony of witnesses and production of books, papers, and records relative to such inquiry, and it is the duty of such persons so subpoenaed to appear and testify and to produce such books, papers, and records as are called for in such subpoena. Should the person subpoenaed fail to appear and testify or produce documentary evidence, the commission may apply to the district court for an order compelling compliance with the subpoena. Failure to obey the order of the court shall be punishable as a contempt of court. The commission shall keep records of its proceedings and of all examinations held by it or under its authority. All records and documents filed by the commission shall be filed as public records. The minutes of the commission shall be kept in a separate book and shall be open to the public at all reasonable times.

(2) The commission, on or before the December 1 preceding each regular session of the governing body, shall make a report to the governing body of its work during the preceding year and include therein all rules adopted and any suggestions for legislation to carry out the purposes of the civil service.

Source: L. 75: Entire title R&RE, p. 1215, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-207 as it existed prior to 1975.

31-30-208. Fee of applicants.

Every applicant for examination shall pay the commission a fee of one dollar for the purpose of defraying the expenses of conducting such examination. All moneys received or collected by the commission shall be paid into the municipal treasury and shall be placed by the treasurer in a separate fund to the credit of the commission for the use of said commission. No person shall be examined unless such fee has been paid.

Source: L. 75: Entire title R&RE, p. 1215, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-208 as it existed prior to 1975.

31-30-209. Powers of commission.

The commission has the power to make and enforce all rules and regulations, which rules and regulations shall be printed for distribution. No rule shall become effective until five days after publication of the same in some newspaper in said city or town.

Source: L. 75: Entire title R&RE, p. 1216, § 1, effective July 1.

Editor's note: This section is similar to former § 31-30-209 as it existed prior to 1975.

31-30-210. Qualifications - notice of examination.

Applicants for appointment must be citizens of the United States and reside in the city and county of such municipality for one year next preceding the date of their application. All examinations must be impartial and only relate to the fitness of such persons examined for the service they wish to enter. Questions must not relate to political or religious affiliation, and an appointment must not be affected in any manner by political or religious affiliation. Notice of time, place, and scope of such examination must be given in the notice published in said paper. A person whose standing is less than sixty-five percent of complete proficiency may not be certified to appointment. Preference must be given to persons honorably discharged from the

naval or military service of the United States and to discharged LGBT veterans, as defined in section 28-5-100.3, and whose qualifications are otherwise equal.

Source: L. 75: Entire title R&RE, p. 1216, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-026), ch. 42, p. 176, § 13, effective November 11.

Editor's note: This section is similar to former § 31-30-210 as it existed prior to 1975.

Cross references: For the short title ("Restoration of Honor Act") in SB 21-026, see section 1 of chapter 42, Session Laws of Colorado 2021.

PART 3

PENSION - POLICE - GENERAL

31-30-301 to 31-30-325. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 3 was similar to the former part 3 as it existed prior to 1975.

(2) This part 3 was numbered as article 49 of chapter 139, C.R.S. 1963. For amendments to this part 3 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to police pension plans, see article 30.5 of this title.

PART 4

PENSION - FIREFIGHTERS' - GENERAL

31-30-401 to 31-30-418. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 4 was similar to the former part 4 as it existed prior to 1975.

(2) This part 4 was numbered as article 50 of chapter 139, C.R.S. 1963. For amendments to this part 4 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to firefighters' pension plans, see article 30.5 of this title.

PART 5

FIREFIGHTERS' PENSIONS - CITIES OF OVER 100,000

31-30-501 to 31-30-523. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 5 was similar to the former part 5 as it existed prior to 1975.

(2) This part 5 was numbered as article 80 of chapter 139, C.R.S. 1963. For amendments to this part 5 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to firefighters' pension plans, see article 30.5 of this title.

PART 6

POLICEMEN'S PENSIONS - CITIES OF OVER 100,000

31-30-601 to 31-30-621. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 6 was similar to the former part 6 as it existed prior to 1975.

(2) This part 6 was numbered as article 81 of chapter 139, C.R.S. 1963. For amendments to this part 6 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to police pension plans, see article 30.5 of this title.

PART 7

PENSION FUNDS - INVESTMENT - PERSONNEL INSURANCE

31-30-701 to 31-30-702. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: (1) Prior to its repeal, this part 7 was similar to the former part 7 as it existed prior to 1975.

(2) This part 7 was numbered as article 82 of chapter 139, C.R.S. 1963. For amendments to this part 7 prior to its repeal in 1996, consult the Colorado statutory research explanatory note

and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to firefighters and police pension funds, see article 30.5 of this title.

PART 8

POLICEMEN'S AND FIREFIGHTERS' PENSION REFORM LAW

31-30-801 to 31-30-806. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: This part 8 was added in 1978. For amendments to this part 8 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions relating to police and firefighters' pension plans, see articles 30.5 and 31 of this title.

PART 9

POLICEMEN'S AND FIREFIGHTERS' PENSION REFORM COMMISSION

31-30-901. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: This part 9 was added in 1978. For amendments to this part 9 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the

replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to police and firefighters' pension plans, see article 30.5 of this title.

PART 10

MEMBERS' BENEFITS

31-30-1001 to 31-30-1019. (Repealed)

Source: L. 96: Entire part repealed, p. 943, § 10, effective May 23.

Editor's note: This part 10 was added in 1979. For amendments to this part 10 prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For provisions relating to police and firefighters' pension plans, see article 30.5 of this title.

PART 11

VOLUNTEER FIREFIGHTER PENSION ACT

Editor's note: Section 23 of the act enacting this part 11 (chapter 254, Session Laws of Colorado 1995) provides the following:

(1) This act shall not affect the terms of members of the boards of trustees created to administer volunteer firemen's pension funds under part 4 of article 30 of title 31, Colorado Revised Statutes, as in effect before June 5, 1995, in any municipality, fire protection district, or county improvement district in this state that maintains a regularly organized volunteer fire department. On and after June 5, 1995, these board members shall continue their terms and duties on the applicable boards of trustees of the volunteer firefighter pension funds under part 11 of article 30 of title 31, Colorado Revised Statutes, created in this act.

(2) This act shall not terminate or require transfers of moneys from volunteer firemen's pension funds governed by part 4 of article 30 of title 31, Colorado Revised Statutes, in effect before June 5, 1995. On and after June 5, 1995, these funds shall remain in effect and be governed by part 11 of article 30 of title 31, Colorado Revised Statutes, created in this act.

Cross references: For the legislative declaration contained in the 1995 act enacting this part 11, see section 1 of chapter 254, Session Laws of Colorado 1995.

31-30-1101. Short title.

This part 11 shall be known and may be cited as the "Volunteer Firefighter Pension Act".

Source: L. 95: Entire part added, p. 1364, § 2, effective June 5.

31-30-1102. Definitions.

As used in this part 11, unless the context otherwise requires:

(1) "Board" means the board of trustees of the volunteer firefighter pension fund that is created in a municipality or district under this part 11.

(2) "District" means a fire protection district or county improvement district in this state having fire department members and offering fire protection services, and any county that provides funding, including volunteer pension funding, through intergovernmental cooperation for the provision of fire protection services.

(3) "Fire and police pension association" means the association created by section 31-31-201.

(4) "Fire department member" means a volunteer firefighter who is in a fire department that serves a municipality, county, or district and who accrues benefits in the volunteer firefighter pension fund.

(5) "Fund" means the volunteer firefighter pension fund provided in this part 11.

(6) "Municipality" means a municipality in this state that maintains a regularly organized volunteer fire department and that offers fire protection services.

(7) "Plan" means a program of benefits provided under this part 11.

(7.5) "Previous net valuation" means an amount equal to the total valuation for assessment certified by the county assessor pursuant to section 39-5-128, and amended pursuant to section 39-1-111 (5), less the valuation for assessment that has been divided for the county revitalization area pursuant to section 30-31-109 (13), an urban renewal area pursuant to section 31-25-107 (9), or a downtown development authority pursuant to section 31-25-807 (3) for the property tax year in which the municipality or district made a contribution to the fund. If the total valuation for assessment certified by the county assessor, as amended, does not include the valuation for assessment that has been divided for an urban renewal area, such urban renewal valuation for assessment shall not be subtracted from the total valuation for assessment.

(8) "Retired fire department member" means a volunteer firefighter who is not on active duty and who receives pension benefits from the volunteer firefighter pension fund.

(9) (a) "Volunteer firefighter" means a firefighter who renders service to a fire department in a municipality, county, or district, who does not receive compensation as a firefighter, and who is not classified as an employee for purposes of the federal "Fair Labor Standards Act of 1938", as amended, based on payments, fees, or benefits that the firefighter receives. "Volunteer firefighter" may include other designations or titles given to firefighters provided that the firefighter meets all of the requirements for being a volunteer firefighter in this part 11.

(b) For the purposes of this subsection (9), "compensation" does not include:

(I) Actual expenses incurred by and reimbursed to a volunteer firefighter;

(II) (Deleted by amendment, L. 2010, (SB 10-021), ch. 17, p. 79, § 1, effective August 11, 2010.)

(III) Participation in or receipt of benefits from the fund;

(IV) Participation in or receipt of benefits upon termination of volunteer services to any district or municipality provided as part of an internal revenue code qualified volunteer service award plan established for the benefit of volunteer firefighters;

(V) Payments from federal moneys, either through the district or municipality or to the volunteer firefighter directly, for participation in a temporary emergency incident;

(VI) Nominal fees or benefits paid on a per-call basis or as part of an annual merit or recognition award program or other incentive award program.

Source: L. 95: Entire part added, p. 1364, § 2, effective June 5. **L. 96:** (3) amended, p. 941, § 5, effective May 23. **L. 2006:** (7.5) added, p. 1422, § 1, effective June 1. **L. 2007:** (2), (4), and (9) amended, p. 315, § 1, effective April 2. **L. 2010:** (9) amended, (SB 10-021), ch. 17, p. 79, § 1, effective August 11. **L. 2024:** (7.5) amended, (HB 24-1172), ch. 387, p. 2681, § 11, effective August 7.

Cross references: (1) For the internal revenue code referred to in subsection (9)(b)(IV), see the federal "Internal Revenue Code of 1986", as amended.

(2) For the federal "Fair Labor Standards Act of 1938", see 29 U.S.C. sec. 201 et seq.

31-30-1103. Board of trustees - fund.

(1) In any municipality or district that maintains a regularly organized volunteer fire department, there is created a board of trustees of the volunteer firefighter pension fund. The board:

(a) Shall manage, use, and disburse moneys in the fund according to its rules and bylaws and this part 11;

(b) Shall supervise and control the fund;

(c) May take all necessary steps and pursue all necessary remedies to preserve the fund.

Source: L. 95: Entire part added, p. 1365, § 2, effective June 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Board does not have discretionary power to alter pension eligibility requirements mandated by the general assembly. Agee v. Trustees of Pension Bd., 33 Colo. App. 268, 518 P.2d 301 (1974).

Standard of review in case of pension eligibility is whether the criteria applied by the board conform with statutory provisions, not whether the board abused its discretion in granting the pensions. Agee v. Trustees of Pension Bd., 33 Colo. App. 268, 518 P.2d 301 (1974).

The Public Employee Retirement Association (PERA) and the Policemen's and Firemen's Pension Reform Act statutory provisions have established a defined benefit contributory pension system in which most public employees are required to participate. By making these contributions, employees obtain a limited vesting of pension rights, which ripen into vested pension rights upon attainment of the respective eligibility requirements. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

31-30-1104. Board - municipality.

(1) In a municipality, the board must consist of the following members:

(a) The mayor for a term equal to the mayor's tenure as mayor;

(b) The municipal treasurer or finance officer for a term equal to the treasurer's or finance officer's tenure with the municipality;

(c) Two other persons appointed by and for terms determined by the governing body of the municipality; and

(d) (I) Prior to August 6, 2014, three fire department members serving the municipality who are elected by the fire department members of those fire departments for three-year terms.

(II) Beginning at the next election to elect a board member pursuant to this paragraph (d) after August 6, 2014, three individuals elected from one or more of the following groups to the extent such groups exist at the time of election: Fire department members, retired fire department members, or retired fire department members returned to active service pursuant to section 31-30-1132. The three individuals shall be elected by the fire department members, retired fire department members, and retired fire department members returned to active service of those fire departments and shall serve for three-year terms as such terms exist on August 6, 2014. Nothing in this subparagraph (II) shall be construed to effect the term of any person serving on the board of a municipal volunteer firefighter pension board pursuant to subparagraph (I) of this paragraph (d) on August 6, 2014.

(2) The board shall elect a president and secretary from its members. The municipal treasurer or finance officer shall serve as the ex officio treasurer of the board.

(3) Repealed.

Source: L. 95: Entire part added, p. 1365, § 2, effective June 5. **L. 2014:** (1)(d) amended and (3) repealed, (HB 14-1111), ch. 24, p. 156, § 1, effective August 6.

31-30-1105. Board - fire protection district.

(1) In a fire protection district, the board must consist of the following members:

(a) The board of directors of the fire protection district for terms equal to their tenure on the fire protection district board;

(b) The treasurer of the board of the fire protection district who shall be treasurer of the fund for a term equal to the treasurer's tenure on the fire protection district board; and

(c) (I) Prior to August 15, 2010, two fire department members elected by the fire department members for two-year terms; except that, at the initial election, one member shall be elected for two years and one member for one year. In all subsequent elections, these members shall be elected for two years.

(II) (A) On and after August 15, 2010, two individuals elected from one or more of the following groups to the extent such groups exist at the time of election: Fire department members, retired fire department members, or retired fire department members returned to active service pursuant to section 31-30-1132. All members in each group existing at the time of election shall be given the opportunity to vote for the two individuals. The two individuals shall serve for two-year terms; except that, at the initial election, one individual shall be elected for two years and one individual for one year. In all subsequent elections, these individuals shall be elected for two years.

(B) Nothing in sub-subparagraph (A) of this subparagraph (II) shall be construed to limit the term of a board member elected pursuant to subparagraph (I) of this paragraph (c).

(2) The board shall elect a president and secretary from its members.

(3) The treasurer of the board shall obtain a bond paid from the fund in an amount determined by the board.

Source: L. 95: Entire part added, p. 1365, § 2, effective June 5. **L. 2010:** (1)(c) amended, (SB 10-021), ch. 17, p. 80, § 2, effective August 11.

31-30-1106. Board - county improvement district.

(1) In a county improvement district, the board must consist of the following members:

(a) One county commissioner of the county in which the district is located for a term equal to the commissioner's tenure as county commissioner;

(b) The county treasurer for a term equal to the treasurer's tenure with the county;

(c) Three residents of the county obligated to pay real or personal property taxes who are appointed by the county commissioners for staggered terms determined by the county commissioners; and

(d) Two fire department members for two-year terms.

(2) The treasurer of the fund shall obtain a bond paid from the fund in an amount determined by the board.

Source: L. 95: Entire part added, p. 1366, § 2, effective June 5.

31-30-1107. Board - consolidation or merger.

(1) If a municipality or district merges or consolidates with one or more municipalities or districts, the former trustees of the various volunteer firefighter pension funds of the consolidated or merged municipalities or districts shall:

(a) Elect seven persons from their members, not more than three of whom are fire department members, to serve as trustees of the volunteer firefighter pension fund of the consolidated or merged fund with due regard to equal representation;

(b) Cease to hold office if they are not elected under paragraph (a) of this subsection (1).

(2) The trustees of the consolidated or merged fund shall elect from its members a president, secretary, and treasurer. The treasurer of the consolidated or merged district's fund shall obtain a bond paid from the fund in an amount determined by the board.

Source: L. 95: Entire part added, p. 1366, § 2, effective June 5.

31-30-1108. Board powers and duties.

(1) A board created by this part 11 to control a fund:

(a) Shall adopt necessary rules that are not inconsistent with this part 11 for the management and discharge of its duties, for its own government and procedure, and for the preservation and protection of the fund;

(b) Shall hear and decide each application for benefits under this part 11 in accordance with section 24-4-105, C.R.S. Action on an application is final and conclusive; except that, if in the opinion of a board, justice demands reconsideration of the action, the board may reverse the action.

(c) Shall keep and preserve a record of the action and all other matters properly before the board;

(d) May make agreements with the fire and police pension association to administer the plan and manage the funds of the plan for investment in accordance with section 31-31-705;

(e) May consolidate its fund with the fund of another municipality or district and shall administer the consolidated funds as a single fund if in the opinion of the board the total moneys allocated to a fund by a municipality or district are inadequate to sustain a proper fund for

retirement or for the other purposes of the fund under this part 11. The boards of these single funds may consolidate the funds under conditions and terms provided in an agreement consistent with this part 11.

Source: L. 95: Entire part added, p. 1367, § 2, effective June 5. **L. 2014:** (1)(d) amended, (SB 14-024), ch. 51, p. 232, § 1, effective March 20.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under this section. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597, (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597, (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-30-1109. Attorney representation.

(1) The attorney for a municipality or district shall:

(a) When required by the board, advise the board on all matters pertaining to the board's duties and management of the fund;

(b) Represent and defend the board in any suit or action at law or in equity brought against the board; and

(c) Bring all suits and actions on the board's behalf as the board requires or requests.

(2) If a conflict between a board and a municipality or district exists, the board may obtain an attorney to represent the board in any action described in this section at the board's expense.

Source: L. 95: Entire part added, p. 1367, § 2, effective June 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Provision in former law applied in Traxler v. Bd. of Trustees of Firemen's Pension Fund, 701 P.2d 607 (Colo. App. 1984).

31-30-1110. Property tax - other tax revenue.

(1) The governing body of a municipality with a population of less than one hundred thousand, the board of directors of each fire protection district, the board of county commissioners, or the board of a county improvement district may levy and set apart a tax for each year of not more than one mill on the taxable property in the municipality, county, or district. The governing body or board shall contribute the proceeds of this tax, if any, to the municipality's, county's, or district's fund. The total tax levied under this section and section 31-30.5-403 (1), if any, for a fire department that has both paid and volunteer firefighters must not exceed one mill on the taxable property in the municipality, county, or district. Any new tax or an increase in the mill levy under this section shall comply with the voter approval requirements under section 20 of article X of the state constitution.

(2) The governing body of a municipality with a population of less than one hundred thousand, the board of directors of a fire protection district, the board of county commissioners, or the board of a county improvement district may contribute the proceeds of any other tax that the municipality, county, or district is authorized to collect to the municipality's, county's, or district's fund.

Source: L. 95: Entire part added, p. 1367, § 2, effective June 5. **L. 96:** Entire section amended, p. 941, § 6, effective May 23. **L. 2006:** Entire section amended, p. 1422, § 2, effective June 1. **L. 2007:** Entire section amended, p. 316, § 2, effective April 2.

31-30-1111. Contribution to fund.

(1) In addition to any tax revenues contributed under section 31-30-1110, the fund also consists of any:

(a) Moneys given to the board or fund by a person for the use and purpose for which the fund is created. The board may take any money, personal property, or real estate, or interest therein by gift, grant, devise, or bequest as trustees for the use and purpose for which the fund is created;

(b) Moneys, fees, rewards, or emoluments of any nature and description that are paid or given to the fund; and

(c) Moneys provided by the state under section 31-30-1112.

(2) Fund moneys are held in trust for the exclusive use and benefit of the fire department members and retired fire department members and their surviving spouses, dependent children, dependent parents, and other beneficiaries in accordance with this part 11.

Source: L. 95: Entire part added, p. 1368, § 2, effective June 5. **L. 2006:** (2) amended, p. 179, § 1, effective March 31; IP(1) amended, p. 1423, § 3, effective June 1.

31-30-1112. State contributions - intent.

(1) (a) Repealed.

(b) On and after July 1, 2004, the state treasurer shall transfer moneys to the department of local affairs for distribution as provided in this section to assist in funding volunteer firefighter pension plans. The department of local affairs shall distribute moneys for funding volunteer firefighter pension plans affiliated with the fire and police pension association pursuant to section 31-31-705 directly to the fire and police pension association as the administrator of the plan. The association shall credit the transferred moneys to the assets of the plan for which they are transferred.

(2) (a) State contributions to any municipality or district must equal ninety percent of all amounts contributed by the municipality or district under section 31-30-1110 in the previous

year, but, notwithstanding any other provision of this part 11, the state contribution shall not exceed one-half mill on the previous net valuation for assessment of the municipality or district assuming one hundred percent collection.

(b) A municipality or district that was contributing an amount necessary to pay volunteer firefighter pensions in excess of three hundred dollars per month shall receive state contributions under paragraph (a) of this subsection (2) in an amount not to exceed one-half mill on the previous net valuation for assessment of the municipality or district assuming one hundred percent collection but based upon the greater of:

(I) The contribution that was actuarially required to pay a pension of three hundred dollars per month in the previous year, as determined by the municipality or district; or

(II) The highest actual contribution received by the municipality or district during the calendar year 1998, 1999, 2000, or 2001, irrespective of whether the state contribution was authorized by law at the time it was made. In the event of a consolidation or merger of two or more municipalities or districts, the sum of the highest actual contribution received by each consolidating or merging municipality or district during the calendar year 1998, 1999, 2000, or 2001 shall be the state contribution of the surviving consolidated or merged entity for the purposes of this subparagraph (II).

(c) and (c.5) (Deleted by amendment, L. 2002, p. 504, § 1, effective July 1, 2002.)

(d) The board in any municipality or district shall not increase benefits above the following amounts unless the increase is approved by the governing body of the municipality or district and an actuarial review indicates a higher payment is actuarially sound:

(I) For volunteer firefighter pensions, three hundred dollars per month;

(II) For a short-term disability monthly annuity pursuant to section 31-30-1121, one hundred fifty dollars per month;

(III) For a retirement pension pursuant to section 31-30-1123, two hundred dollars per month;

(IV) For survivor benefits pursuant to section 31-30-1127, one hundred fifty dollars per month; or

(V) For funeral benefits pursuant to section 31-30-1129, one hundred dollars.

(e) In no event shall a municipality or district receive less than one thousand dollars if the municipality or district contribution to its fund is equal to or greater than one-half mill on the previous net valuation for assessment of the municipality or district.

(f) (Deleted by amendment, L. 2002, p. 504, § 1, effective July 1, 2002.)

(g) The moneys necessary to make the state's contribution under this section shall be derived from the proceeds of the tax imposed by section 10-3-209, C.R.S., as follows:

(I) (A) Repealed.

(B) As of July 1, 2004, the department of local affairs shall be responsible for disbursing the state contribution to each municipality and district. On or before October 31, 2004, and on or before October 31 of each year thereafter, the state treasurer shall transfer the amount necessary to provide contributions equal to the contributions made by the state to each municipality and district during the calendar year 1979 to the department for disbursement to the fund of each municipality or district.

(II) (A) Repealed.

(B) To the extent that the state's contribution under this section exceeds contributions made by the state during the calendar year 1979, the state treasurer shall transfer the excess amounts from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the department of local affairs on or before October 31, 2004, and on or before October 31 of each year thereafter, for disbursement to the municipality or district's funds.

(C) Moneys transferred under this subparagraph (II) shall be separate from and in addition to moneys transferred under section 31-30.5-307 (2) and do not revert to the general fund but are available for the purposes provided in this section.

(h) (I) Repealed.

(II) As of July 1, 2004, the executive director of the department of local affairs or the director's designee shall be responsible for providing the accidental death and disability insurance policy for volunteer firefighters as provided in sections 31-30-1134 and 31-31-202 (4)(d). In addition to any other transfers required by this section, on or before October 31, 2004, and on or before October 31 of each year thereafter, the state treasurer shall transfer from the proceeds of the tax imposed by section 10-3-209, C.R.S., to the department such moneys as may be necessary to pay for the accidental death and disability insurance policy for volunteer firefighters and the administrative costs of providing such policy.

(i) Moneys transferred pursuant to this section shall be included for information purposes in the general appropriation bill or in supplemental appropriation bills to comply with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103, C.R.S.

(j) It is the intent of the general assembly to continually fund volunteer firefighter pension plans.

(3) (a) The department of local affairs shall work with the municipalities and the districts to develop a procedure by which municipalities and districts apply to receive state assistance

moneys distributed pursuant to this section. The application procedure must ensure that the department can verify the amount of money to which each municipality and district is entitled before the department transfers funds to the municipalities and districts each year.

(b) The department of local affairs shall work with the joint budget committee to develop a procedure that allows any municipality or district to apply for a late disbursement of moneys in the event that such municipality or district made a good faith effort, but was unable to comply with the application procedure created pursuant to paragraph (a) of this subsection (3) due to a delay in preparing a financial statement or completing a required audit or actuarial study.

(4) (a) The department of local affairs may impose a nonrefundable application fee in an amount to be determined by the department on any municipality or district that applies to the department for state assistance moneys distributed pursuant to this section. The application fee may be on a sliding scale based on the amount of state assistance moneys distributed to each fund pursuant to this section in the previous year.

(b) All revenue collected by the department of local affairs from the fee imposed pursuant to paragraph (a) of this subsection (4) shall be transmitted to the state treasurer who shall credit the revenue to the volunteer fire department application fund, which fund is hereby created in the state treasury. The moneys in the fund shall be continuously appropriated to the department for the purpose of covering the direct costs of administering the distribution of the state contribution moneys pursuant to this section.

(5) The department of local affairs shall have the authority to contract with any entity for the purpose of complying with the requirements of this section.

(6) Repealed.

Source: L. 95: Entire part added, p. 1368, § 2, effective June 5. **L. 96:** (2)(f), (2)(g)(II), and (2)(h) amended, p. 942, § 7, effective May 23. **L. 2002:** (2)(a), (2)(b), (2)(c), (2)(c.5), (2)(d), (2)(e), and (2)(f) amended, p. 504, § 1, effective July 1. **L. 2004:** (1), (2)(a), (2)(b)(I), (2)(g), and (2)(h) amended and (3) to (6) added, p. 1133, § 2, effective July 1. **L. 2005:** (6)(a) amended, p. 775, § 61, effective June 1. **L. 2006:** (2)(a), (2)(b), and (2)(e) amended, p. 1423, § 4, effective June 1. **L. 2014:** (1) amended, (SB 14-024), ch. 51, p. 232, § 2, effective March 20; (3)(a) and (4)(a) amended and (6) repealed, (HB 14-1169), ch. 84, p. 327, § 2, effective July 1. **L. 2015:** (1)(a), (2)(g)(I)(A), (2)(g)(II)(A), and (2)(h)(I) repealed, (SB 15-264), ch. 259, p. 963, § 81, effective August 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Ample and competent evidence supported the decision of fund's administrative board that city had elected to continue rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Applied in City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

31-30-1113. Fund investments.

(1) The board may invest all or any part of fund moneys in the name of the board's treasurer or in the name of a custodian or custodians appointed by the board under this section in interest-bearing obligations of the United States, in interest-bearing bonds of this state, in general obligation bonds of municipalities, whether organized under general law or article XX of the state constitution, or in any depository stated in section 24-75-603, C.R.S., and secured as provided in articles 10.5 and 47 of title 11, C.R.S. By written resolution, the board may appoint one or more persons to act as a custodian or custodians, in addition to the treasurer, to deposit or cause to be deposited all or part of the fund in any state or national bank or any state or federally chartered savings and loan association in this state. The appointed persons shall give surety bonds, and the board shall determine the bonds' amounts, form, and purposes. These securities and evidences of investment shall be deposited with the treasurer of the municipality or district.

(2) Upon the board's direction, the treasurer of a municipality or district may invest part of the fund available for investment, with or without one or more other volunteer firefighter pension funds, in a noninsured trust pension plan with a bank or trust company authorized to exercise trust powers in this state as a trustee. The trustee's investment of fund moneys is governed by article 1.1 of title 15, C.R.S.

(3) Notwithstanding subsection (1) of this section, the board may invest all or any part of fund moneys in the name of the board's treasurer or in the name of a custodian or custodians appointed by the board under this section in one or more of the following:

(a) Any public-private initiative with the department of transportation, as defined in section 43-1-1201 (3), C.R.S.;

(b) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.; or

(c) Repealed.

(d) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

(4) The board may give preference to the investments described in subsection (3) of this section if such investments are consistent with sound investment policy.

Source: L. 95: Entire part added, p. 1370, § 2, effective June 5. **L. 98:** (3) and (4) added, p. 445, § 6, effective August 5. **L. 2000:** (2) amended, p. 256, § 1, effective March 30. **L. 2005:** (3)(c) repealed, p. 289, § 39, effective August 8. **L. 2010:** (2) amended, (SB 10-021), ch. 17, p. 80, § 3, effective August 11.

Cross references: For the legislative declaration contained in the 1998 act adding subsections (3) and (4), see section 1 of chapter 154, Session Laws of Colorado 1998.

31-30-1114. Fund investment in insurance.

(1) Except as provided in subsection (2) of this section and with the concurrence of sixty-five percent of the fire department members voting thereon and sixty-five percent of the retired fire department members voting thereon, the board may:

(a) Insure the fire department members under the following insurance policies issued by companies authorized to do business in this state:

(I) Individual, group, or blanket life, endowment, or annuity insurance;

(II) Variable annuity insurance; or

(III) Disability or liability insurance; and

(b) Spend any part of the fund to pay premiums on these policies.

(2) The board shall not spend fund moneys to purchase insurance if the expenditure would impair the pension fund's ability to:

(a) Pay annuities to a fire department member, surviving spouse, or dependent parent or child receiving annuities; or

(b) Meet the future requirements of pensions, benefits, and awards under the plan.

(3) The board must be the beneficiary of any insurance policies, and the proceeds of the insurance policies shall be paid to the board as an addition to the fund.

Source: L. 95: Entire part added, p. 1371, § 2, effective June 5.

31-30-1115. Warrants.

(1) Officers of the municipality or district who are designated by law to draw warrants on the treasurer of the municipality or district shall draw warrants thereon upon orders by the board, payable to the board's treasurer for moneys belonging to the fund.

(2) Except as provided in subsection (3) of this section, the board's treasurer shall pay moneys ordered to be paid from the fund to any person only upon warrants signed by the board's president and countersigned by the board's secretary. A warrant shall not be drawn except by the board's order that is duly entered in the records of the board's proceedings.

(3) Fund moneys in noninsured trust pension plans with a bank or trust company shall be paid by the trustee only upon the board's written order that is signed by the board's president, countersigned by the board's secretary, and duly entered in the records of the board's proceedings.

Source: L. 95: Entire part added, p. 1372, § 2, effective June 5.

31-30-1116. Treasurer - custodian - segregation of moneys.

(1) The board's treasurer and the custodian appointed by the board under section 31-30-1113 are the custodians of the fund and shall secure and safely keep books and accounts concerning the fund in the manner as the board may prescribe. The books and accounts are subject to inspection by the board, any board member, or any other interested person. Upon expiration of the treasurer's or custodian's term of office or appointment, the treasurer or custodian shall surrender and deliver to the successor all bonds, securities, and unexpended moneys or other property of the fund that the treasurer or custodian has possessed.

(2) A municipality or district that includes both paid and volunteer firefighters in their pension plans may consolidate the funds but must segregate the moneys for paid and volunteer firefighters on an equitable basis for accounting and actuarial purposes. The segregation shall be considered in actuarial reports on the funds. In computing the portion of the fund attributed to volunteer firefighters, volunteer firefighters' benefits shall not be changed.

Source: L. 95: Entire part added, p. 1372, § 2, effective June 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Legislative intent under former provision. Although this part does not specifically state that a city will be solely liable for making pension funds actuarially sound, it is apparent that this was the legislative intent. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

Fact that the general assembly increased the mandatory municipal contribution in this part does not mean that the general assembly intended in § 31-30-503 that cities should be totally financially responsible for pension funds. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

Section prevails over section 31-30-503 under former law. This section has a later effective date than § 31-30-503 and therefore prevails. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

Governing body controls amount of employee contribution. The governing body of the municipality has control over the amount of the employee contribution up to the prescribed maximum. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

31-30-1117. Exemption from levy.

(1) Except for an assignment for child support purposes as provided in sections 14-10-118 (1) and 14-14-107, as they existed prior to July 1, 1996, and except for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., and a writ of garnishment that is the result of a judgment taken for arrearages for child support or for child support debt, no part of the fund, either before or after any order for distribution of the fund to a fire department member, retired fire department member, or beneficiary of the fund or the surviving spouse or guardian of any child of a deceased or disabled fire department member or of a deceased, disabled, or retired fire department member shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, protest, or proceeding of any nature whatsoever issued out of or by any court in this or any other state for the payment or satisfaction of all or part of any debt, damages, claim, demand, judgment, fine, or amercement of the municipality or district or of a fire department member, retired fire department member, or their surviving spouses, dependent children, or designated beneficiaries.

(2) Except as provided in section 31-30-1118, the fund must be kept, secured, and distributed for the purpose of issuing pensions and protecting the persons named in this part 11 and for no other purpose whatsoever; except that the board may annually spend moneys as it deems proper and necessary from the fund for necessary expenses connected with the fund.

Source: L. 95: Entire part added, p. 1372, § 2, effective June 5. **L. 96:** (1) amended, p. 626, § 44, effective July 1.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Intent of section. Section 31-30-313 and this section are obviously intended to protect the pension funds from attachment and levy by creditors. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Reason for restriction on use of pension funds. Section 31-30-313 and this section place a restriction on the use of pension funds in order to secure the funds for the use and benefit of the firemen and policemen who contributed to the fund. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

31-30-1118. Fund use - other purposes.

(1) If the governing body of a municipality or district finds by resolution that no person is eligible or can become eligible for payment of a fund benefit, it may authorize contributions of all fund moneys for any fire-related purpose and, if no fire-related purpose exists, for any purpose as determined by the governing body of the municipality or district.

(2) At least sixty days before adoption of this resolution, the governing body of the municipality or district shall publish one notice in a newspaper with general circulation within the municipality or district and shall provide a copy of the published notice to the board of directors of the fire and police pension association. The notice must state that the intent of the governing body is to use the money in the fund for the purposes permitted in subsection (1) of this section and that persons who believe they are or may be entitled to benefit payments from the fund have fifty days from the date of the notice in which to file a written objection with the governing body regarding its proposed use of the fund. If a written objection is received, the governing body shall hold a public hearing before adoption of the resolution. Before the hearing, the governing body shall publish notice of the time and place of the hearing and send written notice of the hearing by certified mail to each person who files a written objection.

(3) If a person establishes a claim to a benefit from the fund within one year after adoption of this resolution, the municipality or district shall repay to the fund any money paid from the fund under this section, and no such additional payments shall be made from the fund.

Source: L. 95: Entire part added, p. 1373, § 2, effective June 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

The general assembly has neither expressly authorized nor forbidden a refund of individual pension fund contributions on termination of employment. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Home-rule city can contract to make such refunds. A home-rule city has authority to contract with its firemen and policemen to refund the employee's individual contributions to the respective pension funds on termination of employment prior to qualification for pension benefits. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Permitting the refund of individual pension fund contributions upon termination of employment is simply an extension of the general principle of protecting the welfare of contributors to the fund. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

And denial of refunds would then be unjust. Where the city has contracted to make refunds of employee's contributions to pension funds on termination of employment, and policemen and firemen have relied upon such representations, to deny the refunds sought would be an unjust and unreasonable result. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

31-30-1119. Board report - municipality.

The board shall make a report to the governing body of the municipality on the condition of the fund. The board shall submit the report to the governing body before the last meeting in February and the last meeting in August of each year.

Source: L. 95: Entire part added, p. 1373, § 2, effective June 5. **L. 2010:** Entire section amended, (SB 10-021), ch. 17, p. 80, § 4, effective August 11.

31-30-1120. Maximum benefit amount. (Repealed)

Source: L. 95: Entire part added p. 1374, § 2, effective June 5. **L. 98:** Entire section amended, p. 64, § 1, effective March 23; entire section repealed, p. 807, § 1, effective May 26.

31-30-1121. Disability pension - rules - hearing.

(1) If a volunteer firefighter is injured while in the line of duty as a volunteer firefighter, the board shall pay to the volunteer firefighter:

(a) A short-term disability monthly annuity for not more than one year in an amount it determines is proper and equitable, considering the financial condition of the fund, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater; or

(b) A long-term disability monthly annuity for a disability that deprives the volunteer firefighter of an earning capacity and that extends beyond one year in an amount it determines is proper and necessary but not more than the amount paid by the board pursuant to section 31-30-1122 (1) or four hundred fifty dollars, whichever is greater. Any increase in the benefits in a municipality under this paragraph (b) shall be approved by the municipality's governing body.

(2) Disability-pension applicants shall be examined by one or more physicians selected by the board and may be examined by one or more physicians selected by the applicant. The board shall pay from the fund the expenses of the physician chosen by the board.

(3) The board shall adopt rules it deems proper concerning the examination of persons who are receiving disability benefits under this section to determine periodically the fitness of these persons. A person who is receiving benefits under this section and who is either fifty years of age or has completed twenty years of active duty in the fire department before the date disability benefits under this section are first provided shall not be reexamined. A person receiving benefits under this section shall not be examined before one year after the date disability benefits under this section are first provided and not more often than annually after this date.

(4) The board shall terminate the disability benefits under this section of a person who the board finds has recovered sufficiently from the disability that resulted in the receipt of these benefits, is under the age of fifty years, and has served less than twenty years of active duty. A person whose benefits are terminated under this subsection (4) may file a written protest within thirty days after the termination date stating the objection to the termination and requesting a hearing. The decision of the board is suspended pending a hearing on the protest. At the hearing, the member may appear and be represented by counsel.

Source: L. 95: Entire part added, p. 1374, § 2, effective June 5. **L. 98:** (1) amended, p. 807, § 2, effective May 26.

31-30-1122. Retirement pension.

(1) The board of a municipality, with the prior consent of the municipality's governing body, or the board of a fire protection district or county improvement district may pay a retirement pension to a volunteer firefighter who has twenty years of active service and who is over the age of fifty years. The retirement pension shall be an amount determined by the board of not more than one hundred dollars per month, unless an actuarial review indicates a higher payment is actuarially sound; except that any such amount determined by the board of a municipality shall be made with the prior consent of the municipality's governing body. Pensions that make payments in excess of three hundred dollars per month are subject to the state contribution limitation specified in section 31-30-1112 (2)(b). Except as provided in section 31-30-1132, a volunteer firefighter shall not receive a retirement pension for service in a fire department while the firefighter is an active member of that department. A volunteer firefighter shall maintain a minimum training participation in the fire department of thirty-six hours each year to qualify for retirement benefits. A volunteer firefighter who has served twenty years and who has not reached the age of fifty years may be granted a leave of absence and retain all rights to a retirement pension and is entitled to the retirement pension when the firefighter is fifty years of age.

(2) Notwithstanding subsection (1) of this section, the board may pay a retirement pension to a volunteer firefighter who has less than twenty years of active service if the municipality's or district's fund is actuarially sound. The board shall determine the period of active service necessary to qualify for this retirement pension, but in no event shall such period be less than ten years of active service. The board shall not pay this retirement pension until the volunteer firefighter is fifty years of age. The amount of this retirement pension shall be determined by prorating the amount of the retirement pension under subsection (1) of this section based on the volunteer firefighter's years of service.

(3) Whenever the board increases the retirement pension benefit payable pursuant to subsection (1) of this section, such increase may also be applied to the pension benefit of any retired volunteer firefighter receiving the pension benefit specified in subsection (1) of this section at the time of such increase. The applicable pro rata share of any such increase, based upon the number of years of service, may also be applied to the pension benefit of any retired volunteer firefighter receiving the pension benefit specified in subsection (2) of this section at the time of such increase. Whenever the board elects to apply any retirement pension increase permitted under this subsection (3), the board shall apply such increase to the retirement pension of all retired volunteer firefighters in a fire department who are eligible for such increase under this subsection (3). Any actuarial review required under subsection (1) of this section shall include the cost of any retirement pension increase permitted under this subsection (3).

Source: L. 95: Entire part added, p. 1374, § 2, effective June 5. **L. 97:** (1) amended, p. 169, § 2, effective March 28; (3) added, p. 968, § 1, effective May 22. **L. 98:** (1) and (2) amended, p. 64, § 2, effective March 23; (1) amended, p. 808, § 3, effective May 26.

Editor's note: Amendments to subsection (1) by House Bill 98-1035 and House Bill 98-1380 were harmonized.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Board does not have discretionary power to alter pension eligibility requirements mandated by the general assembly. Agee v. Trustees of Pension Bd., 33 Colo. App. 268, 518 P.2d 301 (1974).

Standard of review in case of pension eligibility is whether the criteria applied by the board conform with statutory provisions, not whether the board abused its discretion in granting the pensions. Agee v. Trustees of Pension Bd., 33 Colo. App. 268, 518 P.2d 301 (1974).

"Active service" requirement not fulfilled. Membership on the board of directors of a fire protection district, when not coupled with regular participation in firefighting activities on the same basis as nonboard members, cannot fulfill the "active service" requirement of subsection (8) of this section. Agee v. Trustees of Pension Bd., 33 Colo. App. 268, 518 P.2d 301 (1974).

31-30-1123. Retirement pension - sources of payment.

The retirement pension of a volunteer firefighter who has earned twenty years of active service as a volunteer firefighter for any one municipality or district shall be paid from the fund of that municipality or district, and no other fund shall pay a pension to that volunteer firefighter. The retirement pension of a volunteer firefighter who earns twenty years of active service as a volunteer firefighter after June 2, 1977, by serving more than one municipality or district shall be paid from the fund of each municipality or district for which the volunteer firefighter served at least five years. The amount paid by each fund for each year of service with the particular municipality or district shall equal one-twentieth of the retirement pension being paid by that fund on the day the volunteer firefighter left the service of the particular municipality or district. The retirement pension of a volunteer firefighter who earns twenty years of active service as a volunteer firefighter by serving more than one municipality or district shall be paid only by the municipality or district last served by that volunteer firefighter if any part of the twenty years of service was earned on or before June 2, 1977. In no event shall a volunteer firefighter receive a

total retirement benefit from all volunteer firefighter pension funds exceeding the maximum amount paid by the board from such funds pursuant to section 31-30-1122 (1) or four hundred fifty dollars, whichever is greater.

Source: L. 95: Entire part added, p. 1375, § 2, effective June 5. **L. 98:** Entire section amended, p. 808, § 4, effective May 26.

31-30-1124. Compliance - insufficient moneys.

(1) The board may require information, including proof of years of service, and establish procedures as it deems necessary to ensure compliance with the requirements and limitations of sections 31-30-1122 and 31-30-1123.

(2) If at any time money or other property in the fund is insufficient to pay the full amount per month to which each volunteer firefighter receiving a pension under this part 11 and other beneficiary of the fund is entitled, an equal percentage of the monthly payment shall be made to those volunteer firefighters and other beneficiaries until the fund is replenished in an amount that permits payment in full to those volunteer firefighters and other beneficiaries.

Source: L. 95: Entire part added, p. 1375, § 2, effective June 5.

31-30-1125. Supplemental retirement pension.

(1) In addition to the monthly retirement pension provided by section 31-30-1122, the board of a municipality, with the prior consent of the municipality's governing body, or the board of a fire protection district or county improvement district may pay a supplemental monthly retirement pension to a volunteer firefighter who is fifty years of age and who has been in active service more than twenty years if:

(a) An actuarial review indicates a supplemental monthly pension payment is actuarially sound; and

(b) Sixty-five percent of the total number of fire department members and retired fire department members give prior approval.

(2) The supplemental monthly pension payment shall not exceed five percent of the monthly pension payment provided by section 31-30-1122 multiplied by the number of years of active service in excess of twenty years, up to a maximum of ten years; except that the total of the

monthly retirement pension payment provided by section 31-30-1122 and the supplemental monthly pension payment shall not exceed an amount that is actuarially sound.

Source: L. 95: Entire part added, p. 1376, § 2, effective June 5. **L. 98:** (2) amended, p. 65, § 3, effective March 23.

31-30-1126. Survivor benefit.

(1) Except as otherwise provided in subsection (3) of this section, upon the death of a retired fire department member or a volunteer firefighter who, regardless of age, has served the requisite number of years for retirement under section 31-30-1122 and who leaves a surviving spouse, the board may pay an annuity of not more than fifty percent of the current pension payment for a retired fire department member if the fund is actuarially sound. If the volunteer firefighter had less than twenty years of active service, the annuity to the surviving spouse shall be prorated based upon the number of years of service.

(2) This annuity to the surviving spouse shall cease if the surviving spouse remarries. Dissolution of a subsequent marriage does not reinstate the annuity. A surviving spouse shall not receive both an annuity under section 31-30-1127 and an annuity under this section.

(3) The benefits under this section do not apply if the optional survivor benefits under section 31-30-1128 are provided.

(4) The benefits under this section may be increased in the same manner as postretirement benefit increases as provided in section 31-30-1122 (3), subject to the state contribution limit set forth in section 31-30-1112 (2).

Source: L. 95: Entire part added, p. 1376, § 2, effective June 5. **L. 98:** (4) added, p. 809, § 5, effective May 26. **L. 2002:** (4) amended, p. 506, § 2, effective July 1.

31-30-1127. Survivor benefit - death from injuries in the line of duty.

(1) Except as otherwise provided in subsection (4) of this section, if a fire department member dies from injuries received while in the line of duty as a volunteer firefighter and leaves a surviving spouse, the board shall pay the surviving spouse a monthly annuity either in an amount the board deems proper and necessary, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater, or within limits prescribed by municipal ordinance or by rules of the board of the

affected municipality or district. The annuity shall cease if the surviving spouse remarries. Dissolution of a subsequent marriage does not reinstate the annuity.

(2) Except as otherwise provided in subsection (4) of this section, if there is no surviving spouse as provided in subsection (1) of this section but there is a surviving child of the deceased volunteer firefighter under eighteen years of age, the board shall pay a monthly annuity either in an amount the board deems proper or necessary, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater, or within limits prescribed by municipal ordinance or by rules of the board of the affected municipality or district. The board shall pay this annuity to the guardian of the child on behalf of the child. The annuity shall cease when the child is eighteen years of age.

(3) Except as otherwise provided in subsection (4) of this section, if there is no surviving spouse or child as provided in subsections (1) and (2) of this section but there is a surviving dependent parent of the deceased volunteer firefighter, the board shall pay the dependent parent a monthly annuity either in an amount the board deems proper and necessary, but not more than one-half the amount paid by the board pursuant to section 31-30-1122 (1) or two hundred twenty-five dollars, whichever is greater, or within limits prescribed by municipal ordinance or by rules of the board of the affected municipality or district. The annuity shall cease if the dependent parent remarries. Dissolution of a subsequent marriage does not reinstate the annuity.

(4) The benefits under this section:

(a) Are in addition to the educational benefits under section 23-3.3-205, C.R.S.;

(b) Do not apply if the optional survivor benefits under section 31-30-1128 are provided; and

(c) May be increased in the same manner as postretirement benefit increases as provided in section 31-30-1122 (3), subject to the state contribution limit set forth in section 31-30-1112 (2).

Source: L. 95: Entire part added, p. 1377, § 2, effective June 5. **L. 98:** Entire section amended, p. 809, § 6, effective May 26. **L. 2002:** (4)(c) amended, p. 506, § 3, effective July 1.

31-30-1128. Optional survivor benefits.

(1) Notwithstanding the provisions of sections 31-30-1126 and 31-30-1127 relating to payment of annuities in the event of the death of a volunteer firefighter in active service, the board in any municipality, with the prior consent of the governing body of such municipality, fire protection district, or county improvement district having a volunteer fire department may provide to the active members of the volunteer fire department the option of having the survivor benefits offered by this section in lieu of the purchase of individual, group, or blanket life, endowment, or annuity or variable annuity insurance pursuant to section 31-30-1114 (1)(a)(I) and

(1)(a)(II) and in lieu of the survivor benefits provided to active volunteer firefighters pursuant to sections 31-30-1126 and 31-30-1127 if the following conditions are met:

(a) Sixty-five percent of the active and retired volunteer firefighters of the affected volunteer fire department consent in writing to the option provided by this section;

(b) An actuarial review by an independent actuary indicates the option provided by this section is actuarially sound and will not impair the ability of pension funds to pay the annuities to a beneficiary or to pay pensions; and

(c) If a municipality intends to provide the option provided by this section, the governing body of the municipality consents to the option.

(2) The governing body of a municipality or the board of a fire protection district or county improvement district having a volunteer fire department that intends to provide the option provided by this section shall determine whether the survivor benefits are allowed only if the volunteer firefighter dies while on duty and shall determine the benefit amount equal to up to one hundred percent of the amount of the pension the volunteer firefighter would have been entitled to under this part 11 if the volunteer firefighter had retired immediately before the volunteer firefighter's death. If survivor benefits are provided pursuant to subsection (1) of this section to the members of a volunteer fire department and if a volunteer firefighter who is a member of such fire department dies on duty or, if authorized by the governing body or board, off duty, a spouse, dependent child, or dependent parent of the volunteer firefighter or, lacking such dependents, any other beneficiary who is a natural person and who has been designated by the volunteer firefighter shall receive a monthly annuity in the amount determined pursuant to this subsection (2).

(3) If survivor benefits are provided pursuant to subsection (1) of this section, the board shall pay the annuity authorized by this section to the designated beneficiary or to the legal guardian of the designated beneficiary who is a child under the age of eighteen as follows:

(a) Until the death of the beneficiary;

(b) If the beneficiary is a child under the age of eighteen, until the death of the child or until the child is eighteen years of age;

(c) If the beneficiary is a full-time student in an educational or vocational institution, until the beneficiary is twenty-three years of age;

(d) If the beneficiary is the surviving spouse, until the surviving spouse remarries; or

(e) Until the proceeds of the insurance policies provided in subsection (4) of this section and the accrued interest on such insurance proceeds are exhausted.

(4) To pay the costs of the option provided pursuant to this section, the board shall insure members of the volunteer fire department by insurance policies of individual, group, or blanket

life, endowment, or annuity insurance or variable annuity insurance. The pension fund must be the beneficiary of these insurance policies, and the proceeds of these insurance policies shall be paid to the board as an addition to the fund. Payment of the premiums on these policies shall be paid from the existing pension fund assets, from additional local contributions made to the existing pension fund for payment of the premiums, or both; except that, notwithstanding the provisions of section 31-30-1112 concerning the amount of state contributions to the pension fund, additional state contributions shall not be made to the existing pension fund assets for payment of the premiums on these policies or as a result of additional local contributions made to the existing pension fund for payment of the premiums.

(5) If survivor benefits are provided pursuant to subsection (1) of this section and if a volunteer firefighter terminates active duty before retirement, the board may allow the firefighter to purchase any insurance policy that was purchased pursuant to subsection (4) of this section at a price equal to the cash value of the policy. If the firefighter does not purchase the policy, the board shall surrender the policy for its cash value. Moneys obtained by the board pursuant to this subsection (5) shall be deposited in the pension fund and used to pay the costs of the survivor benefits provided pursuant to this section.

(6) The survivor benefits provided pursuant to subsection (1) of this section may be terminated at any time by either:

(a) A vote to terminate by the governing body of the municipality or the board of the fire protection district or county improvement district having a volunteer fire department;

(b) A vote to terminate approved by sixty-five percent of the members of the volunteer fire department.

Source: L. 95: Entire part added, p. 1377, § 2, effective June 5.

31-30-1129. Funeral benefit.

When an active volunteer firefighter or retired fire department member dies, the board shall pay a funeral benefit to assist in the proper burial of the deceased firefighter in an amount determined by the board of not more than twice the amount determined by the board under section 31-30-1122, but not less than one hundred dollars. The board shall pay this funeral benefit to any person who pays the necessary funeral expenses.

Source: L. 95: Entire part added, p. 1379, § 2, effective June 5. **L. 98:** Entire section amended, p. 810, § 7, effective May 26.

31-30-1130. Fire department dissolution.

(1) If a fire department dissolves and the services of volunteer firefighters or the fire department are discontinued:

(a) The benefits paid under this part 11 to volunteer firefighters or their surviving spouses, dependent parents, children, and other beneficiaries at the time of the dissolution shall continue;

(b) Assets of the fund shall be transferred with other assets of the fire department and shall be administered by the board of trustees of the successor pension fund;

(c) In no event shall the rate of compensation be altered either after commencement of proceedings for dissolution has occurred or after its completion;

(d) A volunteer firefighter who has accrued ten or more years of active service at the time of the dissolution shall be granted an annuity after the firefighter is fifty years of age. The annuity shall be prorated in accordance with the number of years of service and the amount of annuity being paid for age and service pensions by the board at the time of the dissolution.

Source: L. 95: Entire part added, p. 1380, § 2, effective June 5.

31-30-1131. Volunteer firefighter - employment termination restricted.

(1) An employer shall not terminate an employee who is a volunteer firefighter and who fails to report to work because the employee has responded to an emergency summons if the employee provides the employer with a written statement from the chief of the fire department that the employee's absence was due to the response.

(1.5) An employer shall not terminate an employee who is a volunteer firefighter and who leaves work to respond to an emergency summons, if:

(a) The employer does not deem the employee to be essential to the operation of the employer's daily enterprise;

(b) The employer has previously received written documentation from the fire chief of the employee's fire department notifying the employer of the employee's status as a volunteer firefighter;

(c) The emergency is within the response area of the employee's fire department and is of such magnitude that the emergency summons issued by the fire chief requires all firefighters to respond; and

(d) The chief of the employee's fire department provides the employer with a written statement verifying the time, date, and duration of the employee's response.

(2) An employer may deduct time lost from employment caused by a response to an emergency summons from the wages of an employee who is a volunteer firefighter.

(3) Notwithstanding the provisions of this section, if a volunteer firefighter is called to an emergency pursuant to part 8 of article 33.5 of title 24, C.R.S., the provisions of section 24-33.5-825 or 24-33.5-826, C.R.S., shall control regarding the volunteer firefighters absence or leave from work. Under no circumstances shall a volunteer firefighter's leave exceed the amount allowed pursuant to section 24-33.5-825 or 24-33.5-826, C.R.S.

Source: L. 95: Entire part added, p. 1380, § 2, effective June 5. **L. 2008:** Entire section amended, p. 339, § 2, effective April 8. **L. 2013:** (3) amended, (HB 13-1300), ch. 316, p. 1695, § 100, effective August 7.

Cross references: For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 109, Session Laws of Colorado 2008.

31-30-1132. Retired firefighter - return to active service - benefits.

If the governing body of any municipality, fire protection district, or county improvement district, by resolution, determines that a fire department is in need of additional volunteer firefighters, a retired fire department member shall be eligible to serve as an active volunteer firefighter of such fire department. Any retired fire department member who, subsequent to retirement, serves as an active volunteer firefighter for a fire department pursuant to this section shall continue to receive pension benefits from the volunteer firefighter pension fund under this article during the period in which the person is an active volunteer firefighter of the fire department. During the period such person is receiving a pension and acting as an active volunteer firefighter pursuant to this section, such person shall not receive service credit for the purpose of increasing such pension.

Source: L. 97: Entire section added, p. 169, § 1, effective March 28. **L. 2005:** Entire section amended, p. 776, § 62, effective June 1.

31-30-1133. Qualification requirements - internal revenue code - definitions.

(1) As used in this section, "internal revenue code" means the federal "Internal Revenue Code of 1986", as amended.

(2) Any volunteer firefighter pension plan established by this part 11 to provide retirement benefits for volunteer firefighters shall satisfy the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans. In order to meet those requirements, such plans are subject to the following provisions, notwithstanding any other provision of this part 11:

(a) The board shall distribute the corpus and income of the pension plan to members and their beneficiaries in accordance with this part 11 and the rules adopted by the board.

(b) No part of the corpus or income of the pension plan may be used for or diverted to any purpose other than that of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the pension plan, except for an assignment for child support debt pursuant to section 14-14-104, C.R.S., child support arrearages as requested as part of an enforcement action under article 5 of title 14, C.R.S., or child support arrearages that are the subject of enforcement services provided under section 26-13-106, C.R.S., and except for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., and a writ of garnishment that is the result of a judgment taken for arrearages for child support or for child support debt.

(3) A board may adopt any provision for a plan that is necessary to comply with the internal revenue code.

Source: L. 98: Entire section added, p. 22, § 1, effective March 16. **L. 2006:** (2)(b) amended, p. 179, § 2, effective March 31. **L. 2009:** Entire section amended, (HB 09-1030), ch. 16, p. 87, § 1, effective August 5.

31-30-1134. Statewide accidental death and disability insurance policy - department of local affairs.

(1) Beginning on July 1, 2004, the department of local affairs shall provide for and determine the cost of a statewide accidental death and disability insurance policy to cover all volunteer firefighters serving in volunteer or paid and volunteer fire departments, the insurance to be applicable only when serving as a volunteer firefighter. The policy shall be paid for as provided in section 31-30-1112 (2)(h)(II) from the proceeds of the tax imposed by section 10-3-209, C.R.S.

(2) The department of local affairs shall set the amount of coverage to be provided for each volunteer firefighter, take competitive bids for the policy from insurers, and make such rules as may be necessary to provide for the policy.

(3) The department of local affairs shall secure an accidental death and disability insurance policy that offers the best benefits available for the amount of moneys transferred to the department pursuant to section 31-30-1112 (2)(h)(II).

(4) The insurer shall have sole power to determine disability for volunteer firefighters under the policy provided by this section.

(5) The department of local affairs shall have the authority to contract with any entity for the purpose of complying with the requirements of this section.

Source: L. 2004: Entire section added, p. 1136, § 3, effective July 1.

PART 12

VOLUNTEER SERVICE AWARD ACT

31-30-1201. Short title.

This part 12 shall be known and may be cited as the "Volunteer Service Award Act".

Source: L. 2007: Entire part added, p. 193, § 1, effective March 26.

31-30-1202. Definitions.

As used in this part 12, unless the context otherwise requires:

(1) "Bona fide volunteer" means a person who renders qualified services for an emergency service provider if the only compensation received by the person for performing the qualified services is in the form of:

(a) Reimbursement, or a reasonable allowance, for reasonable expenses incurred in the performance of such services; or

(b) Reasonable benefits, including length of service awards, and nominal fees for qualified services customarily paid by an eligible emergency service provider in connection with the performance of such services.

(2) "Emergency service provider" means a local government or an authority formed by two or more local governments that provides any of the following services:

(a) Fire fighting and prevention services;

(b) Emergency medical services; or

(c) Ambulance services through the use of volunteers.

(3) "Qualified services" means fire fighting and prevention services, emergency medical services, and ambulance services.

(4) "Volunteer service award" means a benefit based on length of service that a volunteer may legally accrue pursuant to current rulings of the internal revenue service and that, while invested under a volunteer service award plan adopted pursuant to this part 12, is exempt from federal income taxes on both the emergency service provider's contribution and all interest, dividends, and capital gains until the ultimate distribution to the volunteer.

Source: L. 2007: Entire part added, p. 193, § 1, effective March 26.

31-30-1203. Volunteer service award plan.

(1) The governing body of any emergency service provider may adopt and amend or provide for the administration and amendment of a volunteer service award plan for bona fide volunteers.

(2) If the governing body of the emergency service provider chooses to adopt and amend or provide for the administration and amendment of a volunteer service award plan, the body shall adopt a plan document providing for the administration of the volunteer service award that is intended to comply with the provisions of section 457 (e)(11) of the federal "Internal Revenue Code of 1986", as amended. The emergency service provider shall be responsible for ensuring that such plan document is in compliance with applicable law. Participation by volunteers shall be subject to the requirements and limitations of said section 457 (e)(11) and the applicable regulations promulgated under said section 457.

(3) The governing body of the emergency service provider that adopts a volunteer service award program shall invest public moneys held to pay such awards as may be allowed pursuant to parts 6 and 7 of article 75 of title 24, C.R.S.

(4) The existence or enactment of any qualified length of service plan to recognize volunteer service that is in effect prior to March 26, 2007, is hereby authorized.

(5) Notwithstanding any provision in this part 12 to the contrary, nothing shall preclude an emergency service provider from adopting any other incentive programs to assist bona fide volunteers.

Source: L. 2007: Entire part added, p. 194, § 1, effective March 26.

PART 13

VOLUNTEER HEALTH INSURANCE ACT

31-30-1301. Short title.

This part 13 shall be known and may be cited as the "Volunteer Health Insurance Act".

Source: L. 2008: Entire part added, p. 579, § 3, effective August 5.

31-30-1302. Definitions.

As used in this part 13, unless the context otherwise requires:

(1) "Bona fide volunteer":

(a) Has the meaning set forth in section 31-30-1202; and

(b) Means any volunteer member of a rescue unit as defined in section 25-3.5-103, C.R.S.

(2) "Carrier" means an entity that provides health coverage in this state, including a franchise insurance plan, a fraternal benefit society, a health maintenance organization, a nonprofit hospital and health service corporation, a sickness and accident insurance company, and any other entity providing a health insurance or health benefits plan or policy subject to the insurance laws and regulations of Colorado.

(3) "Emergency service provider"has the meaning set forth in section 29-11-101, C.R.S.

(4) "Group health insurance plan" means a group sickness and accident insurance plan as described in section 10-16-214, C.R.S.

(5) "Qualified services" means firefighting and fire prevention services, emergency medical services, ambulance services, and search and rescue services.

Source: L. 2008: Entire part added, p. 579, § 3, effective August 5.

31-30-1303. Group health insurance plan.

(1) The governing body of an emergency service provider may enter into insurance contracts with carriers to provide group health insurance plans for its bona fide volunteers. The cost of the plans, sources of funding, amount of contributions required from bona fide volunteers, coverage parameters, and eligibility requirements shall be negotiated by the governing body and the carrier. Nothing in this section shall be construed to preclude a governing body from participating in an insurance pool or from allowing its bona fide volunteers to participate in the group health insurance plan offered to the paid employees of the governing body.

(2) The administration and management of a group health insurance plan shall be the exclusive responsibility of the carriers of the plan.

(3) This section shall apply only to bona fide volunteers deemed to be active and in good standing by the emergency service provider.

Source: L. 2008: Entire part added, p. 580, § 3, effective August 5.

ARTICLE 30.5

Fire - Police - Old Hire Pension Plans

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PART 1

GENERAL PROVISIONS

31-30.5-101. Legislative declaration.

(1) The general assembly finds and determines that police officers, in saving and protecting the lives and property of the citizens and residents of the state of Colorado, are performing state duties and are rendering services of special benefit to this state and that it is the province, right, and obligation of the state of Colorado to care for members of the police force who are entitled to retirement because of length of service or old age or because they have been injured or disabled in service and also to care for the spouses, dependent parents, and dependent children of such police officers.

(2) The general assembly further finds and determines that the establishment of firefighters' pension plans in this state is a matter of statewide concern that affects the public safety and general welfare.

Source: L. 96: Entire article added with relocations, p. 856, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-301.

31-30.5-102. Definitions.

As used in this article 30.5, unless the context otherwise requires:

(1) "Affiliated board" means any board affiliated, as specified in section 31-31-701, with the fire and police pension association created in section 31-31-201.

(1.5) "Board" means the board of trustees established as the governing body of the firefighters' or police officers' old hire pension fund as provided in sections 31-30.5-202 and 31-30.5-203.

(2) "Employer" means any municipality in this state offering police or fire protection service employing one or more members and any special district or county improvement district in this state offering fire protection service employing one or more members.

(3) "Fund" means the applicable firefighters or police officers' pension fund created in section 31-30.5-201.

(4) "Member" means an active employee who is a full-time salaried employee of a municipality, fire protection district, or county improvement district normally serving at least one thousand six hundred hours in any calendar year and whose duties are directly involved with the provision of police or fire protection, as certified by the employee's employer. The term does not include clerical or other personnel whose services are auxiliary to police or fire protection.

(5) "Old hire member" means a member meeting the requirements of section 31-30.5-103 (1) who is not otherwise excluded from an old hire pension plan coverage under section 31-30.5-103 (2).

Source: L. 96: Entire article added with relocations, p. 857, § 1, effective May 23. **L. 2009:** (1) amended and (1.5) added, (HB 09-1030), ch. 16, p. 89, § 2, effective August 5. **L. 2025:** IP amended and (5) added with relocations, (SB 25-275), ch. 377, p. 2091, § 271, effective August 6.

Editor's note: Subsection (5) is similar to former § 31-30.5-103 (3) as it existed prior to 2025.

31-30.5-103. Applicability.

(1) (a) Except as provided in subsection (2) of this section, every employer in this state shall provide the applicable pension benefits of the old hire police or fire pension plan established by this article for members hired on or before April 7, 1978.

(b) In addition to paragraph (a) of this subsection (1), every employer in this state shall provide the applicable pension benefits of the old hire police or fire pension plan established by this article for members hired on or after April 8, 1978, but before January 1, 1980, if:

(I) The member has prior service as a firefighter or police officer in the state of Colorado;

(II) The current employer approved coverage under its old hire pension plan or any other local plan;

(III) The member contributed to the old hire pension fund of the current employer the amount of money that the member would have paid if all the member's prior service had been as an employee of the current employer, such makeup contribution to have been paid over a three-year period; and

(IV) The member requested such coverage, in writing, on or before December 31, 1981.

(2) The following members, otherwise eligible to participate in an old hire pension plan pursuant to subsection (1) of this section shall be exempt from participation:

(a) Members covered under an exempt pension plan established by part 8 of this article;

(b) Members who, pursuant to the affiliation of their old hire pension plan with the fire and police pension association as provided by section 31-31-701, elect to become covered under the provisions of the defined benefit component of the statewide retirement plan, established by article 31.5 of this title; and

(c) Members covered under the federal "Social Security Act", unless their employer also provides supplemental retirement benefits under an old hire pension plan.

(3) Repealed.

Source: L. 96: Entire article added with relocations, p. 857, § 1, effective May 23. **L. 2014:** (2)(b) amended, (SB 14-031), ch. 52, p. 247, § 8, effective March 20. **L. 2024:** (2)(b) amended, (HB 24-1042), ch. 15, p. 36, § 2, effective March 6. **L. 2025:** (3) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6.

Editor's note: (1) This section was formerly numbered as § 31-30-1003.

(2) Subsection (3) was relocated to § 31-30.5-102 in 2025.

ANNOTATION

Annotator's note. Since § 31-30.5-103 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Non-vesting provisions constitutional. Notwithstanding the holding in City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1981), that the 1978 version of the Policeman's and Fireman's Pension Reform Act constituted unconstitutional retrospective legislation, the non-vesting provisions of said act are severable and therefore constitutional. Steins v. Fire & Police Pension Ass'n, 684 P.2d 180 (Colo. 1984).

Plaintiffs not entitled to greater benefits under Denver plan. Peterson v. Fire & Police Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part, rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The provisions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. Littleton v. Fire & Police Pension Ass'n, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. City of Lamar v. Lamar Police Dept., 857 P.2d 457 (Colo. App. 1992).

PART 2

ADMINISTRATION

31-30.5-201. Funds created.

(1) There is created and established in each employer having fire department old hire members, a pension fund to be known as the "firefighters' old hire pension fund".

(2) There is created and established in each employer having police department old hire members, a pension fund to be known as the "police officers' old hire pension fund".

Source: L. 96: Entire article added with relocations, p. 858, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-501 and 31-30-601.

ANNOTATION

Annotator's note. Since § 31-30.5-201 is similar to §§ 31-30-401 and 31-30-501 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of those sections has been included in the annotations to this section.

Board does not have discretionary power to alter pension eligibility requirements mandated by the general assembly. Agee v. Trustees of Pensions Bd., 33 Colo. App. 268, 518 P.2d 301 (1974).

Standard of review in case of pension eligibility is whether the criteria applied by the board conforms with statutory provisions, not whether the board abused its discretion in granting the pensions. Agee v. Trustees of Pension Bd., 33 Colo. App. 268, 518 P.2d 301 (1974).

Firemen's pension act does not impair obligation of contracts of employment in violation of § 11 of art. II, Colo. Const. Huff v. Mayor & City Council, 182 Colo. 108, 512 P.2d 632 (1973).

Pension plans matter of statewide concern. Pension plans for firemen have a direct bearing on the matter of fire protection and are for that reason matters of statewide concern. Huff v. Mayor & City Council, 182 Colo. 108, 512 P.2d 632 (1973).

City ordinances inconsistent with firemen's pension act fail. Because the subject of firemen's pensions has statewide dimensions, inconsistent provisions of a city ordinance must fail insofar as they are inconsistent with the firemen's pension act. Huff v. Mayor & City Council, 182 Colo. 108, 512 P.2d 632 (1973).

Those sections of the Colorado Springs municipal code which bear on the question of firemen's pensions, insofar as they conflict with the firemen's pension act, are invalid, and the provisions of the firemen's pension act apply to the city of Colorado Springs. Huff v. Mayor & City Council, 182 Colo. 108, 512 P.2d 632 (1973).

Firemen's pension act requires only two things of cities over 100,000 population: (1) These cities are required to activate a board of trustees which is to administer the retirement system; and (2) these cities are required to levy a one mill tax on the taxable property of the city for benefit of the fund. Huff v. Mayor & City Council, 182 Colo. 108, 512 P.2d 632 (1973).

Board does not have discretionary power to alter pension eligibility requirements mandated by the general assembly. Agee v. Trustees of Pension Bd., 33 Colo. App. 268, 518 P.2d 301 (1974).

Standard of review in case of pension eligibility is whether the criteria applied by the board conform with statutory provisions, not whether the board abused its discretion in granting the pensions. Agee v. Trustees of Pension Bd., 33 Colo. App. 268, 518 P.2d 301 (1974).

The Public Employee Retirement Association (PERA) and the Policemen's and Firemen's Pension Reform Act statutory provisions have established a defined benefit contributory pension system in which most public employees are required to participate. By making these contributions, employees obtain a limited vesting of pension rights, which ripen into vested pension rights upon attainment of the respective eligibility requirements. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

The city of Colorado Springs is subject to the state statutory scheme which requires that cities which have a paid fire department and a population in excess of 100,000 establish a fire fighters pension fund. These provisions require that the fund be administered by a board of trustees who must follow certain guidelines. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

31-30.5-202. Board of trustees - firefighters' old hire pension fund.

(1) The general supervision, management, and control of the firefighters' old hire pension fund shall be vested in a board of trustees.

(2) In any municipality having a population of less than one hundred thousand, the board shall consist, except as provided in subsection (6) of this section, of the mayor, the municipal treasurer or finance officer, one other person appointed by the governing body of such municipality, and three active or retired old hire members of the fire department serving the municipality who shall be elected by the active and retired old hire members of the fire department. The terms of office on the board shall be: The mayor of the municipality, during tenure in office; the treasurer or finance officer, during tenure in office; the appointed citizen, to be designated by the governing body of the municipality at time of appointment; the three active or retired old hire members of the fire department, to be elected for terms of three years, but at the initial election to be conducted to elect old hire members of the fire department, one old hire member shall be elected for a three-year term, one old hire member for a two-year term, and one old hire member for a one-year term. Thereafter, such old hire members shall be elected for three-year terms. Said board shall elect from its number a president and secretary. The municipal treasurer or finance officer shall be ex officio treasurer of the board.

(3) (a) In any municipality having a population of at least one hundred thousand, the board shall be composed of the mayor, the manager of safety, the manager of revenue, the chief of the fire department, and the city auditor or such persons performing the duties of the above-named

officers, and also two active or retired old hire members of the fire department to be selected as provided in paragraph (b) of this subsection (3).

(b) During the month of July in each year, the chief officer of the fire department shall conduct an election by secret ballot, at which election all active and retired old hire members of the fire department shall be eligible to vote, for the purpose of determining membership on the board. In the first election so held, two old hire members shall be elected, the member receiving the highest number of votes being elected for a term of two years and the member receiving the next highest number of votes being elected for a term of one year. Upon election, such members shall be certified as members of the board and shall take office on the August 1 following their election. In subsequent elections, only one old hire member shall be elected for a term of two years, and the member receiving the highest number of votes in each subsequent election shall be certified as a member of the board and shall take office on the August 1 following the member's election. In case any old hire member so elected to the board becomes unable or ineligible to serve on the board by reason of death, disability, or for any other cause, a special board election shall be held to fill the vacancy so created for the remainder of the unexpired term.

(c) The board shall select from their number a president and a secretary, and the manager of revenue, or the person performing the duties thereof, shall be ex officio treasurer of said board and custodian of all funds coming into its hands.

(4) In fire protection districts, except as provided in subsection (6) of this section, the board shall consist of the board of directors of the fire protection district, the treasurer of the board of the fire protection district to be treasurer of the fund, and two active or retired old hire members of the fire department. The trustees shall serve terms of office on the board as follows: The president for the term of office, the treasurer for tenure in office, and two active or retired old hire members for two-year terms of office. Initial election of the old hire members of the fire department shall be conducted to elect one old hire member for two years and one old hire member for one year.

(5) In county improvement districts, the board shall consist of one member of the governing board of the county in which the district is located, the county treasurer or finance officer, three residents of the county obligated to pay real or personal property taxes, and two active or retired old hire members of the fire department. The trustees shall serve terms of office on the board as follows: Members of the governing board, during their tenure in office; the county treasurer, during the treasurer's tenure in office; and the two active or retired old hire members of the fire department for two-year terms of office.

(6) Notwithstanding the provisions of subsections (2), (3), and (4) of this section, any municipality or fire protection district, with the concurrence of a majority of the active and retired old hire members voting thereon, may by ordinance or resolution create the board to administer the fund if the number of employer representatives on such board equals the number of member representatives on such board; except that, if fewer than two old hire members are

available or willing to serve on such board, the number of employer representatives may exceed the number of member representatives.

(7) In case of any consolidation or merger of any municipality, fire protection district, or county improvement district with one or more municipalities, fire protection districts, or county improvement districts, the former trustees of the various firefighters' pension funds of such consolidated or merged political subdivisions shall, with due regard to equal representation, elect seven persons from their number to serve as trustees of the old hire firefighters' pension fund of said merged or consolidated fund, not more than three of whom shall be old hire members, and the former trustees not so elected to serve shall cease to hold office. The trustees of said consolidated fund shall elect from their number a president, secretary, and treasurer.

(8) The treasurer of the board, in addition to any custodian appointed by the board pursuant to section 31-30.5-204 (4), shall be the custodian of the fund and shall secure and safely keep the same, subject to the control and direction of the board, and shall keep books and accounts concerning said fund in such manner as may be prescribed by the board. The books and accounts shall always be subject to the inspection of the board or any member thereof or any other interested person. The treasurer, upon expiration of the treasurer's term of office, shall surrender and deliver to the treasurer's successor all bonds, securities, and unexpended moneys or other property that came into the treasurer's hands as treasurer of said fund. The treasurer shall be required to supply bond in an amount designated by the board and paid for by the fund.

Source: L. 96: Entire article added with relocation, p. 858, § 1, effective May 23. **L. 2003:** (2) and (3)(a) amended, p. 826, § 1, effective April 1. **L. 2005:** (2), (3)(b), (4), and (5) amended, p. 134, § 1, effective August 8.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-402 (1)(a), (1)(b), (2)(a), (2.5), and (3), 31-30-411, and 31-30-502.

31-30.5-203. Board of trustees - police officers' old hire pension fund.

(1) The general supervision, management, and control of the police officers' old hire pension fund shall be vested in a board of trustees.

(2) In any municipality having a population of less than one hundred thousand, unless it is a home rule city or town that provides for the composition of the board by charter or ordinance, the board shall consist of the mayor, the municipal treasurer, the clerk, and one active old hire member of the police department who shall be elected by the active old hire members of the department; except that, if there are no active old hire members available or willing to serve on

such board, such board shall consist of the mayor, the municipal treasurer, and the clerk. Said board shall select from their number a president and a secretary. The municipal treasurer shall be ex officio treasurer of said board and custodian of all funds coming into the treasurer's hands.

(3) In any municipality having a population of at least one hundred thousand, the board shall consist of such persons or officials as may be designated by the charter and ordinances thereof.

(4) The treasurer of the board, in addition to any custodian appointed by the board pursuant to section 31-30.5-204 (4), shall be the custodian of the fund, shall secure and safely keep the same, subject to the control and direction of the board, and shall keep books and accounts concerning said fund in such manner as may be prescribed by the board. The books and accounts shall always be subject to the inspection of the board, any member thereof, or any other interested person. Said treasurer, upon expiration of the treasurer's term of office, shall surrender and deliver to the treasurer's successor all bonds, securities, and unexpended moneys or other property that came into the treasurer's hands as treasurer of the fund. The treasurer shall be required to supply bond in an amount designated by the board and paid for by the fund.

Source: L. 96: Entire article added with relocations, p. 861, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-304, 31-30-305 (1), and 31-30-612.

31-30.5-204. Powers and duties of the board.

(1) The board shall:

(a) Promulgate all necessary rules, not inconsistent with the provisions of this article, for managing and discharging its duties and for its own government and procedure in so doing and for the preservation and protection of the fund.

(b) Hear and decide all applications for relief, pensions, annuities, retirement, or other benefits under the provisions of this article. Action on such applications shall be final and conclusive; except that, when, in the opinion of the board, justice demands that said action should be reconsidered, the same may be reversed by said board.

(c) Keep and preserve a record of actions taken by the board and of all other matters properly before said board.

(d) Make an annual report to the governing body of the employer of the condition of the fund in August of each year.

(2) The board has power to compel witnesses to attend and testify before it upon all matters connected with the provisions of this article in the same manner as is or may be provided by law. The president of said board or any member thereof may administer oaths to such witnesses.

(3) The board has the power to draw on the fund for the payment of expenses attributable to the administration of the fund, the payment of benefits, and for the purpose of investing all or any part of the fund as permitted by part 5 of this article.

(4) The board may designate one or more financial institutions as custodian of the fund. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires. All moneys paid or transmitted to the custodian shall be credited to appropriate accounts in the fund and the custodian shall maintain a current inventory of all investments of the fund.

(5) In municipalities that prescribe the composition of the board for the police officers' old hire pension fund by ordinance or charter, the board shall have such additional powers and duties as may be provided by the charter and ordinances of such municipalities.

Source: L. 96: Entire article added with relocations, p. 862, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-305 (4), 31-30-312 (1) and (2), 31-30-403 (3)(a), 31-30-502 (1)(b), and 31-30-615.

ANNOTATION

Annotator's note. Since § 31-30.5-204 is similar to §§ 31-30-505 and 31-30-605 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

The words "final and conclusive" merely determine the point of administrative finality, leaving to the courts the ultimate decision on the validity of the "final" administrative orders. City of Aurora v. Hood, 194 Colo. 80, 570 P.2d 246 (1977).

And indicate legislative intent as to review. The words "final and conclusive" are an indication by the general assembly of its intent to provide the same type of review on the record customarily available under other statutes dealing with review of administrative orders. City of Aurora v. Hood, 194 Colo. 80, 570 P.2d 246 (1977).

Constitutionality of no review by courts of board decision not decided. In this case the court expressly reserved the question of the constitutionality of the provision of this section making the action of the firemen's pension board not subject to review by the

courts. Shearer v. Bd. of Trustees of Firemen's Pension Fund, 121 Colo. 592, 218 P.2d 753 (1950).

31-30.5-205. Attorneys to advise.

It is the duty of the attorneys for the employer to advise the boards on all matters pertaining to their duties and management of the fund when required to do so. Such attorneys shall represent and defend the boards as their attorneys in all suits or actions at law or in equity that may be brought against them and bring all suits and actions in their behalf that may be required or determined upon by said boards. In the event of a conflict between a board and an employer, the board may obtain legal counsel to represent the board in any such action at the expense of the board.

Source: L. 96: Entire article added with relocations, p. 863, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-414.

31-30.5-206. Warrants drawn.

It is the duty of such officers of the municipality, fire protection district, or county improvement district as are designated by law to draw warrants on the treasurer of said municipality, fire protection district, or county improvement district on orders by the board, to draw warrants thereon, payable to the treasurer of said board for all funds belonging to the fund.

Source: L. 96: Entire article added with relocations, p. 864, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-410 (1).

31-30.5-207. Method of payment.

All moneys ordered to be paid from the fund to any person shall be paid by the treasurer only upon the warrant signed by the president of said board and countersigned by the secretary thereof. No warrant shall be drawn except by order of the board after having been duly entered on the records of the proceedings of the board.

Source: L. 96: Entire article added with relocations, p. 864, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-410 (2).

31-30.5-208. Fund not subject to levy.

Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., and for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to this article where the offender or a related party received direct financial gain, no portion of the fund, before or after its order for distribution by the board to the persons entitled thereto, shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree, or process or proceeding whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against the employer or the beneficiary of the fund. Said fund shall be held and distributed for the purposes of this article and for no other purpose whatsoever.

Source: L. 96: Entire article added with relocations, p. 864, § 1, effective May 23; entire section amended, p. 627, § 45, effective July 1; entire section amended, p. 1464, § 13, effective January 1, 1997. **L. 2005:** Entire section amended, p. 75, § 12, effective August 8.

ANNOTATION

Annotator's note. Since § 31-30.5-208 is similar to §§ 31-30-313 and 31-30-412 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

Intent of section. This section and section 31-30-412 are obviously intended to protect the pension funds from attachment and levy by creditors. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Reason for restriction on use of pension funds. This section and section 31-30-412 place a restriction on the use of pension funds in order to secure the funds for the use and benefit of the firemen and policemen who contributed to the fund. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

31-30.5-209. Idle funds.

(1) If the governing body of a municipality, by resolution, finds that no person named in this article is, and no such person can become, eligible for payment of a benefit from the municipality's police officers' old hire pension fund established pursuant to section 31-30.5-201 (2), it may authorize use of the money in the fund to make contributions to the defined benefit system trust fund pursuant to part 3 of article 31.5 of this title 31, to make contributions to a police benefit fund established pursuant to section 31-31-601 (1)(b), as said section existed prior to its repeal, or to make contributions under the federal social security laws if the municipality's police officers are covered by the social security laws. To the extent that money in the fund exceeds three times the present yearly employer contribution to any of the preceding benefit funds on behalf of the municipality's current police officers, such excess may be used for any law-enforcement-related purpose. If the municipality does not employ any police officer, the governing body may authorize use of the money in the fund for any law-enforcement-related purpose. In addition, any money in the fund that is attributable to contributions by the municipality and to interest on such contributions may be used for any police-related purpose and, if no such police-related need exists, then for any purpose as decided by the governing body of the municipality. For the purposes of this subsection (1), contracting with the county or county sheriff for law enforcement service shall not be considered employment of a police officer.

(2) If the governing body of a municipality, fire protection district, or county improvement district, by resolution, finds that no person named in this article is, and no such person can become, eligible for payment of a benefit from the employer's firefighters' old hire pension fund, it may authorize use of the money in the fund to make contributions to the defined benefit system trust fund pursuant to part 3 of article 31.5 of this title 31 or to make contributions under the federal social security laws if the employer's firefighters are covered by the social security laws. In addition, any money in the fund that is attributable to contributions by the municipality or district and to interest on such contributions may be used for any fire-related purpose and, if no such fire-related need exists, for any purpose as decided by the governing body of the municipality or district.

(3) (a) At least sixty days before adoption of a resolution permitted by subsection (1) or (2) of this section, the governing body of the municipality or district shall publish one notice in a newspaper having general circulation within the municipality or district and shall provide a copy of such published notice to the board of directors of the state fire and police pension association established pursuant to section 31-31-201 (1). The notice shall state the intent of the governing

body to use the money in the fund for the purposes permitted in this section. The notice shall state that persons who believe they are or may be entitled to benefit payments from the fund shall have fifty days from the date of the notice in which to file an objection, in writing, with the governing body regarding its proposed use of the fund. If any such written objection is received, the governing body shall hold a public hearing before adoption of any resolution under this section with prior published notice of the time and place of the hearing as well as written notice of such hearing mailed, by certified mail, to each person filing a written objection.

(b) If, within one year after adoption of a resolution pursuant to this section, any person establishes a claim to a benefit from the fund, the municipality or district shall repay to the fund any money expended from such fund pursuant to this section, and no such additional expenditures shall be made from the fund.

(4) (a) (I) Notwithstanding the provisions of subsections (1) and (2) of this section and subject to the provisions of paragraph (c) of this subsection (4), if no members are active participants in an employer's old hire pension plan established under this article, the governing body of the employer, by resolution, may authorize the use of the excess balance in the plan fund for the purposes permitted in subsections (1) and (2) of this section. If a governing body authorizes the use of the excess balance under this subsection (4), the employer shall maintain the plan fund at a level equal to at least two times the amount necessary to fund the benefit liabilities of any persons continuing to receive benefits from the plan fund.

(II) For purposes of this paragraph (a), "excess balance" means the amount in an old hire plan fund in excess of two times the amount necessary to fund the benefit liabilities of persons continuing to receive benefits from the plan fund, as determined by the plan's actuary. In determining the excess balance in an old hire plan fund, the actuary shall utilize the assumptions approved by the board of directors of the fire and police pension association pursuant to section 31-30.5-306 (2)(b).

(b) Notwithstanding the provisions of subsections (1) and (2) of this section and paragraph (a) of this subsection (4) and subject to the provisions of paragraph (c) of this subsection (4), if no members are active participants in an employer's old hire pension plan established under this article and the plan provides no rank escalation benefit to persons receiving benefits from the plan fund, the board, after disclosure to the affected retirees, is authorized to use the assets in the plan fund for the purpose of purchasing annuities in amounts sufficient to pay any required benefits, including nondiscretionary cost-of-living adjustments required under the plan, to those persons who continue to receive benefits from the plan fund. If the board purchases annuities for such persons, the governing body of the employer, by resolution, may authorize the use of any additional funds that remain in the plan fund after purchasing such annuities for the purposes permitted in subsections (1) and (2) of this section. Annuities may be purchased pursuant to this paragraph (b) only from insurance companies rated at least A+ by the A.M. Best company or rated at least AA by Standard & Poors Corporation. If there is a default on the payment of

benefits resulting from an annuity purchased under this paragraph (b), the employer remains liable to make any required benefit payments to persons for whom the annuities were purchased.

(c) Moneys in the plan fund in excess of the amount required to purchase annuities as provided in paragraph (b) of this subsection (4), if any, may be used to purchase additional benefits or may be treated as an excess balance as provided in paragraph (a) of this subsection (4).

Source: L. 96: Entire article added with relocations, p. 864, § 1, effective May 23. **L. 97:** (4) added, p. 21, § 1, effective July 1. **L. 2002:** (4)(c) amended, p. 173, § 1, effective October 1. **L. 2006:** (1) and (2) amended, p. 180, § 3, effective March 31. **L. 2008:** (4)(c) amended, p. 14, § 2, effective August 5. **L. 2014:** (4) amended, (SB 14-031), ch. 52, p. 235, § 1, effective March 20. **L. 2024:** (1) and (2) amended, (HB 24-1042), ch. 15, p. 37, § 3, effective March 6.

Editor's note: Provisions of this section were formerly numbered as § 31-30-313 (2)(a) and § 31-30-412 (2)(a) to (2)(c).

ANNOTATION

Annotator's note. Since § 31-30.5-209 is similar to §§ 31-30-313 and 31-30-412 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

The general assembly has neither expressly authorized nor forbidden a refund of individual pension fund contributions on termination of employment. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Home-rule city can contract to make such refunds. A home-rule city has authority to contract with its firemen and policemen to refund the employee's individual contributions to the respective pension funds on termination of employment prior to qualification for pension benefits. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Permitting the refund of individual pension fund contributions upon termination of employment is simply an extension of the general principle of protecting the welfare of contributors to the fund. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

And denial of refunds would then be unjust. Where the city has contracted to make refunds of employee's contributions to pension funds on termination of employment, and policemen and firemen have relied upon such representations, to

deny the refunds sought would be an unjust and unreasonable result. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

31-30.5-210. Plan amendment.

(1) No modification of any provision of an old hire pension plan established pursuant to this article may be made after December 1, 1978, except as may be authorized by subsection (2) of this section.

(2) Upon the request of an employer and with the approval of sixty-five percent of the active and retired old hire members, the board of directors of the fire and police pension association established pursuant to section 31-31-201 (1), shall permit the modification of any provision of an old hire pension plan established pursuant to this article, if the board determines that such modification will maintain or enhance the actuarial soundness, as defined in section 31-31-102 (1), of such fund. In addition, upon the request of an employer, the board shall permit the modification of any provision of an old hire pension plan necessary to comply with state or federal law. Such modification may be made without the approval of the active and retired old hire members. This subsection (2) shall not be construed to authorize the board to allow a modification of any such old hire plan so as to change the nature of the plan from a defined benefit plan to a money purchase plan or to adversely affect the pension benefits of active or retired old hire members.

Source: L. 96: Entire article added with relocations, p. 865, § 1, effective May 23. **L. 2003:** (2) amended, p. 827, § 2, effective April 1. **L. 2005:** (2) amended, p. 135, § 2, effective August 8.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-805 (10)(a) and 31-30-1005 (6).

ANNOTATION

Annotator's note. Since § 31-30.5-210 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of those sections have been included in the annotations to this section.

Legislative intent under former provision. Although this part does not specifically state that a city will be solely liable for making pension funds actuarially sound, it is apparent that this was the legislative intent. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

Fact that the general assembly increased the mandatory municipal contribution in this part does not mean that the general assembly intended in § 31-30-503 that cities should be totally financially responsible for pension funds. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

Section prevails over § 31-30-503 under former law. This section has a later effective date than § 31-30-503 and therefore prevails. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

Governing body controls amount of employee contribution. The governing body of the municipality has control over the amount of the employee contribution up to the prescribed maximum. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-30.5-211. Affiliation with the fire and police pension association.

Any employer may elect affiliation with the fire and police pension association established by section 31-31-201 (1), relating to an old hire pension plan established pursuant to this article. The procedures for affiliation and other provisions governing the administration of an affiliated plan are set forth in section 31-31-701.

Source: L. 96: Entire article added with relocations, p. 866, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1003 (3)(a).

ANNOTATION

Annotator's note. Since § 31-30.5-211 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of those sections have been included in the annotations to this section.

Plaintiffs not entitled to greater benefits under Denver plan. Peterson v. Fire & Police Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part, rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The provisions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. Littleton v. Fire & Police Pension Ass'n, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. City of Lamar v. Lamar Police Dept., 857 P.2d 457 (Colo. App. 1992).

31-30.5-212. Qualification requirements - internal revenue code - definitions.

(1) As used in this section, "internal revenue code" means the federal "Internal Revenue Code of 1986", as amended.

(2) Old hire pension plans shall satisfy the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans.

(3) A board, as defined in section 31-30.5-102 (1.5), may adopt any provision for an old hire pension plan that is necessary to comply with the internal revenue code.

(4) (a) The board of directors of the fire and police pension association established by section 31-31-201 may create a master plan document for old hire pension plans and may submit the master plan document to the internal revenue service for a determination of its status as a qualified plan under the internal revenue code. The master plan document shall include provisions necessary to comply with the internal revenue code.

(b) The board of directors of the fire and police pension association established by section 31-31-201 may:

(I) Amend the master plan document as may be necessary to comply with the internal revenue code; and

(II) Require an affiliated board to adopt the master plan document or to obtain internal revenue service approval for its old hire pension plan.

(c) Nothing in this subsection (4) shall preclude an affiliated board from submitting its plan document to the internal revenue service for a determination of its plan document's status as a qualified plan under the internal revenue code.

(5) The old hire pension funds established by this article shall be held in trust for the benefit of old hire members and other persons entitled to benefits. No part of the corpus or income of a pension fund shall be used for or diverted to purposes other than for the exclusive benefit of old hire members or other persons entitled to benefits from the pension fund and for expenses incident to operation of the pension fund. No person shall have any interest in or right to any part of the corpus or earnings of the pension trust except as expressly provided, including assignments for child support purposes as provided for in section 14-14-104, C.R.S., child support arrearages as requested as part of an enforcement action under article 5 of title 14, C.R.S., or child support arrearages that are the subject of enforcement services provided under section 26-13-106, C.R.S., income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, and payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S.

Source: L. 96: Entire article added with relocations, p. 866, § 1, effective May 23. **L. 98:** (8) amended and (9) and (10) added, p. 24, § 2, effective March 16. **L. 2006:** (2) amended, p. 180, § 4, effective March 31. **L. 2009:** Entire section R&RE, (HB 09-1030), ch. 16, p. 89, § 3, effective August 5.

Editor's note: This section was formerly numbered as § 31-30-324.5.

31-30.5-213. Dissolution of fire departments.

In the event of dissolution, for any reason, of fire departments whereby the services of firefighters or fire departments are discontinued, the firefighters or their surviving spouses, dependent parents, and children receiving benefits at the time of such dissolution shall continue to receive such benefits in accordance with the provisions of this article. Assets of the pension funds shall be transferred with other assets of the department and shall be administered by the board of trustees of the successor pension fund. In no event shall the rate of compensation be altered either after commencement of proceedings for dissolution has occurred or after its completion. After attaining fifty years of age, any firefighter having accrued ten or more years of active service at the time of such dissolution shall be granted an annuity, prorated in accordance with the number of years of service and the amount of annuity being paid for age and service pensions by the board of trustees of such pension fund at the time of such dissolution.

Source: L. 96: Entire article added with relocations, p. 867, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-415 (9).

PART 3

FUNDING - STATE-ASSISTED PLANS

31-30.5-301. Legislative declaration.

The general assembly finds and declares that the establishment of statewide actuarial standards regarding funded and unfunded liabilities of state-assisted old hire police officers' and firefighters' pension funds established pursuant to this article is a matter of statewide concern affected with a public interest, and the provisions of this part 3 are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state. The general assembly further declares that state moneys provided to municipalities, fire protection districts, and county improvement districts do not constitute an obligation of the state to participate in the costs of pension plan benefits but are provided in recognition that said local governments are currently burdened with financial obligations relating to pensions in excess of their present financial capacities. It is the intent of the general assembly in providing state moneys to assist said local governments that state participation decrease annually, terminating at the earliest possible date.

Source: L. 96: Entire article added with relocations, p. 867, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-802.

31-30.5-302. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Commission" means the pension review commission established pursuant to section 24-51.1-101.

(2) "Employee" means any old hire firefighter, except any volunteer firefighter, or old hire police officer employed by an employer who is eligible for the benefits provided pursuant to this article.

(3) "Employer" means any municipality, fire protection district, or county improvement district employing one or more employees.

(4) "Governing body" means the governing body of a municipality, fire protection district, or county improvement district.

(5) "State-assisted" means having received state moneys relating to accrued unfunded liability.

(6) "Volunteer firefighter" has the same meaning as provided in section 31-30-1102 (9).

Source: L. 96: Entire article added with relocations, p. 868, § 1, effective May 23. **L. 2014:** (5) amended, (SB 14-031), ch. 52, p. 236, § 2, effective March 20. **L. 2018:** (1) amended, (SB 18-200), ch. 370, p. 2264, § 28, effective June 4.

Editor's note: This section was formerly numbered as § 31-30-803.

Cross references: For the legislative declaration in SB 18-200, see section 1 of chapter 370, Session Laws of Colorado 2018.

31-30.5-303. State assistance - limitation. (Repealed)

Source: L. 96: Entire article added with relocations, p. 868, § 1, effective May 23. **L. 2014:** Entire section repealed, (SB 14-031), ch. 52, p. 236, § 3, effective March 20.

Editor's note: This section was formerly numbered as § 31-30-804.

31-30.5-304. Limitation on existing funds - procedures.

(1) On and after January 1, 1982, every state-assisted old hire police officers' or firefighters' pension plan created pursuant to this article shall be financed in accordance with minimum funding standards prescribed in this part 3. Contributions made pursuant to this section include municipal, special district, and county improvement district contributions, the established employee contribution, and any state contribution.

(2) (a) Annual contributions to state-assisted old hire police officers' and firefighters' pension funds shall be made in at least the amount determined by the policy set by the board of the fire and police pension association that balances the following considerations: Stabilization of the amount of the annual required contributions over time; keeping the funded ratio of the pension fund from declining; and reducing or eliminating contributions as may be prudent based on actuarial experience. The unfunded accrued liabilities of the plan may be amortized over a period not to exceed the lesser of twenty years or the number of years equal to the average remaining life expectancy of the pension fund's members.

(b) In addition to the contributions required by paragraph (a) of this subsection (2), the employer shall annually pay any required dollar amount of contributions necessary to fund additional plan benefits adopted under section 31-30.5-210 (2), as established by supplemental actuarial studies on such funds.

(3) and (3.5) (Deleted by amendment, L. 2014.)

(4) Repealed.

(5) (Deleted by amendment, L. 2014.)

(6) All municipalities, fire protection districts, and county improvement districts, including both paid firefighters and volunteer firefighters in their pension plans, shall segregate the pension funds for paid firefighters and volunteer firefighters on an equitable basis for accounting and actuarial purposes, and said segregation shall be considered in all actuarial reports applicable to such funds. In computing the portion of the fund attributable to volunteer firefighters, the benefits of such volunteer firefighters shall not be reduced or otherwise changed.

(7) (Deleted by amendment, L. 2014.)

(8) Every employee employed as a firefighter or police officer for the first time after April 7, 1978, is covered by the benefit provisions set forth in or authorized by article 31 of this title.

(9) Volunteer firefighters and volunteer firefighter pension funds are exempt from all provisions of this section except subsection (6) of this section.

(10) (Deleted by amendment, L. 2014.)

(11) Repealed.

(12) (Deleted by amendment, L. 2014.)

(13) The board of any state-assisted old hire pension plan may take, by gift, grant, devise or bequest, any money, personal property, or real estate, or interest therein, as trustees for the uses and purposes for which the fund is created.

Source: L. 96: Entire article added with relocations, p. 868, § 1, effective May 23. **L. 2003:** (5)(a)(II) and (5)(b) amended, p. 1472, § 1, effective May 1. **L. 2006:** (3.5) amended, p. 181, § 5, effective March 31. **L. 2009:** (5)(a)(II) and (5)(b) amended, (SB 09-227), ch. 125, p. 540, § 1, effective April 16. **L. 2011:** (5)(a)(II) and (5)(b) amended, (SB 11-221), ch.152, p. 528, § 1, effective May 5. **L. 2014:** Entire section amended, (SB 14-031), ch. 52, p. 237, § 4, effective March 20. **L. 2020:** (2)(a) amended and (4) and (11) repealed, (HB 20-1044), ch. 105, p. 404, § 1, effective September 14.

Editor's note: This section was formerly numbered as § 31-30-805.

31-30.5-305. No change in employer obligation.

It is the intention of the general assembly that the minimum funding standards established by this part 3 shall not enlarge nor diminish the obligation of municipalities and fire protection districts to their employees for pension benefits provided pursuant to this article.

Source: L. 96: Entire article added with relocations, p. 873, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-806.

31-30.5-306. Actuarial studies.

(1) An actuarial study of each old hire police officers' and firefighters' pension fund administered by the association shall be conducted not later than July 1, 2014, and an updated actuarial study shall be conducted by the association every two years thereafter until the plan is terminated.

(2) (a) The association shall designate actuaries or firms of actuaries to supervise, conduct, or review actuarial studies required by this section.

(b) The fire and police pension association's board of directors shall specify the actuarial assumptions to be used in each such actuarial study.

(3) Costs of all such actuarial studies are an expense of the old hire plan and the fire and police pension association is authorized to pay for such costs as provided in section 31-31-302 (3).

(4) (Deleted by amendment, L. 2014.)

Source: L. 96: Entire article added with relocations, p. 873, § 1, effective May 23. **L. 2001:** (1)(b) amended, p. 302, § 1, effective August 8. **L. 2003:** (1)(b)(II) amended, p. 1473, § 2, effective May 1. **L. 2006:** (1)(b)(II) amended, p. 181, § 6, effective March 31. **L. 2009:** (1)(b)(II) amended, (SB 09-227), ch. 125, p. 541, § 2, effective April 16. **L. 2011:** (1)(b)(II) amended, (SB 11-221), ch. 152, p. 529, § 2, effective May 5. **L. 2014:** Entire section amended, (SB 14-031), ch. 52, p. 241, § 5, effective March 20.

Editor's note: This section was formerly numbered as § 31-30-1014.5.

31-30.5-307. State contribution.

(1) (a) (Deleted by amendment, L. 2014.)

(b) (I) Each employer having rank escalation and having old hire members shall determine for each such employee the percentage that such employee's years served as of January 1, 1980, bear to the total number of years required for retirement. At retirement, the retirement pension shall be divided into that percentage and the remainder. The portion of the retirement pension equal to that percentage earned as of January 1, 1980, shall be subject to rank escalation as provided under the old hire pension plan, and the remainder of the retirement pension shall be subject to the same adjustment as that determined by the fire and police pension association board of directors pursuant to section 31-31.5-410.

(II) An employer may elect to continue full rank escalation benefits for that portion of the retirement pension subject to the adjustment as provided in subparagraph (I) of this paragraph (b), but no state contribution shall be used to fund such continuation of rank escalation or any unfunded liabilities incurred as a result of such continuation of rank escalation.

(c) (Deleted by amendment, L. 2014.)

(d) Repealed.

(2) (a) Moneys transferred from the state treasurer as state assistance to the old hire plan members' benefit trust fund shall not revert to the general fund but are continuously available for the purposes provided in this part 3 and part 11 of article 30 of this title.

(b) No other transfers for state assistance to the old hire plans shall be made to the old hire plan members' benefit trust fund pursuant to this section.

(2.5) Repealed.

(3) to (6) (Deleted by amendment, L. 2014.)

Source: L. 96: Entire article added with relocations, p. 874, § 1, effective May 23. **L. 98:** (1)(b)(I) amended, p. 826, § 43, effective August 5. **L. 99:** (2.5) added, p. 1269, § 2, effective August 4. **L. 2000:** (2.5) repealed, p. 271, § 2, effective March 31. **L. 2001:** (1)(d) amended and (4) added, p. 302, § 2, effective August 8; (1)(d) repealed, p. 1180, § 18, effective August 8. **L. 2003:** (1)(a), (1)(c), (2), and (4) amended and (5) added, p. 1473, § 3, effective May 1. **L. 2004:** (2) amended, p. 1203, § 72, effective August 4. **L. 2005:** (6) added, p. 756, § 2, effective June 1. **L. 2006:** (2), (5)(a), (5)(b), and (6) amended, p. 181, § 7, effective March 31. **L. 2009:** (1)(a), (1)(c), (2), (4), (5)(a), and (5)(b) amended, (SB 09-227), ch. 125, p. 541, § 3, effective April 16. **L. 2011:** (1)(a), (1)(c), (2), (4), (5)(a)(II), and (5)(b) amended, (SB 11-221), ch. 152, p. 529, § 3, effective May 5. **L. 2013:** (2) and (3) amended, (SB 13-234), ch. 180, p. 663, § 1, effective May 10. **L. 2014:** Entire section amended, (SB 14-031), ch. 52, p. 242, § 6, effective March 20. **L. 2024:** (1)(b)(I) amended, (HB 24-1042), ch. 15, p. 37, § 4, effective March 6.

Editor's note: (1) This section was formerly numbered as § 31-30-1014 (4), (5), and (7).

(2) Subsection (1)(d) was amended in House Bill 01-1008. Those amendments were superseded by the repeal of subsection (1)(d) in Senate Bill 01-208.

ANNOTATION

A similar provision of law applied in City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

PART 4

FUNDING - NONSTATE ASSISTED PLANS

31-30.5-401. Sources of revenue for fund.

(1) Except for state-assisted old hire police officers' and firefighters' pension plans and those affiliated with the fire and police pension association pursuant to section 31-31-701, each old hire pension fund may consist of:

(a) All moneys that may be given to such board or fund by any person for the use and purpose for which such fund is created. Such board may take, by gift, grant, devise, or bequest, any money, personal property, or real estate, or interest therein, as trustees for the uses and purposes for which the fund is created;

(b) All moneys, fees, rewards, or emoluments of every nature and description that may be paid or given to said fund;

(c) All moneys derived from employer and member contributions, as provided for in sections 31-30.5-402 and 31-30.5-403.

Source: L. 96: Entire article added with relocations, p. 876, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-406.

ANNOTATION

Annotator's note. Since § 31-30.5-401 is similar to § 31-30-407 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing that section have been included in the annotations to this section.

This section is clear and free from ambiguity and is capable of only one interpretation, if interpretation be required. Pueblo Fireman's Pension Bd. v. Hubersberger, 132 Colo. 344, 288 P.2d 352 (1955).

Mandatory duty of board. Under this section once a petitioner's disability is established, it is the mandatory duty of the board to retire him and grant his pension. Pueblo Fireman's Pension Fund v.

Hubersberger, 132 Colo. 344, 288 P.2d 352 (1955).

The general assembly did not intend to permit a city to reduce an employee in rank, level, and dignity and change his class of employment by forcing him to accept a position which would accomplish that result; and then supplement such lower salary by an amount sufficient to pay the employee his former salary, and thereby deprive him of his pension. If we should establish such rule in the instant case, the rule could be applied to compel an employee of the city to accept any position of a different class and lower level and rank, provided the employee received his original pay; and by this method defeat his pension. The general assembly never intended for transfers to the manipulated so as to accomplish that result. Pueblo Fireman's Pension Bd. v. Hubersberger, 132 Colo. 344, 288 P.2d 352 (1955).

A petitioner is entitled to know what facts the board relies on and an opportunity, after notice, to present evidence to controvert the factual situation used as a basis for the conclusion of the board. Pueblo Fireman's Pension Bd. v. Hubersberger, 132 Colo. 344, 288 P.2d 352 (1955).

31-30.5-402. Municipalities under fifty thousand - limit of contributions to old hire police officers' pension plans.

(1) There is granted to municipalities in this state having less than fifty thousand population the power to pay from the general funds of their respective municipalities into the old hire police officers' pension fund of their respective municipalities such sum monthly as shall not exceed five percent of the monthly salaries of the total active old hire members in the police department of their respective municipalities.

(2) In such municipalities as make contributions from general funds into the old hire police officers' pension fund of their respective municipalities pursuant to subsection (1) of this section, the active old hire members of such police department shall contribute monthly, from their respective monthly salaries, into the municipality's old hire police officers' pension fund identical percentages of their respective monthly salaries so that the contribution of the active old hire members of the police department as a whole matches the contribution of the municipality.

Source: L. 96: Entire article added with relocations, p. 876, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-319 and 31-30-320.

ANNOTATION

Annotator's note. Since § 31-30.5-402 is similar to §§ 31-30-319 and 31-30-320 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing that section have been included in the annotations to this section.

Police officers are not entitled to a refund. In absence of statutory provision or contractual agreement, rights of police officers under police pension system do not include right to refund. Benson v. City of Sheridan, 31 Colo. App. 540, 506 P.2d 401 (1972).

Applied in Benson v. City of Sheridan, 31 Colo. App. 540, 506 P.2d 401 (1972); Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976); Lepore v. Bd. of Trustees, 628 P.2d 625 (Colo. App. 1981).

31-30.5-403. Employers under one hundred thousand - limit of contributions to old hire firefighter pension plans.

(1) There may be levied and set apart by the governing body of each municipality having a population of less than one hundred thousand, by the board of directors of each fire protection district, or by the board of a county improvement district, a tax for the year 1969 and each year thereafter of not more than one mill on the taxable property in such municipality, fire protection district, or county improvement district, the proceeds thereof to be credited to the old hire firefighters' pension fund of each such municipality, fire protection district, or county improvement district.

(2) Any municipality, fire protection district, or county improvement district having less than one hundred thousand population and having a paid fire department shall levy an assessment on the active old hire members in an amount not to exceed six percent of their monthly salaries and, as a minimum amount, shall match the moneys derived therefrom by an equal contribution from the municipality, fire protection district, or county improvement district by use of the levy provided for in subsection (1) of this section, or the proper governing body shall appropriate said sum out of the general revenues of the municipality, fire protection district, or county improvement district.

(3) Any municipality having less than one hundred thousand population and having a paid and volunteer fire department or any fire protection district or county improvement district having a paid and volunteer fire department shall assess the paid old hire members of such department in an amount not to exceed six percent of their monthly salaries and, as a minimum amount, shall match the moneys derived therefrom by an equal contribution from the municipality, fire protection district, or county improvement district by use of the levy provided for in subsection (1) of this section. Said sum shall be segregated by the municipal treasurer, the treasurer of the district board of directors, or the treasurer of the county improvement district, as

the case may be, and shall be used for the payment of pensions to the paid old hire members of said departments and their surviving spouses and orphans, as otherwise provided for in this article, but, so long as there are volunteer members in said department, the present old hire pension fund, if derived from state allocations, shall continue to be maintained for the benefit of all members of said department, paid old hire members and volunteers alike, under such rules as the board determines to be equitable.

(4) A paid firefighter is any firefighter whose main source of income is derived from service on a fire department. All other firefighters who render service to a fire department are volunteer firefighters.

(5) If the total moneys allocated to an old hire firefighters' pension fund by a municipality, fire protection district, or county improvement district are, in the opinion of the board of such municipality, fire protection district, or county improvement district, inadequate to sustain a proper fund for retirement or for the other purposes of the fund under this article, such board may consolidate its old hire fund with the old hire fund of another municipality, fire protection district, or county improvement district, and such consolidated funds shall thereafter be administered as a single fund. Such consolidation of funds may be made under such conditions and in conformity with such terms as are mutually agreed to by the boards of the consolidating single funds, consistent with the provisions of this article.

Source: L. 96: Entire article added with relocations, p. 877, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-405.

ANNOTATION

A similar provision of law applied in Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

31-30.5-404. Plans affiliated with the fire and police pension association.

Notwithstanding any provision of this part 4 to the contrary, an employer that affiliates its old hire police officers' or firefighters' pension fund with the fire and police pension association pursuant to section 31-31-701 and that is not receiving state contributions under part 3 of this article shall annually contribute an amount approved by the board of directors of the association, upon the advice of its actuary, sufficient to pay the normal cost plus amortize the unfunded past

service liability attributed to old hire members, over a period not to exceed the lesser of twenty years or the number of years equal to the average remaining life expectancy of the pension fund's members.

Source: L. 96: Entire article added with relocations, p. 878, § 1, effective May 23. **L. 2009:** Entire section amended, (SB 09-227), ch. 125, p. 543, § 4, effective April 16.

PART 5

INVESTMENTS - INSURANCE

31-30.5-501. Old hire pension fund - investments.

It is lawful for the board of trustees of the old hire firefighters' pension fund and the board of trustees of the old hire police officers' pension fund in any municipality or district in this state to invest such respective pension funds, or any part thereof, in the name of the treasurer of such municipality or in the name of a custodian or custodians appointed by the board, as provided for in this section, in interest-bearing obligations of the United States, in interest-bearing bonds of the state of Colorado, or in general obligation bonds of cities, whether organized under general law or article XX of the state constitution, or in any depository enumerated in section 24-75-603, C.R.S., and secured as provided in articles 10.5 and 47 of title 11, C.R.S. The board of trustees, by written resolution, may appoint one or more persons to act as custodians, in addition to the treasurer, to deposit or cause to be deposited all or part of such funds in any state or national bank or any state or federally chartered savings and loan association in Colorado. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires. All such securities and evidences of investment shall be deposited with the treasurer of such municipality.

Source: L. 96: Entire article added with relocations, p. 878, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-701.

31-30.5-502. Insurance - investment by banks and trust companies.

(1) Notwithstanding any restrictions on investments of old hire police officers' or firefighters' pension funds contained in any laws of this state, it is lawful for the board of trustees of any such

pension fund, with the consent in writing of a majority of the active old hire members of the police department or fire department for the benefit of which the pension fund is maintained, to:

(a) Insure the old hire members of any such police department or fire department by the purchase of policies of individual, group, or blanket life, endowment, disability, or annuity insurance, or variable annuity insurance in and from companies authorized to do business in Colorado and to expend any portion of such pension fund for the purpose of paying the premiums on any such insurance policies; or

(b) Establish a noninsured trust pension plan with a bank or trust company authorized to exercise trust powers in this state as trustee, invested by the trustee pursuant to the provisions of part 3 of article 1 of title 15, C.R.S.; but the trustee shall at all times hold fixed income obligations having a book value or cost of not less than sixty percent of the total contributions made to the trust less the amounts paid out.

(2) If any old hire member of such police department, fire department, or association is receiving any pension, benefit, or award made prior to April 9, 1965, by such board of trustees, no such part of said fund shall be expended for purchasing said insurance as will impair the ability of said fund to meet the requirements of such pensions, benefits, and awards. The board of trustees of the old hire pension fund shall be the beneficiary of any such insurance policies, and the proceeds thereof shall be paid to the board of trustees as an addition to the old hire pension fund.

Source: L. 96 Entire article added with relocations, p. 878, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-702.

31-30.5-503. Alternative investment authority.

Notwithstanding any other provision of this part 5, moneys of old hire pension plans that are not affiliated with the fire and police pension association under section 31-31-701 may be managed and invested by the trustees of such plans pursuant to the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S. Such investments shall be audited at least biennially.

Source: L. 96: Entire article added with relocations, p. 879, § 1, effective May 23. **L. 97:** Entire section amended, p. 10, § 1, effective March 13. **L. 2004:** Entire section amended, p. 1203, § 73, effective August 4.

Editor's note: This section was formerly numbered as § 31-30-1012 (8)(a).

ANNOTATION

Annotator's note. Since § 31-30.5-503 is similar to § 31-30-1012 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provision of that section has been included in the annotations to this section.

As trustee of the fire and police members' benefit fund, fund's administrative board must, as a matter of law, insure that beneficiaries of the fund receive the appropriate level of benefits provided by the local plan and, if necessary, investigate what benefits are "appropriate". Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

PART 6

RETIREMENT BENEFITS

31-30.5-601. Police officers' old hire pension plans - municipalities under one hundred thousand in population.

(1) In municipalities having a population of less than one hundred thousand and making contributions from general funds into the police officers' old hire pension fund of their respective municipalities, any old hire member of such police department who has reached the age of fifty-five years and who has served for a period of twenty years in any such department in the state of Colorado or who in the alternative has completed twenty-five years in any such department in the state of Colorado, regardless of age, is entitled to a monthly pension equal to one-half the amount of the average salary the member received as a member of said department for one year before the time of granting the member's application. Such payment shall be made regardless of income or earnings that the said retired old hire member receives from any source.

(2) In municipalities having a population of less than one hundred thousand and not making contributions into their respective police officers' old hire pension fund, any old hire member of the police department who has reached the age of sixty years and who has served for a period of twenty years in any such department in the state of Colorado is entitled to a monthly pension equal to one-half of the amount of the average salary the member received as a member of said department for one year before the time of granting the member's application. If, thereafter, such member accepts a salaried position paying a salary of sixty dollars or more per month, the

payment of the member's pension shall be suspended during the period the member holds such position.

Source: L. 96: Entire article added with relocations, p. 879, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-314 and 31-30-322.

ANNOTATION

Annotator's note. Since § 31-30.5-601 is similar to §§ 31-30-314 and 31-30-322 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those section have been included in this annotations to this section.

Service for 20 years "in any such department". The requirement of service for a period of 20 years "in any such department" in this section means service in a police department in a municipality making contributions to the pension fund under § 31-30-319. Lepore v. Bd. of Trustees, 628 P.2d 625 (Colo. App. 1981).

Denial of pension has no effect on vested right in pension fund. The denial of an application for a pension under this section does not deprive the applicant of any vested right in the pension fund as he is still eligible to apply for a pension under § 31-30-314. Lepore v. Bd. of Trustees, 628 P.2d 625 (Colo. App. 1981).

Refund of contributions to fund. A home-rule city has authority to contract with its firemen and policemen to refund the employee's individual contributions to the respective pension funds on termination of employment prior to qualification for pension benefits. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Applied in Benson v. City of Sheridan, 31 Colo. App. 540, 506 P.2d 401 (1972).

31-30.5-602. Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population.

In municipalities, fire protection districts, and county improvement districts having a population of less than one hundred thousand, any old hire member who has reached the age of fifty years and who has served for a period of twenty years of active service in any such department in this state is entitled to a monthly pension equal to one-half the amount of the member's monthly salary as of the date of the member's retirement plus, if the governing body of

the municipality, the board of directors of the fire protection district, or the board of the county improvement district authorizes such additional benefits, one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of the member's retirement to the rank occupied by the member in said department. Any old hire member of a paid fire department of a municipality, fire protection district, or county improvement district, who has served prior time in a volunteer fire department in any municipality, fire protection district, or county improvement district in this state, in the event the member becomes a paid member, may be credited service time at their discretion, at the rate of one year of paid service for each four complete years of volunteer time; except that they shall not receive both a pension under part 11 of article 30 of this title and a service credit under this section.

Source: L. 96: Entire article added with relocations, p. 880, § 1, effective May 23. **L. 2005:** Entire section amended, p. 776, § 63, effective June 1.

Editor's note: This section was formerly numbered as § 31-30-408.

ANNOTATION

Annotator's note. Since § 31-30.5-602 is similar to § 31-30-408 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Authority to contract to refund employee's contributions to fund. A home-rule city has authority to contract with its firemen and policemen to refund the employee's individual contributions to the respective pension funds on termination of employment prior to qualification for pension benefits. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

No authority to alter eligibility requirements. An administrative body does not have discretionary powers to alter eligibility requirements for retirement pension benefits which have been mandated by the general assembly. Bonacci v. City of Aurora, 642 P.2d 4 (Colo. 1982).

Municipality cannot make adverse change in pension plan without offsetting increase in benefits. City of Aurora v. Ackman, 738 P.2d 796 (Colo. App. 1987).

31-30.5-603. Police officers' old hire pension plans - municipalities of at least one hundred thousand in population.

In municipalities having a population of at least one hundred thousand, any old hire member of the police department who has attained the age of sixty years is entitled to a monthly pension equal to one-half the amount of the average salary said member received as a member of said department for one year before retirement. Any old hire member of the police department of such municipality having served twenty-five years or more in such police department, other than an old hire member who has arrived at the age of sixty years and retired, is entitled to a monthly pension equal to one-half the amount of the average salary said member received as a member of said department for one year before the time of retirement.

Source: L. 96: Entire article added with relocations, p. 880, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-610.

31-30.5-604. Firefighters' old hire pension plans - municipalities of at least one hundred thousand in population.

(1) In municipalities having a population of at least one hundred thousand, any old hire member of the fire department who has served at least twenty-five years of active duty and has attained the age of fifty years shall be retired within thirty days after making application for retirement, except during periods of national emergency, and such person shall be paid a monthly pension equal to one-half the amount of the monthly salary said person received as a member of said department as of the date of application for retirement. For so long as the old hire member is in retirement, there shall be added to the amount of the member's pension one-half of any increase in salary and longevity or additional pay based on length of service granted to the rank formerly occupied by the member in the department.

(2) (a) When, for any reason, the rank or grade within a fire department is abolished or ceases to exist and a retired old hire member of such department, on or after April 30, 1963, is in receipt of a pension or annuity from the fund by reason of retirement in such classification, grade, or rank, such member shall receive the member's regular pension payment for the grade or rank occupied at the time of the member's retirement. In addition, such member of a fire department shall receive additional benefits as follows: The fraction which such member's regular pension payment for the grade or rank occupied at the time of the member's retirement bears to the regular pension payment for the next higher rank at such time shall be computed; and such member shall receive one-half of any increase in salary and longevity pay or additional pay based on length of service granted to the next higher rank or grade in such department

multiplied by the fraction as above computed; but if the next higher and next lower ranks or grades of the department receive equal money increases, such member shall receive one-half of any increase without multiplication of the fraction above computed. An old hire member of such department who, on July 1, 1969, is in receipt of a pension or annuity from the fund, by reason of retirement in a rank or grade which has been abolished or has ceased to exist, shall have the member's benefits as above described recomputed, and any additional moneys to which the member is entitled shall be paid to the member as if this provision were in effect at the date of the member's application for retirement.

(b) The provisions of this subsection (2) shall apply alike to all those who retired under this section and to those who retire under the provisions of section 31-30.5-705.

Source: L. 96: Entire article added with relocations, p. 881, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-511.

ANNOTATION

Annotator's note. Since § 31-30.5-604 is similar to § 31-30-511 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing that section has been included in the annotations to this section.

Despite age and length of service requirements being satisfied, board still has discretion. Although the conditions of this section with respect to age and length of service have been fulfilled, the board of trustees has the discretionary power exercised to deny a petition for retirement. Bedwell v. Bd. of Trustees, 114 Colo. 475, 166 P.2d 994 (1946).

Escalator clause adjusts pension to keep pace with cost of living. Provision in subsection (3)(a) that "such officer or member shall receive one-half of any increase in salary and longevity pay or additional pay based on length of service granted to the next higher rank or grade in such department multiplied by the fraction as above computed" is known as an escalator clause and is intended to automatically adjust pension payments to keep pace with cost of living and wage increases. Huff v. Mayor & City Council, 182 Colo. 108, 512 P.2d 632 (1973).

No authority to alter eligibility requirements. An administrative body does not have discretionary powers to alter eligibility requirements for retirement pension benefits which have been mandated by the general assembly. Bonacci v. City of Aurora, 642 P.2d 4 (Colo. 1982).

PART 7

DISABILITY AND SURVIVOR BENEFITS

31-30.5-701. Coverage.

The provisions of this part 7 governing the benefits payable in the event of the death or disability of an active old hire member shall apply with respect to any such member who dies or becomes disabled prior to January 1, 1980. The provisions of this part 7 governing the benefits payable in the event of the death of a retired old hire member shall apply regardless of the date of death.

Source: L. 96: Entire article added with relocations, p. 882, § 1, effective May 23.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Policemen must have been in good standing at the time of death or injury. The language of this section grants and limits pension benefits and fixes the point of time at which the individual or class is determined a beneficiary, and it is quite clear that it is intended to cover "policemen who have been members in good standing of the police departments", and the real, significant point of time is, "the time of death or injury". Bd. of Trustees of Policemen's Pension Fund v. Starasinich, 128 Colo. 556, 264 P.2d 1033 (1954).

And rights to benefit from the fund attach the moment a policeman's disabilities occur while he is a member in good standing. Bd. of Trustees of Policemen's Pension Fund v. Starasinich, 128 Colo. 556, 264 P.2d 1033 (1954).

Thus, a policemen's discharge from the police department for alleged misconduct does not, in any manner, invalidate his claim for a disability pension. Bd. of Trustees of Policemen's Pension Fund v. Starasinich, 128 Colo. 556, 264 P.2d 1033 (1954).

31-30.5-702. Police officers' old hire pension plans - municipalities under one hundred thousand in population.

(1) If an old hire member of any police department in a municipality having a population of less than one hundred thousand, while in the performance of the member's duty or by reason of service in such department, becomes physically or mentally disabled and such disability is

deemed to be of a temporary nature, the board of trustees shall retire the individual with a disability and shall authorize the payment to such individual, monthly, of an amount from the pension fund equal to the monthly compensation paid any such member as salary at the date of such disability, not to exceed a period of one year. For the purpose of determining the physical or mental disability of any such member, the board of trustees may personally examine the member or may appoint one or more physicians or surgeons to make an examination of the member and report their findings to the board, which report may be taken into consideration in determining whether the member has a physical or mental disability.

(2) After any old hire member of any police department in a municipality having a population of less than one hundred thousand has been retired temporarily by reason of any disability, the board of trustees has the right at any time to cause such retired member to be brought before it and again examined by competent physicians or surgeons and has the right to examine other witnesses for the purpose of discovering whether such disability yet continues and whether such retired member should be continued on the pension roll, not to exceed a period of one year, or reinstated in the service of the police department, except in case of dismissal or resignation. Such retired member is entitled to notice and to be present at the hearing of any such evidence and may be represented by counsel. The retired member shall be permitted to propound any question pertinent or relevant to such matter and shall also have the right to introduce evidence on the member's own behalf. All witnesses so produced shall be examined under oath, and any member of such board of trustees is authorized to administer such oath to such witnesses. The decision of such board shall be final.

(3) If any old hire member or officer of any police department in a municipality having a population of less than one hundred thousand becomes mentally or physically disabled so as to render necessary the member's retirement from service in such department, said board of trustees shall retire such member from service in such department, and the member shall receive from the pension fund an amount equal to one-half of the monthly salary received by the member at the time the member becomes so disabled. Except as provided in subsection (4) of this section, when any old hire member of such police department or retired old hire member dies and leaves a surviving spouse or dependent parent or children under the age of sixteen years, surviving, the board of trustees shall authorize the payment monthly from the pension fund of the sum of thirty dollars to such surviving spouse or dependent parent and six dollars to each such minor child until the child reaches the age of sixteen years. No pension shall be paid to the dependent parent of the deceased member who leaves a surviving spouse, and, if the surviving spouse of any deceased member remarries, such pension shall cease.

(4) In those municipalities making contributions from general funds into the old hire police officers' pension plan pursuant to section 31-30.5-402, the benefits payable in the event an old hire member of such police department or retired member dies and leaves a dependent surviving spouse or dependent parent or children under the age of sixteen years shall be an amount equal to one-fourth the monthly salary received by the member of the department at the time the member

died to such surviving spouse or dependent parent and an amount equal to one-eighth of the monthly salary received by the member of the department at the time the member died to each minor child until such child reaches the age of sixteen years. No pension shall be paid to the dependent parent of the deceased member who leaves a surviving spouse, and, if the surviving spouse of any deceased member remarries, such pension shall cease.

(5) If at any time there is not sufficient money or other property in said pension fund to pay to each beneficiary the full amount per month to which such beneficiary is entitled, an equal percentage of such monthly payment shall be made to each, until such fund is so replenished as to warrant payment in full to each of such beneficiaries.

Source: L. 96: Entire article added with relocations, p. 882, § 1, effective May 23. **L. 2014:** (1) amended, (SB 14-118), ch. 250, p. 986, § 22, effective August 6.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-308 (1) to (3), 31-30-309, and 31-30-321 (1)(c).

ANNOTATION

Annotator's note. Since § 31-30.5-702 is similar to §§ 31-30-308 and 31-30-321 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

A claim accrues at the time of the disabling injury. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

There is no time limit in this article for applying for benefits. This article providing for the creation of the police pension fund and payment therefrom fixes no limit of time within which application for a pension must be made or action to enforce the claimed right commenced. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

Thus, the general three-year statute of limitations applies. The general assembly has not enacted a special limitation on the time for filing pension claims, hence, the three-year statute of § 13-80-108 (1)(b) governs. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

So resignation coupled with inaction for a period of more than six years must be taken as an abandonment of any right to claim a pension. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

But once right to receive pension has been determined the right to receive

payment is continuous. The right to receive a pension is a very different right from the right to receive payment once the basic right to receive the pension itself has been determined. Once the right to receive a pension has been determined, then the receipt of the pension is a continuing one. The basic or primary right (to receive the pension) is not a continuing one and may be barred by laches or by a statute of limitations. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

Effect of voluntary resignation and subsequent reappointment. The voluntary resignation of a public employee from his position operates as a complete severance therefrom, and the loss of right to the position and of all rights, benefits, or emoluments thereof, including all pension rights, and his subsequent reappointment after he has passed the age limit for admission in the pension fund does not entitle him to reinstatement as a beneficiary of such fund. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

Pensions are granted for the benefit of the state and not primarily for the benefit of the recipients. They are awarded to reward efficiency and to encourage officers to remain in the service as well as to give assurance of decent living upon retirement, whether by reason of old age or because of disability. Bd. of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956).

Permanent disability is not required to be service-connected. Blank v. Police Pension Bd., 44 Colo. App. 323, 612 P.2d 1156 (1980).

Applied in Lepore v. Bd. of Trustees, 628 P.2d 625 (Colo. App. 1981).

31-30.5-703. Firefighters' old hire pension plans - municipalities and districts under one hundred thousand in population.

(1) (a) Any old hire member of a paid fire department in a municipality, fire protection district, or county improvement district, having less than one hundred thousand in population who becomes mentally or physically disabled while on active duty during regular assigned hours of duty from any cause not self-inflicted nor due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's duties shall be retired by the board. Any old hire member of said fire department who has completed five or more years as a member of said department but who is unable to perform the member's duties by reason of heart disease or any disease of the lungs or respiratory tract shall submit competent evidence substantiating the member's claim that the member has contracted said disease while on duty as a result of strain or the inhalation of noxious fumes, poison, or gases and shall be retired by the board.

(b) In cases where a special position or assignment can or may be assigned to such old hire member, the member may be assigned to such special position or assignment. Any such

retirement shall be for the period of the disability and no longer and shall be governed by the provisions of paragraphs (c) to (e) of this subsection (1).

(c) Effective July 1, 1969, said old hire member shall be paid a monthly pension equal to one-half the amount of the member's monthly salary as of the date of the member's retirement plus, if the governing body of the municipality, the board of directors of the fire protection district, or the board of the county improvement district authorizes such additional benefits, one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of the member's retirement to the rank occupied by the member in said department. Said pension shall continue to be paid as long as the member is in retirement.

(d) All applicants for disability pensions shall be examined by one or more physicians selected by the board and may be examined by one or more physicians selected by the applicant. All expenses of examination by the physician chosen by the board shall be paid by the board out of the old hire pension fund.

(e) The board shall establish such rules as it deems proper for the purpose of reexamination of all old hire members who are retired for disability to determine from time to time the fitness of such members to return to active duty in said department. No such member who has reached the age of fifty years, either before or after the member's retirement, shall be reexamined. No such member who has completed twenty years of active duty before the date of such retirement shall be reexamined. No member on the retired list shall be examined sooner than one year after date of retirement and not more often than once a year thereafter. In the event it is found by said board that any member on the retired list has recovered from the disability that caused the member's retirement, such member, if the member is under fifty years of age and has served less than twenty years of active duty, shall be removed from the retired list and ordered to report to the chief officer of said fire department within thirty days for assignment to active duty. During said period of thirty days, such member may file a written protest in which the member shall state any objection to the member's removal from the retired list. The decision of said board shall be suspended pending a hearing on said protest, at which hearing such member shall have the right to appear and to be represented by counsel. During the period that any member is retired for disability by said board, such member, if under the age of fifty years and having served less than twenty years of active duty, shall be carried on a special roll of the fire department and listed as inactive.

(f) (I) Except as provided in subparagraph (II) of this paragraph (f), if an old hire member of the fire department becomes mentally or physically disabled while not on active duty during regularly assigned hours of duty and from any cause not self-inflicted or due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's regular fire department duties, the member shall be paid by the board, starting twelve months from such disability and for the remaining period of such disability, a monthly benefit equal to five percent of the amount set forth in paragraph (c) of this subsection (1), multiplied by the

number of years the member has been in active service with said fire department; but any such benefit under this subsection (1) shall not exceed one-half of the member's monthly salary as of the date of the member's disability. The provisions covering examinations, and reexamination as set forth in paragraph (e) of this subsection (1), shall be applicable to all cases arising under this paragraph (f).

(II) Any person who became an old hire member of a fire department prior to July 1, 1971, shall be entitled to the benefits set forth in subparagraph (I) of this paragraph (f) as of the date of the onset of such disability and shall not be subject to the twelve-month delay provision.

(2) If any old hire member of a fire department in a municipality, fire protection district, or county improvement district having a population of less than one hundred thousand dies from any cause, whether on duty or not or while on the retired list, leaving a surviving spouse or dependent parent, such surviving spouse or dependent parent shall be awarded a monthly annuity equal to one-third of the monthly salary of a first-grade firefighter at the time of the member's death or retirement so long as the surviving spouse or dependent parent remains unmarried. No dissolution of a subsequent marriage shall have the effect of reinstating said surviving spouse on the pension roll or authorizing the granting of a pension. No pension shall be paid to the dependent parent of a deceased old hire member who leaves a surviving spouse or dependent children.

(3) In addition to the annuity set forth in subsection (2) of this section, the board shall also order the payment to such surviving spouse or the legally appointed guardian of each dependent child of such deceased old hire member of said fire department of a monthly annuity of thirty dollars for each child, to continue until such child reaches the age of eighteen years. If such surviving spouse dies or there is no surviving spouse, as limited and described in subsection (2) of this section, but there are surviving children under eighteen years of age, the board shall order a monthly payment equal to the full payment to which a firefighter's surviving spouse is entitled under subsection (2) of this section to be divided equally among the children or a monthly payment of thirty dollars for each child, whichever total amount is greater, to the guardian for said children. In no event shall such surviving children of a deceased or retired firefighter receive an amount in excess of one-half of the current salary paid to a firefighter, first grade, of said department. No annuity shall be paid to the dependent parent of a deceased member who leaves a child or children under eighteen years of age.

(4) When any active or retired old hire member dies, the board shall appropriate from the old hire pension fund the sum of one hundred dollars, as a death benefit, to be paid to the surviving spouse or family of the deceased, but, if there is no surviving spouse or family, said sum shall be paid to such other person as the board of said fund designates.

Source: L. 96: Entire article added with relocations, p. 884, § 1, effective May 23.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-407 (1) to (3) and 31-30-409.

31-30.5-704. Police officers' old hire pension plans - municipalities of at least one hundred thousand in population.

(1) If any old hire member of the police department in a municipality having a population of at least one hundred thousand, while in the performance of the member's duty, becomes temporarily totally disabled, physically or mentally, for service by reason of service in such department, the board shall order the payment to such disabled member, monthly during such disability but not to exceed one year, from the old hire pension fund, a sum equal to the monthly compensation allowed such member as salary at the date of the member's disability if such member is paid no salary as such member. If any old hire member of the police department, while in the performance of the member's duty, becomes mentally or physically permanently disabled by reason of service in such department so as to render necessary the member's retirement from service in such department, the board shall retire such disabled member from service in such department. No such retirement on account of disability shall occur unless said member has contracted said disability while in the service of said police department.

(2) Upon retirement the board shall order the payment to such disabled member from the old hire pension fund a sum equal to one-half the monthly compensation allowed to such the member as salary at the date of the member's retirement. If any old hire member of the police department in a municipality having a population of at least one hundred thousand, while in the performance of the member's duty, is killed, dies as a result of an injury received in the line of duty or of any disease contracted by reason of the member's occupation, dies from any cause whatever as the result of the member's services in said department, or dies while in the service or on the retired list from any cause and leaves a surviving spouse or a dependent child under sixteen years surviving or, if unmarried, leaves a dependent parent surviving, the board shall direct the payment from the fund, monthly, to such surviving spouse, while unmarried, of thirty dollars, and for each child, while unmarried, until the child reaches the age of sixteen years, six dollars, and to the dependent parent, if such member was unmarried, thirty dollars. The pension to the dependent parent or both shall be paid as follows: If the father is dead, the mother shall receive the entire thirty dollars, and if the mother is dead, the father shall receive the entire thirty dollars, and if both are living, each shall receive fifteen dollars.

Source: L. 96: Entire article added with relocations, p. 886, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-608.

31-30.5-705. Firefighters' old hire pension plans - municipalities of at least one hundred thousand in population.

(1) Any old hire member of a fire department in a municipality having a population of at least one hundred thousand, who becomes mentally or physically disabled while on active duty during regularly assigned hours of duty from any cause not self-inflicted nor due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's duties shall be retired by the board. Any old hire member of said fire department who has completed five years or more as a member of the department but who is unable to perform the member's duties by reason of heart disease or any disease of the lungs or respiratory tract shall be presumed, unless said presumption is overcome by competent evidence, to have contracted said disease while on active duty as a result of strain or the inhalation of noxious fumes, poison, or gases and shall be retired by the board.

(2) In cases where a special position or assignment can or may be assigned to such member, the member may be assigned to such special position or assignment. Any such retirement shall be for the period of the disability, and no longer, and shall be governed by the provisions of subsections (3), (4), and (5) of this section.

(3) The old hire member shall be paid a monthly pension equal to one-half the amount of the member's monthly salary as of the date of the member's retirement plus one-half of any increase in salary and longevity or additional pay based on length of service granted during the period of the member's retirement to the rank occupied by the member in the department. The member, after retirement, shall continue to accrue longevity, and the member's length of service shall continue to extend in the same manner and with the same limitations as if the member were still active and not retired. Said pension shall continue to be paid as long as the member is in retirement.

(4) All applicants for disability pensions shall be examined by one or more physicians selected for the purpose by the board and may be examined by one or more physicians selected by the applicant. All expenses of examination by the physician chosen by the board shall be paid by the board out of said fund.

(5) The board shall establish such general rules as it deems proper for the purpose of reexamination of all old hire members who have been retired for disability to determine from time to time the fitness of such members to return to active duty in the department. No such member who has reached the age of fifty years, either before or after the member's retirement, shall be reexamined. No such member who has completed twenty-five years of active duty in the department before the date of such retirement shall be reexamined. No member on the retired list shall be examined sooner than one year after date of retirement and not more often than once a

year thereafter. In the event it is found by the board that any old hire member on the retired list has recovered from the disability that caused the member's retirement, such member, if the member is under fifty years of age and has served less than twenty-five years of active duty, shall be removed from the retired list and ordered to report to the chief officer of the fire department within thirty days for assignment to active duty. During said period of thirty days such member may file a written protest in which the member shall state any objection that the member may have to the member's removal from the retired list. The decision of the board shall be suspended pending a hearing on said protest, at that hearing the member shall have a right to appear and to be represented by counsel. During the period that any member is ordered retired for disability by the board, such member, if under the age of fifty years and having served less than twenty-five years of active duty, shall be carried on a special roll of the fire department and listed as inactive.

(6) In any case where an old hire member of the fire department in a municipality having a population of at least one hundred thousand becomes mentally or physically disabled while not on active duty during regularly assigned hours of duty and from any cause not self-inflicted or due to the habitual use of intoxicants or drugs to an extent whereby the member is unable to perform the member's regular fire department duties, the member shall be paid by the board, during the period of such disability and no longer, a monthly benefit equal to five percent of the amount set forth in subsection (3) of this section multiplied by the number of years the member has been in active service with the fire department; except that any such benefit under this section shall not exceed one-half of the member's monthly salary as of the date of the member's disability. The provisions covering examinations and reexaminations, as set forth in subsections (4) and (5) of this section, shall be applicable to all cases arising under this subsection (6).

(7) If any old hire member of a fire department in a municipality having a population of at least one hundred thousand dies from any cause while in the service or while on the retired list, leaving a surviving spouse, such surviving spouse shall be awarded a monthly annuity equal to one-third of the monthly salary of such member at the time of the member's death or retirement plus one-third of any increase in salary and longevity or additional pay based on length of service granted to firefighters of the rank or comparable successor rank that the member held in the department on the date of the member's death or retirement so long as such surviving spouse remains unmarried. No dissolution of a subsequent marriage shall have the effect of reinstating said spouse on the pension roll or authorizing the granting of a pension. This section shall apply alike to surviving spouses of firefighters and retired firefighters who die after April 11, 1947, and to surviving spouses of firefighters and retired firefighters who were dead on said date, it being the intent of the general assembly to provide an annuity for all surviving spouses of firefighters, which annuity shall increase or decrease proportionately to any increase or decrease in the current rate of pay of firefighters.

(8) The board shall also order the payment to such surviving spouse or the legally appointed guardian of each child of such deceased old hire member of the fire department a monthly annuity of thirty dollars for each child, to continue until such child reaches the age of eighteen

years. If such surviving spouse dies or there is no surviving spouse as limited and described but such deceased old hire member leaves surviving children under eighteen years of age, the board shall order a monthly payment equal to the full payment to which a firefighter's surviving spouse is entitled under subsection (7) of this section to be divided equally among the children or a monthly payment of thirty dollars for each child, whichever total amount is greater, to the guardian of the children for the children. In no event shall such surviving children of a deceased or retired firefighter receive an amount in excess of one-half of the current salary paid to a firefighter, first-grade, of said department.

(9) When an active or retired firefighter dies without necessary funeral expenses, the board shall appropriate from the fund a sum not exceeding one hundred dollars to the surviving spouse or family or other person paying the expenses for the purpose of assisting the proper final disposition of the deceased old hire member.

Source: L. 96: Entire article added with relocations, p. 887, § 1, effective May 23. **L. 2021:** (9) amended, (SB 21-006), ch. 123, p. 500, § 29, effective September 7.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30.5-508 (1) to (6), 31-30-509, 31-30-510, and 31-30-512.

ANNOTATION

Annotator's note. Since § 31-30.5-705 is similar to §§ 31-30-509 and 31-30-510 as they existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing those sections have been included in the annotations to this section.

If widow remarries, dependent child is not entitled to increased benefits. It was not the intention of the general assembly that, when a fireman entitled to pension died leaving a wife and dependent child, the dependent child should be entitled to increased benefits upon the remarriage of the widow. Shearer v. Bd. of Trustees of Firemen's Pension Fund, 121 Colo. 592, 218 P.2d 753 (1950).

Discrimination against common-law spouse unconstitutional. The provision of this section which distinguishes between common-law and statutory marriages, is unconstitutional, as benefits may not be denied a surviving common-law spouse. Carter v. Firemen's Pension Fund, 634 P.2d 410 (Colo. 1981).

Restriction of payments to surviving spouse married to employee previous to employee's retirement application held unconstitutional. Restriction defining surviving spouse as one "whom such officer,

member, or employee married previous to his application for retirement or previous to April 5, 1945" is unconstitutional and may not be applied. Branson v. City & County of Denver, 707 P.2d 338 (Colo. 1985).

Remarried widow cannot declare a child an orphan and get increased benefits. A surviving child whose mother or stepmother also survives does not become entitled to additional benefits under this section upon the remarriage of the mother or stepmother, although she, on remarrying, declares the child an orphan. Shearer v. Bd. of Trustees of Firemen's Pension Fund, 121 Colo. 592, 218 P.2d 753 (1950).

Applied in Carter v. Firemen's Pension Fund, 634 P.2d 410 (Colo. 1981).

PART 8

EXEMPT PLANS

31-30.5-801. Exempt alternative programs authorized.

(1) Notwithstanding any other provision of this article or the provisions of article 31 of this title that specifically refer to exempt plans, any municipality, fire protection district, or county improvement district, prior to January 1, 1980, may establish an alternative police officers' or firefighters' pension benefit program or combination pension and insurance benefit program for police officers or firefighters that, if found by an actuarial study to be actuarially sound, shall be exempt from all provisions of parts 3 to 7 of this article. Such program and any amendments thereto must be approved in an election held or vote called for that purpose by at least sixty-five percent of the total votes cast by all police officers or firefighters actively employed by the municipality, fire protection district, or county improvement district and all former old hire members who have earned pension rights or benefits under this article at the time the program is adopted or amended. No amendment of an exempt alternative program may be adopted that would adversely affect the accrued pension benefits of former old hire members. Once established, such exempt alternative program shall cover all police officers or firefighters employed by the municipality, fire protection district, or county improvement district, regardless of the date of hire. Any municipality, fire protection district, or county improvement district having established an exempt alternative program pursuant to this section shall be entitled to receive its appropriate share of state contributions to local police officers' or firefighters' pension funds and shall file any reports required to receive such state contributions. The date limitation of January 1, 1980, established in this subsection (1) shall not be construed as limiting the ability of an employer to establish an exempt money purchase plan in accordance with the provisions of subsection (2) of this section and section 31-30.5-802.

(2) (a) Not later than January 1, 1983, any employer that covered its firefighters or police officers hired on or after April 8, 1978, under the statewide defined benefit plan established in part 4 of article 31 of this title, may withdraw from that plan upon establishment of a money

purchase plan, in accordance with the requirements governing exempt alternative programs under subsection (1) of this section.

(b) Such money purchase plan shall include all firefighters or police officers hired on or after April 8, 1978, and may include all old hire firefighter or police officer members, at the option of the employer.

(c) The money purchase plan shall be approved by sixty-five percent of all firefighters or police officers hired on or after April 8, 1978. In order for old hire firefighter or police officer members to be included in such plan, pursuant to paragraph (b) of this subsection (2), sixty-five percent of those members shall approve the plan.

(d) Any employer desiring to withdraw pursuant to the provisions of this section shall file a resolution with the fire and police pension association stating such intent. The resolution shall also state a requested effective date for withdrawal.

(e) The withdrawal shall be effective on the requested effective date or on the first day of the month following certification by the fire and police pension association of the approval of the members, whichever occurs later.

Source: L. 96: Entire article added with relocations, p. 889, § 1, effective May 23. **L. 2005:** (1) amended, p. 776, § 64, effective June 1.

Editor's note: This section was formerly numbered as § 31-30-325.

31-30.5-802. Exempt money purchase plan option.

(1) Any employer that has not elected to affiliate with the fire and police pension association relating to an old hire plan established pursuant to this article may offer to the active old hire members of such plan the option of converting to a money purchase plan.

(2) Such option shall be available on an individual basis such that any member desiring to remain in the current defined benefit plan may do so.

(3) The money purchase plan offered may be a new plan established by the employer or an existing plan maintained for the benefit of other members employed in the same department.

(4) Any such money purchase plan shall be exempt from all provisions of parts 3 to 7 of this article.

(5) The option may be offered only if approved by at least sixty-five percent of all active old hire members. If approved, a deadline shall be set for electing between the current plan and the

money purchase plan. Prior to said deadline, the employer shall provide to each active old hire member a disclosure statement describing the differences between the current plan and the money purchase plan and a statement as to the minimum beginning account balance for such employee in the event of conversion to a money purchase plan.

(6) If any active old hire member elects to remain in the current plan, the employer shall continue to fund such plan on an actuarially sound basis with any unfunded liability being amortized over a period not to exceed twenty years after January 1, 1989.

(7) Within ninety days after the election is made by each active old hire member, the employer shall make the final determination as to whether to adopt such option and shall be under no obligation to do so. In the event that the employer determines that the option will not be adopted at that time, the employer may reoffer the option at a later date in accordance with the provisions contained in this section.

(8) No such option may be adopted which, in its application, would adversely affect the pension benefits of retired old hire members.

(9) Nothing in this section shall be construed to prohibit an election by an employer to affiliate its local plan with the fire and police pension association after said employer has adopted a money purchase plan option pursuant to this section. Any such affiliation shall be governed by the provisions of section 31-31-701.

Source: L. 96: Entire article added with relocations, p. 890, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1003.3.

31-30.5-803. Investment authority.

(1) Except as provided in subsection (2) of this section, moneys of exempt alternative plans that are not affiliated with the fire and police pension association under section 31-31-706 may be managed and invested by the trustees of such plans pursuant to the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S. Such investments shall be audited at least biennially.

(2) (a) (Deleted by amendment, L. 97, p. 10, § 2, effective March 13, 1997.)

(b) The trustees of an exempt alternative plan may allow a participant to exercise control of the investment of the participant's accrued benefit under the plan, subject to the following requirements:

(I) The trustees shall select at least three investment alternatives, each of which is diversified in itself, that allow the participant a broad range of investments and a meaningful choice between risk and return in the investment of the participant's accrued benefit;

(II) The trustees shall allow the participant to change investments at least once each calendar quarter; and

(III) The trustees shall provide the participant with information describing the investment alternatives and the nature, investment performance, fees, and expenses of the investment alternatives and other information to enable a participant to make informed investment decisions.

(c) Neither the state nor local governments shall be held responsible to pay for any or all financial losses experienced by participants of the exempt alternative plan; except that nothing in this section relieves a local government's responsibility as a trustee to the plan.

Source: L. 96: Entire article added with relocations, p. 892, § 1, effective May 23. **L. 97:** Entire section amended, p. 10, § 2, effective March 13. **L. 2004:** (1) amended, p. 1204, § 74, effective August 4. **L. 2010:** (1) amended, (SB 10-024), ch. 20, p. 90, § 3, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1012 (8).

ANNOTATION

Annotator's note. Since § 31-30.5-803 is similar to § 31-30-1012 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

As trustee of the fire and police members' benefit fund, fund's administrative board must, as a matter of law, insure that beneficiaries of the fund receive the appropriate level of benefits provided by the local plan and, if necessary, investigate what benefits are "appropriate". Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

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PART 1

GENERAL PROVISIONS

31-31-101. Legislative declaration.

The general assembly hereby declares that the establishment of police officers' and firefighters' pension plans in this state is a matter of statewide concern that affects the public safety and general welfare, that the ability of pension funds to pay earned benefits to present and future members is a necessary corollary to the establishment of pension plans, and that statewide pension plans establishing pension benefits that can be fully funded with local money will permit the continuation of pension plans for police officers and firefighters in this state. In addition, the general assembly declares that any pension plan must be actuarially sound to assure the security of the pension system and that this article is enacted to provide for the stability and security of police officers' and firefighters' pension plans in this state. The general assembly further declares that state money provided to municipalities, fire protection districts, and county improvement districts do not constitute a continuing obligation of the state to participate in the ongoing normal costs of pension plan benefits, except for state funding of death and disability retirement benefits as specified in this article, but are provided in recognition that the local governments are currently burdened with financial obligations relating to pensions in excess of their present financial capacities. It is the intent of the general assembly in providing state money to assist the local governments that state participation decrease annually, terminating at the earliest possible date.

Source: L. 96: Entire article added with relocations, p. 893, § 1, effective May 23. **L. 2026:** Entire section amended, (SB 26-039), ch. 37, p. 178, § 2, effective August 12.

Editor's note: This section was formerly numbered as § 31-30-1001.

ANNOTATION

Annotator's note. Since § 31-31-101 is similar to § 31-30-1001 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Intention of general assembly in enacting plan was to preempt benefits provided under Denver city charter. The payment of state plan benefits in addition to those provided by the Denver city charter would disserve the basic purpose of the legislation which is to relieve communities of the intolerable financial burdens they would otherwise face in connection with their pension plans. Peterson v. Fire & Police Pension Ass'n, 725 P.2d 81 (Colo. App. 1986).

The Public Employee Retirement Association and the Policemen's and Firemen's Pension Reform Act statutory provisions have established a defined benefit contributory pension system in which most public employees are required to participate. By making these contributions, employees obtain a limited vesting of pension rights, which ripen into vested pension rights upon attainment of the respective eligibility requirements. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Plaintiffs not entitled to greater benefits under Denver plan. Peterson v. Fire & Police Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part, rev'd in part on other grounds, 759 P.2d 720 (Colo. 1988).

Prior to death, benefits are partially vested and may be changed. Prior to a police officer's or firefighter's death, there is limited or partial vesting of survivor benefits, and, until survivor benefits fully vest, a pension plan can be changed; however any adverse change must be balanced by change that is beneficial, actuarially necessary or one that strengthens or improves pension plan. Peterson v. Fire & Police Pension Ass'n, 759 P.2d 720 (Colo. 1988), aff'd in part, rev'd in part on other grounds, 759 P.2d 720 (Colo. 1988).

Diminished benefits offered under state plan were offset by improved actuarial soundness and more stable funding. Though adoption of state plan meant reduced benefits to persons formerly covered by Denver city pension plan, this reduction was justified by improved funding and increased chance that pension fund obligations would be fulfilled. Peterson v. Fire & Police Pension Ass'n, 759 P.2d 720 (Colo. 1988).

31-31-102. Definitions.

As used in this article 31, unless the context otherwise requires:

(1) "Actuarially sound" means a police officers' or firefighters' pension fund determined by the board to be receiving or scheduled to receive employer and member contributions in each fiscal year equal to the annual contributions actuarially determined to be necessary to pay the annual current service cost of pension benefits attributable to active employees and to pay the annual contribution necessary to amortize any unfunded accrued liability over a period not to exceed forty years. The actuarial cost method to be utilized shall be the entry age-normal cost

method. The date from which unfunded liabilities shall be amortized shall be determined pursuant to part 3 of article 30.5 of this title.

(2) "Board" means the board of directors established as the governing body of the fire and police pension association as provided in section 31-31-201 (2). "Board" includes representatives of the association as delegated by the board.

(3) "Employer" means any municipality in this state offering police or fire protection service employing one or more members and any special district, fire authority, or county improvement district in this state offering fire protection service employing one or more members.

(4) "Member" means an active employee who is a full-time salaried employee of a municipality, fire protection district, fire authority, or county improvement district normally serving at least one thousand six hundred hours in any calendar year and whose duties are directly involved with the provision of police or fire protection, as certified by the member's employer. For purposes of the statewide money purchase plan, "member" also includes an active employee who works less than sixteen hundred hours per year but otherwise qualifies as a member and whose employer elects to treat all such other similar employees as members. The term does not include clerical or other personnel whose services are auxiliary to police protection, or any volunteer firefighter, as such term is defined in section 31-30-1102 (9). For the purpose of participation in the defined benefit component of the statewide retirement plan pursuant to article 31.5 of this title 31 or the statewide money purchase plan pursuant to part 5 of this article 31, but not for the purpose of participation in the statewide death and disability plan pursuant to part 8 of this article 31, the term may include clerical or other personnel employed by a fire protection district, fire authority, or county improvement district, whose services are auxiliary to fire protection. For the purpose of eligibility for disability or survivor benefits, "member" includes any employee on an authorized leave of absence.

(5) "Money purchase plan" or "money purchase pension plan" means a retirement plan under which:

(a) The employer has a fixed obligation to make an annual contribution to the plan;

(b) The plan provides for an individual account for each member; and

(c) The member's benefits are based solely on the amount contributed to the member's account and any income, expenses, gains, and losses allocated to the member's account.

(5.5) "Old hire member" has the meaning set forth in section 31-30.5-102 (5).

(6) "Retired member" means any member who is retired, disabled, or eligible for a benefit as provided in section 31-31.5-401.

Source: L. 96: Entire article added with relocations, p. 893, § 1, effective May 23. **L. 98:** (5) amended, p. 24, § 3, effective March 16. **L. 2001:** (3) amended, p. 416, § 1, effective June 1. **L. 2003:** (4) amended, p. 1231, § 1, effective August 6. **L. 2024:** IP, (4), and (6) amended, (HB 24-1042), ch. 15, p. 38, § 5, effective March 6. **L. 2025:** (5.5) added, (SB 25-275), ch. 377, p. 2091, § 272, effective August 6. **L. 2026:** (2) amended, (SB 26-039), ch. 37, p. 179, § 3, effective August 12.

Editor's note: This section was formerly numbered as § 31-30-1002 (1), (2), (4), (5), and (5.5).

PART 2

ADMINISTRATION

31-31-201. Association - creation - board - organization - tax exemption.

(1) There is hereby created an independent public body corporate and politic to be known as the fire and police pension association. The association is constituted as a public instrumentality, and its exercise of the powers conferred by this article and article 30.5 of this title shall be deemed to be the performance of an essential public function. The association shall be a body corporate and a political subdivision of the state and shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state.

(1.5) The general assembly hereby finds and declares that the fire and police pension association is a political subdivision of the state and that property owned, used, and occupied by the association is intended to be exempt from property tax as property of the state under section 4 of article X of the state constitution. Accordingly, for property tax years commencing on or after January 1, 2007, all real property owned, used, and occupied by the association and personal property owned and used by the association shall be exempt from the levy and collection of property tax.

(2) (a) The governing body of the association shall be a board of directors consisting of nine members appointed by the governor and confirmed by the senate as follows:

(I) Two members who shall represent Colorado municipal employers;

(II) One member who shall represent full-time paid firefighters;

(III) One member who shall represent full-time paid police officers;

(IV) One member who shall be a retired firefighter who, upon completion of the member's term, shall be replaced by a retired police officer. Thereafter, the appointments of retired officers shall alternate between a retired firefighter and a retired police officer for each successive six-year term.

(V) One member of a board of directors of a special district or the full-time paid professional manager of a special district who shall represent special districts having volunteer firefighters;

(VI) One member from the state's financial or business community with experience in investments;

(VII) One member from the state's financial or business community with experience in insurance disability claims; and

(VIII) One member of the state's financial or business community experienced in personnel or corporate administration in corporations of over two hundred employees.

(b) Members shall be appointed for terms of four years; except that a member appointed pursuant to subparagraph (IV) of paragraph (a) of this subsection (2) shall serve for a term of six years.

(c) Vacancy in any position shall be filled in the same manner as the original appointment was made. Appointments may be made without confirmation of the senate when the senate is not in session, but such appointments shall be confirmed within thirty days of the next meeting of the senate in regular session or they shall be void.

(d) The governor may remove any member of the board for cause.

(3) (a) The members of the board shall serve without compensation but shall be reimbursed for any necessary expenditures and shall suffer no loss of salary or wages through service on such board.

(b) The board shall elect a chair and a vice-chair, shall appoint an executive director and such other employees as may be necessary, and shall fix the compensation for the appointees. The board shall have the authority to retain actuaries, investment counselors, private legal counsel, and other consultants as deemed necessary. The fees of such persons shall be considered expenses of the association.

(4) Neither the members of the board nor any person authorized by the board to act in an official capacity shall be held personally liable for any act undertaken pursuant to the provisions of this article 31, article 30.5, or article 31.5 of this title 31.

Source: L. 96: Entire article added with relocations, p. 894, § 1, effective May 23. **L. 2007:** (1.5) added, p. 1541, § 1, effective May 31. **L. 2010:** (2)(a)(IV) and (2)(b) amended, (HB 10-

1016), ch. 72, p. 245, § 1, effective August 11. **L. 2024:** (4) amended, (HB 24-1042), ch. 15, p. 38, § 6, effective March 6.

Editor's note: This section was formerly numbered as § 31-30-1004.

ANNOTATION

Annotator's note. Since § 31-31-201 is similar to § 31-30-1004 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Fire and police pension association board is not an "agency" for purposes of the State Administrative Procedure Act and, therefore, appropriate standard of review of its actions is not the "substantial evidence" standard of such act but is the "no competent evidence" standard of C.R.C.P. 106(a)(4). Ross v. Fire & Police Pension Ass'n, 713 P.2d 1304 (Colo. 1986).

Presence and participation of member of fund's administrative board who was a retired firefighter and member of old hire plan did not undermine the impartiality of the board's decision where member's participation was limited to being present at the public hearing and member did not ask questions of witnesses or make comments during the hearing, nor participate in board's deliberations on or determination of issue. Pueblo v. Fire & Police Pension Ass'n, 827 P.2d 597, (Colo. App. 1992).

31-31-202. Powers and duties of the board.

(1) The board shall:

(a) Establish standards for determining the actuarial soundness of:

(I) The pension plans in the defined benefit system and the affiliated old hire plans and the affiliated exempt plans with assets in the fire and police members' benefit investment fund, in accordance with section 31-31-301 (1); and

(II) Alternative pension plans having defined benefits in whole or in part established pursuant to section 31-31-601 (1), as said section existed prior to its repeal. Based upon such standards, the board shall require biennial actuarial reviews of such plans with the cost of the reviews to be paid by employers having established such plans.

(b) Establish standards for benefit projections for money purchase plans;

(c) Establish criteria for the determination of disability to administer the provisions of part 8 of this article 31;

(d) Promulgate rules relating to standards for disclosure of all ramifications of and procedures for obtaining the member approval provided for in section 31-31-601 (1), as said section existed prior to its repeal;

(e) Administer or provide for the administration and, in accordance with the provisions of sections 31-31-302 (1) and 31-31-303, the investment of the fire and police members' benefit investment fund and the fire and police members' self-directed investment fund;

(f) Repealed.

(g) Review or initiate proposed legislation affecting or related to the provisions of this article and article 30.5 of this title;

(h) Provide for disbursements from the fire and police members' benefit investment fund created by section 31-31-301 (1) and from the fire and police members' self-directed investment fund created by section 31-31-301 (4). Such disbursements shall be made only for payment of the expenses of the association, payment of refunds to members, payment of survivor, disability, or retirement benefits, or for purposes of investment.

(i) Make such modifications to the minimum annual rates of contribution certified to municipalities, fire protection districts, and county improvement districts as may be justified by actuarial studies approved by the board, subject to the requirements of section 31-30.5-304. In addition, the board shall supervise the establishment of such minimum annual rates of contribution for any nonexempt municipalities, fire protection districts, or county improvement districts that, for any reason, did not receive such minimum annual rate of contribution. Such establishment and modification of minimum annual rates of contribution shall be conducted substantially in the manner provided by procedural regulations promulgated by the board.

(j) Adopt such rules as may be necessary to implement the provisions of this article 31, article 30.5, and article 31.5 of this title 31;

(k) Approve or deny applications for coverage under the statewide money purchase plan pursuant to section 31-31-501;

(l) Delegate any authority to the executive director, officers, committees, or other contractors as it deems appropriate for the administration of the plans;

(m) Determine eligibility for retirement for disability, whether total or occupational, for any police officer or firefighter in this state whether or not such member is covered by the provisions of this article, in accordance with the rules adopted by the board pursuant to subsection (1)(j) of this section, except for the following:

(I) Those police officers and firefighters having social security coverage and not affiliated as to disability; and

(II) Those police officers and firefighters whose employers have established exempt alternative pension plans, including exempt alternative defined benefit plans that are administered on an actuarially sound basis, based upon assumptions and methodology adopted by the board for statewide use, on or before December 1, 1978, in accordance with the provisions of part 8 of article 30.5 of this title, unless such plans have elected to become covered under the statewide death and disability plan pursuant to part 8 of this article 31.

(2) Repealed.

(3) Under the direction of the board, each employer, including employers not covered by or specifically exempted from the statewide retirement plan in accordance with the provisions of section 31-31-401 (1), shall furnish such information and shall keep such records as the board may require for the discharge of its duties.

(4) (a) Except as otherwise provided in paragraph (d) of this subsection (4), the board shall provide for and determine the cost of a statewide accidental death and disability insurance policy to cover all volunteer firefighters serving in volunteer or paid and volunteer fire departments, the insurance to be applicable only when serving as a volunteer firefighter. The policy shall be paid for as provided in section 31-30-1112 (2)(h)(II) from proceeds of the tax imposed by section 10-3-209, C.R.S.

(b) Except as otherwise provided in paragraph (d) of this subsection (4), the board shall set the amount of coverage to be provided for each volunteer firefighter, take competitive bids for the policy from insurers, and make such rules as may be necessary to provide for the policy.

(c) The insurer shall have sole power to determine disability for volunteer firefighters under the policy provided by this subsection (4).

(d) On and after July 1, 2004, the responsibility to provide a statewide accidental death and disability insurance policy to cover all volunteer firefighters serving in volunteer or paid and volunteer fire departments shall be the responsibility of the department of local affairs pursuant to section 31-30-1134.

(5) (a) The board, in the performance of its duties under this article, shall have the power of subpoena over persons, and books, papers, records, and other things, and such power shall be enforceable by the courts; except that no subpoena shall be issued until the subpoena has been approved by a vote of the board.

(b) The chair of the board, or any other member of the board designated by the chair, shall have the power to administer oaths, in the performance of the duties of the board under this article.

(5.5) The board may release the names and addresses of retirees of a plan affiliated with the fire and police pension association pursuant to part 7 of this article to the local pension board of the affiliated plan if:

(a) The local pension board has filed a written request in the manner prescribed by the association; and

(b) The local pension board has provided the board with written assurances that the information requested will be used only for pension-related purposes.

(6) The board shall have such other powers and duties as are specifically granted pursuant to this article and parts 1 to 7 of article 30.5 of this title.

(7) The board may promulgate rules for the assessment of interest, including the waiver of interest for good cause, on unpaid contributions to statewide plans. Interest shall accrue at the rate of one-half of one percent per month.

(8) The board may assess the reasonable actuarial, audit, and operational costs incurred by the association related to compliance with regulatory requirements which are attributable to employers with members participating in plans administered by the association. Alternatively, the board may find such costs to be de minimis and pay the costs from the plan assets.

Source: L. 96: Entire article added with relocations, p. 896, § 1, effective May 23. **L. 98:** (2)(a)(II) amended, p. 827, § 44, effective August 5. **L. 2001:** (5.5) added, p. 416, § 2, effective June 1; (1)(f) repealed, p. 1276, § 41, effective June 5. **L. 2004:** (4) amended, p. 1137, § 4, effective July 1. **L. 2006:** (1)(a)(I), (1)(e), and (1)(h) amended, p. 182, § 8, effective March 31. **L. 2015:** (4)(a) amended, (SB 15-264), ch. 259, p. 964, § 82, effective August 5; (7) and (8) added, (SB 15-027), ch. 9, p. 20, § 1, effective August 5. **L. 2022:** (3) amended, (HB 22-1034), ch. 61, p. 301, § 2, effective January 1, 2023. **L. 2024:** (1)(a)(II) and (1)(d) amended, (HB 24-1042), ch. 15, p. 38, § 7, effective March 6. **L. 2026:** (1)(c) and (1)(j) amended, (1)(l) added, (1)(m) added with relocations, and (2) repealed, (SB 26-039), ch. 37, p. 179, § 4, effective August 12.

Editor's note: (1) This section was formerly numbered as § 31-30-1005 (1) to (5).

(2) Subsection (1)(m) is similar to former subsection (2) as it existed prior to 2026. Subsection (2) was relocated to subsection (1)(m) in 2026.

ANNOTATION

Annotator's note. Since § 31-31-202 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597, (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597, (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-31-203. Fund not subject to levy.

Except for assignments for child support debt pursuant to section 14-14-104, child support arrearages as requested as part of an enforcement action under article 5 of title 14, or child support arrearages that are the subject of enforcement services provided under section 26-13-106, for income assignments for child support purposes pursuant to section 14-14-111.5, for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), and for restitution

that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to this article 31 where the offender or a related party received direct financial gain, or as otherwise required under federal law, no portion of the funds created pursuant to this article 31 or article 31.5 of this title 31 before or after their order for distribution by the board to the persons entitled thereto, shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree, or process or proceeding whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against the fire and police pension association or employers that belong to such association or the beneficiary of such funds. The funds shall be held and distributed for the purpose of this article 31 and for no other purpose whatsoever.

Source: L. 96: Entire article added with relocations, p. 898, § 1, effective May 23; entire section amended, p. 627, § 46, effective July 1; entire section amended, p. 1464, § 14, effective January 1, 1997. **L. 2005:** Entire section amended, p. 76, § 13, effective August 8. **L. 2006:** Entire section amended, p. 183, § 9, effective March 31. **L. 2010:** Entire section amended, (SB 10-024), ch. 20, p. 90, § 4, effective August 11. **L. 2022:** Entire section amended, (HB 22-1034), ch. 61, p. 301, § 3, effective January 1, 2023.

Editor's note: Amendments to this section by Senate Bill 96-002 and Senate Bill 96-204 were harmonized.

31-31-204. Defined benefit system.

(1) There shall be a defined benefit system that shall consist of the following plans:

(a) The statewide retirement plan established pursuant to article 31.5 of this title 31;

(b) Repealed.

(c) Any exempt plan that is incorporated into the defined benefit system, pursuant to an agreement established under section 31-31-706 (2);

(d) Any health-care benefit plan established in association with the included plans; and

(e) Any other plan authorized to be incorporated into the statewide defined benefit system.

(2) The board may create plan documents for the plans within the defined benefit system that shall be in substantial conformance with the statutory provisions for each plan and that may include modifications and plan amendments as authorized under law.

(2.5) Notwithstanding section 31-31.5-601 or the terms of an agreement entered into pursuant to section 31-31-706 (2), the board may modify, alter, or amend the plan provisions contained in article 31.5 of this title 31 or a plan document or rules of a plan within the defined benefit system as the board deems prudent and necessary to administer benefits under the plan consistently and uniformly across the defined benefit system in a manner that does not result in an actuarial cost to the plan. Such modifications or amendments may include changes to the options for the distribution of benefits. This subsection (2.5) shall not be construed to authorize modification to the amount of a normal benefit.

(3) **Qualification requirements - internal revenue code - definitions.**

(a) As used in this subsection (3), "internal revenue code" means the federal "Internal Revenue Code of 1986", as amended.

(b) The defined benefit system and each of the plans established by part 2 or 7 of this article 31 or part 1 of article 31.5 of this title 31 included within the system shall satisfy the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans.

(c) The board may adopt any provision for a plan established by part 2 or 7 of this article 31 or part 1 of article 31.5 of this title 31 that is necessary to comply with the internal revenue code.

(4) **Trust fund.**

(a) There is hereby created the defined benefit system trust fund. All assets held in connection with the defined benefit system, including all contributions to the plans in the system, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property, or rights, shall be held in trust for the exclusive benefit of members and their designated beneficiaries under the plans. Such assets shall constitute the trust fund. No part of the assets and income of the trust fund shall be used for, or diverted to, purposes other than for the exclusive benefit of members and their designated beneficiaries and for defraying reasonable expenses of the system.

(b) All amounts of compensation contributed pursuant to the plans, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property, or rights held as part of the defined benefit system, including member contributions, employer contributions, any state contributions, fees collected, gifts received, unclaimed deposits, and investment income, shall be transferred to the board to be held, managed, invested, and distributed as part of the trust fund in accordance with the provisions of the documents governing the system. All contributions to the plans shall be transferred by the employers to the trust fund. All benefits under the plans shall be distributed solely from the trust fund pursuant to the documents governing the system.

(c) The board is the trustee of the defined benefit system trust fund.

(d) Repealed.

Source: L. 2006: Entire section added, p. 183, § 10, effective March 31. **L. 2009:** (3) amended, (HB 09-1030), ch. 16, p. 90, § 4, effective August 5. **L. 2012:** (2.5) added, (HB 12-1031), ch. 68, p. 236, § 1, effective August 8. **L. 2022:** (1)(a), (2.5), (3)(b), and (3)(c) amended (HB 22-1034), ch. 61, p. 301, § 4, effective January 1, 2023; (1)(b)(II) and (4)(d)(V) added by revision, (HB 22-1034), ch. 61, pp. 301, 312, §§ 4, 22.

Editor's note: Subsections (1)(b)(II) and (4)(d)(V) provided for the repeal of subsections (1)(b) and (4)(d), respectively, effective January 1, 2023. (See L. 2022, pp. 301, 312.)

31-31-205. Confidentiality of members' protected personal information.

All information contained in records of active members, retired members, former members, inactive members, designated beneficiaries, alternate payees, benefit recipients, and their dependents of any plan administered by the association or of any locally administered and financed alternative plan shall be maintained as confidential. The association or local plan administrator may provide such information as is necessary to a third-party service provider pursuant to article 73 of title 24.

Source: L. 2022: Entire section added, (HB 22-1034), ch. 61, p. 302, § 5, effective August 10.

PART 3

FIRE AND POLICE MEMBERS' BENEFIT FUND

31-31-301. Investment funds - creation.

(1) (a) There is hereby created the fire and police members' benefit investment fund, which shall consist of the portion of the assets that are designated for investment by the board of the following plans:

(I) The defined benefit system established in part 2 of this article;

(II) Old hire police and fire pension plans established in article 30.5 of this title, which are affiliated with the association pursuant to part 7 of this article;

(III) Exempt plans established pursuant to part 8 of article 30.5 of this title, which are affiliated with the association pursuant to part 7 of this article;

(IV) Volunteer firefighter pension plans, which are affiliated with the association pursuant to part 7 of this article; and

(V) The statewide death and disability plan established in part 8 of this article.

(b) The board shall keep an accurate account of the assets of each plan deposited in the investment fund and shall disburse moneys in accordance with the provisions of this article and the applicable plan document.

(2) and (3) (Deleted by amendment, L. 2006, p. 186, § 11, effective March 31, 2006.)

(4) (a) There is hereby created the fire and police members' self-directed investment fund, which shall consist of the portion of the assets that are designated for self-direction by the member of the following plans:

(I) The defined benefit system established in part 2 of this article;

(II) Old hire police and fire pension plans established in article 30.5 of this title, which are affiliated with the association pursuant to part 7 of this article;

(III) The fire and police members' statewide money purchase plan established in part 5 of this article;

(IV) Repealed.

(V) The fire and police members' deferred compensation plans established in part 9 of this article; and

(VI) The affiliated exempt plans which are affiliated with the association pursuant to part 7 of this article.

(b) The board shall keep an accurate account of the assets of each plan deposited in the investment fund and shall disburse moneys in accordance with the provisions of this article and the applicable plan document.

Source: L. 96: Entire article added with relocations, p. 899, § 1, effective May 23. **L. 2000:** (3)(d) repealed, p. 76, § 2, effective August 2. **L. 2003:** (1)(a)(V) added, p. 744, § 1, effective August 6. **L. 2006:** Entire section amended, p. 186, § 11, effective March 31. **L. 2010:** (4)(a)(IV) repealed, (SB 10-024), ch. 20, p. 90, § 5, effective August 11.

Editor's note: Provisions of this section were formerly numbered as §§ 31-30-1012 (1)(a) and 31-30-1012.5.

ANNOTATION

Annotator's note. Since § 31-31-301 is similar to § 31-30-1012 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

As trustee of the fire and police members' benefit fund, fund's administrative board must, as a matter of law, insure that beneficiaries of the fund receive the appropriate level of benefits provided by the local plan and, if necessary, investigate what benefits are "appropriate". Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-31-302. Fund - management - investment - definitions.

(1) (a) The board shall be the trustee of the fire and police members' benefit investment fund and shall have full and unrestricted discretionary power and authority to invest and reinvest such portions of the fund as in its judgment may not be immediately required for the payment of refunds or benefits. In exercising its discretionary authority with respect to the management and investment of fund assets, the board shall be governed by the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S.

(b) (I) If the board invests fund moneys through an investment firm offering for sale corporate stocks, bonds, notes, debentures, or a mutual fund that contains corporate securities, the investment firm shall disclose, in any research or other disclosure documents provided in support of the securities being offered, to the board whether the investment firm has an agreement with a for-profit corporation that is not a government-sponsored enterprise, whose securities are being offered for sale to the board and because of such agreement the investment firm:

(A) Had received compensation for investment services banking within the most recent twelve months; or

(B) May receive compensation for investment banking services within the next three consecutive months.

(II) For the purposes of this paragraph (b), "investment firm" means a bank, brokerage firm, or other financial services firm conducting business within this state, or any agent thereof.

(2) The board shall designate one or more financial institutions as custodians of the fund. All moneys paid or transmitted to the custodian shall be credited to appropriate accounts in the fund and the custodian shall maintain a current inventory of all investments of the fund.

(3) Disbursements from the fund shall be made, subject to the approval of the board, only for payment of the expenses of the association, refunds to the members, benefits, and investment purposes.

(4) and (5) (Deleted by amendment, L. 97, p. 11, § 3, effective March 13, 1997.)

(6) All transactions involving the purchase and sale of investments authorized in this section shall be effected on behalf of the association. To facilitate sale and exchange transactions, securities belonging to the association may be registered in the name of nominees in the discretion of the board and in accordance with standard business practices. All such nominees shall be bonded in such amounts as may be determined to be advisable by the board. Nothing in this subsection (6) shall preclude the board or its authorized agents from forming a corporation described in section 501 (c)(2) and (c)(25) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (c)(2) and (c)(25), as amended, with respect to the ownership of investments in real property.

(7) The board shall submit an annual audit of the fund to the general assembly and the annual audit of the fund and annual actuarial study, with assumptions, to each employer. Each employer shall make the audit and study available for review by its members. Nothing in this subsection (7) shall be construed as diminishing the obligation of the board to provide any documentation required by the state auditor to carry out his or her responsibilities pursuant to section 2-3-103 (1), C.R.S., regarding state moneys held by the fire and police pension association.

(8) (a) As used in this subsection (8):

(I) "Association" means the fire and police pension association.

(II) "Investment" means the utilization of money or other assets in the expectation of future returns in the form of income or capital gain.

(III) "Investment fiduciary" means a person who or entity that exercises any discretionary authority or control over an investment of the association or renders investment advice for the association for a fee or other direct or indirect compensation.

(IV) "Investment information" means information that has not been publicly disseminated or that is unavailable from other sources and includes information the release of which might cause an investment vehicle, an investment manager, a general partner, a fund sponsor, or an investment fiduciary significant competitive harm. Investment information includes, but is not limited to, financial performance data and projections, financial statements, lists of co-investors and their level of investment, portions of lists of current or projected investment opportunities that would cause competitive harm, product and market data, rent rolls, leases, other types of

proprietary information, or documents and information that investors are legally required to maintain as confidential as a condition of performing due diligence or participating in an investment.

(V) "Investment vehicle" means an entity in which an investment fiduciary has made or considered an investment on behalf of the association. Investment vehicles include but are not limited to sponsored funds, limited partnerships, and limited liability companies.

(VI) "Public record" means all or part of a writing, as defined in section 24-72-202 (6), C.R.S.

(b) Subject to paragraph (c) of this subsection (8), a public record received, prepared, used, or retained by an investment fiduciary in connection with an investment or potential investment of the association that relates to investment information pertaining to an investment vehicle in which the investment fiduciary has invested or has considered an investment or that relates to investment information whether prepared by or for the investment fiduciary is exempt from the disclosure requirements of part 2 of article 72 of title 24, C.R.S.

(c) If a public record described in paragraph (b) of this subsection (8) is an agreement or instrument to which the association is a party, only those parts of the public record that contain investment information, as defined in subparagraph (IV) of paragraph (a) of this subsection (8), are exempt from the disclosure requirements of part 2 of article 72 of title 24, C.R.S.

(d) At least annually the board shall publish and make available to the public a report of its investments that includes the following:

(I) The name of each investment vehicle in which the association invested during the reporting period;

(II) The aggregate amount of money invested by the association in investment vehicles during the reporting period; and

(III) The rate of return realized during the reporting period on the investments of the association in investment vehicles.

Source: L. 96: Entire article added with relocations, p. 900, § 1, effective May 23. **L. 97:** (1) and (4) to (6) amended, p. 11, § 3, effective March 13. **L. 2003:** (1) amended, p. 675, § 4, effective August 6; (7) amended, p. 1232, § 2, effective August 6. **L. 2004:** (1)(a) amended, p. 1204, § 75, effective August 4. **L. 2005:** (8) added, p. 26, § 1, effective March 11. **L. 2006:** (1)(a) amended, p. 188, § 12, effective March 31. **L. 2012:** (8)(a)(IV), (8)(a)(V), (8)(b), (8)(c), and (8)(d) amended, (HB 12-1077), ch. 26, p. 75, § 1, effective August 8.

Editor's note: This section was formerly numbered as § 31-30-1012 (2) to (7) and (9).

ANNOTATION

Annotator's note. Since § 31-31-302 is similar to § 31-30-1012 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

As trustee of the fire and police members' benefit fund, fund's administrative board must, as a matter of law, insure that beneficiaries of the fund receive the appropriate level of benefits provided by the local plan and, if necessary, investigate what benefits are "appropriate". Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-31-303. Fire and police members' self-directed investment fund - management - investment.

(1) The board shall be the trustee of the fire and police members' self-directed investment fund subject to the members' allocation of moneys in their accounts to the alternatives offered by the board. A member who exercises control over the plan assets in the members' account shall not be deemed to be a fiduciary by reason of such exercise of control, and the board shall not be liable for any loss that results from such exercise of control.

(2) The board shall designate one or more financial institutions as custodians of the fire and police members' self-directed investment fund. All moneys paid or transmitted to the custodian shall be credited to appropriate accounts in the fund, and the custodian shall maintain a current inventory of all investments of the fund.

(3) Disbursements from the fire and police members' self-directed investment fund shall be made, subject to the approval of the board, only for payment of the expenses of the association in connection with the administration of the fund, refunds to the members, benefits, and investment purposes.

(4) (a) The board may allow a member to exercise control of the investment of part or all of the member's accrued benefit under the member's plan. In allowing a member to exercise such control, the board shall:

(I) Select at least three investment alternatives, each of which is diversified in itself, that allow the member a broad range of investments and a meaningful choice between risk and return in the investment of the member's accrued benefit;

(II) Allow the member to change investments at least once each calendar quarter; and

(III) Provide the member with information describing the investment alternatives, the nature, investment performance, fees, and expenses of investment alternatives, and other information to enable a member to make informed investment decisions.

(b) The board shall adopt rules governing the calculation and allocation of earnings and losses under the various investment alternatives that it may offer, the transfer of assets between funds under each alternative, the allocation of a member's account between investment alternatives, and such other matters as may be necessary to its administration and management of the fire and police members' self-directed investment fund created pursuant to this section.

(5) Any provider of investment products that contracts with the board shall be held to the standard of conduct set forth in paragraph (a) of subsection (4) of this section with respect to those functions over which the provider has substantial discretion. The board is authorized to take such steps, including but not limited to making contract amendments, as are required to accomplish the provisions of this subsection (5).

(6) The board shall submit an annual audit of the fire and police members' self-directed investment fund to the general assembly and the annual audit of the fund to each employer. Each employer shall make the audit available for review by its members.

Source: L. 2006: Entire section added, p. 188, § 13, effective March 31.

PART 4

STATEWIDE DEFINED BENEFIT PLAN

31-31-401. Applicability of plan.

(1) Every employer in this state shall provide the pension benefits of the statewide retirement plan established by part 31.5 of this title 31 for members hired on or after April 8, 1978, except for the following:

(a) Any employer that began covering members under the federal "Social Security Act" on or before August 11, 2005, and any employer that began covering members under the federal "Social Security Act" on or before August 11, 2005, that chooses to cover members hired after August 11, 2005, under the federal "Social Security Act";

(b) Any employer that covers members under an exempt plan established pursuant to part 8 of article 30.5 of this title 31;

(c) Any employer that withdrew its members from the statewide defined benefit plan pursuant to section 31-31-601, as said section existed prior to its repeal, and established a locally administered and financed alternative pension plan;

(d) Any employer that has withdrawn its members from the defined benefit component of the statewide retirement plan for the purpose of covering them under the statewide money purchase plan established pursuant to part 5 of this article 31; and

(e) Any employer that covers a member hired on or after April 8, 1978, but before January 1, 1980, under an old hire pension plan as permitted by section 31-30.5-103 (1).

(2) Nothing in this part 4 shall affect retirement pensions or disability or survivor benefits of members hired prior to April 8, 1978, who retired, were disabled, or died prior to January 1, 1980.

(3) Where an employer results from a merger, a consolidation, or an exclusion or dissolution proceeding between or among one or more employers, including a new governmental entity created by intergovernmental agreement between or among one or more employers, all members transferred to or employed by such resulting employer shall, for the purposes of this article 31 and articles 30.5 and 31.5 of this title 31, have those rights and obligations they had prior to the merger, consolidation, exclusion, dissolution, or intergovernmental agreement. In the event of a transfer of members, provision shall be made in such agreement or proceeding for allocation and transfer of plan assets, and, in the event of the transfer of members of a defined benefit plan, provision shall be made in such agreement or proceeding for discharging plan liabilities and funding in order to maintain or enhance the actuarial soundness of the remaining and resulting plans. If the resulting employer had no members prior to the merger, consolidation, exclusion, or dissolution, it may continue as its plan any plan of a transferring employer, authorized by this article, for its members hired after the effective date of the agreement or proceeding or the resulting employer shall belong to the statewide retirement plan. The board may authorize the resulting employer to consolidate preexisting retirement plans and any retirement plan attributable solely to the resulting employer into one or more plans if the plans to be consolidated are identical, the benefits are equal for all members covered under the retirement provisions of the plans, and no member suffers a reduction of benefits or an increase in member contributions due to such plan consolidation. Any member employed by a predecessor department who participated in a money purchase plan prior to the merger, consolidation, exclusion, or dissolution and who participates in the statewide retirement plan after the merger, consolidation, exclusion, or dissolution shall pay the continuing uniform rate of contribution established by the board pursuant to section 31-31.5-305.

(4) (Deleted by amendment, L. 2022.)

(5) A member normally serving less than one thousand six hundred hours in any calendar year shall be exempted from the lifetime benefit components of the statewide retirement plan and shall be covered under the statewide money purchase plan.

(6) If an employer that is otherwise required to enroll its members under a plan fails to properly enroll such members, neither the fire and police pension association nor the defined benefit system trust fund is obligated or liable for any purpose to any person or employer arising from such failure.

Source: L. 96: Entire article added with relocations, p. 902, § 1, effective May 23. **L. 2003:** (5) added, p. 1232, § 3, effective August 6. **L. 2005:** (1)(a) amended, p. 305, § 1, effective August 8. **L. 2013:** (6) added, (SB 13-080), ch. 68, p. 222, § 1, effective August 7. **L. 2015:** (3) amended, (SB 15-026), ch. 8, p. 18, § 1, effective August 5; (4)(a) amended and (4)(c) added, (SB 15-028), ch. 10, p. 23, § 1, effective August 5. **L. 2018:** (3) amended, (HB 18-1031), ch. 5, p. 35, § 2, effective August 8. **L. 2022:** Entire section amended, (HB 22-1034), ch. 61, p. 302, § 6, effective January 1, 2023. **L. 2024:** (1)(c) and (1)(d) amended, (HB 24-1042), ch. 15, p. 39, § 8, effective March 6.

Editor's note: This section was formerly numbered as § 31-30-1003 (1), (2)(a)(I), (4), (5), and (7).

Cross references: For the "Social Security Act", see 42 U.S.C. sec. 301 et seq.

ANNOTATION

Annotator's note. Since § 31-31-401 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Plaintiffs not entitled to greater benefits under Denver plan. Peterson v. Fire & Police Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part, rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The provisions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. Littleton v. Fire & Police Pension Ass'n, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited

directly in the local government's alternative pension plan. City of Lamar v. Lamar Police Dept., 857 P.2d 457 (Colo. App. 1992).

31-31-402. Employer and member contributions - repeal. (Repealed)

Source: L. 96: Entire article added with relocations, p. 903, § 1, effective May 23. **L. 2000:** (1) amended, p. 1865, § 89, effective August 2; (4) amended, p. 45, § 1, effective August 2. **L. 2006:** (1), (2), and (3) amended and (5) added, p. 189, § 14, effective March 31. **L. 2007:** (1), (2), and (4) amended, p. 273, § 1, effective August 3. **L. 2010:** (1) and (3) amended, (SB 10-022), ch. 18, p. 82, § 1, effective August 11. **L. 2015:** (4) amended, (SB 15-027), ch. 9, p. 20, § 2, effective August 5. **L. 2020:** (1), (2), and (3) amended, (HB 20-1044), ch. 105, p. 405, § 2, effective September 14. **L. 2022:** (6) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: (1) This section was formerly numbered as § 31-30-1013.

(2) Subsection (6) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-403. Normal retirement - statewide defined benefit plan - repeal. (Repealed)

Source: L. 96: Entire article added with relocations, p. 905, § 1, effective May 23. **L. 2001:** (1), (4), (5)(b)(II), (5)(b)(III), and (5)(c) amended and (8) added, p. 417, § 3, effective June 1. **L. 2003:** (2)(a)(II) amended, p. 742, § 2, effective August 6. **L. 2006:** (2)(a)(II) and (2)(b) amended, p. 191, § 15, effective March 31. **L. 2007:** (5)(c) and (5)(d) amended, p. 50, § 1, effective March 14. **L. 2010:** (1)(b) and IP(2)(a) amended and (2)(c) added, (SB 10-022), ch. 18, p. 83, § 2, effective August 11. **L. 2020:** (1), (2)(a), and (4) amended, (HB 20-1044), ch. 105, p. 406, § 3, effective September 14. **L. 2022:** (9) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: (1) This section was formerly numbered as § 31-30-1006.

(2) Subsection (8) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-404. Return or transfer of contributions - vested retirement - repeal. (Repealed)

Source: L. 96: Entire article added with relocations, p. 907, § 1, effective May 23. **L. 99:** (1)(b) amended, p. 36, § 2, effective August 4. **L. 2001:** (2) amended and (3) added, p. 418, § 4, effective June 1. **L. 2003:** (2)(a) amended, p. 742, § 3, effective August 6. **L. 2010:** (2)(b) amended, (SB 10-022), ch. 18, p. 84, § 3, effective August 11. **L. 2020:** (2) amended, (HB 20-1044), ch. 105, p. 408, § 4, effective September 14. **L. 2022:** (4) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: (1) This section was formerly numbered as § 31-30-1011.

(2) Subsection (4) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-405. Stabilization reserve account and separate retirement account - creation - allocation - repeal. (Repealed)

Source: L. 96: Entire article added with relocations, p. 909, § 1, effective May 23. **L. 2000:** (4) amended, p. 76, § 1, effective August 2. **L. 2001:** (3) amended, p. 419, § 5, effective June 1. **L. 2006:** (1) amended, p. 101, § 1, effective March 27; entire section amended, p. 191, § 16, effective March 31. **L. 2020:** (2), (3), (5), and (6) amended, (HB 20-1044), ch. 105, p. 408, § 5, effective September 14. **L. 2022:** (7) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: (1) This section was formerly numbered as § 31-30-1017.

(2) Subsection (7) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-406. Separate retirement accounts - administration - repeal. (Repealed)

Source: L. 96: Entire article added with relocations, p. 909, § 1, effective May 23; (2) amended, p. 1342, § 7, effective June 1. **L. 2001:** (2)(a) and (4) amended and (7) added, p. 419, § 6, effective June 1. **L. 2003:** (1), (6), and (7)(b) amended, p. 742, § 4, effective August 6. **L.**

2020: (4) and (7) amended and (6) repealed, (HB 20-1044), ch. 105, p. 409, § 6, effective September 14. **L. 2022:** (8) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: (1) This section was formerly numbered as § 31-30-1018.

(2) Subsection (8) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-407. Adjustment of benefits - repeal. (Repealed)

Source: L. 96: Entire article added with relocations, p. 910, § 1, effective May 23; (2) amended, p. 1340, § 3, effective June 1. **L. 2002:** (1), (2), and (4) amended, p. 173, § 2, effective October 1. **L. 2008:** (1), (2), and (3) amended and (5) added, p. 13, § 1, effective August 5. **L. 2022:** (6) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: (1) This section was formerly numbered as § 31-30-1010.

(2) Subsection (6) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-408. Modification of state plan by the board - repeal. (Repealed)

Source: L. 96: Entire article added with relocations, p. 911, § 1, effective May 23. **L. 2010:** (1)(b), (3), (4), and (5) amended and (1.5) added, (SB 10-022), ch. 18, p. 84, § 4, effective August 11. **L. 2012:** IP(1) amended, (HB 12-1031), ch. 68, p. 236, § 2, effective August 8. **L. 2013:** (1)(d), (1)(e), (1.5)(a)(III), and (1.5)(a)(IV) amended, (SB 13-240), ch. 273, p. 1434, § 1, effective August 7. **L. 2020:** (1.6) added, (HB 20-1044), ch. 105, p. 410, § 7, effective September 14. **L. 2022:** (6) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: (1) This section was formerly numbered as § 31-30-1006.5.

(2) Subsection (6) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-409. Qualification requirements - internal revenue code. (Repealed)

Source: L. 96: Entire article added with relocations, p. 912, § 1, effective May 23. **L. 98:** (2)(f), (2)(i), and (2)(j) amended and (2)(k) added, p. 25, § 4, effective March 16. **L. 2006:** Entire section repealed, p. 192, § 17, effective March 31.

Editor's note: This section was formerly numbered as § 31-30-1019.

31-31-410. Purchased or rolled-over service credit - repeal. (Repealed)

Source: L. 99: Entire section added, p. 35, § 1, effective January 1, 2000. **L. 2002:** IP(1), (1)(c), and (1)(d) amended and (2.5) added, p. 53, § 1, effective January 1, 2003. **L. 2015:** Entire section amended, (SB 15-025), ch. 7, p. 15, § 1, effective August 5. **L. 2021:** (2)(b) amended, (SB 21-026), ch. 42, p. 177, § 14, effective November 11. **L. 2022:** (4) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: Subsection (4) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-411. Return to work by participating member after retirement - rules - repeal. (Repealed)

Source: L. 2010: Entire section added, (SB 10-023), ch. 19, p. 87, § 1, effective August 11. **L. 2022:** (4) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: Subsection (4) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-412. Merger into the statewide retirement plan.

(1) (a) On or about January 1, 2023, the assets and liabilities of the statewide defined benefit plan shall merge into the statewide retirement plan created pursuant to article 31.5 of this title 31.

(b) Statewide defined benefit assets held in the actuarial account pursuant to this part 4 shall be transferred to the lifetime benefits account created pursuant to part 1 of article 31.5 of this title 31.

(c) Stabilization reserve account assets held in separate retirement accounts pursuant to this part 4 shall be transferred to the money purchase account created pursuant to part 1 of article 31.5 of this title 31.

(d) Deferred retirement option plan account assets of the statewide defined benefit plan shall be transferred to the money purchase account created pursuant to part 1 of article 31.5 of this title 31.

(2) All remaining defined benefits and other obligations of the statewide defined benefit plan payable on and after January 1, 2023, shall be paid from the lifetime benefits account of the statewide retirement plan; except that the remaining obligations held in the separate retirement accounts of the statewide defined benefit plan shall be transferred to and be payable from the money purchase component of the statewide retirement plan. Said obligations shall be paid pursuant to the statutory provisions and rules adopted by the board regarding the statewide retirement plan.

(3) Participation by all members, including retirees, in the statewide defined benefit plan shall terminate upon the merger of the plans and said members shall begin participation in the defined benefit component of the statewide retirement plan. Accumulated service credit and length of service shall be aggregated between the plans.

(4) Immediately after such transfer, the affected member's accrued benefits in the statewide retirement plan shall be equal to the member's accrued benefits immediately before the transfer.

(5) The merger is intended to be consistent with the requirements under section 414 (l) of the "Internal Revenue Code of 1986", as amended, and shall not be considered a plan termination and shall not result in a distributable event.

Source: L. 2022: Entire section added, (HB 22-1034), ch. 61, p. 304, § 7, effective August 10.

Cross references: For section 414 (l) of the "Internal Revenue Code of 1986", see 26 U.S.C. § 414 (l).

PART 5

STATEWIDE MONEY PURCHASE PLAN

31-31-501. Withdrawal into statewide money purchase plan.

(1) Any employer may withdraw from its participation in the statewide retirement plan established by article 31.5 of this title 31 for the sole purpose of electing participation in the statewide money purchase plan created pursuant to the authority granted in section 31-31-502.

(2) (a) The employer may initiate withdrawal from the statewide retirement plan by filing with the board a resolution adopted by the employer pursuant to subsection (2)(b) of this section no less than nine months prior to the effective date of withdrawal unless a shorter waiting period is approved by the board. The effective date of withdrawal shall be the first day of the month immediately following the month in which the waiting period expires.

(b) The employer's withdrawal resolution shall be adopted by the governing body of the employer and shall state the employer's intent to withdraw from participation in the statewide retirement plan for the purpose of electing participation in the statewide money purchase plan.

(c) Any withdrawal shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the statewide retirement plan at the time of the election and who vote in the election proposing the withdrawal.

(d) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining the member approval provided for in subsection (2)(c) of this section.

(e) All withdrawals from the statewide retirement plan shall comply with the requirements set forth in this section, and, except as otherwise provided in this section, all withdrawals meeting such requirements shall be approved by the board. Withdrawal requests that do not meet the requirements of this section shall not be approved by the board.

(3) The rights of benefit recipients and the vested rights of inactive members shall not be impaired or reduced in any manner as a result of the withdrawal of an employer as provided in this section.

(4) (a) (I) The board shall determine the amount of reserves required as of the effective date of withdrawal to maintain current benefits payable by the association to benefit recipients and to preserve the vested rights of inactive members. The amount of reserves shall be determined by the board utilizing certified actuarial reports prepared by the actuary for the statewide retirement plan. Any such actuarial report shall also certify that the employer's withdrawal shall not have an adverse financial impact on the actuarial soundness of the new hire benefits account. If the actuary determines, in accordance with accepted actuarial principles, that the withdrawal will not have an adverse financial impact on the actuarial soundness of the new hire benefits account, the

board shall transfer such employer's share of the employer contribution reserve in the new hire benefits account, as determined by the actuary, and all member contributions for the employer's active members to a short-term investment account. If the actuary determines, in accordance with accepted actuarial principles, that the withdrawal shall have an adverse financial impact on the actuarial soundness of the new hire benefits account, the employer shall not be permitted to withdraw.

(II) At least sixty days prior to the effective date of the withdrawal, the actuarial reports shall be updated and appropriate adjustments made to the amount of reserves transferred by the board to the short-term investment account on behalf of the employer if an update is required pursuant to rules adopted by the board. Within thirty days after the receipt of such updated reports, the withdrawal may be terminated by either:

(A) The employer filing with the board a subsequent resolution revoking the employer's resolution of intent to withdraw; or

(B) More than thirty-five percent of the employer's active members who are eligible to vote filing with the board ballots indicating that they no longer wish to withdraw.

(III) If a resolution or a sufficient number of ballots is timely filed with the board pursuant to subparagraph (II) of this paragraph (a), the withdrawal shall be terminated, and the board shall return to the new hire benefits account any amounts transferred to the short-term investment account pursuant to subparagraph (I) of this paragraph (a). If no resolution or an insufficient number of ballots is timely filed, the withdrawal shall proceed in accordance with the provisions of this section.

(IV) The board shall prescribe the form of the ballot to be submitted by members indicating that they no longer wish to withdraw and any other rules necessary for the implementation of this subsection (4).

(b) On the effective date of withdrawal, the actuarial reports prepared pursuant to the provisions of paragraph (a) of this subsection (4) shall be updated to finalize the amount of reserves required for the purposes specified in paragraph (a) of this subsection (4).

(c) Expenses incurred by the board for the actuarial reports prepared as a result of an application for withdrawal shall be paid by the employer making such application.

(d) The board shall provide any information contained in such actuarial reports upon request of the employer making the application for withdrawal.

(5) (a) In the event that the amount of the reserves required pursuant to the provisions of subsection (4) of this section exceeds the amount of the employer's share of the employer contribution reserve in the new hire benefits account as calculated by the actuary, the employer shall make an additional payment no later than ten working days after the effective date of

withdrawal in an amount equal to the difference between the amount of reserves required and the amount of reserves on deposit.

(b) In the event that the amount of the reserves on deposit in the new hire benefits account, as calculated by the actuary, for the employer making application for withdrawal, exceeds the amount of reserves required pursuant to the provisions of subsection (4) of this section, such excess amount and the amount required for the transfer of member contributions as provided in subsection (6) of this section shall be transferred to the fire and police members' statewide money purchase plan benefit trust fund on the effective date of withdrawal. Allocation of such amounts to individual member accounts under the statewide money purchase plan shall be made as set forth in section 31-31-502.

(c) The payments required by this section are subject to interest if not submitted when due.

(6) (a) Members who are not vested under the statewide retirement plan and who are employed by an employer who has withdrawn from the statewide retirement plan shall have their member contributions credited to the statewide money purchase pension plan as set forth in section 31-31-502.

(b) (I) Members who are vested under the statewide retirement plan and who are employed by an employer who has filed a resolution of intent to withdraw from the statewide retirement plan may elect that, if the withdrawal becomes effective, their contributions remain with the statewide retirement plan by giving written notice to the association no later than the date established for completion of the member election provided in subsection (2)(c) of this section.

(II) Members who have made such an election shall become inactive statewide retirement plan members entitled to vested benefits upon termination and attainment of vested retirement age.

(III) Members who have made such an election shall not be entitled to withdraw any amounts from their separate retirement account until they have terminated their current employment.

(IV) If members who have made such an election die or become disabled prior to termination of employment, neither they nor their survivors shall be eligible for benefits under the statewide retirement plan, but rather they shall be limited to those benefits provided in part 8 of this article 31.

(c) Members who do not elect to leave their contributions with the statewide retirement plan pursuant to subsection (6)(b) of this section shall have their member contributions credited to the statewide money purchase pension plan as set forth in section 31-31-502.

(7) The provisions of section 31-31.5-411 (1)(b) that relate to the purchase of service credit forfeited by the refund of member contributions shall not apply to members who are employees of an employer that has withdrawn from the statewide retirement plan. Such service credit

forfeited by such withdrawal may be purchased pursuant to the provisions of section 31-31.5-310.

Source: L. 96 Entire article added with relocations, p. 914, § 1, effective May 23. **L. 98:** (6)(b)(IV) amended, p. 62, § 2, effective February 8, 1999. **L. 2001:** (2)(a), (2)(d), and IP(4)(a)(II) amended, p. 420, § 7, effective June 1. **L. 2006:** (5)(b) amended, p. 194, § 18, effective March 31. **L. 2015:** (5)(c) amended, (SB 15-027), ch. 9, p. 21, § 4, effective August 5. **L. 2017:** (2)(c) amended, (SB 17-020), ch. 23, p. 69, § 1, effective March 8. **L. 2022:** (1), (2), (4)(a)(I), (6)(a), (6)(b)(I), (6)(b)(II), (6)(b)(IV), (6)(c), and (7) amended, (HB 22-1034), ch. 61, p. 305, § 8, effective January 1, 2023. **L. 2024:** (7) amended, (HB 24-1042), ch. 15, p. 39, § 9, effective March 6. **L. 2026:** (6)(b)(IV) amended, (SB 26-039), ch. 37, p. 180, § 5, effective August 12.

Editor's note: This section was formerly numbered as § 31-30-1003.1.

31-31-502. Statewide money purchase plan - creation - management.

(1) The board shall develop, maintain, and amend a statewide money purchase plan document that is intended to comply with the qualification requirements specified in section 401 of the internal revenue code, as applicable to governmental plans. As used in this subsection (1), "internal revenue code" shall have that meaning set forth in section 31-31-204 (3). The plan shall cover the members of those employers that have withdrawn from the statewide retirement plan pursuant to section 31-31-501.

(2) (a) There is hereby created the fire and police members' statewide money purchase plan benefit trust fund, which shall consist of moneys of employers that have withdrawn from the statewide retirement plan pursuant to section 31-31-501, including member and employer contributions and such amounts as are transferred pursuant to section 31-31-501. The board shall keep an accurate account of the fund and of each member's separate account in the fund.

(b) The plan document created by the board pursuant to subsection (1) of this section shall govern the calculation and allocation of earnings and losses under the various investment alternatives which the board may offer, the transfer of assets between funds under each alternative, the allocation of a member's account between investment alternatives, and such other matters as may be necessary to the board's administration and management of the fund created pursuant to this section.

(c) In its administration, investment, and management of the fire and police members' statewide money purchase plan benefit trust fund, the board shall be subject to the provisions of section 31-31-303.

(3) Each member's member contributions transferred to the fund pursuant to section 31-31-501 (5)(b) shall be allocated to the member's separate account within the fund. In addition, each member's separate account will be credited with a portion of any excess employer reserve that is transferred to the fund, such amount to be calculated by multiplying the excess employer reserve times the proportion that the member's transferred member contributions bears to the total member contributions transferred.

(4) (a) Except as provided in subsection (4)(b) of this section, upon the effective date of an employer's withdrawal from the statewide retirement plan and election to participate in the statewide money purchase plan, each member covered by the statewide money purchase plan shall pay into the fund eight percent of salary paid. The payment shall be made by the employer by deduction from the salary paid such member. Except as provided in subsection (4)(b) of this section, for each such member, the employer shall pay into the fund eight percent of the salary paid to such member. All such payments shall be made by one voucher for the aggregate amount and shall be made no later than ten days following the date of payment of salary to the member. All such payments shall be credited to the fund. Late payments are subject to the penalty set forth in section 31-31.5-309.

(b) (I) Upon the request of an employer, the board shall permit a higher mandatory employer contribution rate, mandatory employee contribution rate, or both, than is set forth in subsection (4)(a) of this section if the board determines that:

(A) A local resolution or ordinance setting forth the higher mandatory contribution rate or rates was enacted and is in effect; and

(B) An employee election was conducted and the higher mandatory contribution rate or rates was approved by sixty-five percent of the employer's active members of the plan who vote in the election proposing the higher rate.

(II) Any active member and any employer may make voluntary contributions to the plan by payroll deduction. Voluntary member contributions are not subject to the employer pickup provisions of section 414 (h) of the federal "Internal Revenue Code of 1986", as amended.

(III) In no event shall increased contributions resulting from a higher contribution rate or rates cause a member to exceed the limit on annual additions under the federal "Internal Revenue Code of 1986", as amended, as applicable to government plans.

(5) The board may amend the pension benefits provided under the statewide money purchase plan document created pursuant to subsection (1) of this section only upon the approval of at least sixty-five percent of the active members of the plan who vote in the election proposing the

plan amendment and more than fifty percent of the employers who vote in the election proposing the plan amendment and who have active members covered by the plan, each employer to be assigned one vote; except that employers having both active police and fire members in the plan shall be assigned two votes; and except that the board may amend the plan document, without further approval, as it deems prudent and necessary to comply with state and federal law or as it deems necessary to efficiently administer benefits under the plan.

(6) (a) Any employer who has established a local money purchase plan pursuant to part 6 of this article or article 30.5 may apply to the board to cover the members of its local money purchase plan under the statewide money purchase plan. An application may be initiated by filing with the board a resolution adopted by the employer pursuant to paragraph (b) of this subsection (6) no less than six months prior to the proposed effective date of coverage under the statewide money purchase plan, unless a shorter waiting period is approved by the board. The effective date of coverage shall be the first day of the month following the waiting period.

(b) The employer's resolution applying for coverage under the statewide money purchase plan shall be adopted by the governing body of the employer and shall state the employer's intent to cover the members of its local money purchase plan under the statewide money purchase plan.

(c) Any application for coverage under the statewide money purchase plan shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the local money purchase plan at the time of the application and who vote in the election proposing the coverage under the statewide money purchase plan.

(d) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining the member approval described in paragraph (c) of this subsection (6). The board shall also promulgate rules relating to standards for granting an employer's application for participation in the statewide money purchase plan and for the submission of information to the board by the employer.

(e) An application for coverage under the statewide money purchase plan shall not be complete until the employer certifies to the board that:

(I) The employer's local money purchase plan meets the qualification requirements of section 401 (a) of the "Internal Revenue Code of 1986" that are applicable to governmental plans;

(II) In connection with the employer's resolution pursuant to paragraph (b) of this subsection (6), the employer's governing body has adopted a resolution for complete or partial termination of the local money purchase plan in accordance with the terms of that plan and that:

(A) The termination resolution does not adversely affect the qualified status of the local money purchase plan; and

(B) The rights of all participants in the local money purchase plan who are affected by the termination to benefits accrued to the date of termination are nonforfeitable;

(III) All active and retired fire and police participants in the local money purchase plan will become participants in the statewide money purchase plan;

(IV) As directed by the board, the employer will transfer or cause to be transferred to the statewide money purchase plan all assets of the local money purchase plan that are attributable to the accrued benefits of the transferred participants;

(V) All employer and employee contributions required to be made to the local money purchase plan as of the date of termination have been paid;

(VI) Participants in the local money purchase plan will not incur a reduction in their respective accrued benefits, determined as of the date of transfer, as a result of their transfer to the statewide money purchase plan; and

(VII) The employer agrees to participate in the statewide money purchase plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan.

Source: L. 96: Entire article added with relocations, p. 917, § 1, effective May 23. **L. 97:** (2) amended, p. 13, § 4, effective March 13. **L. 2000:** (4) and (5) amended, p. 53, § 1, effective August 2. **L. 2006:** (1), (2)(a), and (2)(c) amended, p. 194, § 19, effective March 31. **L. 2007:** (4)(a) amended, p. 274, § 2, effective August 3. **L. 2012:** (5) amended, (HB 12-1031), ch. 68, p. 236, § 3, effective August 8. **L. 2017:** IP(4)(b)(I), (4)(b)(I)(B), (5), and (6)(c) amended, (SB 17-020), ch. 23, p. 69, § 2, effective March 8. **L. 2022:** (1), (2)(a), and (4)(a) amended, (HB 22-1034), ch. 61, p. 307, § 9, effective January 1, 2023.

Editor's note: This section was formerly numbered as § 31-30-1005.3.

PART 6

WITHDRAWN LOCAL ALTERNATIVE PENSION PLAN

31-31-601. Withdrawn local alternative pension plan - creation - administration - repeal. (Repealed)

Source: L. 96: Entire article added with relocations, p. 920, § 1, effective May 23. **L. 98:** (1)(b)(II) amended, p. 62, § 3, effective February 8, 1999. **L. 2017:** (1)(c) amended, (SB 17-020), ch. 23, p. 70, § 3, effective March 8. **L. 2022:** (3) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: (1) This section was formerly numbered as § 31-30-1003 (2)(b).

(2) Subsection (3) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-602. Withdrawn local alternative pension plans - investment authority.

(1) Except as provided in subsection (2) of this section, any locally administered and financed alternative pension plan fund established pursuant to this part 6 may be managed and invested by the trustees of such plan pursuant to the standard and other provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S. Such investments shall be audited at least biennially.

(2) The trustees of a locally administered and financed alternative plan may allow a participant to exercise control of the investment of the participant's accrued benefit under the plan, subject to the following requirements:

(a) The trustees shall select at least three investment alternatives, each of which is diversified in itself, that allow the participant a broad range of investments and a meaningful choice between risk and return in the investment of the participant's accrued benefit;

(b) The trustees shall allow the participant to change investments at least once each calendar quarter; and

(c) The trustees shall provide the participant with information describing the investment alternatives and the nature, investment performance, fees, and expenses of the investment alternatives and other information to enable a participant to make informed investment decisions.

Source: L. 96: Entire article added with relocations, p. 921, § 1, effective May 23. **L. 97:** Entire section amended, p. 14, § 5, effective March 13. **L. 2004:** (1) amended, p. 1204, § 76, effective August 4.

PART 7

AFFILIATION OF PLANS WITH THE ASSOCIATION

31-31-701. Affiliation by old hire pension plans.

(1) Any employer may elect affiliation with the association relating to an old hire fire or police pension plan that it has established pursuant to article 30.5 of this title by filing with the

board a resolution approved as to form by the fire and police pension association and adopted by the employer. The effective date of affiliation must be mutually agreed upon by the employer and the association.

(2) (Deleted by amendment, L. 2014.)

(3) On the effective date of affiliation pursuant to this section, the assets of the old hire pension plan shall be transferred to the trust fund created by subsection (6) of this section. The amount of the transfer must equal the market value of such assets at the close of business on date of affiliation. Upon affiliation and the transfer of assets to the fund, benefits due pursuant to the old hire plan shall be paid by the association from the assets of the plan.

(4) An eligible employer may request of the board, prior to filing a resolution of affiliation, an estimate of the employer's contribution rate necessary to comply with the contribution requirements established by subsection (5) of this section.

(5) An employer that affiliates pursuant to this section shall annually contribute an amount approved by the board, upon advice of its actuary, to pay the normal cost plus amortize the unfunded past service liability attributed to old hire members hired prior to April 8, 1978, over a period not to exceed the lesser of twenty years or the number of years equal to the average remaining life expectancy of the pension fund's members.

(6) There is hereby created the old hire plan members' benefit trust fund that consists of the assets of old hire plans administered and managed by the board pursuant to this section. The board shall keep an accurate account of each such individual old hire plan.

(7) (a) The fire and police pension association has the following responsibilities for affiliated plans:

(I) Investing the assets of the plan, including determining the allocation of assets;

(II) Collecting and accounting for contributions to the plan;

(III) Distributing benefits provided under the plan as directed by the employer or its agent and issuing tax forms and filing tax reports regarding distributions;

(IV) Conducting actuarial valuations and audits of the plan as are required by statute or by regulatory bodies;

(V) Maintaining records and reporting the investments, assets, and benefits of the plan as required by statute or by regulatory bodies;

(VI) Authorizing the payment of expenses of the plan from the assets of the plan. Any expenses that are incurred by the association which are directly related to the association's administration of the plan shall be paid from that plan's assets. Any expenses that are incurred by the association which are attributable to more than one plan administered by the association shall

be allocated to each plan on an equitable basis as determined by the association. The allocated expense shall be paid from the assets of each plan.

(VII) Taking such other actions as may be allowed or required by statute.

(b) The local old hire pension board has the following responsibilities for an affiliated plan:

(I) Establishing eligibility for and the amount of benefits to be received by members and beneficiaries of the plan, including but not limited to determination of base salaries, years of service under the plan, marital status, and continuing eligibility of members and survivors;

(II) Maintaining records of the terms and provisions of the plan, as they may be adopted and amended;

(III) Making determinations regarding benefit or cost-of-living adjustments and rank escalation, if any;

(IV) Periodically certifying information required by the association to administer the plan benefits; and

(V) Electing options for the allocation of assets, if such options are provided by the association.

Source: L. 96: Entire article added with relocations, p. 921, § 1, effective May 23. **L. 2006:** (3) amended and (6) added, p. 195, § 20, effective March 31. **L. 2014:** Entire section amended, (SB 14-031), ch. 52, p. 245, § 7, effective March 20.

Editor's note: This section was formerly numbered as § 31-31-1003 (3).

ANNOTATION

Annotator's note. Since § 31-31-701 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Plaintiffs not entitled to greater benefits under Denver plan. Peterson v. Fire & Police Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part, rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The provisions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. Littleton v. Fire & Police

Pension Ass'n, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. City of Lamar v. Lamar Police Dept., 857 P.2d 457 (Colo. App. 1992).

31-31-702. Affiliation by local money purchase plans. (Repealed)

Source: L. 96: Entire article added with relocations, p. 922, § 1, effective May 23. **L. 2010:** Entire section repealed, (SB 10-024), ch. 20, p. 89, § 1, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1003.3.

31-31-703. Money purchase plan benefit trust fund - creation - management. (Repealed)

Source: L. 96: Entire article added with relocations, p. 922, § 1, effective May 23. **L. 97:** (1), (2), (5), and (6) amended, p. 15, § 6, effective March 13. **L. 2000:** (2) amended, p. 51, § 1, effective August 2. **L. 2004:** (2) amended, p. 1204, § 77, effective August 4. **L. 2006:** Entire section amended, p. 195, § 21, effective March 31. **L. 2010:** Entire section repealed, (SB 10-024), ch. 20, p. 89, § 2, effective August 11.

Editor's note: This section was formerly numbered as § 31-30-1012.3.

31-31-704. Optional affiliation by social security employers.

(1) (a) Prior to January 1, 2007, and notwithstanding the exemption provided in section 31-31-401 (1)(a), any employer that covers members under the federal "Social Security Act", as amended, or any county that covers salaried employees whose duties are directly involved with the provision of law enforcement or fire protection, as certified by the county under the federal "Social Security Act", as amended, may have elected affiliation with the association, either as to coverage under the statewide death and disability plan or as to retirement under the statewide defined benefit plan, or as to both, by filing with the board a resolution of the governing body of such employer, but any such affiliation shall either exclude past service credit or include past service credit funded by contribution levels established by the board.

(b) On or about January 1, 2023, participation by members employed by social security employers who elected optional affiliation pursuant to subsection (1)(a) of this section shall be transferred to the statewide retirement plan pursuant to the merger described in section 31-31-412.

(1.5) to (4) (Deleted by amendment, L. 2012.)

(5) Benefits provided pursuant to the statewide defined benefit and statewide death and disability plans established by this article to members of employers that have affiliated pursuant to this section prior to January 1, 2007, shall be reduced by the pro rata amount of any social security benefit received by the member attributable to the member's quarters of social security coverage derived from employment as a member.

(6) to (10) (Deleted by amendment, L. 2012.)

Source: L. 96: Entire article added with relocations, p. 924, § 1, effective May 23. **L. 2003:** (1) and (3) amended and (1.5) and (3.5) added, p. 1232, § 4, effective August 6. **L. 2006:** (2) amended and (9) and (10) added, p. 101, § 2, effective March 27. **L. 2012:** Entire section amended, (HB 12-1018), ch. 24, p. 62, § 1, effective August 8. **L. 2022:** (1) amended, (HB 22-1034), ch. 61, p. 307, § 10, effective January 1, 2023.

Editor's note: This section was formerly numbered as § 31-30-1003.5.

Cross references: For the federal "Social Security Act", see 42 U.S.C. sec. 301 et seq.

31-31-704.5. Entry for social security employers.

(1) (a) (I) Notwithstanding the exemption provided in section 31-31-401 (1)(a), any employer that covers members under the federal "Social Security Act", as amended, or any county that covers salaried employees under the federal "Social Security Act", as amended, whose duties are peace officers or firefighters as certified by the county may elect coverage under the statewide retirement plan social security supplemental component established pursuant to article 31.5 of this title 31 by filing a resolution of affiliation with the board pursuant to subsection (2) of this section. Election of coverage under the plan shall be irrevocable.

(II) The board may allow an employer eligible for participation in the social security pursuant to subsection (1)(a)(I) of this section to alternatively elect to participate in other lifetime benefit components of the statewide retirement plan with full benefits and unreduced contribution rates. Such participation shall be as provided by rules adopted by the board. The

board may determine a continuing rate of contribution for all members who are active on the effective date of coverage to fund benefits as may be necessary to ensure that the affiliating employers' coverage shall not have an adverse financial impact on the actuarial soundness of the plan.

(b) A county electing to affiliate with the association for the purpose of providing coverage of its peace officers or firefighters shall make such election through the county's governing board. For purposes of administering to counties affiliated pursuant to this section, any county electing to affiliate shall be included in the definition of "employer", as defined in section 31-31-102 (3), and any covered peace officer or firefighter of such county shall be included in the definition of "member", as defined in section 31-31-102 (4).

(2) The employer's resolution applying for coverage by the association shall first be adopted by the governing body of the employer and shall state the employer's intent to cover its members under the plan.

(3) Any application for coverage by the association shall be approved by at least sixty-five percent of all active members employed by the employer at the time of the application who vote in the election proposing the coverage; except that no such election shall be required if:

(a) The employer allows members to elect to remain in a predecessor plan pursuant to association rules or if the members have approved leaving a predecessor plan pursuant to section 24-54-106 (3); and

(b) The employer designates that all future eligible employees will participate in a plan of the association.

(4) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining member approval pursuant to subsection (3) of this section. The board shall also promulgate rules relating to standards for granting an employer's application for participation in the plan and for the submission of information to the board by the employer. The rules shall contain a provision specifying that an employer that opts for coverage by the association shall not be permitted to opt out of the coverage at any later date. The board may adopt rules allowing an eligible individual active employee of an affiliating department to elect to remain in a predecessor plan and not have coverage by the association.

(5) An application for coverage by the association filed by an employer shall include the employer's certification to the board:

(a) That all fire and law enforcement employees who are active at the time of affiliation, except those that have elected to remain in a predecessor plan as may be allowed by rule, and all fire and law enforcement employees who are hired after affiliation as certified by the employer, will become participants in the plan and the election to participate in the plan is irrevocable; and

(b) That the employer agrees to participate in the plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan.

(6) An employer that affiliates with the association pursuant to this section shall not be prohibited from participating in other governmental pension or benefit plans to the extent allowed under the federal "Internal Revenue Code of 1986", as amended.

(7) Nothing contained in this section shall affect the ability of an employer to terminate social security coverage or affect the procedures for such termination.

(8) Any employer participating in the social security component of the statewide retirement plan created pursuant to article 31.5 of this title 31 may not elect coverage under the statewide death and disability plan under part 8 of this article 31.

Source: L. 2006: Entire section added, p. 102, § 3, effective March 27. **L. 2012:** (7) added, (HB 12-1018), ch. 24, p. 64, § 2, effective August 8. **L. 2017:** (3) amended, (SB 17-020), ch. 23, p. 70, § 4, effective March 8. **L. 2019:** (1), (2), (3), (4), (5), and (6) amended, (SB 19-260), ch. 430, p. 3737, § 1, effective August 2; (4) amended, (SB 19-106), ch. 143, p. 1751, § 3, effective August 2. **L. 2022:** (1) amended and (8) added, (HB 22-1034), ch. 61, p. 308, § 11, effective January 1, 2023.

Cross references: For the federal "Social Security Act", see 42 U.S.C. sec. 301 et seq. For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

31-31-704.6. Social security supplemental plan - creation - management - repeal. (Repealed)

Source: L. 2006: Entire section added, p. 102, § 3, effective March 27. **L. 2015:** (3) amended, (SB 15-027), ch. 9, p. 21, § 3, effective August 5. **L. 2022:** (6) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: Subsection (6) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-704.7. Participation in statewide death and disability plan - repeal. (Repealed)

Source: L. 2012: Entire section added, (HB 12-1018), ch. 24, p. 64, § 3, effective August 8. **L. 2015:** Entire section amended, (SB 15-028), ch. 10, p. 24, § 2, effective August 5. **L. 2020:** Entire section amended, (HB 20-1044), ch. 105, p. 411, § 8, effective September 14. **L. 2022:** (3) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: Subsection (3) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-705. Affiliation by volunteer pension plans.

(1) The board is authorized to make affiliation agreements with governing bodies that provide pension plans for volunteer firefighters to administer such plans and manage the funds of such plans for investment. The fire and police pension association may require periodic renewal of the agreement.

(2) The fire and police pension association has the following responsibilities in connection with a volunteer firefighter pension plan that has an agreement with the association pursuant to subsection (1) of this section:

(a) Investing the assets of the plan, including determining the allocation of assets;

(b) Collecting and accounting for contributions to the plan;

(c) Distributing benefits provided under the plan as directed by the governing body or its agent and issuing tax forms and filing tax reports regarding distributions;

(d) Conducting actuarial valuations and financial audits of the plan on at least a biannual basis or as required by regulatory bodies or by law;

(e) Maintaining records and reporting the investments, assets, and benefits of the plan as required by statute or by regulatory bodies;

(f) Authorizing the payment of expenses of the plan from the assets of the plan. Any expenses that are incurred by the fire and police pension association that are directly related to the association's administration of the plan shall be paid from that plan's assets. Any expenses incurred by the association that are attributable to more than one plan administered by the association shall be allocated to each plan on an equitable basis as determined by the association. The allocated expense shall be paid from the assets of each plan.

(g) Taking such other actions as may be allowed or required by statute.

(3) The governing body of a volunteer pension plan or its local pension board has the following responsibilities when the plan is affiliated with the fire and police pension association pursuant to subsection (1) of this section:

(a) Establishing eligibility for and the amount of benefits to be received by members and beneficiaries of the plan, including the determination of base benefits, years of service under the plan, marital status, and continuing eligibility of retirees and survivors;

(b) Electing options for the allocation of assets, if such options are provided by the fire and police pension association;

(c) Maintaining records of the terms and provisions of the plan as they may be adopted and amended;

(d) Making determinations regarding benefit improvements, if any; and

(e) Periodically certifying information required by the fire and police pension association to administer the plan benefits.

(4) A governing body that provides pension benefits for volunteer firefighters may terminate its affiliation with the fire and police pension association upon giving written notice to the association at least sixty days prior to the end of any quarter of a calendar year. The association may allow a shorter notice period. The association may terminate the affiliation of a volunteer plan upon sixty days written notice to the governing body for failure to fulfill its responsibilities to the plan or its failure to renew an affiliation agreement.

Source: L. 96: Entire article added with relocations, p. 926, § 1, effective May 23. **L. 2014:** Entire section amended, (SB 14-024), ch. 51, p. 233, § 3, effective March 20.

Editor's note: This section was formerly numbered as § 31-30-1005 (1)(k).

ANNOTATION

Annotator's note. Since § 31-31-705 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be

funded, nor does it specify the extent of coverage which may be provided. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-31-706. Affiliation by exempt defined benefit pension plans.

(1) At the request of any local employer having an exempt defined benefit pension plan, the board is authorized to make an agreement with the employer's governing body to manage such employer's exempt defined benefit pension plan fund for investment.

(2) (a) As an alternative to affiliation for investment management pursuant to subsection (1) of this section, at the request of any local employer having an exempt defined benefit pension plan, the board is authorized to make an agreement with the employer's governing body to incorporate the exempt defined benefit pension plan into the defined benefit system. The incorporation shall be under terms and conditions that are mutually agreeable to the employer's governing body and the board and as may be required to maintain the qualified status of the plan under the federal "Internal Revenue Code of 1986", as amended.

(b) Prior to the implementation of an agreement of incorporation pursuant to paragraph (a) of this subsection (2), the board shall find that the incorporation is not projected to have an adverse actuarial impact on existing members of the defined benefit system. The board and the

employer's governing body are authorized to take all actions necessary to accomplish the agreement and to maintain the qualified status of the formerly exempt defined benefit pension plan after incorporation into the defined benefit system. Notwithstanding any other requirement, an exempt defined benefit pension plan may be incorporated into the defined benefit system without the approval of the members of the exempt plan or the statewide plan.

(c) The board may require that employees hired by the local employer with the formerly exempt defined benefit pension plan after the date of incorporation pursuant to this subsection (2) be members of the statewide retirement plan pursuant to article 31.5 of this title 31.

Source: L. 96: Entire article added with relocations, p. 926, § 1, effective May 23. **L. 2005:** Entire section amended, p. 309, § 1, effective April 14. **L. 2006:** (2)(a) and (2)(b) amended, p. 196, § 22, effective March 31. **L. 2022:** (2)(c) amended, (HB 22-1034), ch. 61, p. 309, § 12, effective January 1, 2023.

Cross references: For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

31-31-707. Multiple plan employers.

An employer with multiple plans may exercise its options of affiliation and withdrawal pursuant to this article on an individual plan basis.

Source: L. 2001: Entire section added, p. 420, § 8, effective June 1.

31-31-708. Optional affiliation by county sheriff.

Any county that does not cover, under the federal "Social Security Act", as amended, salaried employees whose duties are directly involved with the provision of law enforcement or fire protection as certified by the county may elect coverage under the statewide retirement plan established in article 31.5 of this title 31 and the statewide death and disability plan established in part 8 of this article 31 by filing a resolution of affiliation with the board. Election of coverage under the plan is irrevocable. Such participation shall be as provided by rules adopted by the board. The board may determine a continuing rate of contribution for all members who are active on the effective date of coverage to fund benefits as may be necessary to ensure that the affiliating employers' coverage shall not have an adverse financial impact on the actuarial soundness of the plan.

Source: L. 2016: Entire section added, (HB 16-1038), ch. 65, p. 168, § 1, effective August 10. **L. 2020:** Entire section amended, (HB 20-1044), ch. 105, p. 411, § 9, effective September 14. **L. 2022:** Entire section amended, (HB 22-1034), ch. 61, p. 309, § 13, effective January 1, 2023.

PART 8

DISABILITY AND SURVIVOR BENEFITS

Editor's note: This part 8 was added in 1996. It was repealed and reenacted in 2026, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this part 8 prior to 2026, consult the 2025 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 8, see the comparative tables located in the back of the index.

31-31-801. Disability and survivor benefits program design - rules.

(1) The association shall provide twenty-four-hour, on- and off-duty coverage.

(2) The statewide death and disability plan consists of three levels of disability, including temporary occupational disability, permanent occupational disability, and total disability as specified in this part 8.

(3) The board may adopt rules for the implementation, administration, and management of the plan, including further defining the standards for disability, the processing of disability applications, survivor benefits, and the administrative review process.

(4) The board, as a fiduciary, may delegate one or more of its responsibilities under this part 8 as specified in section 31-31-202 (1)(l) but shall maintain its responsibility for oversight of the delegation.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 157, § 1, effective August 12.

31-31-802. Definitions.

As used in this part 8, unless the context otherwise requires:

(1) "Assigned duties" means those specific tasks or jobs designated by the employer for a particular position within a job classification. The term does not include the duties of a member's rank or grade that the member is not actually required to regularly perform in the position which the member occupies.

(2) "Dependent child" means an unmarried child under the age of twenty-three and includes, if the board so determines, any child, regardless of age or marital status, who is so mentally or physically incapacitated that the child cannot provide for the child's own care. The term also includes a child who is conceived but unborn at the date of the member's death or the date of disability, whichever applies. Any applicable increase in benefits occurs upon birth.

(3) "Occupational disability" means a disability resulting in an incapacity to perform assigned duties and expected, with reasonable medical probability, to exist for at least one year.

(4) "Permanent occupational disability" means an occupational disability caused by a condition that is permanent or degenerative, and for which there is no prognosis for improvement or recovery through surgical treatment, counseling, medication, therapy, or other means.

(5) "Statewide death and disability plan" or "plan" means the program created in this part 8.

(6) "Temporary occupational disability" means an occupational disability for which there is a prognosis for improvement or recovery through surgical treatment, counseling, medication, therapy, or other means.

(7) "Total disability" means inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that may be expected to result in death or that has lasted or may be expected to last for a period of not less than twelve months.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 158, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-801 as it existed prior to 2026.

31-31-803. Coverage and eligibility to apply.

(1) Any member is eligible for the benefits provided by this part 8, with the exception of the following:

(a) Any member whose employer covers them under the federal "Social Security Act";

(b) Any member whose employer had established an exempt defined benefit pension plan in accordance with part 8 of article 30.5 of this title 31, on January 1, 1980, unless an employer irrevocably elected not later than October 1, 1983, to be subject to the provisions of this part 8;

(c) Any member whose employer had established a money purchase plan on or before December 1, 1978, in accordance with the provisions of part 8 of article 30.5 of this title 31; and

(d) Any member whose employer has affiliated with the public employees' retirement association for the purpose of administering retirement benefits for its members.

(2) (a) Departments participating in a plan established pursuant to part 4, 5, or 11 of this article 31 or article 31.5 of this title 31 and not participating in the plan for disability and survivor benefits under this part 8 may be covered by the provisions of this part 8 in accordance with the terms, conditions, and procedures established by the board.

(b) No withdrawal from coverage under the disability and survivor benefits provisions of this part 8 is permitted to take effect after December 31, 2001.

(c) If an employer has withdrawn under this subsection (2), reentry into the disability and survivor benefit plan provided by this part 8 is permitted only once, in accordance with terms, conditions, and procedures established by the board.

(3) If an employer that is otherwise required to enroll its members under the plan fails to properly enroll such members, neither the fire and police pension association nor the death and disability trust fund is obligated or liable for any purpose to any person or employer arising from such failure.

(4) (a) A member is ineligible for disability retirement benefits with respect to an occupational or total disability that is the proximate consequence or result of a pre-existing and permanent medical condition.

(b) Every newly hired member shall disclose their complete health history on the statewide standard health history form provided by the association.

(c) Any member who conceals any material fact concerning health history when completing the form may be disqualified from receiving an award of disability retirement benefits under this part 8 if the association determines that the condition concealed by the member proximately caused the total or occupational disability.

(5) Members who have coverage under this section are eligible to apply for disability retirement benefits under this part 8 if:

(a) The association receives an application on the association-approved form no later than three hundred sixty-five days after the last day on the payroll under which disability coverage under this part 8 is provided.

(b) The member is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension plan;

(c) The member has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article 31 or under a local money purchase plan; or

(d) The member is not participating in the deferred retirement option plan established pursuant to 31-31.5-409.

(6) Within the application for disability retirement benefits, a member may irrevocably elect not to be considered for reinstatement by their former employer in the event that such member becomes eligible. Any such election terminates any obligation for reinstatement by the employer as may be required by section 31-31-810 (2) or 31-31-813.

(7) Within the application for disability retirement benefits, the employer shall:

(a) Make a statement indicating the reason for the member's separation from employment; and

(b) State any additional basis for disability under the death and disability program that the employer believes exists and include any documentation of relevant medical evidence. If the member's disability ceases to exist and the member becomes eligible to be restored to active service pursuant to section 31-31-813 (2), the association may consider the member for a continuing disability with regard to the additional basis provided by the employer. The association shall conduct the consideration as if the member had filed an original application; except that limitation periods under section 31-31-813 (2) shall accrue from the date of the original disablement. If the member fails to be examined with regard to the additional basis, the member is entitled to neither reinstatement nor continuing disability retirement benefits.

(8) (a) Notwithstanding any other provision of this section, benefits are not payable for any disability resulting in whole or in part from:

(I) Addiction to a controlled substance, the use of which is prohibited in article 18 of title 18;

(II) Engaging in any act for which the member has been convicted of a felony; or

(III) An intentionally self-inflicted injury.

(b) As used in this subsection (8):

(I) "Addiction" has the same meaning set forth in section 12-245-801.

(II) "Controlled substance" has the same meaning set forth in section 18-18-102.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 158, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-802 as it existed prior to 2026.

ANNOTATION

Annotator's note. Since § 31-31-803 is similar to § 31-30-1003 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Plaintiffs not entitled to greater benefits under Denver plan. Peterson v. Fire & Police Pension Ass'n, 725 P.2d 81 (Colo. App. 1986), aff'd in part, rev'd in part on the grounds, 759 P.2d 720 (Colo. 1988).

Refund of employer and employee contributions under subsection (2)(b)(V). The provisions of this section require the fire and police pension association to refund to withdrawing local governments all contributions previously made by them on behalf of both present and former employees. Littleton v. Fire & Police Pension Ass'n, 786 P.2d 458 (Colo. App. 1989).

All moneys refunded by the fire and police pension association must be deposited directly in the local government's alternative pension plan. City of Lamar v. Lamar Police Dept., 857 P.2d 457 (Colo. App. 1992).

31-31-804. Total disability.

(1) A member who meets the definition of total disability, as defined by this part 8 and the rules adopted by the board, is retired from active service for disability and is eligible to receive the disability retirement benefit provided in subsection (2) of this section.

(2) The normal annual disability retirement benefit for total disability is seventy percent of the annual base salary paid to the member immediately preceding retirement for disability.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 161, § 1, effective August 12.

31-31-805. Permanent occupational disability.

(1) A member who meets the definition of permanently occupationally disabled, as defined by this part 8 and the rules adopted by the board, is retired from active service for such time as the permanent occupational disability continues and is eligible to receive the disability retirement benefit provided in subsection (2) of this section.

(2) The normal annual disability retirement benefit for permanent occupational disability is fifty percent of the annual base salary paid to the member immediately preceding retirement for disability.

(3) The association may require members who are receiving a permanent occupational disability retirement benefit pursuant to this section to participate in rehabilitation and retraining programs as the association deems appropriate.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 161, § 1, effective August 12.

31-31-806. Retirement options for members receiving a total or permanent occupational disability retirement benefit.

A member eligible for the normal annual disability retirement benefit for total disability or permanent occupational disability may elect to receive the normal annual disability retirement benefit or a reduced benefit under one of the options adopted by the board through rule, which shall be the actuarial equivalent of the normal disability retirement benefit.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 161, § 1, effective August 12.

31-31-807. Temporary occupational disability.

(1) A member who meets the definition of temporarily occupationally disabled, as defined by this part 8 and the rules adopted by the board, is retired from active service for such time as the temporary occupational disability continues for a period up to five years from the date of original disablement and is eligible to receive the disability retirement benefit provided in this section.

(2) The annual disability retirement benefit for temporary occupational disability is forty percent of the annual base salary being paid to the member immediately preceding retirement for disability.

(3) A member found to have a temporary occupational disability is subject to reexamination at such times and in such manner as the association may direct. The association may require treatment, counseling, or therapy necessary to rehabilitate the member for return to work. At the time of reexamination, a member with a temporary disability shall provide evidence of compliance with the requirements established by the association. The association may terminate benefits if the member fails to make rehabilitation efforts, fails to comply with the treatment plan, or fails to provide evidence of a continuing disability.

(4) A member who remains disabled may apply for an upgrade to permanent occupational disability or to total disability no later than six months prior to the end of five years from the date of original disablement. The association may upgrade a member to a permanent occupational disability upon a finding by the association that the member meets the definition of permanent occupational disability. The association may upgrade a member to a total disability upon a finding by the association that the member meets the definition of total disability. After the five-year period, benefits cease unless the member has been upgraded to either permanent occupational disability or total disability.

(5) A member who is on temporary occupational disability is not entitled to any cost of living adjustment.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 161, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-803 (2.2) as it existed prior to 2026.

31-31-808. Disability prior to October 1, 2002.

(1) A member who becomes occupationally disabled and was awarded disability prior to October 1, 2002, is retired from active service for such time as the occupational disability continues and is eligible to receive the disability retirement benefit provided by subsection (2) of this section.

(2) The annual disability retirement benefit for occupational disability for a member who is retired pursuant to subsection (1) of this section is thirty percent of the annual base salary paid to the member immediately preceding retirement for disability. The benefit is increased by:

(a) Ten percent of the annual base salary if the member had a spouse at the time of becoming occupationally disabled, for so long as such spouse survives and is married to the member or is legally entitled to maintenance from the member in an amount equal to or greater than the amount of the increase in the benefit authorized by this subsection (2)(a). If the amount of maintenance is less than the amount of the increase in the benefit authorized by this subsection (2)(a), the benefit is increased by an amount equal to the amount of the maintenance; except that, for any member who is receiving the benefit authorized by this subsection (2)(a) and who becomes legally required to pay maintenance prior to June 1, 2001, the amount of the benefit is ten percent of the annual base salary.

(b) Ten percent of the annual base salary if such member has any dependent children.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 162, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-803 (2) as it existed prior to 2026.

31-31-809. Disability retirement benefits - on-duty.

(1) The association shall determine whether the disability is the result of an injury incurred while performing official duties or an occupational disease arising out of and in the course of the member's employment. An on-duty determination does not change the benefit amount awarded.

(2) The board shall adopt rules that specify standards for determining whether a member's disability is the result of an injury incurred while performing official duties or an occupational disease arising out of and in the course of employment and that establish procedures for making such determination.

(3) The determinations made by the association pursuant to this subsection (3) shall be made solely on the basis of the medical evidence that was previously submitted in connection with the member's application for disability and other relevant evidence that is contemporaneous in time with the termination of the member's employment.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 163, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-806.5 as it existed prior to 2026.

31-31-810. Disability decisions and appeals.

(1) (a) The association makes the determination of disability, whether the disability is occupational or total, whether the disabling condition is on-duty, and the amount of the disability retirement benefit. The association may consider any evidence it deems relevant in making the determination, including reports made by physicians, who may be appointed upon the recommendation of a medical advisor with whom the board shall contract to provide advisory services.

(b) The association may request that any physician appointed to examine the disability applicant also provide an opinion as to whether the applicant's injury was received while performing official duties or whether the applicant's occupational disease arose out of and in the course of the applicant's employment. The association may investigate claims at the time of initial application for benefits or subsequent to an award of benefits to determine eligibility or

continuing eligibility for such benefits. The association may appoint investigators and other personnel as necessary to carry out this function.

(c) An applicant may appeal the decisions made by the association pursuant to this subsection (1) through the administrative review procedures set forth in the rules adopted by the board. A final decision from the association can only be reviewed by proper court action subject to rule 106 (a)(4) of the Colorado rules of civil procedure.

(d) In connection with this subsection (1), the board:

(I) May appoint hearing officers to conduct hearings on any issue relating to an applicant's disability; and

(II) May adopt rules to establish a process for the administrative review of disability applications, including standards of review for the applications, without board review.

(2) If the association determines that an applicant for disability is not disabled and the applicant is on sick leave, disability leave, or other type of leave of absence, is serving in a temporary position pending the determination of an application, or has been terminated from employment by the employer on the basis of an alleged disability, the employer shall reinstate the applicant to active service in the same position the applicant held prior to the commencement of such leave, assignment to a temporary position, or termination. If the employer refuses to reinstate the applicant to the applicant's prior position, the employer shall thereafter pay benefits to the applicant as if the applicant had been determined occupationally disabled by the association. The employer shall continue to pay such benefits until the applicant is reinstated to the applicant's prior position or declines an offer of reinstatement.

(3) A member whose disability retirement benefits cease and who is not restored to active service or a member who elects to terminate their disability retirement benefits is entitled to:

(a) Any vested benefit earned through their years of service prior to becoming disabled, payable at normal retirement age; or

(b) A refund of the member's contributions if no benefit is vested.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 163, § 1, effective August 12.

ANNOTATION

Annotator's note. Since § 31-31-810 is similar to § 31-31-803 and its antecedent provisions, relevant cases construing those provisions have been included in the annotations to this section.

District court or reviewing court should not substitute its own judgment as to the weight of the evidence for that of the board. Ross v. Fire & Police Pension Ass'n, 682 P.2d 496 (Colo. App. 1984), aff'd, 713 P.2d 1304 (Colo. 1986).

Statute provides that board is not bound by physicians' determinations on whether disability exists and, therefore, board did not abuse its discretion in denying disability application even through two of the reexamining physicians found the applicant to have a disability. Ross v. Fire & Police Pension Ass'n, 682 P.2d 496 (Colo. App. 1984), aff'd on other grounds, 713 P.2d 1304 (Colo. 1986).

Eligibility of plaintiff for occupational disability benefits where medical opinions of physicians panels conflicted was a question for the board to determine and, since competent evidence supported board's denial of benefits, court of appeals was correct in reinstating board's decision. Ross v. Fire & Police Pension Ass'n, 713 P.2d 1304 (Colo. 1986).

Limitations imposed by the amendment providing that investigation of a member shall not be pursued when more than five years have elapsed since the date of the award, must be pleaded and proved as an affirmative defense. Kilbourn v. Fire and Police Pension Ass'n, 971 P.2d 284 (Colo. App. 1998).

31-31-811. Cost of living adjustments.

(1) Cost of living adjustments payable under the statewide death and disability plan established in this part 8 are paid effective October 1 each year, and the redetermined amount of the benefit is payable for the following twelve months. To be eligible for a cost of living adjustment, retirement benefits shall have been paid for at least twelve calendar months prior to the effective date of the cost of living adjustment.

(2) (a) For the cost of living adjustment of permanent occupational disability retirement benefits, the amount of the benefit on the effective date of the benefit is increased by a percentage to be determined by the board but not more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the cost of living adjustment.

(b) For the cost of living adjustment of total disability retirement benefits, the amount of the benefit on the effective date of the benefit is increased by three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the cost of living adjustment. In the case of a member changing status from occupational disability to total disability, the three percent cost of living adjustment begins with the effective date of the benefit and there is no retroactive cost of living adjustment applied to the benefit for any period that the member was receiving an occupational disability benefit.

(3) The cost of the adjustment of benefits provided by this section is funded in the same manner as other benefits established by this part 8.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 164, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-803 (6) as it existed prior to 2026.

31-31-812. Reduction of disability retirement benefits.

(1) (a) The benefits payable pursuant to this part 8 to any member who is awarded an occupational disability benefit prior to October 1, 2002, a total disability benefit, or who is permanently occupationally disabled and who is also eligible to receive payments from the member's individual account pursuant to part 5 of article 31.5 of this title 31 or a similar provision in a local pension plan is reduced by an amount that is the actuarial equivalent of the benefits such member is eligible to receive from the separate retirement account, whether the benefits received from the account are paid on a periodic basis or in a lump sum.

(b) The benefits payable pursuant to this part 8 to any member who is awarded a total disability benefit or who is permanently occupationally disabled and who is also eligible to receive a defined benefit from a statewide or local pension plan is reduced by the amount of the defined benefit.

(c) Any disability retirement benefit provided pursuant to this part 8 is reduced by the pro rata amount of any social security benefit received by the member attributable to the member's quarters of social security coverage derived from employment as a member.

(d) Any member receiving an occupational disability benefit pursuant to this part 8 and a social security benefit attributable to the member's quarters of social security coverage derived from employment as a member shall file an annual report concerning any social security income. If such member knowingly fails to file such report or files a fraudulent report, the disability retirement benefit is discontinued.

(2) The benefits payable pursuant to this part 8 to any member who is occupationally disabled prior to October 1, 2002, is permanently occupationally disabled, or who is totally disabled and who at the time of the award of such benefits is a member of a money purchase plan pursuant to this article 31 or article 30.5 of this title 31, including any department chief, who at the time of the award of such benefits has been exempted from the statewide retirement plan as permitted by section 31-31.5-203, is reduced by an amount that is the actuarial equivalent of the benefits such member receives from any such money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum. A

reduction shall not exceed the actuarial equivalent of money purchase plan benefits if such benefits had been funded at the same rate of contributions specified in section 31-31.5-301.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 165, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-804 as it existed prior to 2026.

31-31-813. Change in disability status - reexamination.

(1) At any time that a total disability ceases to exist, based upon periodic reexamination as may be required by the association or based upon other evidence of ability to engage in substantial gainful activity, a member retired for such disability shall be declared permanently occupationally disabled, and the benefits provided by section 31-31-804 are reduced to the level provided in section 31-31-805.

(2) (a) At any time that an occupational disability ceases to exist, based upon periodic reexamination as may be required by the association, a member retired for such disability may be restored to active service, and the benefits are discontinued. The member shall be restored to active service by the member's former employer if a vacancy exists in the same position the member held prior to retirement, or if there is a position of equal base pay available, or if the member agrees to accept another available position that may not be the same or of equal base pay to the member's former position.

(b) If the position to which the member will be restored requires, as a matter of state law, that the member maintain any type of state certification, the employer need not restore the member to such position if the member does not have the necessary certification or the member's certification has otherwise lapsed, expired, or been revoked. The employer, however, must afford the member an opportunity to attain certification, recertification, or reactivation of an existing certification and must hold open any position that the member has agreed to accept pursuant to this subsection (2) for a period not to exceed one year. The board is directed to evaluate the impact of this requirement on employers of association members. The one-year period may extend beyond the five-year limitation set forth in subsection (2)(f) of this section, as long as the opening occurs within the five-year period. Disability retirement benefits will be continued during any period, not to exceed one year, that the member is attempting to attain certification, recertification, or reactivation.

(c) If, at the time of a finding by the association that a member's occupational disability has ceased to exist, there is no opening in the same position the member held prior to retirement or one of equal base pay and there is no opening in a position of lesser base pay that the member

agrees to accept, the association may order the member to proceed with any necessary training in order to attain, reinstate, or reactivate any certification required for the position from which the member retired. Disability retirement benefits are continued during the training period up to a maximum of one year.

(d) If the member refuses to take the steps necessary to attain certification, recertification, or reactivation as required by subsections (2)(b) and (2)(c) of this section, or if at the end of the one-year limitation on attaining certification, recertification, or reactivation the member has not attained the necessary certification, recertification, or reactivation, disability retirement benefits are discontinued, and the employer is relieved of further obligations pursuant to this subsection (2).

(e) If a member refuses to accept the same or a position of equal base pay, the disability retirement benefits are discontinued, but a member shall not lose benefits if there is no such vacancy or if the member refuses to accept a position that is not the same or of equal base pay to the member's former position, or if the employer refuses to restore the member to active service, except as provided pursuant to subsection (2)(b) of this section.

(f) If the association determines that a disability ceases to exist, and if no appropriate vacancy is available at that time, the member has the first right of refusal to fill a vacancy if it occurs within five years from the date of original disablement. If an occupational disability is based on a medical determination of mental impairment or disease, the association must determine, that the occupational disability ceases to exist before the member is granted a first right of refusal.

(g) At least thirty days prior to making its determination, the association shall provide written notice to the employer and member of the opportunity for a hearing, upon request of the employer or member. If a hearing is requested, the association shall provide the employer with copies of any medical reports prepared by the physicians with respect to any examination or reexamination of the member. Neither the employer, the agents of the employer, including any physician retained to review such reports, nor the association shall release such reports to any other person except as otherwise allowed in section 24-72-204 (3)(a)(I).

(h) If the member refuses a vacancy in the same position the member held prior to retirement or in a position of equal base pay to the member's former position, the disability retirement benefits are discontinued. Except as otherwise provided in this subsection (2), if the employer refuses to allow a member who exercises such first right of refusal to fill the vacancy, the employer shall thereafter pay the cost of the benefits.

(i) When a temporary occupational disability ceases to exist and the member is restored to active service with the member's employer, a transfer will be made from the statewide death and disability plan to the member's normal retirement plan in the amount of the monthly employer and employee contributions being made to the member's pension plan at the time of disability but

not more than sixteen percent of the monthly base salary that the member was being paid at the time of disability retirement, multiplied by the number of months the member received temporary occupational disability retirement benefits. The member will receive service credit for such transfer. A restored member of a local plan that has a contribution rate in excess of sixteen percent shall have the difference between the amount transferred and the amount that would have been contributed at the excess rate, made up by an additional contribution from the employer.

(3) When a member on temporary occupational disability satisfies the age and service requirements for a normal retirement, including the time the member was on temporary occupational disability, a transfer is made from the statewide death and disability plan to the member's normal retirement plan in the amount of the monthly employer and employee contributions being made to the member's pension plan at the time of disability but not more than sixteen percent of the monthly base salary that the member was being paid at the time of disability multiplied by the number of months the member received temporary occupational disability retirement benefits. A member of a statewide or local retirement plan that has a mandatory contribution rate in excess of sixteen percent shall have the difference between the amount transferred and the amount that would have been contributed at the excess rate made up by an additional contribution from the employer. The member shall then be granted a normal retirement under the member's retirement plan and the temporary occupational disability retirement benefits under the statewide death and disability plan shall terminate.

(4) Within five years from the date of a finding of occupational disability pursuant to subsection (1) of this section or from the date of original disablement pursuant to section 31-31-805, 31-31-807, or 31-31-808, a member retired for such disability may be declared totally disabled based upon periodic reexamination as ordered by the association in its discretion. If the member is declared totally disabled, the benefits provided by section 31-31-805, 31-31-807, or 31-31-808 are increased to the level provided in section 31-31-804. Cost of living adjustments are paid prospectively in accordance with section 31-31-811.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 166, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-805 as it existed prior to 2026.

ANNOTATION

Annotator's note. Since § 31-31-813 is similar to § 31-31-805 and its antecedent provisions, relevant cases construing those provisions have been included in the annotations to this section.

District court or reviewing court should not substitute its own judgment as to the weight of the evidence for that of the board. Ross v. Fire & Police Pension Ass'n, 682 P.2d 496 (Colo. App. 1984), aff'd, 713 P.2d 1304 (Colo. 1986).

Statute provides that board is not bound by physicians' determinations on whether disability exists and, therefore, board did not abuse its discretion in denying disability application even through two of the reexamining physicians found the applicant to have a disability. Ross v. Fire & Police Pension Ass'n, 682 P.2d 496 (Colo. App. 1984), aff'd on other grounds, 713 P.2d 1304 (Colo. 1986).

Eligibility of plaintiff for occupational disability benefits where medical opinions of physicians panels conflicted was a question for the board to determine and, since competent evidence supported board's denial of benefits, court of appeals was correct in reinstating board's decision. Ross v. Fire & Police Pension Ass'n, 713 P.2d 1304 (Colo. 1986).

Before discontinuing an employee's occupational disability payments, there is no need for a physician to examine the former employee if the physician's sole purpose would be to determine whether the employee could perform the duties which he was already performing in his job. Kilbourn v. Fire and Police Pension Ass'n, 971 P.2d 284 (Colo. App. 1998).

31-31-814. Disqualification upon reemployment.

If, subsequent to disability retirement benefits being awarded to a member pursuant to this part 8, but prior to a decision of the association that an occupational disability ceases to exist, a member is employed or reemployed in this state or any other jurisdiction, pursuant to either an agreement or court order, in a full-time salaried position that normally involves working at least one thousand six hundred hours in any given calendar year and the duties of which are directly involved with the provision of police or fire protection as determined by the association, the disability retirement benefits provided pursuant to this part 8 are discontinued. Any application for retirement for disability made by the member after such appointment or reinstatement shall be treated in all respects as a new application.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 168, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-806 as it existed prior to 2026.

ANNOTATION

Annotator's note. Since § 31-31-814 is similar to § 31-31-806 and its antecedent provisions, relevant cases construing those provisions have been included in the annotations to this section.

This statute, as amended, provides an alternative remedy for determining a claimant's continuing eligibility for occupational disability benefits and is remedial in nature. Kilbourn v. Fire and Police Pension Ass'n, 971 P.2d 284 (Colo. App. 1998).

Full-time employment as a fire chief precludes a firefighter from collecting occupational disability benefits because the position of fire chief directly involves "the provision of . . . fire protection" under this section. Dolan v. Fire & Police Pension Ass'n, 2017 COA 55, 413 P.3d 279.

It is not necessary to be involved in "hands-on" firefighting or medical care to be directly involved in the provision of fire protection. Working in a command capacity at the scenes of fires and accidents applies when determining eligibility for disability benefits. Dolan v. Fire & Police Pension Ass'n, 2017 COA 55, 413 P.3d 279.

District court or reviewing court should not substitute its own judgment as to the weight of the evidence for that of the board. Ross v. Fire & Police Pension Ass'n, 682 P.2d 496 (Colo. App. 1984), aff'd, 713 P.2d 1304 (Colo. 1986).

Statute provides that board is not bound by physicians' determinations on whether disability exists and, therefore, board did not abuse its discretion in denying disability application even through two of the reexamining physicians found the applicant to have a disability. Ross v. Fire & Police Pension Ass'n, 682 P.2d 496 (Colo. App. 1984), aff'd on other grounds, 713 P.2d 1304 (Colo. 1986).

Eligibility of plaintiff for occupational disability benefits where medical opinions of physicians panels conflicted was a question for the board to determine and, since competent evidence supported board's denial of benefits, court of appeals was correct in reinstating board's decision. Ross v. Fire & Police Pension Ass'n, 713 P.2d 1304 (Colo. 1986).

31-31-815. Death of member - survivor benefits.

(1) (a) If a member dies while in active service or while on temporary occupational disability and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in subsection (1)(b) of this section are paid if the member:

(I) Is not eligible for a normal retirement pension under an old hire pension plan established pursuant to article 30.5 of this title 31 that provides for postretirement survivor benefits to a spouse and dependent children in the event the member dies in active service while eligible for normal retirement; and

(II) (A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or

(B) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article 31 or under a local money purchase plan.

(b) One of the following survivor benefits is paid if the requirements of subsection (1)(a) of this section are satisfied:

(I) When there is a surviving spouse and no dependent children, the monthly benefit is forty percent of the monthly base salary paid to such member immediately preceding death.

(II) When there is a surviving spouse and one dependent child, the monthly benefit is forty percent of the monthly base salary paid to such member immediately preceding death.

(III) When there is a surviving spouse and two or more dependent children, the monthly benefit is fifty percent of the monthly base salary paid to such member immediately preceding death.

(IV) When there is no surviving spouse and three or more dependent children, the monthly benefit is fifty percent of the monthly base salary paid to such member immediately preceding death.

(V) When there is no surviving spouse and two dependent children, the monthly benefit is forty percent of the monthly base salary paid to such member immediately preceding death.

(VI) When there is no surviving spouse and one dependent child, the monthly benefit shall be forty percent of the monthly base salary paid to such member immediately preceding death.

(2) Any benefit provided in accordance with this section to the surviving spouse or dependent child of a member who dies while in active service terminates upon the death of the surviving spouse or upon the death or termination of dependency of such dependent child, as applicable.

(3) (a) When there is a surviving spouse and one dependent child residing in a separate household from the surviving spouse, the surviving spouse receives twenty-five percent of the monthly base salary and the child shall receive the balance of the benefit pursuant to subsection (1)(b)(II) of this section.

(b) When there is a surviving spouse and two or more dependent children residing in a separate household from the surviving spouse, the surviving spouse receives twenty-five percent of the monthly base salary and the children receive the balance of the benefit pursuant to subsection (1)(b)(III) of this section.

(c) Upon the termination of the benefit payable to the child or children pursuant to subsection (3)(a) or (3)(b) of this section, the surviving spouse receives the benefit pursuant to subsection (1)(b)(I) of this section.

(4) If a survivor benefit is payable for the benefit of more than one dependent child of the member pursuant to subsection (1)(b)(III), (1)(b)(IV), or (1)(b)(V) of this section and the dependent children reside in separate households from each other, the benefit is divided equally among the children.

(5) Any surviving spouse or dependent child receiving benefits pursuant to subsection (1)(b)(I) or (1)(b)(VI) of this section prior to January 1, 2002, receives any increased benefit established in subsection (1)(b)(I) or (1)(b)(VI) of this section on January 1, 2002, as applicable.

(6) (a) The survivor benefits payable under the statewide death and disability plan established in this part 8 is redetermined effective October 1 each year, and the redetermined amount is payable for the following twelve months. To be eligible for redetermination, the benefits shall have been paid for at least twelve calendar months prior to the effective date of redetermination. The annual redetermination of benefits made pursuant to this section is in lieu of any other annual cost of living adjustment.

(b) For the redetermination of survivor benefits payable pursuant to this section, the amount of the benefit on the effective date of the benefit is increased by a percentage to be determined by the board but not more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination.

(c) The cost of the adjustment of benefits provided by this section is funded in the same manner as other benefits established by this part 8.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 169, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-807 as it existed prior to 2026.

31-31-816. Death of member - line-of-duty - survivor benefits.

(1) (a) If a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment, and if such member qualifies for line-of-duty status under section 101 (h) of the federal "Internal Revenue Code of 1986", and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in either subsection (1)(b) or (1)(c) of this section is paid if the member:

(I) Is not eligible for a normal retirement pension under an old hire pension established pursuant to article 30.5 of this title 31 that provides for postretirement survivor benefits to a spouse and dependent children in the event the member dies in active service while eligible for normal retirement; and

(II) (A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or

(B) Has not reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article 31 or under a local money purchase plan.

(b) Except as otherwise provided in subsection (1)(c) of this section, one of the following survivor benefits is paid if the requirements of subsection (1)(a) of this section are satisfied:

(I) When there is a surviving spouse and no dependent children, the monthly benefit is forty percent of the monthly base salary paid to such member immediately preceding death.

(II) When there is a surviving spouse and one dependent child, the monthly benefit is forty percent of the monthly base salary paid to such member immediately preceding death.

(III) When there is a surviving spouse and two or more dependent children, the monthly benefit is fifty percent of the monthly base salary paid to such member immediately preceding death.

(IV) When there is no surviving spouse and three or more dependent children, the monthly benefit is fifty percent of the monthly base salary paid to each member immediately preceding death.

(V) When there is no surviving spouse and two dependent children, the monthly benefit is forty percent of the monthly base salary paid to such member immediately preceding death.

(VI) When there is no surviving spouse and one dependent child, the monthly benefit is forty percent of the monthly base salary paid to such member immediately preceding death.

(c) For survivors who become eligible for survivor benefits on or after October 15, 2002, one of the following survivor benefits is paid if the requirements of subsection (1)(a) of this section are satisfied:

(I) The monthly benefit when there is a surviving spouse, either with or without children, is seventy percent of the monthly base salary being paid to such member immediately preceding death.

(II) The monthly benefit when there is no surviving spouse but a surviving child or children is:

(A) Seventy percent of the monthly base salary being paid to such member immediately prior to death if the child or children were living in the member's home at the time of the member's death; or

(B) Forty percent of the monthly base salary being paid to such member immediately prior to death for one child and fifteen percent for each additional child; except that the total benefit received shall not be greater than seventy percent of the monthly base salary if the child or children were not living in the member's home at the time of the member's death.

(2) (a) On or after October 1, 2001, if a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment, and if such member qualifies for line-of-duty status under section 101 (h) of the federal "Internal Revenue Code of 1986", and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in subsection (2)(b) of this section is paid if the member:

(I) Is eligible for a normal retirement pension under an old hire pension established pursuant to article 30.5 of this title 31 that provides for postretirement survivor benefits to a spouse and dependent children in the event the member dies in active service while eligible for normal retirement;

(II) Is eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or

(III) Has reached age fifty-five with twenty-five years of accumulated service as a member and is a participant under the statewide money purchase plan pursuant to part 5 of this article 31 or under a local money purchase plan.

(b) One of the following survivor benefits is paid if the requirements of subsection (2)(a) of this section are satisfied and if the survivor benefit currently received pursuant to subsection (2)(a)(I), (2)(a)(II), or (2)(a)(III) of this section is less than seventy percent of the monthly base salary being paid to the member immediately preceding death:

(I) The monthly benefit to be paid in addition to the monthly retirement benefit otherwise payable when there is a surviving spouse, either with or without children, is the difference between seventy percent of the monthly base salary paid to such member immediately preceding death and the amount payable pursuant to benefits received under the plan identified in subsection (2)(a)(I), (2)(a)(II), or (2)(a)(III) of this section.

(II) The monthly benefit to be paid in addition to the monthly retirement benefit otherwise payable when there is no surviving spouse but there is a surviving child or children is:

(A) If the child or children were living in the member's home at the time of the member's death, the difference between seventy percent of the monthly base salary being paid to such

member immediately preceding death and the amount payable pursuant to benefits received under the plan identified in subsection (2)(a)(I), (2)(a)(II), or (2)(a)(III) of this section; or

(B) If the child or children were not living in the member's home at the time of the member's death, the sum of forty percent of the monthly base salary being paid to such member immediately prior to death for the first child plus fifteen percent for each additional child, the total of which shall not be greater than seventy percent of the monthly base salary less the amount payable pursuant to benefits received under the plan identified in subsection (2)(a)(I), (2)(a)(II), or (2)(a)(III) of this section.

(3) The board shall adopt rules that specify standards and establish procedures for determining whether a member's death is the direct and proximate result of a personal injury sustained while performing official duties or an occupational disease arising out of and in the course of a member's employment and, in the case of a line-of-duty death, whether any of the exceptions specified in section 101 (h)(2) of the federal "Internal Revenue Code of 1986", are applicable. Such decisions by the association may be appealed through the administrative review procedures set forth in the rules adopted by the board and such final decision by the association can only be reviewed by proper court action subject to rule 106 (a)(4) the Colorado rules of civil procedure. The board may appoint hearing officers to conduct hearings on any issue relating to survivor benefits.

(4) (a) The board shall adopt rules that specify the method of reviewing existing survivor benefit awards to:

(I) Determine whether a member's death was the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment;

(II) Determine, in the case of line-of-duty deaths occurring after December 31, 1996, whether any of the exceptions specified in section 101 (h)(2) of the federal "Internal Revenue Code of 1986", are applicable;

(III) Establish procedures for making such determinations and the appeals through the administrative review procedures, including the appointment of hearing officers to conduct hearings. Final decisions by the association can only be reviewed by proper court action subject to rule 106 (a)(4) of the Colorado rules of civil procedure.

(b) The determinations made by the board pursuant to this subsection (4) are made on the basis of the medical evidence that was previously submitted in connection with the application for survivor benefits and other relevant nontestimonial evidence.

(c) Any decision made by the board to change an existing survivor benefit award to an on-duty survivor benefit under this subsection (4) operates on a prospective basis from the date of the board's decision.

(5) Any benefit provided in accordance with this section to the surviving spouse or dependent child of a member who dies while in active service terminates upon the death of the surviving spouse or upon the death or termination of dependency of the dependent child, as applicable.

(6) (a) When there is a surviving spouse and one dependent child residing in a separate household from the surviving spouse, the surviving spouse receives two-thirds of the benefit and the child receives the balance of the benefit pursuant to subsection (1) or (2) of this section.

(b) When there is a surviving spouse and two or more dependent children residing in a separate household from the surviving spouse, the surviving spouse receives fifty percent of the benefit and the children receive the balance of the benefit pursuant to subsection (1) or (2) of this section.

(c) Upon the termination of the benefit payable to the child or children pursuant to subsection (6)(a) or (6)(b) of this section, the surviving spouse receives the entire benefit pursuant to subsection (1) or (2) of this section.

(7) If a survivor benefit is payable for the benefit of more than one dependent child of the member pursuant to subsection (1) or (2) of this section and the dependent children reside in separate households from each other, the children's benefit is divided equally among the children.

(8) If a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment and otherwise qualifies for benefits under subsection (2) of this section, but falls within one or more of the exceptions specified in section 101 (h)(2) of the federal "Internal Revenue Code of 1986", and leaves a surviving spouse or dependent children, or both, said survivors shall:

(a) Receive benefits as allowed under section 31-31-815; or

(b) Receive benefits as allowed under the member's normal retirement plan.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 171, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-807.5 as it existed prior to 2026.

31-31-817. Reduction of survivor benefits.

(1) The benefits payable under sections 31-31-815 and 31-31-816 to the surviving spouse and dependent children of any member, who at the time of the member's death was a member of

a money purchase plan established under this article or article 30.5 of this title 31, including any department chief, who at the time of the chief's death had been exempted from the statewide retirement plan as permitted by section 31-31.5-203, are reduced by an amount that is the actuarial equivalent of the benefits such surviving spouse and dependent children receive from the money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum. No such reduction shall exceed the actuarial equivalent of money purchase plan benefits if such benefits had been funded at the same rate of contributions specified in section 31-31.5-301.

(2) The benefits payable under sections 31-31-815 and 31-31-816 to the surviving spouse and dependent children of any member who are also receiving payments from the member's separate retirement account pursuant to sections 31-31-412 (1)(c) and 31-31.5-304 (2) are reduced by an amount that is the actuarial equivalent of the benefits such surviving spouse and dependent children receive from the separate retirement account, whether the benefits received from the account are paid on a periodic basis or in a lump sum.

(3) The benefits payable under sections 31-31-815 and 31-31-816 to the surviving spouse and dependent children of any member who are also receiving payments from a statewide or local Colorado fire or police defined benefit pension plan are reduced by the amount of the defined benefit payments to be received.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 175, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-808 as it existed prior to 2026.

31-31-818. Termination of benefits.

Except as otherwise provided in section 31-31-815 (2), any benefit provided in accordance with this part 8 to a surviving spouse terminates upon the death of the surviving spouse. Except as otherwise provided in section 31-31-815 (2), any benefit provided in accordance with this part 8 to a dependent child terminates upon the death of the dependent child or the termination of dependency of the dependent child.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 175, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-809 as it existed prior to 2026.

31-31-819. Funding of death and disability benefits.

(1) For members who die or are disabled on or after January 1, 1980, the death and disability benefits provided to any member pursuant to this part 8 is paid for by state money transferred to the fire and police members' benefit investment fund created by section 31-31-301 (1)(a), subject to the limitations imposed by this section. Money in the disability and death benefits trust fund created by section 31-31-821 shall not be used for any purpose other than the payment of the death and disability benefits established by this part 8.

(2) The board shall submit an annual actuarial valuation report dated January 1 of the year in which the report is submitted, regarding the benefit liabilities accrued under this part 8 to the state auditor, the legislative audit committee, and the joint budget committee of the general assembly, together with any recommendations concerning such liabilities as accrued.

(3) (a) To ensure that there is sufficient money to pay death and disability benefits for members hired before January 1, 1997, the state treasurer shall issue warrants to the fire and police pension association on July 1, 2022, and July 1, 2023, in an amount equal to six million six hundred fifty thousand dollars for each warrant and on July 1, 2025, and every July 1 thereafter through July 1, 2059, in an amount equal to two million fifty thousand dollars for each warrant. The warrant issued on July 1, 2022, is to be paid from the general fund, and the remaining warrants are to be paid from the death and disability payment cash fund created in subsection (3)(b) of this section. The board shall deposit this money in the statewide death and disability trust fund created in section 31-31-821.

(b) (I) The death and disability payment cash fund is created in the state treasury. The fund consists of money transferred to the fund in accordance with subsections (3)(b)(II) and (3)(b)(III) of this section. In accordance with section 24-36-114 (1), the state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the general fund. The state treasurer shall use the money in the fund for the warrants issued on July 1, 2023, July 1, 2025, and every July 1 thereafter through July 1, 2059, in accordance with subsection (3) of this section.

(II) On July 1, 2022, the state treasurer shall transfer six million six hundred fifty thousand dollars from the general fund to the death and disability payment cash fund created in subsection (3) of this section.

(III) On July 1, 2025, and every July 1 thereafter through July 1, 2059, the state treasurer shall transfer two million fifty thousand dollars from the general fund to the death and disability payment cash fund created in section (3)(b)(I) of this section.

(4) For each member hired on or after January 1, 1997, who is eligible for the death and disability coverage provided by this part 8, a contribution shall be made to the death and

disability account in the fund for the year 2021 in an amount not greater than three percent of the member's salary. Thereafter, the board, based on an annual actuarial valuation, may adjust the contribution rate every year, but in no event may the adjustment for any one-year period exceed two-tenths of one percent of the member's salary. Any employer and any local pension board or authority shall provide such information as may be required by the board in order to complete the annual actuarial valuations. The actuary appointed by the board may use either the entry age-normal cost method or the aggregate cost method for purposes of the study required by this subsection (4). Any unfunded accrued liability shall be funded over a period not to exceed thirty years. The actuarial study shall not include any consideration of a cost of living adjustment to benefits awarded to members who are occupationally disabled. Payments shall be made by the employer and are due no later than ten days following the date of payment of salary to the member. The payments required by this section are subject to interest if not submitted when due. Any decision regarding whether the contribution required by this subsection (4) are assessed against the employer or the member, or shall in some manner be assessed jointly against the employer and the member, will be made at the local level using the usual process for determining employee benefits. If it is not already part of the usual process for determining employee benefits, the employer shall confer with the employees or their representative prior to making a determination on how the contribution will be assessed.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 176, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-811 as it existed prior to 2026.

ANNOTATION

Annotator's note. Since § 31-31-819 is similar to § 31-30-1014 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, a relevant case construing the provisions of that section has been included in the annotations to this section.

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Ample and competent evidence supported the decision of fund's administrative board that city had elected to continue rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-31-820. Military leave of absence.

(1) Authorized leave of absence includes leave for military service as allowed by the board. The board shall adopt rules regarding authorized leave of absence for military service, including, but not limited to:

(a) Limits on the length of the term of the leave of absence;

(b) Assessment of costs for coverage during the leave of absence; and

(c) Any other matter that the board deems necessary for coverage under the statewide death and disability plan.

(2) The benefits payable to the member, the surviving spouse of the member, and the dependent children of the member pursuant to this part 8 are reduced by an amount that is the actuarial equivalent of any military benefit received as a result of the death or disability of a member while on authorized leave for military service whether the benefits are paid on a periodic basis or in a lump sum.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 177, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-812 as it existed prior to 2026.

31-31-821. Statewide death and disability trust fund - created.

(1) There is created a disability and death benefits trust fund within the association into which contributions for death and disability benefits, including state contributions made pursuant to section 31-31-819 are deposited. The benefits provided by this part 8, together with the expenses of administering said part, are paid from the fund.

(2) The assets of the disability and death benefits trust fund shall be invested in the fire and police members' benefit investment fund.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 178, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-813 as it existed prior to 2026.

31-31-822. Suspension and termination of benefits for noncompliance.

If a member refuses to submit to a medical examination required by the association and authorized by this part 8, fails to provide information necessary for the association to assess eligibility or continuing eligibility for benefits, or obstructs the association from receiving such necessary information, all rights to collect or to begin or maintain any proceeding for the collection of benefits pursuant to this part 8 are suspended, and all rights to benefits that accrue and become payable during the period of such refusal or obstruction are barred. If the member continues to refuse to submit to the examination or to provide the additional information after direction by the association or its hearing officer or in any way obstructs the same, the board shall terminate the benefit.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 178, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-814 as it existed prior to 2026.

31-31-823. Amendment of plan provisions.

The board may amend the provisions for disability and survivor benefits under this part 8 as it deems prudent and necessary to comply with state and federal law or as it deems necessary to efficiently administer the benefits under the plan.

Source: L. 2026: Entire part R&RE, (SB 26-039), ch. 37, p. 178, § 1, effective August 12.

Editor's note: This section is similar to former § 31-31-815 as it existed prior to 2026.

PART 9

SUPPLEMENTAL PROGRAMS

31-31-901. Deferred compensation plan - definitions.

(1) Upon the request of any employer, the board may administer and amend or provide for the administration and amendment of any deferred compensation plan adopted by such employer for members or other employees who provide direct support to the employer's public safety department.

(2) In order to assist employers in establishing a deferred compensation plan, the board may develop, maintain, and amend a master deferred compensation plan document or a multi-employer deferred compensation plan document that is intended to comply with the provisions of section 457 of the "Internal Revenue Code of 1986", 26 U.S.C. sec. 457, as amended. Any employer may adopt such master plan for its participants with the assistance of the board; however, such employer shall be responsible for ensuring that such master plan is in compliance with applicable law. Participation by nonmember employees shall be subject to the requirements and limitations of said section 457 of the "Internal Revenue Code of 1986", and the regulations promulgated under section 457.

(3) There is hereby created the fire and police members' deferred compensation trust fund, which shall consist of the assets of deferred compensation plans administered by the board pursuant to the provisions of this section. The board shall be the trustee of the trust fund and shall keep a separate account of the assets of each deferred compensation plan held within the trust fund. The assets of each deferred compensation plan shall be held for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of the plan and any trust established to hold the assets of the plan. The board shall allow investment of the trust fund through the fire and police members' self-directed investment fund pursuant to section 31-31-301 (4).

(4) The expenses incurred by the board in the administration of each deferred compensation plan shall be paid from the assets of such plan being held in the fire and police members' deferred compensation fund pursuant to the provisions of subsection (3) of this section. Such expenses shall not be paid for by the fire and police pension association.

(5) For the purposes of this section, unless the context otherwise requires:

(a) "Deferred compensation" means that income that a participant may legally defer pursuant to current rulings of the internal revenue service and that, while invested under a deferred compensation plan adopted pursuant to this section, is exempt from federal income taxes on both the employer's contribution and all interest, dividends, and capital gains until the ultimate distribution to the participant.

(b) "Participant" means:

(I) A member employed by an employer who has requested the board, pursuant to subsection (1) of this section, to administer and amend or provide for the administration and amendment of any deferred compensation plan adopted by the employer; or

(II) An employee who provides direct support to the public safety department of an employer who has requested the board, pursuant to subsection (1) of this section, to administer and amend or provide for the administration and amendment of any deferred compensation plan adopted by the employer.

Source: L. 96: Entire article added with relocations, p. 937, § 1, effective May 23. **L. 98:** (3) amended, p. 138, § 1, effective April 2. **L. 2001:** (1), (2), (3), and (8) amended, p. 427, § 17, effective June 1. **L. 2006:** Entire section amended, p. 197, § 25, effective March 31. **L. 2017:** (2) amended, (SB 17-013), ch. 14, p. 41, § 1, effective August 9.

Editor's note: This section was formerly numbered as § 31-30-1005.5.

31-31-902. Group health insurance plans.

(1) The board may enter into contracts with carriers to provide group health insurance plans for the following individuals if they are receiving a benefit from another plan administered by the association:

(a) A retired member;

(b) A retired volunteer firefighter;

(c) A surviving spouse;

(d) A dependent child; and

(e) A recipient of a benefit from the fire and police members' deferred compensation fund created by section 31-31-901.

(2) The administration and management of the group health insurance plans shall be the exclusive responsibility of the respective carrier. The cost of the plan, coverage, and eligibility requirements shall be as negotiated in the contract between the association and the carrier.

(3) The association shall pay no premium subsidy for group health insurance authorized to be offered by this section. Premiums shall be deducted from the monthly benefit payments of participating retired members or their beneficiaries.

(4) For purposes of this section, the term "carrier" means a private insurance company holding a valid outstanding certificate of authority from the division of insurance or a nonprofit hospital service plan or a nonprofit medical service plan incorporated as a nonprofit corporation pursuant to article 40 of title 7, C.R.S., or a health maintenance organization established pursuant to parts 1 and 4 of article 16 of title 10, C.R.S.

Source: L. 96: Entire article added with relocations, p. 938, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1005 (7).

ANNOTATION

Annotator's note. Since § 31-31-902 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-31-903. Group life insurance plans.

(1) (a) The board may enter into contracts with carriers to provide group life insurance coverage to active members of paid pension plans administered by the association and, if they

are receiving a benefit from another plan administered by the association, to the following individuals:

(I) A retired member;

(II) A retired volunteer firefighter;

(III) A surviving spouse;

(IV) A dependent child; and

(V) An individual who is receiving a benefit from the fire and police members' deferred compensation fund created by section 31-31-901.

(b) For purposes of this section, "carrier" means a private insurance company holding a valid outstanding certificate of authority from the division of insurance.

(2) The administration and management of the group life insurance plan shall be the exclusive responsibility of the carrier. The terms and conditions of coverage shall be as negotiated in the contract between the association and the carrier. The board may change the terms of or discontinue the coverage if the board determines that such action is in the best interests of the members. Participating members shall be notified sixty days prior to the effective date of any such change or discontinuance.

(3) The association shall pay no premium subsidy for group life insurance authorized to be offered by this section. Premiums shall be deducted from the salaries of participating active members and submitted to the association with the employer's monthly contribution reports or shall be deducted from the monthly benefit payments of participating retired members or their beneficiaries. Participating members who receive neither salaries nor benefits may arrange alternative methods of premium payment with the association.

(4) The named beneficiary shall be the beneficiary of life insurance obtained pursuant to the provisions of this section, unless the member or a court order names a different beneficiary for life insurance purposes. Life insurance obtained pursuant to the provisions of this section may be assigned by the member.

Source: L. 96: Entire article added with relocations, p. 938, § 1, effective May 23.

Editor's note: This section was formerly numbered as § 31-30-1005 (8).

ANNOTATION

Annotator's note. Since § 31-31-903 is similar to § 31-30-1005 as it existed prior to the 1996 amendment that relocated parts 3 through 10 of article 30, relevant cases construing the provisions of that section have been included in the annotations to this section.

Health insurance benefits may also be provided to retirees covered by the Policemen's and Firemen's Pension Reform Act. The provisions of this act indicate that the fund's administrative board may contract with carriers to provide this type of coverage. The act does not specify the manner in which these benefits are to be funded, nor does it specify the extent of coverage which may be provided. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Rules promulgated by fund's administrative board to enable it to review whether an employer had elected to continue rank escalation benefits after January 1, 1980, fit squarely within the board's express statutory authority under subsection (1)(j). Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Hearing held by fund's administrative board to review and ascertain the character or nature of the city's determination regarding continuation of rank escalation benefits was critical to the board's ability to carry out its statutory obligations, first, to members eligible for benefits under pension plans affiliated with FPPA and, second, to the state in distributing its contributions to such plans. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

Actions taken by fund's administrative board under its rules were limited to interpreting acts taken by the employer, and the dispositive actor in setting the scope of pension benefits, undisputably a local policy issue, continued under the rules, to the city as the employer. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

As "gatekeeper" of state moneys, fund's administrative board must insure that employers maintain a level of annual contributions to pay earned benefits to present and future plan members and see that no state moneys are used to fund a continuation of full rank escalation benefits after January 1, 1980. Pueblo v. Fire and Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

31-31-904. Statewide health-care defined benefit plan - definitions.

(1) The board may develop, maintain, and amend a statewide health-care defined benefit plan, including a plan document, that complies with the qualification requirements specified under the internal revenue code, as applicable to governmental plans. The purpose of such plan shall be to provide a defined benefit to assist in paying for the costs of health care for each retired eligible member.

(2) The board may conduct an election of all eligible members for the purpose of determining whether the eligible members want to participate in the statewide health-care defined benefit plan created pursuant to subsection (1) of this section. If sixty-five percent of all eligible members vote in favor of participating in the plan, all eligible members shall be required to participate in such plan, except as provided in subsection (3) of this section.

(3) The board shall certify the results of the election held pursuant to subsection (2) of this section, including the vote total for the eligible members of each employer. The board shall mail a copy of the certification to each employer within ten days after the certification. If less than a majority of an employer's eligible members vote in favor of participating in the statewide health-care defined benefit plan, the employer, on behalf of its eligible members, may elect not to participate in the plan. Such election by the employer must be made within ninety days after the certification of the election results by the board.

(4) Contributions to the statewide health-care defined benefit plan shall be the responsibility of the eligible members, unless an eligible member's employer elects to pay all or a portion of his or her contribution. All of the contributions shall be credited to the defined benefit system trust fund.

(5) The board shall administer the statewide health-care defined benefit plan on an actuarially sound basis. Neither the state nor any employer shall be liable for any unfunded accrued liability of the plan.

(6) As used in this section, unless the context otherwise requires:

(a) "Eligible member" means each member who participates in a statewide retirement plan administered by the board pursuant to this title.

(b) "Internal revenue code" shall have the same meaning as provided in section 31-31-204 (3).

Source: L. 2003: Entire section added, p. 744, § 2, effective August 6. **L. 2006:** (4) and (6)(b) amended, p. 199, § 26, effective March 31.

PART 10

POLICE OFFICERS' AND FIREFIGHTERS' PENSION REFORM COMMISSION

31-31-1001. Police officers' and firefighters' pension reform commission - creation - duties. (Repealed)

Source: L. 96: Entire article added with relocations, p. 939, § 1, effective May 23. **L. 2000:** (1) amended, p. 116, § 3, effective March 15. **L. 2007:** (1) amended, p. 190, § 27, effective March 22. **L. 2010:** (3) added, (SB 10-213), ch. 375, p. 1763, § 10, effective June 7. **L. 2018:** Entire section repealed, (SB 18-200), ch. 370, p. 2264, § 29, effective June 4.

Editor's note: (1) This section was formerly numbered as § 31-30-901.

(2) Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2011. (See L. 2010, p. 1763.)

(3) This section was relocated to § 24-51.1-101.

Cross references: For the legislative declaration in SB 18-200, see section 1 of chapter 370, Session Laws of Colorado 2018.

31-31-1002. Volunteer firefighter pension plans study. (Repealed)

Source: L. 2015: Entire section added, (SB 15-029), ch. 285, p. 1168, § 1, effective June 5. **L. 2018:** Entire section repealed, (SB 18-200), ch. 370, p. 2264, § 30, effective June 4.

Cross references: For the legislative declaration in SB 18-200, see section 1 of chapter 370, Session Laws of Colorado 2018.

PART 11

ALTERNATIVES FOR MONEY PURCHASE PLAN MEMBERS

31-31-1101. Entry into the fire and police pension association defined benefit system.

(1) Any employer who has established a local money purchase plan pursuant to part 6 of this article 31 or article 30.5 of this title 31 or has withdrawn into the statewide money purchase plan pursuant to part 5 of this article 31 may apply to the board to require all new employees hired on or after a date certain who meet the definition of member as defined in section 31-31-102 (4) to participate as a group in the defined benefit system in either the defined benefit component or the hybrid and money purchase components of the statewide retirement plan established in article 31.5 of this title 31. An application may be initiated by filing with the board a resolution adopted by the governing body of the employer in accordance with the terms, process, certifications, and schedule established by the board.

(1.5) An employer who has elected participation pursuant to subsection (1) of this section may also apply to cover some or all of the existing members of its money purchase plan under the defined benefit system. An application may be initiated by filing with the board a resolution adopted by the governing body of the employer in accordance with the requirements, terms, process, certifications, and schedule established by the board.

(2) (Deleted by amendment, L. 2018.)

(3) Except as otherwise provided in subsection (3.5) of this section, any application for coverage under the defined benefit system pursuant to subsection (1.5) of this section shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the money purchase plan at the time of the application and who vote in the election proposing the coverage.

(3.5) (a) In lieu of an election to obtain the approval by at least sixty-five percent of all active members who vote in the election proposing the coverage as required by subsection (3) of this section, and when the local plan allows for the individual self-direction of each member's account, the employer may offer each active local plan member the option to discontinue participation in the local money purchase plan and to participate in the defined benefit system. The offer shall be extended to all active local plan members employed by the employer at the time of the offer.

(b) Nothing contained in subsection (3.5)(a) of this section shall be construed to waive or invalidate the requirement for an election of members that may be required by a local plan document, trust agreement, or labor agreement.

(4) The board shall promulgate rules relating to standards for disclosure of all ramifications and procedures for obtaining member approval pursuant to subsection (3) of this section or for

allowing active members to join the defined benefit system pursuant to subsection (3.5) of this section. The board shall also promulgate rules relating to standards for granting an employer's application for participation in the defined benefit system and for the submission of information to the board by the employer. Such rules shall contain a provision specifying that an employer that opts to participate in the defined benefit system shall not be permitted to opt out of the elected plan at any later date.

(5) and (6) (Deleted by amendment, L. 2018.)

(7) The board shall determine a continuing uniform rate of contribution for all members who are active on the effective date of coverage to fund the benefits payable by the fire and police pension association under the applicable component of the statewide retirement plan. The continuing rate of contribution shall be determined by the board utilizing certified actuarial reports prepared by the actuary for the plan. Any actuarial report shall also certify, in accordance with accepted actuarial principals, that the employers' coverage shall not have an adverse financial impact on the actuarial soundness of the plan. Continuing contributions for each member who is active on the effective date of coverage shall be made at the rate established on said date until the member's retirement or termination; except that the board may lower the continuing rate of contribution in the event it finds that the original continuing rate of contribution is in excess of what is required to pay the cost of benefits based on the advice of the actuary. The board may periodically adjust the rate prior to the election of coverage by an employer based on certified actuarial reports prepared by the actuary for the plan.

Source: L. 2003: Entire part added, p. 735, § 1, effective August 6. **L. 2006:** (1), (2), (3), (4), (5)(c), and (6)(a) amended and (3.5) added, p. 302, § 1, effective August 7. **L. 2017:** (3) and (3.5)(a) amended, (SB 17-020), ch. 23, p. 71, § 6, effective March 8. **L. 2018:** Entire section amended, (HB 18-1031), ch. 5, p. 32, § 1, effective August 8. **L. 2020:** (7) amended, (HB 20-1044), ch. 105, p. 414, § 12, effective September 14. **L. 2022:** (1) amended, (HB 22-1034), ch. 61, p. 311, § 19, effective January 1, 2023. **L. 2024:** (7) amended, (HB 24-1042), ch. 15, p. 39, § 11, effective March 6.

31-31-1102. Statewide hybrid plan - creation - management - repeal. (Repealed)

Source: L. 2003: Entire part added, p. 737, § 1, effective August 6. **L. 2006:** (1), (2), (3), and (4)(a) amended, p. 199, § 27, effective March 31. **L. 2007:** (4)(a) amended, p. 275, § 4, effective August 3. **L. 2012:** (5) amended, (HB 12-1031), ch. 68, p. 237, § 5, effective August 8. **L. 2015:** (4)(a) amended, (SB 15-027), ch. 9, p. 22, § 6, effective August 5. **L. 2017:** IP(4)(b)(I) and

(4)(b)(I)(B) amended, (SB 17-020), ch. 23, p. 71, § 7, effective March 8. **L. 2022:** (6) added by revision, (HB 22-1034), ch. 61, p. 312, §§ 21, 22.

Editor's note: Subsection (6) provided for the repeal of this section, effective January 1, 2023. (See L. 2022, p. 312.)

31-31-1103. Entry into the statewide defined benefit plan. (Repealed)

Source: L. 2003: Entire part added, p. 739, § 1, effective August 6. **L. 2006:** (1)(a), (1)(b), (1)(c), (1)(d), (1)(e)(III), and (1)(f)(I) amended and (1)(c.5) added, p. 304, § 2, effective August 7. **L. 2017:** (1)(c) and (1)(c.5)(I) amended, (SB 17-020), ch. 23, p. 71, § 8, effective March 8. **L. 2018:** Entire section repealed, (HB 18-1031), ch. 5, p. 36, § 3 effective August 8.

31-31-1104. Merger into the statewide retirement plan.

(1) (a) On or about January 1, 2023, the assets and liabilities of the statewide hybrid plan shall merge into the statewide retirement plan created pursuant to article 31.5 of this title 31.

(b) The statewide hybrid plan members defined benefit account assets shall be transferred to the lifetime benefits account created pursuant to part 1 of article 31.5 of this title 31.

(c) The statewide hybrid plan aggregate money purchase accounts assets shall be transferred to the money purchase account created in part 1 of article 31.5 of this title 31.

(d) Deferred retirement option plan account assets of the statewide hybrid plan shall be transferred to the money purchase account created in part 1 of article 31.5 of this title 31.

(2) All remaining defined benefits and other obligations of the statewide hybrid plan payable on and after January 1, 2023, shall be paid from lifetime benefits account of the statewide retirement plan. The money purchase obligations of the statewide hybrid plan shall be transferred to and be payable from the money purchase component of the statewide retirement plan. Said obligations shall be paid pursuant to the statutory provisions and rules adopted by the board regarding the statewide retirement plan pursuant to article 31.5 of this title 31.

(3) Participation by all members, including retirees, in the statewide hybrid plan shall terminate upon the merger of the plans and said members shall begin participation in the hybrid component and the money purchase component of the statewide retirement plan. Accumulated service credit and length of service shall be aggregated between the plans. Retirees shall receive

an adjustment to their benefits based on the actuarial funding of the plan upon merger as determined by the board.

(4) Immediately after such transfer, the affected member's accrued benefits in the statewide retirement plan shall be at least as great as the member's accrued benefits immediately before the transfer.

(5) The merger is intended to be consistent with the requirements under section 414 (l) of the federal "Internal Revenue Code of 1986", as amended, and shall not be considered a plan termination and shall not result in a distributable event.

Source: L. 2022: Entire section added, (HB 22-1034), ch. 61, p. 311, § 20, effective August 10. **L. 2023:** (5) amended, (HB 23-1301), ch. 303, p. 1840, § 74, effective August 7.

PART 12

ENSURING PROPER PAYMENTS

31-31-1201. Review of award of benefits and benefit payments.

(1) At any time, the board may review an award of benefits or a benefit payment under any benefit plan in the defined benefit system, the statewide money purchase plan, or the statewide death and disability plan for the purpose of determining whether there has been fraud, an overpayment, an error, or a mistake.

(2) At any time, the board may review a benefit payment under any benefit plan or compensation plan other than the plans identified in subsection (1) of this section that the board administers for the purpose of determining whether there has been an overpayment, an error, or a mistake.

(3) Based upon a preponderance of the evidence from the review authorized by this section, the board:

(a) May determine that a benefit payment be terminated, diminished, maintained, or increased;

(b) May order a member or beneficiary to repay any overpayments made on or after five years prior to the date of the first notice of overpayment issued by the fire and police pension association; or

(c) Shall order the termination of benefits and the repayment of any past benefits paid to a member or beneficiary where the board finds that the benefits were granted based on false representations or a willful failure to disclose a material fact.

(4) The board shall adopt rules establishing procedures for the review of benefits and payments. The board may delegate the review pursuant to the rules. Any rules established by the board shall provide that a member or beneficiary shall have the opportunity to appeal any adverse action to the board for a final determination.

(5) Any appeal of a final determination by the board shall be in accordance with rule 106 (a)(4) of the Colorado rules of civil procedure.

Source: L. 2008: Entire part added, p. 160, § 2, effective August 5.

31-31-1202. Collection of overpaid benefits.

(1) The board shall institute practices and procedures as it deems necessary to collect money due a plan administered by the fire and police pension association as determined in section 31-31-1201, including but not limited to withholding subsequent benefit payments to which the member or beneficiary is or becomes entitled, applying the amount withheld as an offset against the amount due, and referring an account to a collection agency or attorney for collection. If, after due notice, any member or beneficiary defaults in any repayment of overpaid benefits, the amount due may be collected by civil action, which shall include the right of attachment in the name of the association. The board may allow installment payments of amounts due based on equitable considerations.

(2) Reasonable fees for collection, including attorney fees, as determined by the fire and police pension association, shall be added to the amount of debt. The debtor shall be liable for repayment of the total of the amount outstanding plus the collection fee.

(3) A certified copy of any final determination of the board ordering the repayment of overpayments pursuant to this article may be filed with the clerk of the district court of any judicial district in this state at any time after the period provided for appeal or seeking review of the order has passed without appeal or review being sought or, if appeal or review is sought, after the order has been finally affirmed and all appellate remedies and all opportunities for review have been exhausted. The fire and police pension association shall at the same time file a certificate to the effect that the time for appeal or review has passed without appeal or review being undertaken or that the order has been finally affirmed with all appellate remedies and all opportunities for review having been exhausted. The clerk of the district court shall record the order and the association's certificate in the judgment book of said court and entry thereof made in the judgment docket, and it shall thereafter have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Any such order may be filed by and in the name of the association.

Source: L. 2008: Entire part added, p. 161, § 2, effective August 5.

31-31-1203. False statement - felony.

If, for the purpose of obtaining any order, benefit, award, compensation, or payment pursuant to articles 30, 30.5, and 31 of this title 31, either for self-gain or for the benefit of any other person, a person willfully makes a false statement or representation material to the claim, the person commits a class 6 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, and the person forfeits all right to compensation pursuant to articles 30 and 30.5 of this title 31 and this article 31.

Source: L. 2008: Entire part added, p. 162, § 2, effective August 5. **L. 2023:** Entire section amended, (HB 23-1293), ch. 298, p. 1796, § 64, effective October 1.

ARTICLE 31.5

Fire and Police Pension Association of Colorado Statewide Retirement Plan

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PART 1

ESTABLISHMENT AND ADMINISTRATION

31-31.5-100.3. Definitions.

As used in this article 31.5, unless the context otherwise requires:

(1) "Actuarially sound" means a police officers' or firefighters' pension fund determined by the board to be receiving or scheduled to receive employer and member contributions in each fiscal year equal to the annual contributions actuarially determined to be necessary to pay the

annual current service cost of pension benefits attributable to active employees and to pay the annual contribution necessary to amortize any unfunded accrued liability over a period not to exceed forty years. The actuarial cost method to be utilized shall be the entry age-normal cost method. The date from which unfunded liabilities shall be amortized shall be determined pursuant to part 3 of article 30.5 of this title 31.

(2) "Association" means the fire and police pension association created in section 31-31-201 (1).

(3) "Board" means the board of directors established as the governing body of the fire and police pension association as provided in section 31-31-201 (2).

(4) "Employer" means any municipality in this state offering police or fire protection service employing one or more members and any special district, fire authority, or county improvement district in this state offering fire protection service employing one or more members.

(5) "Lifetime benefit components" means the defined benefit component, the social security component, and the hybrid component, as described in this article 31.5, collectively.

(6) "Member" means an active employee who is a full-time salaried employee of a municipality, fire protection district, fire authority, or county improvement district normally serving at least one thousand six hundred hours in any calendar year and whose duties are directly involved with the provision of police or fire protection, as certified by the member's employer. The term does not include clerical or other personnel whose services are auxiliary to police protection, or any volunteer firefighter, as such term is defined in section 31-30-1102 (9). For the purpose of participation in the defined benefit component of the statewide retirement plan pursuant to this article 31.5, or the statewide money purchase plan pursuant to part 5 of article 31 of this title 31, but not for the purpose of participation in the statewide death and disability plan pursuant to part 8 of article 31 of this title 31, the term may include clerical or other personnel employed by a fire protection district, fire authority, or county improvement district, whose services are auxiliary to fire protection. For the purpose of eligibility for disability or survivor benefits, "member" includes any employee on an authorized leave of absence.

(7) "Money purchase plan" or "money purchase pension plan" means a retirement plan under which:

(a) The employer has a fixed obligation to make an annual contribution to the plan;

(b) An individual account for each member is provided; and

(c) The member's benefits are based solely on the amount contributed to the member's account and any income, expenses, gains, and losses allocated to the member's account.

(8) "Predecessor plans" means the statewide defined benefit plan formerly governed by part 4 of article 31 of this title 31, the statewide hybrid plan formerly governed by part 11 of article

31 of this title 31, and the social security supplemental plan formerly governed by part 7 of article 31 of this title 31.

(9) "Retired member" means any member who is retired, disabled, or eligible for a benefit as provided in section 31-31.5-401.

Source: L. 2025: Entire section added with relocations, (SB 25-275), ch. 377, p. 2092, § 273, effective August 6.

Editor's note: This section is similar to former § 31-31.5-101 (5) as it existed prior to 2025.

31-31.5-101. Establishment of the statewide retirement plan.

(1) The statewide retirement plan is hereby established to provide defined benefit and money purchase retirement benefits to members of employers affiliated with the plan. Initial employers affiliated with the plan include those departments that participated in the statewide defined benefit plan established pursuant to part 4 of article 31 of this title 31, the statewide hybrid plan established pursuant to part 11 of article 31 of this title 31, and the social security supplemental plan established pursuant to part 7 of article 31 of this title 31 as such plans existed before their merger into the statewide retirement plan pursuant to House Bill 22-1034, enacted in 2022.

(2) The board is the trustee of the statewide retirement plan, and has those fiduciary duties to the plan and the members of the plan as expressly provided by law.

(3) The board, as a fiduciary, may delegate one or more of its responsibilities under this article 31.5 but shall maintain its responsibility for oversight of the delegation.

(4) (a) The statewide retirement plan is intended to comply with the qualification requirements specified in section 401 (a) of the "Internal Revenue Code of 1986", as amended and applicable to governmental plans, as defined in section 414 (d) of said code.

(b) The board may adopt any provision for the plan that is necessary or in the board's judgment prudent to comply with state or federal law.

(5) Repealed.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 280, § 1, effective August 10; (1) amended, (SB 22-212), ch. 421, p. 2989, § 98, effective August 10. **L. 2023:** (5)(f) amended, (HB 23-1301), ch. 303, p. 1840, § 75, effective August 7. **L. 2024:** (5)(f) and (5)(i) amended,

(HB 24-1042), ch. 15, p. 40, § 12, effective March 6. **L. 2025:** (5) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6.

Editor's note: (1) Subsection (5)(i) was numbered as (5)(g) in HB 22-1034 but has been renumbered on revision for ease of location.

(2) Subsection (5) was relocated to § 31-31.5-100.3 in 2025.

31-31.5-102. Administration of the plan - rules.

(1) (a) Contributions and earnings to all components of the statewide retirement plan shall be held in trust as part of the defined benefit system trust fund.

(b) There is hereby established in the defined benefit system trust fund, a lifetime benefits account into which contributions made pursuant to sections 31-31.5-301, 31-31.5-302, and 31-31.5-303 must be deposited. The defined benefits of the lifetime benefit components, including cost of living adjustments provided by the plan pursuant to part 4 of this article 31.5, together with the expenses of administering the lifetime benefit components of the plan, shall be paid from the account. The lifetime benefits account shall be invested within the fire and police members' benefit investment fund.

(c) There is established in the defined benefit system trust fund, a money purchase account into which contributions made pursuant to section 31-31.5-304 must be deposited and assigned to individual accounts and administered pursuant to part 5 of this article 31.5. The board may create subaccounts within the account to adequately track the vesting and the source of money deposited into the account on behalf of each member. The money purchase component account must be invested within the fire and police members' self-directed investment fund.

(d) The board shall keep an accurate account of the assets and liabilities of the lifetime benefits account and the money purchase component account.

(2) The board may adopt by rule such matters as may be necessary to codify the board's interpretation, administration, and management of the statewide retirement plan.

(3) The board may provide for the administration of domestic relations orders issued pursuant to article 10 of title 14 with regard to the plan or its predecessor plans.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 282, § 1, effective August 10.

PART 2

MEMBERSHIP PARTICIPATION

31-31.5-201. Membership.

Except as otherwise provided in this article 31.5 or article 31 of this title 31, a member whose employer is affiliated with a component of the statewide retirement plan shall participate in the statewide retirement plan on the first day of employment if the employer withholds member contributions on behalf of the member and the applicable forms are completed and submitted to the association.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 283, § 1, effective August 10.

31-31.5-202. Reentering and affiliating employers.

(1) Members of employers who reenter or affiliate pursuant to part 7 or part 11 of article 31 of this title 31 shall participate in the statewide retirement plan beginning on the employer's effective date pursuant to rules adopted by the board.

(2) Members covered by subsection (1) of this section may elect a trustee-to-trustee transfer in order to transfer assets from the predecessor money purchase plan to the member's individual account established pursuant to part 5 of this article 31.5.

(3) An active member who is required to transfer money purchase assets to the statewide retirement plan may also elect to convert the vested proceeds from the predecessor money purchase plan into service credit towards the accrual of benefits under the lifetime benefit components as may be allowed pursuant to the board's rules.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 283, § 1, effective August 10.

31-31.5-203. Department chief - exemption by written agreement - definition.

(1) A department chief hired on or after April 8, 1978, is exempt from the statewide retirement plan upon the execution of a written agreement between the department chief and the chief's employer that provides for the department chief's participation in social security or in a federal insurance contribution act replacement plan as allowed under rules established by the board and in compliance with the federal "Internal Revenue Code of 1986". A department chief may satisfy the federal insurance contribution act replacement plan requirement by participating

in an employer sponsored plan, the statewide money purchase plan, or a component of the statewide retirement plan.

(2) As used in this section, "department chief" means the senior command officer of any fire or police department of any employer by whatever title known including but not limited to chief, administrator, or director.

(3) A department chief exempted from the statewide retirement plan pursuant to subsection (1) of this section may maintain coverage for disability and survivor benefits under part 8 of article 31 of this title 31 if the department chief participates in the statewide money purchase plan.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 284, § 1, effective August 10. **L. 2023:** (3) amended, (HB 23-1301), ch. 303, p. 1841, § 76, effective August 7. **L. 2026:** (3) amended, (SB 26-039), ch. 37, p. 180, § 6, effective August 12.

31-31.5-204. Reemployment.

(1) An inactive member who is subsequently reemployed shall participate in the plan in the manner prescribed by rules adopted by the board.

(2) (a) The board shall adopt rules regarding the treatment of a member who participates in the statewide retirement plan, incurs a bona fide separation from service, elects a retirement, and subsequently returns to work with an employer who participates in the statewide retirement plan in conformance with the federal "Internal Revenue Code of 1986", as amended.

(b) Such rules must indicate:

(I) Whether the member continues to receive benefit distributions during the reemployment or whether the member's benefit distribution ceases during reemployment;

(II) Whether the member earns additional service credit as determined by the plan in which the subsequent employer participates or whether the member earns additional retirement benefits by participating in an alternate money purchase plan; and

(III) Whether the benefit distribution, if ceased during reemployment, resumes when the member subsequently separates from service.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 284, § 1, effective August 10.

PART 3

CONTRIBUTIONS AND SERVICE CREDIT

31-31.5-301. Defined benefit component minimum contributions.

(1) Every member covered under the defined benefit component of the statewide retirement plan shall pay into the lifetime benefits account twelve percent of base salary paid or any higher member contribution rate established pursuant to part 6 of this article 31.5. The payment shall be made by the employer by deduction from the salary paid to the member.

(2) (a) Every employer employing members who are covered by the defined benefit component of the statewide retirement plan shall pay into the lifetime benefits account nine percent of the base salary paid to the member or any higher employer contribution rate established pursuant to part 6 of this article 31.5. The employer contribution rate shall increase by three percent to be implemented through six annual increases as follows: Beginning in 2023, and each year thereafter through 2028, the employer contribution rate shall increase by an additional one-half of one percent of base salary until the total employer contribution rate, including the cumulative contribution rate increases, is twelve percent of base salary.

(b) In addition to the rate established in subsection (2)(a) of this section, the employer contribution rate shall be increased by one percent of base salary to be implemented as follows: Beginning in 2029, and continuing through 2030, the employer contribution rate shall increase by an additional one-half of one percent of base salary in each year for a total of a one percent increase in order to pay for the cost of providing the option to retire contained in section 31-31.5-401 (2)(b).

(3) After considering the results of the actuarial valuation conducted pursuant to section 31-31.5-402, if the assets of the lifetime benefit components of the plan combined with projected contributions are sufficient to fully fund the benefits provided for in part 4 of this article 31.5 on an actuarially sound basis plus the projected cost of living adjustments as determined by the board, the board may, in its sole discretion, allocate surplus contributions to the money purchase component pursuant to section 31-31.5-304. The board shall designate whether any such allocation is an employer contribution or a member contribution.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 285, § 1, effective August 10.

31-31.5-302. Social security component minimum contributions.

(1) This component covers the members of those employers that have elected coverage under the plan pursuant to section 31-31-704.5.

(2) Each member shall make contributions at one-half of the member contribution rate established for the defined benefit component in section 31-31.5-301 by deduction from the salary paid to the member. For each member, the employer shall pay one-half of the employer contribution rate established for the defined benefit component in section 31-31.5-301 including any allocation made to the money purchase component made pursuant to section 31-31.5-301 (3).

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 285, § 1, effective August 10.

31-31.5-303. Hybrid component minimum contributions.

(1) Every employer shall contribute to the lifetime benefits account eight percent of the base salary of the member. The employer contribution rate shall increase by one percent of base salary to be implemented through eight annual increases as follows: Beginning in 2023, and each year thereafter through 2030, the employer contribution rate shall increase by an additional one-eighth of one percent of base salary until the total employer contribution rate, including the cumulative contribution rate increases, is nine percent of base salary.

(2) Every member shall contribute to the lifetime benefits account eight percent of the base salary of the member. The member contribution rate shall increase by one percent of base salary to be implemented through eight annual increases as follows: Beginning in 2023, and each year thereafter through 2030, the member contribution rate shall increase by an additional one-eighth of one percent of base salary until the total member contribution rate, including the cumulative contribution rate increases, is nine percent of base salary. The payment shall be made by the employer by deduction from the salary paid to the member.

(3) The combined mandatory contributions shall be allocated between the hybrid component and the money purchase component as determined annually by the board based on the amount required to fund the benefit provided under the hybrid component.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 286, § 1, effective August 10.

31-31.5-304. Money purchase component contributions.

(1) For members who elected the money purchase only option upon reentry into a predecessor plan, the contribution rate for employers and members is equal to the contribution rates established in the predecessor plan.

(2) Contributions, including separate retirement account balances from the predecessor statewide defined benefit plan established under part 4 of article 31 of this title 31, transfers from the predecessor statewide hybrid plan money purchase accounts, surplus contributions allocated from the defined benefit component contributions pursuant to section 31-31.5-301 (3), the portion of the minimum contributions of hybrid component allocated to the money purchase component pursuant to section 31-31.5-303 (3), increased local mandatory contributions pursuant to section 31-31.5-307, and increased local voluntary contributions pursuant to section 31-31.5-308 must be deposited in the money purchase component.

(3) The board may provide through rules for rollovers or transfer of funds from other plans to be deposited in the money purchase component subject to requirements and limits established by the federal "Internal Revenue Code of 1986", as amended.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 286, § 1, effective August 10.

31-31.5-305. Continuing rates of contribution for reentry and affiliating departments.

(1) At the time of reentry or affiliation, the board may establish a continuing rate of contribution for departments reentering or affiliating with the statewide retirement plan in addition to the employer and member contributions otherwise required by this part 3 in order to maintain the actuarial soundness of the plan and the plan for disability and survivors benefits provided for in part 8 of article 31 of this title 31.

(2) It shall be locally decided during the affiliation process whether the continuing rate of contribution shall be made by the member or the employer or split equally between the member and the employer.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 287, § 1, effective August 10.

31-31.5-306. Picked-up contributions.

Each employer shall pick up the mandatory employee contributions required under this part 3, to the extent allowed by the federal "Internal Revenue Code of 1986", as amended, and the contributions picked up shall be treated as employer contributions pursuant to section 414 (h)(2) of the federal "Internal Revenue Code of 1986", as amended, in determining their income tax treatment. The employer shall pay these employee contributions directly to the association, instead of paying such amounts to the members. Such contributions shall be paid from the same funds that are used in paying salaries to the members. Such contributions, although designated as

employee contributions, shall be paid by the employer in lieu of contributions by the members. Members may not elect to choose to receive such contributions directly instead of having them paid by the employer to the plan. Employee contributions so picked up shall be treated for all purposes of this article 31.5, other than federal tax, in the same manner as employee contributions made before the date picked up.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 287, § 1, effective August 10.

31-31.5-307. Increased local mandatory contribution requirements.

(1) An employer or active member or both may be required to pay a mandatory contribution rate in excess of the rate established in section 31-31.5-301, 31-31.5-302, or 31-31.5-303 upon enactment by the employer of a resolution or ordinance setting forth the higher contribution rate and approval of the higher rate by at least sixty-five percent of the employer's active members voting for the higher contribution rate.

(2) An employee who has previously established a mandatory contribution rate under a local money purchase plan in excess of the mandatory contribution rate may continue the previous contribution rate as an increased contribution rate.

(3) Upon adoption of a resolution or ordinance, and approval of at least sixty-five percent of the employer's active members voting, a mandatory contribution rate in excess of the minimum required contribution rate may be reduced to the minimum required contribution rate or the excess above the minimum required contribution rate may be redirected to another available employee benefit.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 287, § 1, effective August 10.

31-31.5-308. Increased local voluntary contribution requirements.

(1) Active members may make additional after-tax contributions to the money purchase component account under part 5 of this article 31.5. Voluntary member contributions are not subject to the employer pick-up provisions of section 414 (h)(2) of the federal "Internal Revenue Code of 1986", as amended.

(2) Employers may make additional contributions to the money purchase component account under part 5 of this article 31.5 on behalf of members. Employer voluntary contributions vest on the schedule established in section 31-31.5-501.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 288, § 1, effective August 10.

31-31.5-309. Remittance of contributions to the association.

(1) Remittances of contributions are due no later than ten days following the date of payment of salary to a member. All remittances of contributions must be credited to the defined benefit system trust fund.

(2) The payments required by this section are subject to interest as established by the board if not submitted when due.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 288, § 1, effective August 10.

31-31.5-310. Service credit purchases.

Members participating in the lifetime benefit components may purchase, including by rollover or transfer of funds, additional defined benefit service credit for other public employment within the United States not covered by the plan, United States uniformed military service, or up to five years of private employment, subject to the limits established by the federal "Internal Revenue Code of 1986", as amended, and as may be allowed under the rules and regulations adopted by the board.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 288, § 1, effective August 10.

PART 4

BENEFITS IN THE LIFETIME BENEFIT COMPONENTS

31-31.5-401. Vesting and benefit eligibility.

(1) A member with five years of service credit in one or a combination of more than one of the lifetime benefit components is considered vested for purposes of a pension payable from the lifetime benefit components of the statewide retirement plan.

(2) A member is eligible for a normal retirement when:

(a) The member has accumulated at least twenty-five years of service credit and has attained age fifty-five; or

(b) The member has attained age fifty, the member's combined age and years of accrued service is equal to at least eighty, and the member is not receiving benefits pursuant to part 8 of article 31 of this title 31.

(3) A vested member who attains age fifty-five is eligible to terminate service and begin receiving an unreduced benefit. A member who terminates employment before attaining age fifty-five and who has at least five years of service credit may leave contributions in the plan and begin receiving an unreduced benefit upon attaining age fifty-five.

(4) An active or inactive vested member who is not eligible for normal retirement, who has attained age fifty, who is not receiving or has terminated benefits pursuant to part 8 of article 31 of this title 31, and who has terminated employment is eligible for an early retirement pension. The early retirement pension for a member is the benefit that the member would have received at age fifty-five reduced on an actuarial equivalent basis to reflect the early receipt of the benefit as determined by the board.

(5) Subject to rules adopted by the board, years of service credit of a member who is employed by successive employers may be aggregated for determining eligibility and benefits provided by the lifetime benefit components of the statewide retirement plan if the service for each employer was rendered while the employer covered its members under the statewide retirement plan, the predecessor statewide defined benefit plan, or the defined benefit component of the predecessor statewide hybrid plan.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 288, § 1, effective August 10. **L. 2026:** (2)(b) and (4) amended, (SB 26-039), ch. 37, p. 181, § 7, effective August 12.

31-31.5-402. Plan funding - actuarial valuation and adjustments to maintain the actuarial soundness of the plan.

(1) The general assembly declares that the rates of member and employer contributions must be adequate to fund benefit liabilities accrued under the statewide retirement plan established by this article 31.5.

(2) (a) The board shall conduct an annual actuarial valuation of the statewide retirement plan and shall determine the cost of all benefits of the lifetime benefit components, which may include projected cost of living adjustments for each of the lifetime benefit components. The board shall submit an annual actuarial valuation report to the state auditor, the pension review committee, the legislative audit committee, and the joint budget committee of the general

assembly, together with any recommendations concerning such liabilities as accrued. Amortization of liability over a forty-year period shall be deemed adequate to maintain actuarial stability.

(b) The board shall periodically conduct a review and study of the actual experience of the assets and liabilities of the lifetime benefit components of the statewide retirement plan. The board shall adjust the assumptions made with regard to each component as a result of the review and study.

(3) The board shall determine after each annual actuarial valuation if the cost of all benefits established by this part 4 and the cost of a normal retirement pension beginning at age fifty-five for members then eligible may be fully funded on an actuarially sound basis not including future projected cost of living adjustments without necessitating an increase in the employer and member contributions made pursuant to subsection (5) of this section.

(4) If in any year the board determines pursuant to subsection (2) of this section that the cost of the benefits described in this part 4 may not be fully funded on an actuarially sound basis, the board, in its discretion, may take the following actions singularly or in any combination and in any order:

(a) The board may terminate allocating surplus contributions to the money purchase component pursuant to section 31-31.5-301 (3);

(b) The board may terminate making cost of living adjustments pursuant to section 31-31.5-410;

(c) (I) The board may order that the normal retirement pension commence such number of months as are actuarially supportable, from one to sixty, after age fifty-five for members who are otherwise eligible pursuant to section 31-31.5-401 (2)(a). If the board adjusts the age of eligibility pursuant to this subsection (4)(c)(I), it shall also adjust the age of eligibility for benefits under section 31-31.5-401 (2)(b), (3), and (4) in a like manner. The determination of the board is conclusive absent fraud.

(II) A pension commenced before any adjustment in the age of eligibility pursuant to subsection (4)(c)(I) of this section is not subject to review. If a court determines that this subsection (4) is invalid, the age of retirement to be eligible for any normal retirement benefit shall be age sixty except for persons receiving a benefit at the time of the court's decision.

(d) The board may prospectively order that the benefit multiplier used in section 31-31.5-403 (1)(b) be reduced from two and one-half percent to as low as two percent for any given year or years;

(e) The board may suspend further implementation or participation in any plan amendment adopted pursuant to part 6 of this article 31.5 that contributes additional cost to the plan;

(f) The board may suspend further participation in the deferred retirement option plan pursuant to section 31-31.5-409 if it determines that the option contributes additional cost to the statewide retirement plan; and

(g) The board may reinstate any benefits terminated, adjusted, or suspended pursuant to this section if it determines that the action taken is no longer necessary to maintain the actuarial soundness of the lifetime benefit components. This may include, but is not limited to, retroactive reinstatement of the benefit multiplier reduced under subsection (4)(d) of this section.

(5) (a) If the actual financial experience of the lifetime benefits account is found to be more or less favorable than the assumed experience during the previous period, adjustments may be made by the board in the member and employer contributions as may be deemed feasible and advisable so long as the employer contribution rate adjustment is equal to the member contribution rate adjustment.

(b) The board shall not increase employer or member contributions pursuant to subsection (5)(a) of this section unless it has taken the actions permitted under subsections (4)(a) to (4)(f) of this section and it finds that the increase is necessary to maintain the actuarial soundness of the plan.

(6) Nothing in this section shall be construed to require the reduction of benefits below the level sustainable by the higher member or employer contribution rates established pursuant to section 31-31.5-601.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 289, § 1, effective August 10. **L. 2023:** IP(4) amended, (HB 23-1301), ch. 303, p. 1841, § 77, effective August 7.

31-31.5-403. Defined benefit component benefits.

(1) In calculating the retirement pension for a member who has service credit in the defined benefit component, the benefit is the sum of the following:

(a) Two percent multiplied by the service credit earned or purchased in the defined benefit component, not to exceed ten years of service credit, multiplied by the average of the member's highest three years' base salary in the defined benefit component; plus

(b) Two and one-half percent multiplied by the service credit earned or purchased in the defined benefit component in excess of ten years multiplied by the average of the member's highest three years' base salary in the defined benefit component.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 291, § 1, effective August 10.

31-31.5-404. Social security component benefits.

(1) In calculating the retirement pension for a member who has service credit in the social security component, the benefit is the sum of the following:

(a) One percent multiplied by the years of service credit in the social security component, not to exceed ten years of service credit, multiplied by the average of the member's highest three years' base salary in the social security component; plus

(b) One and one-quarter percent multiplied by the years of service credit in the social security component in excess of ten years multiplied by the average of the member's highest three years' base salary in the social security component.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 291, § 1, effective August 10.

31-31.5-405. Hybrid component benefits.

(1) In calculating the normal retirement pension for a member who has years of service credit in the hybrid component, the benefit shall be:

(a) A multiplier, which the board shall establish by adjusting the funding status of the predecessor statewide hybrid plan to equal the funding status of the predecessor statewide defined benefit plan using valuations as of December 31, 2021, and based on the recommendations made by the plan's actuary, multiplied by the years of service credit earned or purchased in the statewide hybrid plan prior to January 1, 2023, multiplied by the average of the member's highest three years' base salary; plus

(b) One and one-half percent multiplied by the years of service credit earned or purchased in the hybrid component on or after January 1, 2023, multiplied by the average of the member's highest three years' base salary.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 291, § 1, effective August 10.

31-31.5-406. Optional survivor benefits.

(1) A member eligible for a normal, late, or early retirement pension may elect to receive a reduced pension payable to the member and, upon the member's death a reduced benefit to the member's designated beneficiary. The board shall establish such options by rule in a manner that

provides for an actuarial equivalent benefit of the normal or early retirement pension otherwise payable.

(2) If a member reaches age eligibility for a normal, vested, or early retirement pension, and dies before making an election allowed pursuant to subsection (1) of this section or before the first pension payment has been deposited, and is survived by a spouse, dependent child, or designated beneficiary, the member shall be considered to have elected an actuarially reduced pension and retired on the day before the member's death. Payable to the members spouse, dependent child, or designated beneficiary, such reduced pension shall be payable to the member's designated beneficiary. A spouse, dependent child, or designated beneficiary of a member who has not yet reached age eligibility may elect to receive an actuarially reduced benefit beginning on the date that the member would have reached age eligibility in lieu of a death benefit under part 8 of article 31 of this title 31 and in lieu of a refund of member contributions pursuant to section 31-31.5-411.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 292, § 1, effective August 10. **L. 2023:** (2) amended, (HB 23-1301), ch. 303, p. 1841, § 78, effective August 7.

31-31.5-407. Minimum benefit.

(1) If the total amount of pension benefits paid under the lifetime benefit component as provided in this article 31.5 at the time of death is less than the amount of the members' contributions to the lifetime benefit component, the difference shall be paid to:

(a) The member's estate, if no pension payment was made pursuant to an option under section 31-31.5-406; or

(b) The survivor's estate, if pension payments were made pursuant to an option under section 31-31.5-406.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 292, § 1, effective August 10.

31-31.5-408. Late retirement.

(1) Any member retiring and eligible for a normal or vested retirement benefit may elect to defer receipt of the pension until attaining age sixty-five years, but no later. In the case of such an election, the late retirement pension is the actuarial equivalent of the normal retirement pension as determined by the board.

(2) The board may promulgate rules to allow members who are eligible to receive any type of retirement benefits to defer receipt of the benefits to the extent permitted under the federal "Internal Revenue Code of 1986" as amended, and the regulations promulgated pursuant to section 401 (a)(9) of said code.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 292, § 1, effective August 10.

31-31.5-409. Deferred retirement option plan (DROP).

The board may establish by rule a deferred retirement option plan for vested members who have attained age fifty. The purpose of the DROP is to allow an eligible member to elect, in lieu of immediate termination of employment and receipt of a lifetime retirement benefit, to continue employment for a specified period of time of up to five years and to have the member's otherwise deductible employee contribution and retirement benefits paid into the member's individual account created by section 31-31.5-503 until the end of the specified period of the member's participation, at which time employment ceases.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 293, § 1, effective August 10.

31-31.5-410. Cost of living adjustments - definitions.

(1) Cost of living adjustments payable under the lifetime benefit components of the plan, if any, may be paid effective October 1 each year. To be eligible to receive a cost of living adjustment, the benefits must have been paid for at least twelve calendar months prior to the effective date of the cost of living adjustment. Subject to the limits set forth in subsection (2) of this section, the board has the authority to determine the form in which a cost of living adjustment may be paid. This includes the frequency of payment, whether the payment is compounded or noncompounded, and any other form in which to pay a cost of living adjustment.

(2) (a) Any cost of living adjustment made pursuant to subsection (1) of this section shall be determined by the board in its discretion as a fiduciary of the statewide retirement plan after considering the funding level of the lifetime benefit components, the cost of the adjustment, the components' ability to fund future benefits, and any other factors that the board deems appropriate. The cost of living adjustment shall not exceed the greater of:

(I) One hundred three percent of the benefits paid for the prior twelve-month period; or

(II) The benefits paid during the prior twelve-month period multiplied by a fraction using the consumer price index for the immediately preceding calendar year as the numerator and the

consumer price index for the calendar year prior to the immediately preceding calendar year as the denominator.

(b) As used in this section, "consumer price index" means the national consumer price index for urban wage earners and clerical workers prepared by the United States department of labor.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 293, § 1, effective August 10. **L. 2023:** (1) and IP(2)(a) amended, (HB 23-1106), ch. 34, p. 116, § 1, effective August 7.

31-31.5-411. Refunds of member contributions.

(1) (a) Any member covered by the statewide retirement plan who terminates service may elect to have the member's accumulated contributions to one or more lifetime benefit components of the plan refunded together with five percent of the member's total accumulated contributions as interest in a lump sum and thereafter shall have no right to lifetime benefits provided by the plan.

(b) If the member who terminates service and receives a refund of member contributions subsequently returns to service as an active member with an employer that covers its members under the statewide retirement plan, the member's prior service credit shall be restored when the member returns the member's refunded contributions to the lifetime benefit components, with interest accrued from the date of refund to the date of return, according to the terms and conditions established by the board. If the member fails to return the contributions and interest, the member shall be treated as a new member, and the member's prior service shall not be recognized in determining pension eligibility or pension benefits. The restoration of a member's service credit pursuant to this subsection (1)(b) shall not entitle the member to reinstatement of any previously forfeited balance in the member's money purchase component account or the separate retirement account.

(2) (a) If a member dies after termination of service, is not eligible for a vested, normal, or early retirement, and has not yet received a refund or began receiving benefit payments, the association shall refund the member's lifetime benefit component contributions to the member's designated beneficiary, surviving spouse, or dependent children. Where there is no designated beneficiary, surviving spouse, or dependent children, the refund shall be made to the deceased member's estate.

(b) If a member who has not terminated service dies, and there is no spouse or dependents eligible for survivor benefits under part 8 of article 31 of this title 31, the deceased member's lifetime benefit component contributions may be refunded to:

(I) The member's designated beneficiary if the member is not eligible for vested, early, or normal retirement. The designated beneficiary may in the alternative elect a lifetime benefit pursuant to section 31-31.5-406.

(II) If there is no designated beneficiary, the member's estate.

(3) The designated beneficiary of a member eligible for vested, early, or normal retirement shall receive the benefit described in section 31-31.5-406 (2) and no refund of contributions shall be made.

(4) Upon payment of a refund of member contributions, no lifetime benefit components benefits shall be payable.

(5) Refunds of contributions to the lifetime benefit components shall not be made to any members of employers who have failed to remit all contributions required under the provisions of the statewide retirement plan.

(6) A member or the member's designated beneficiary, surviving spouse or partner in a civil union, or dependent children who is entitled to receive a refund of the member's defined benefit contributions may elect to have the refund credited to the member account in the money purchase component. Upon the refund being credited, the member or the member's designated beneficiary, surviving spouse or partner in a civil union, or dependent children are treated as having taken a refund from the defined benefit component for all purposes.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 293, § 1, effective August 10.

PART 5

MONEY PURCHASE COMPONENT

31-31.5-501. Vesting.

(1) A member is one hundred percent vested in the individual account in the money purchase benefit account pursuant to section 31-31.5-503.

(2) Employer contributions made to the statewide retirement plan that are credited to the money purchase component account are subject to the following vesting rules:

(a) In the event of permanent occupational or total disability retirement or an award of a survivor benefit due to a death of an active member pursuant to part 8 of article 31 of this title 31, a member shall be one hundred percent vested in the employer contributions made to the money purchase component account.

(b) A member shall be one hundred percent vested in the employer's contributions made to the money purchase component account upon attaining normal retirement age if employed by the employer on or after that date.

(c) Except as provided in subsections (2)(a) and (2)(b) of this section, a member is vested in the employer contributions made to the money purchase component account in the amount of twenty percent for each full year of service performed for a covered department. Upon attaining five full years of service, a member is one hundred percent vested. Vesting also applies to employer contributions allocated pursuant to section 31-31.5-301 (3) or allocated under the predecessor statewide defined benefit plan pursuant to section 31-31-405, as it existed prior to its repeal.

(3) Upon distribution, the portion of the member's employer contributions to the money purchase component account that is not vested shall be treated as a forfeiture.

(4) (a) Years of service in the money purchase component for purposes of this section cannot be purchased by the member or the employer.

(b) A member who only participates in the money purchase component does not receive service credit for purposes of the lifetime benefit components.

(c) For members who participate in both the lifetime benefit components and the money purchase component concurrently, years of service include all years of service with the employer while in the plan or a predecessor plan, regardless of whether contributions were made to the money purchase component for each year.

(5) A member who is restored to active service after a disability ceases to exist receives credit for years of service in the money purchase component with the employer prior to the disability as well as time while out on disability.

(6) Subject to rules adopted by the board, years of service of a member who is employed by successive employers may be aggregated for determining eligibility and benefits provided by the money purchase component of the statewide retirement plan if the service for each employer was rendered while the employer covered its members under the statewide retirement plan, the predecessor statewide defined benefit plan, or the predecessor statewide hybrid plan.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 295, § 1, effective August 10. **L. 2024:** (2)(c) amended, (HB 24-1042), ch. 15, p. 40, § 13, effective March 6.

31-31.5-502. Normal retirement age.

The normal retirement age for the money purchase component is age fifty-five.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 296, § 1, effective August 10.

31-31.5-503. Individual accounts - investment and account administration.

(1) (a) The board shall create and maintain adequate records to disclose the interest of each member and beneficiary with assets in the money purchase component of the plan. The records must be in the form of individual accounts, and credits and charges must be made to such accounts in the manner prescribed by the board through rulemaking.

(b) The board shall designate a record keeper responsible for the administration of the individual accounts. The maintenance of individual accounts is only for accounting purposes, and a segregation of the assets of the trust fund to each account is not required.

(c) Distribution and withdrawals made from an account must be charged to the accounts as of the date payment is made. Earnings or losses on the amount allocated to the member's individual account while invested as part of the members self-directed investment fund must be allocated as determined by the record keeper.

(2) (a) The board may create and offer to each member with an individual account in the money purchase component various investment options, including at least three alternatives that allow a member a broad range of investments, diversification, and a meaningful choice between risk and return in the investment of the member's account.

(b) (I) One hundred percent of each individual account may be invested as directed by the member in any one or a combination of the investment options. If a member or designated beneficiary does not have a valid investment election on file for any portion of the amount in that member's accounts, that portion of the member's accounts shall be invested in the investment option selected by the board as the default option. In such event, the member or designated beneficiary is deemed to have directed that investment option for investment of that portion of the member's accounts.

(II) Upon the death of the member, the designated beneficiary may elect to allocate the investment of the member's individual account as provided for in this section. If no notice of reallocation is received from the designated beneficiary, the member's individual account remains invested as previously allocated during the member's lifetime.

(III) The board may establish one or more default options based upon various factors, including but not limited to market risk, stability, and rate of return. If the board has properly exercised its fiduciary duty in selecting a default option, it has no liability for any loss sustained by a member or designated beneficiary whose accounts in whole or in part are invested in the default option.

(c) Members may redirect the investment of their account at any time and may reallocate money in existing funds as allowed by the association. The board may also bring a suit or take such other action as it deems appropriate if questions involving investment directions arise.

(3) The accounts of members, designated beneficiaries, and alternate payees shall be adjusted in accordance with the following:

(a) The balance of each account must be adjusted daily to reflect any distribution and all interest, dividends, account charges, and changes of market value resulting from the investment of the member's individual account.

(b) Contributions must be allocated to the individual account of each eligible member not less frequently than monthly, according to the amount that is actually contributed on behalf of each member. In all cases, deposits of contributions shall be treated as actually made only as of the date the contributions are accepted as in good order by the record keeper.

(c) The expenses of the money purchase component of the plan must first be paid from forfeitures, penalties received, settlement proceeds, and other sources of revenue received, and then must be allocated to and deducted from the members' accounts. Notwithstanding the foregoing, any revenue credits derived from the investments offered by the money purchase component may instead be distributed to participants. Expenses that are incurred as a direct result of the investments held in the money purchase component account must be deducted from the interest, dividends, and net income of the appropriate investment. General expenses must be deducted from the accounts of each member according to the member's time-weighted pro-rata share of the money purchase component account. The board may also assess a record keeping fee and an administrative fee for costs associated with the administration of the money purchase component.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 296, § 1, effective August 10.

31-31.5-504. Distribution of money purchase component accounts.

(1) A member's vested account balance becomes eligible for distribution upon the member's death, permanent occupational or total disability pursuant to part 8 of article 31 of this title 31, normal, vested, or early retirement, or termination of employment.

(2) Upon becoming eligible for distribution and upon approval of the board, a member, or the designated beneficiary if the member dies before distribution of the member's individual account, may elect to receive the vested portion of balance of the member's individual account by one of the following methods:

(a) The member or designated beneficiary may choose a lump sum payment of all or a portion of the member's individual account.

(b) The member or designated beneficiary may elect to have the value of all or a portion of the individual account used to purchase an annuity contract, with a term and in a form as the member elects. If there is an elected distribution in the form of an annuity, any benefit payable as a result of the member's or beneficiary's death must be determined solely under the terms of the annuity contract.

(c) The member may elect to have all or a portion of the member's individual account distributed in substantially equal monthly payments over the member's life expectancy or a period not to exceed the joint life expectancy of the member and a spouse, if the spouse is the sole beneficiary, or until the account is exhausted. If the member dies prior to the member's required beginning date, the designated beneficiary may elect to have all or a portion of the member's individual account distributed in substantially equal monthly payments over a period not to exceed the life expectancy of the designated beneficiary.

(d) A member who is vested in both member and employer contributions to the money purchase component of the plan and has attained age fifty-five may elect to transfer all or part of the member's individual account balance within the plan from the money purchase component account to the lifetime benefits account to purchase a monthly benefit, which is considered a portion of the pension under part 4 of this article 31.5. At retirement, a member may make a one-time irrevocable election to purchase the monthly benefit in a single lump sum, which must be transferred prior to the receipt of benefits from the lifetime benefit components. Funds may not be transferred from outside the statewide retirement plan to purchase a monthly benefit. Any transferred or rollover funds, except those funds transferred by a department as part of an affiliation or reentry process, held within the member's individual account are not eligible for purchase of a monthly benefit and remain in the account until otherwise distributed.

(3) A member who terminates employment and has taken a refund of the member's contributions to the lifetime benefit components is not required to withdraw the money purchase component account, which shall be maintained and shall continue to receive allocations for earnings and expenses until the assets of the account are distributed.

(4) The board may establish by rule a minimum value for an individual account and may require distribution if an account falls below the required minimum value without receipt of a request for distribution.

(5) Upon a member's death with no designated beneficiary, the member's individual account must be distributed to the member's estate. Upon the death of a designated beneficiary who succeeded the member in death, the member's individual account must be distributed to the designated beneficiary's estate.

(6) To the extent allowed under the federal "Internal Revenue Code of 1986", as amended, the board may, but is not required to, provide by rule for loans or disaster distributions to members and for in-service distributions.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 297, § 1, effective August 10.

PART 6

AMENDMENT OF THE PLAN

31-31.5-601. Modification of plan by the board.

(1) Subject to the requirements set forth in subsection (2) of this section and notwithstanding any other provision of this article 31.5, the board may modify the statewide retirement plan as follows:

(a) To modify the multiplier, retirement age, or service requirements for pension benefits set forth in part 4 of this article 31.5 with respect to the members of the defined benefit components if the modification does not require an increase in the employer and member contribution rates established pursuant to part 3 of this article 31.5 and if the board determines that the modification will maintain or enhance the actuarial soundness, as specified in section 31-31.5-100.3 (1); and

(b) To increase the member contribution rate above the rates established pursuant to part 3 of this article 31.5 with respect to the members of the statewide retirement plan if the increase does not require an increase in the employer contribution rate established pursuant to part 3 of this article 31.5. Any such increase in the member contribution rate is not subject to negotiation for payment by the employer.

(c) To increase the contribution rates above the rates established pursuant to part 3 of this article 31.5 with respect to the members and employers of the statewide retirement plan if the rate of increase for the member and for the employer is equal.

(2) Before modifying the plan pursuant to subsection (1) of this section, the board must find that:

(a) The modification does not adversely affect the plan's status as a qualified plan pursuant to the federal "Internal Revenue Code of 1986", as amended;

(b) The modification has been approved by sixty-five percent of the active members of the statewide retirement plan who are affected by the modification and who vote in an election proposing the modification;

(c) The modification has been approved by more than fifty percent of the employers having active members covered by the statewide retirement plan that vote in the election proposing the modification, each employer to be assigned one vote; except that employers having both active police and active fire members in the plan shall be assigned two votes; and

(d) The modification does not adversely affect the pension benefits of retired members.

(3) Any increase in the member contribution rate established pursuant to this section shall be paid from a member's salary and otherwise be treated in the same manner specified in part 3 of this article 31.5 for required minimum member contributions for purposes of the federal "Internal Revenue Code of 1986", as amended.

(4) The board may eliminate an increase in the member or the member and employer contribution rate increases established pursuant to this part 6 so long as the requirements for an increase set forth in subsection (2) of this section are met.

(5) The board shall not adopt a modification that reduces the statewide retirement plan's age for normal retirement below that permitted by section 31-31.5-401 (2).

(6) The board shall adopt rules setting forth the procedures for the elections required by subsections (2)(b) and (2)(c) of this section. Each employer having members in the statewide retirement plan shall comply with the procedures established by the board and shall certify the results of any member election to the board as prescribed by the board's rules.

(7) A written copy of the language of any modifications to the statewide defined benefit plan or an increase in the member contribution rate adopted by the board pursuant to this section shall be kept and maintained by the board at its offices and be made available for copying and inspection by any interested party.

(8) If at any time the cost of any modification adopted by the board pursuant to subsection (1)(a) of this section would require an increase in employer and member contributions made pursuant to part 3 of this article 31.5 or any higher member contribution rate established pursuant to subsection (1)(b) of this section, the board shall revoke the modification as it applies to active members of the statewide retirement plan pursuant to section 31-31.5-402. The board may reinstitute the modification at a later date, in its discretion, if reinstituting the modification would not require an increase in the employer and member contributions made pursuant to part 3 of this article 31.5.

Source: L. 2022: Entire article added, (HB 22-1034), ch. 61, p. 299, § 1, effective August 10. **L. 2025:** (1)(a) amended, (SB 25-275), ch. 377, p. 2093, § 274, effective August 6.

ARTICLE 32

Utilities

PART 1
PUBLIC UTILITIES - FRANCHISES

31-32-101. Franchise granted by ordinance.

31-32-102. Notice of application - publication.

31-32-103. Ordinance read twice - publication before passage.

31-32-104. Majority vote required for passage.

31-32-105. Cities or towns may erect utilities.

PART 2
PUBLIC UTILITIES - ACQUISITION - METHOD

31-32-201. Financing acquisition of utilities.

PART 1

PUBLIC UTILITIES - FRANCHISES

Cross references: For requirement that a municipality be made a party in any proceeding involving the validity of an ordinance or franchise and that the attorney general be served with a copy in any proceeding involving the constitutionality of an ordinance or franchise, see § 13-51-115 and C.R.C.P. 57(j).

31-32-101. Franchise granted by ordinance.

No franchise or license giving or granting to any person the right or privilege to erect, construct, operate, or maintain a street railway, electric light plant or system, gasworks, gas plant or system, geothermal system, solar system, or telegraph or telephone system within any city or town or to use the streets or alleys of a city or town for such purposes shall be granted or given by any city or town in this state in any other manner or form than by an ordinance passed and published in the manner set forth in this part 1.

Source: L. 75: Entire title R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 31-32-101 as it existed prior to 1975.

ANNOTATION

The only specific power conferred by this section is to grant a franchise in the form of an ordinance. Denver & S. Pac. Ry. v. City of Englewood, 62 Colo. 229, 161 P. 151 (1916).

A town organized under the general law is not empowered by this section to prescribe the rates which a street railway company occupying the street under a franchise of the town may exact for its service. Denver & S. Pac. Ry. v. City of Englewood, 62 Colo. 229, 161 P. 151 (1916).

Applied in Inland Util. Co. v. Schell, 87 Colo. 73, 285 P. 771 (1930).

31-32-102. Notice of application - publication.

Any person desiring to secure a franchise or license for any of the purposes named in section 31-32-101 shall cause a notice of its intention to apply to the governing body of the city or town for the passage of an ordinance granting such franchise or license. Notice shall be published, in a newspaper of general circulation published in such city or town, once a week for three successive weeks immediately prior to the next regular meeting of the governing body at which it is intended to apply for the passage of the ordinance granting or giving such franchise or license. Such notice shall specify the regular meeting of the governing body at which it is intended to apply for such franchise or license, the name of the applicant therefor, a general description of the rights and privileges to be applied for, and the time for and terms upon which such franchise or license is desired. If there is no newspaper of general circulation published within the city or town, such notice may be published by posting copies thereof in six public places for the same length of time.

Source: L. 75: Entire title R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 31-32-102 as it existed prior to 1975.

31-32-103. Ordinance read twice - publication before passage.

Every such ordinance shall be read at least twice in full, once at the time of its introduction and again before the question of its passage is voted upon. No governing body of any city or town shall permit any such ordinance to be introduced or read for the first time at any meeting other than the regular meeting specified in such notice nor unless proof of compliance by the applicant with section 31-32-102 is first presented to such governing body in the form of a publisher's affidavit of publication or a certificate of the clerk of the posting of such notice. When such

ordinance has been introduced and read for the first time, the governing body, if it desires to further consider the granting of the rights or privileges sought for thereby, shall order the same to be published daily in a paper of general circulation published in such city or town for a period of not less than two weeks prior to the time such ordinance is again read and put upon its passage. If there is no paper of general circulation published daily in such city or town, such publication shall be made in a paper of general circulation published weekly in such city or town. If there is no such paper published daily or weekly, such publication shall be made by posting copies of such proposed ordinance in at least six public places in such municipality for the same period of time. No such ordinance shall be adopted or passed by the governing body of any city or town unless the same has been previously introduced and read and publication first made as provided for in this section. Such previous introduction and reading of such ordinance and the fact of its publication in a newspaper or by posting shall appear in the certificate and the attestation of the clerk on such ordinance after its adoption.

Source: L. 75: Entire title R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 31-32-103 as it existed prior to 1975.

31-32-104. Majority vote required for passage.

Every such ordinance shall require for its passage or adoption the concurrence of a majority of all the members of the governing body of the city or town.

Source: L. 75: Entire title R&RE, p. 1244, § 1, effective July 1. **L. 81:** Entire section amended, p. 1496, § 11, effective May 28.

Editor's note: This section is similar to former § 31-32-104 as it existed prior to 1975.

31-32-105. Cities or towns may erect utilities.

Nothing in this part 1 shall be construed as in any way modifying or restricting the right of cities or towns to purchase or erect electric light works, heating and cooling works and distribution systems for the distribution of heat and cooling obtained from geothermal resources, solar or wind energy, hydroelectric or renewable biomass resources, including waste and cogenerated heat, or gasworks in the manner provided for by law.

Source: L. 75: Entire title R&RE, p. 1244, § 1, effective July 1. **L. 81:** Entire section amended, p. 1457, § 5, effective May 27.

Editor's note: This section is similar to former § 31-32-105 as it existed prior to 1975.

PART 2

PUBLIC UTILITIES - ACQUISITION - METHOD

31-32-201. Financing acquisition of utilities.

(1) In any municipality possessed of authority to acquire public utilities operating under general law or under article XX of the state constitution, unless otherwise provided by the charter of such municipality, no public utility shall be acquired until the plan for such acquisition has been adopted by ordinance and such ordinance has been approved at a regular or special election in the manner provided for authorization of bonded indebtedness by section 31-15-302 (1)(d). Nothing in this subsection (1) shall prevent the institution of condemnation proceedings as may be provided by law or require an election with respect to water facilities or sewerage facilities.

(2) Such ordinance shall describe the property to be acquired, the full purchase price to be paid by such municipality therefor, and the method of payment thereof as well as the total obligations to be incurred by such municipality in making such acquisition, whether by way of general obligation bonds of such municipality issued under the provisions of section 6 of article XI of the state constitution or by way of obligations chargeable solely or in part against the income of such utility, or both. In the event of the issuance of obligations payable solely out of income, all operating and other costs shall be met solely out of income of the utility acquired.

(3) Said ordinance may provide for the payment into such income fund for service to be rendered for municipal purposes, but such payments shall at all times be reasonable.

Source: L. 75: Entire title R&RE, p. 1244, § 1, effective July 1.

Editor's note: This section is similar to former § 31-32-201 as it existed prior to 1975.

ANNOTATION

This section in exact language provides for what must be included in a utilities plan ordinance. Citizens Util. Co. v. City of Rocky Ford, 132 Colo. 427, 289 P.2d 165 (1955).

And by its mandatory provisions discloses that a plan under a plan ordinance must give an accurate description of the property to be acquired. Citizens Util. Co. v. City of Rocky Ford, 132 Colo. 427, 289 P.2d 165 (1955).

Also, the plan ordinance must specify the exact amount to be paid, or the exact amount of the total obligation to be incurred, or the exact amount of the interest the obligations were to bear or fall far short of the statutory requirement. Citizens Util. Co. v. City of Rocky Ford, 132 Colo. 427, 289 P.2d 165 (1955).

Under this section, it is sufficient if the ordinance is adopted by a majority of the qualified electors voting and it is not necessary that it be adopted by a majority of all the qualified electors in the city. Weybright v. Klein, 104 Colo. 590, 92 P.2d 734 (1939).

Courts generally are hesitant to interfere with a will of the people as expressed in an election. Citizens Util. Co. v. City of Rocky Ford, 132 Colo. 427, 289 P.2d 165 (1955).

Courts should, and do, attempt to protect the people against incurring indebtedness where it appears that such is incurred without a full understanding of the true import of the indebtedness proposed. Citizens Util. Co. v. City of Rocky Ford, 132 Colo. 427, 289 P.2d 165 (1955).

This section recognizes the power of home rule cities to provide by charter the methods for acquiring or constructing light and power plants. It lays down the plan to be followed even by home rule cities "unless otherwise provided by the charter of such city or town". A recognition of the fact that they may so provide is an acknowledgment that they possess the power to do so. Cook v. City of Delta, 100 Colo. 7, 64 P.2d 1257 (1937).

This section does not apply to bonds issued for extension of municipally owned lighting system. The provisions of this section, providing that no public utility shall be acquired by a municipality until the ordinance therefor shall have been approved by the electors, has no application to the issuance of bonds for extension and improvement of a municipally owned electric lighting system. Searle v. Town of Haxtun, 84 Colo. 494, 271 P. 629 (1928).

But does apply where method of payment is by so-called revenue bonds. This section provides that no public utility shall be acquired by any city until the plan for such acquisition shall have been adopted by ordinance, approved by a majority of the qualified property electors. The ordinance shall describe the property to be acquired, the full purchase price to be paid, the method of payment, and the total obligation to be incurred, whether by way of general obligation bonds or by way of obligations chargeable solely or in part against the income of such utility. It would seem that the general assembly intended this section to

apply to a situation where so-called revenue bonds are provided for. Colo. Cent. Power Co. v. Municipal Power Dev. Co., 1 F. Supp. 961 (D. Colo. 1932).

An ordinance providing alternate plans for acquiring an electric plant is not invalid. Colo. Cent. Power Co. v. Municipal Power Dev. Co., 1 F. Supp. 961 (D. Colo. 1932).

Applied in City of Thornton v. Pub. Utils. Comm'n, 157 Colo. 188, 402 P.2d 194 (1965).

ARTICLE 35

Water and Sewage

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PART 1

WATER RIGHTS AND WORKS - GENERAL

31-35-101. Powers - canals - water rights - diversion - ratification of prior rights.

(1) Any municipality in this state, for the purpose of supplying said municipality and the inhabitants thereof with water, has the power under this part 1:

(a) To purchase or lease any canal or ditch constructed, with all the rights, privileges, and franchises of any person owning or having any interest in or right to the same, and to hold and operate the said canals and ditches in the same manner as the persons from which the same is

purchased or leased if a majority of the registered electors of such municipality voting at any regular election vote in favor of said purchase;

(b) To repair, improve, or enlarge any canal or ditch which is leased or purchased or any flume, dam, or gate connected therewith and for such purposes to levy and collect taxes as other taxes are levied and collected by law;

(c) To purchase water and water rights in all cases where condemnation would lie to obtain the same under section 31-15-708 (1)(b);

(d) To divert the waters acquired by purchase to the amount and extent lawfully appropriated prior to said purchase;

(e) To purchase and hold the lands with which said water right is connected when deemed necessary and proper by the governing body, whether the same are within or beyond the municipal limits, or to lease or sell such lands when deemed advisable by said governing body.

(2) Any municipality making a purchase or lease of any canal or ditch shall thereby assume all obligations and other duties which by law devolve upon the owner of such ditch or canal and from whom the same may be acquired by the powers of this section.

(3) The right to hold and retain water rights, or such lands and water rights as have been purchased by any municipality in this state prior to April 2, 1891, for the purpose of providing water for the use thereof or that of its inhabitants, the right to divert the water belonging to such rights to the use of such municipality and the inhabitants thereof, and the right to sell and dispose of such lands so purchased separate and apart from the water rights, as provided in paragraph (e) of subsection (1) of this section, are hereby given, ratified, and confirmed to such municipality.

Source: L. 75: Entire title R&RE, p. 1245, § 1, effective July 1. **L. 2010:** (1)(e) amended, (SB 10-181), ch. 373, p. 1745, § 1, effective August 11.

Editor's note: This section is similar to former §§ 31-35-101 to 31-35-105 as they existed prior to 1975.

31-35-102. Ditch and canal management.

The management of any ditch or canal acquired pursuant to section 31-35-101 shall be under the control of the governing body of such acquiring municipality.

Source: L. 75: Entire title R&RE, p. 1245, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-102 as it existed prior to 1975.

31-35-103. Trustees of waterworks - duties.

The registered electors of any city or town may elect at a special election held for that purpose three trustees to constitute a board to have the care, operation, management, and control of waterworks owned or acquired by the city or town, subject to the conditions of sections 31-35-104 to 31-35-111.

Source: L. 75: Entire title R&RE, p. 1245, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-106 as it existed prior to 1975.

31-35-104. First election of trustees.

If, at the election provided in section 31-35-111, the majority of votes cast are for the board of trustees, the mayor shall issue a call for a special election of such board of trustees, to be conducted by the clerk in accordance with the provisions of section 31-35-106 and the "Colorado Municipal Election Code of 1965" insofar as practicable. If the entire city or town is included within the jurisdiction of such board of trustees, the election may be held in conjunction with the regular election.

Source: L. 75: Entire title R&RE, p. 1245, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-107 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-35-105. Trustees - qualifications.

No person not a resident and owner of realty within the city or town for the period of at least one year next preceding his election and residing in that part or district of the city or town for which the board of trustees is to be elected shall be eligible for election as a trustee of said board.

Source: L. 75: Entire title R&RE, p. 1246, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-108 as it existed prior to 1975.

31-35-106. Regular election of trustees.

The regular election for electing trustees under the provisions of this part 1, after the first election to be called by the mayor, shall be held biennially on the first Tuesday in June; but if the entire city or town is included within the jurisdiction of such board of trustees, the election may be held in conjunction with the regular election. The election shall be conducted by the clerk in accordance with the provisions of the "Colorado Municipal Election Code of 1965" insofar as practicable. Only registered electors who reside in that part of the city or town within the jurisdiction of such board of trustees shall be permitted to vote in such election. Likewise only registered electors residing in such part of the city or town shall be permitted to vote on any proposition to create or contract a debt or loan for the purpose of acquiring, constructing, or extending waterworks.

Source: L. 75: Entire title R&RE, p. 1246, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-109 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

31-35-107. Trustees - quorum - existing boards - secretary.

(1) The first board of trustees elected pursuant to this part 1 shall be elected as follows: One for the period of two years, one for the period of four years, and one for the period of six years;

and, at the end of each term, a board member shall be elected for a term of six years. The ballot at the first election shall designate the term for which the candidate is to be elected.

(2) Said board shall constitute a body corporate to be known as the "trustees of ..... waterworks", the name of the city or town to be inserted in said title, and shall be a party to all suits, proceedings, and contracts, the same as are municipalities in this state. Said board shall have control of all real estate owned, controlled, or acquired on or after April 15, 1903, by the city or town or any board of trustees or other body used in connection with said waterworks in operating waterworks constructed, including mains, pipes, reservoirs, buildings, machinery, lands, leases, water, water rights and privileges of every kind belonging thereto, and property of every kind and description, and the title to the same shall vest in said board of trustees, and their successors in office, as trustees for the use and benefit of the city or town or part or district of the city or town and the inhabitants and property therein supplied from said waterworks.

(3) As soon as said board of trustees organizes, it shall have all the power to manage, repair, control, and extend and have all other powers in and about and over said property to acquire, purchase, and develop water and water rights and to exchange and extinguish the indebtedness growing out of the same or existing as of April 15, 1903, against waterworks possessed by any such city or town on said date. A majority of the trustees shall be a quorum and competent to bind the whole number by act and deed.

(4) The question of contracting a bonded debt or for funding or floating bonded indebtedness shall be submitted to the registered electors of the city or town or part or district of the city or town at a special election to be called for voting upon such proposition; except that when the registered electors of any said city or town, prior to the establishment of a board of trustees under this part 1, have authorized by election the acquisition, construction, and operation of a municipal waterworks system and the incurring of indebtedness therefor and indebtedness for such purpose exists after creation of the board, no further election shall be necessary to permit the contracting of additional bonded debt or for funding or floating additional bonded indebtedness for the purpose of carrying out the powers granted under this title to cities or towns regarding waterworks, water rights, and property and the management, maintenance, development, and expansion thereof.

(5) The provisions of this part 1 regarding indebtedness and limitations thereon in connection with water and waterworks shall apply to indebtedness created by the board of trustees elected under this part 1 as shall the provisions of other sections of the statutes of this state relating to bonded indebtedness for said purposes.

(6) The board of trustees may employ a secretary.

Source: L. 75: Entire title R&RE, p. 1246, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-110 as it existed prior to 1975.

31-35-108. Acts of board - meetings - vacancies - compensation and bond.

No members of the board of trustees shall have any authority to act on behalf of the board except in pursuance of an order regularly made at a meeting of the board. No action of the board shall be binding unless authorized by a majority of the trustees at a regular meeting or a duly called special meeting. Meetings of the board of trustees shall be held at the office of the waterworks and shall be open to the public. A record of the meetings shall be kept by the secretary in a book provided for that purpose, which book, together with all contracts, maps, plans, and documents relating to the management and operation of the waterworks, shall be open to public inspection at reasonable hours. No member of said board shall be interested, directly or indirectly, in any contract relating to the waterworks or in any contract providing for the expenditure of any moneys in relation thereto. Any such trustee shall be considered as vacating his office in the event of his violating this section or accepting the nomination or becoming a candidate for any other public office. In the event of a vacancy by death, resignation, or otherwise, the board shall fill said vacancy by electing some qualified person to fill the vacancy until the next election at which time the vacancy shall be filled for the balance of the unexpired term. Trustees under this part 1 shall receive five hundred dollars per year for their services, and each of said trustees shall enter into a bond of two thousand dollars to the people of the district for the faithful performance of their duties and the proper accounting of all moneys that may come into their hands as trustees.

Source: L. 75: Entire title R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-111 as it existed prior to 1975.

31-35-109. Semiannual statement of condition.

The board of trustees shall make, twice a year, on June 1 and December 1, a full and complete statement in detail of all moneys collected and expended by it during the preceding six months and of the condition of the waterworks under its control. The statement shall be published at least one time in a daily newspaper published in the county in which said waterworks are located.

Source: L. 75: Entire title R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-112 as it existed prior to 1975.

31-35-110. Annual statement of estimate.

The board of trustees shall render each year, before the making by the governing body of its annual appropriations, a statement to the governing body of the estimated amount, to be raised by taxation, required by such board for the proper maintenance and care of said waterworks during the next succeeding fiscal year, which amount shall be included in the levy fixed by the governing body upon the property in that part or district of the city or town supplied by said waterworks.

Source: L. 75: Entire title R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-113 as it existed prior to 1975.

31-35-111. Election.

Before the people of any city or town or part or district of any city or town can avail themselves of the provisions of this section and of sections 31-35-104 to 31-35-110, the question to determine their wishes shall first be submitted to the registered electors of said city or town or part or district of the city or town at a special election to be called by the mayor of said city or town upon petition presented to him signed by at least one hundred taxpaying electors who reside in the city or town or that part or district of the city or town for which the board of trustees may be asked. If the entire city or town is proposed to be included within the jurisdiction of such board of trustees, such election may be held in conjunction with the regular election. At said election the ballot or voting machine tabs shall be "For the Board of Trustees" and "Against the Board of Trustees". The election shall be conducted by the clerk in accordance with the provisions of the "Colorado Municipal Election Code of 1965" insofar as practicable. If the majority of votes cast is against the creation of the board of trustees, no further action may be taken under this section and sections 31-35-104 to 31-35-110 for a period of one year from such election and then only on petition as provided in said sections.

Source: L. 75: Entire title R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-114 as it existed prior to 1975.

Cross references: For the "Colorado Municipal Election Code of 1965", see article 10 of this title.

PART 2

LEASING WATER RIGHTS - CITIES OF OVER 200,000

31-35-201. Leasing of water - no rights vested.

In the event any municipal appropriator of water, having a population in excess of two hundred thousand, leases, after May 12, 1931, water not needed by it for immediate use, no rights shall become vested to a continued leasing or to a continuance of the conditions concerning any return water arising therefrom so as to defeat or impair the right to terminate the leases or change the place of use. Any leasing shall not injuriously affect rights vested in other appropriators prior to said date. Nothing in this section shall authorize an appropriator to recapture water for a second use after it has once been used by it.

Source: L. 75: Entire title R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-201 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Legal Problems in City Water Supply", see 22 Rocky Mt. L. Rev. 356 (1950). For article, "Foreign Water in Colorado — The City's Right to Recapture and Re-Use Its Transmountain Diversion", see 42 Den. L. Ctr. J. 116 (1965). For comment, "Municipal Utilities in Colorado — Can They Charge Their Nonresident Customers More Than They Charge Their Resident Customers Just Because the Nonresident Lives on the Wrong Side of the Boundary?", see 60 U. Colo. L. Rev. 357 (1989).

Municipality may divert water from its natural stream. It is the general rule that when an appropriator of water has no present need for it for irrigating his lands he must not divert it from the natural stream. This rule, however, does not apply to decreed water needed for municipal purposes, and the distinction has received legislative recognition in the enactment of

this section. City & County of Denver v. Sheriff, 105 Colo. 193, 96 P.2d 836 (1939).

Even if there is no immediate need. The city of Denver having perfected a valid appropriation, any water to which it is entitled thereunder for which there may at any given time in the future be no immediate need, may be temporarily leased by the city in accordance with this section. City & County of Denver v. Sheriff, 105 Colo. 193, 96 P.2d 836 (1939).

PART 3

WATER MAINS AND OTHER IMPROVEMENTS - CITIES AND TOWNS

31-35-301. Construction of water mains.

When any city or town is the owner of a municipal water plant with water mains in operation throughout the greater portion of said city or town and is unable to extend the same so as to cover the entire area contained within the municipal limits of said city or town, the citizens and resident taxpayers of any area containing four blocks or more situated in said city or town not having water mains therein may agree among themselves or a majority of the owners of the lots therein for the construction of the same. Upon application to the governing body by a majority of such owners, the governing body shall have authority to enter into a contract with said owners of said four blocks or more or with the majority thereof to allow them to construct such water mains in such territory and to connect the same with the supply of water of said city or town. The governing body has authority to enter into a contract with such citizens to allow all the proceeds derived from water rentals going to such addition through such water mains and collected as rental therefor to be applied to the payment of such water pipes, the cost thereof to be limited by the city or town to not more than the actual cost thereof upon any basis by which the city or town itself could secure the construction of the same. Said payments shall be made without interest and upon such terms not exceeding ten years as may be agreed upon by contract between the parties thereto.

Source: L. 75: Entire title R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-301 as it existed prior to 1975.

31-35-302. Petition - plans - contract.

(1) For the purpose of carrying the provisions of this section and section 31-35-301 into effect, the owners of four blocks or more situated in any city or town in this state owning its own

municipal water plant which has not been supplied with water mains shall present a petition to the governing body, offering therein to construct such water mains and pipes in the streets and alleys of said city or town in such manner and at such places and of such sizes as the said governing body may require and at a cost to said city or town as low as the same could be constructed by said city or town.

(2) Upon receipt of such petition, the governing body shall prepare plans and specifications for the supplying of said territory with water mains and pipes, and the petitioners, upon the inspection of said plans and specifications, shall state their willingness to construct the same at a certain price to be paid for out of the revenues derived from water running through said pipes in said district, the same to be charged at no higher rate than the remainder of said city or town is paying. If such proposition is satisfactory to the governing body, it has the right to enter into a contract with said petitioners upon behalf of said city or town for the construction of such water mains and pipes according to said plans and specifications and for the price agreed upon, not more than that specified, and within a time to be set by said governing body.

(3) Upon the completion of said works by said petitioners, the city or town shall inspect and, if satisfactory, accept the same and issue certificates of indebtedness therefor stating therein how the same is to be paid out of the proceeds from such water rentals collected from the territory in which said extensions are made, unless otherwise sooner arranged for by said city or town, and proceed to operate and maintain the same and collect the revenues therefrom and to apply the same to the payment of the indebtedness created for the construction of said pipes without interest until the same is paid for or until said city or town makes payment therefor in some other manner. Said rentals shall be paid upon said certificates from time to time when the amount of one hundred dollars is received from said rentals for that purpose, and said rentals shall be set apart and kept as a separate fund and used for the purposes provided in this subsection (3) only until the entire indebtedness is paid.

Source: L. 75: Entire title R&RE, p. 1249, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-302 as it existed prior to 1975.

31-35-303. Necessity declared by ordinance.

When, in the opinion of the governing body, it is necessary to make any public improvement, including the establishment, extending, widening, grading, or improving of any street or alley, or the establishment, construction, extending, enlarging, or completing of any sewer, sidewalk, bridge, or viaduct, or removing any irrigating ditch, it is lawful for said body to declare by ordinance the necessity for such improvement.

Source: L. 75: Entire title R&RE, p. 1249, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-303 as it existed prior to 1975.

31-35-304. Streets and alleys - eminent domain.

In case such proposed improvements consist of the establishment, opening, extending, or widening of any street or alley in such city or town and it is necessary to take private property to make such improvement, said ordinance shall declare such necessity, specifying and describing the property to be taken. Thereupon such city or town, by its governing body and its duly authorized officers, may exercise the right of eminent domain and may condemn, take, or damage any private property that may be necessarily condemned, taken, or damaged in the making of such improvement. The manner of proceeding in such cases shall be as prescribed by the laws of this state for the condemnation of lands in other cases.

Source: L. 75: Entire title R&RE, p. 1249, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-304 as it existed prior to 1975.

Cross references: For proceedings under eminent domain, see article 1 of title 38.

31-35-305. Sidewalks - assessment - hearing - lien.

In case such proposed improvement consists of the establishment, construction, extending, or completing of any sidewalk in said city or town, the ordinance shall specify the property in front of which the sidewalk is to be constructed, extended, or completed; the names of the owners of said property; and the length, width, grade, and material of which the sidewalk is to be constructed. The governing body, as soon thereafter as the cost of said improvements can be definitely ascertained, shall assess the cost thereof upon the lots respectively in front of which said sidewalk is to be constructed. Such assessment, when completed, shall be subject to inspection by any interested person. Notice of the making and completion of the assessment shall be given by the publication of a notice to the effect that said assessment has been made upon said lots and is ready for inspection. The notice shall be published at least once a week for four successive weeks in some newspaper published or of general circulation in said city or town and

shall designate a day upon which the governing body shall sit for the purpose of hearing objections thereto and making corrections therein. Upon the day designated, the governing body shall sit for said purpose and hear any objections that may be made and shall thereupon make any such changes in said assessments as may in their judgment be necessary, equitable, or just and shall thereupon finally determine such assessments. Such assessments, when so finally determined, shall be a lien upon the property so assessed for the purpose of making said improvement. An appeal shall lie to any court of competent jurisdiction from any decision of such governing body.

Source: L. 75: Entire title R&RE, p. 1250, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-305 as it existed prior to 1975.

31-35-306. Other laws not affected.

Nothing in this part 3 shall abridge or otherwise affect the right to make public improvements by virtue of any other laws of this state.

Source: L. 75: Entire title R&RE, p. 1250, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-306 as it existed prior to 1975.

PART 4

SEWER AND WATER SYSTEMS

31-35-401. Definitions.

As used in this part 4, unless the context otherwise requires:

(1) "Consumer" means any public or private user of water facilities or sewerage facilities or both.

(2) "Governing body" means the body which is in charge of the municipality's water or sanitation facilities, whether or not the same is a "governing body" as defined in part 1 of article 1 of this title.

(3) "Joint system" or "joint water and sewer system" means water facilities and sewerage facilities combined, operated, and maintained as a single public utility and income-producing project.

(4) "Municipality" means a municipality as defined in part 1 of article 1 of this title and includes any quasi-municipal corporation formed principally to acquire, operate, and maintain water facilities or sewerage facilities or both.

(5) "Net effective interest rate" of a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the principal amount of such issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities. "Net interest cost" of a proposed issue of bonds means the total amount of interest to accrue on said bonds from their date of issuance to their respective maturities plus the amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(6) "Sewerage facilities" means any one or more of the various devices used in the collection, treatment, or disposition of sewage or industrial wastes of a liquid nature or storm, flood, or surface drainage waters, including all inlets; collection, drainage, or disposal lines; intercepting sewers; joint storm and sanitary sewers; sewage disposal plants; outfall sewers; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such sewerage facilities.

(7) "Water facilities" means any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and improvements; but, no municipality shall construct or acquire facilities for the sale of electric energy or power, except hydroelectric energy or power for sale at wholesale only, without complying with the provisions of section 31-15-707.

Source: L. 75: Entire title R&RE, p. 1250, § 1, effective July 1. **L. 81:** (7) amended, p. 1540, § 1, effective May 18.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1975. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Purpose. The general assembly enacted this statute to provide for the issuance of revenue bonds to finance a sewer district and sewerage facilities. Town of Sheridan v. Valley San. Dist., 137 Colo. 315, 324 P.2d 1038 (1958).

The term municipality is defined in this section to include a sanitation district. Perl-Mack Civic Ass'n v. Bd. of Dirs. of Baker Metro. & San. Dist., 140 Colo. 371, 344 P.2d 685 (1959).

The term "consumer" includes the state and its subdivisions for purposes of assessment of service fees under § 31-35-402 (1)(f). City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

Applied in City of Arvada v. City & County of Denver, 663 P.2d 611 (Colo. 1983).

31-35-402. Powers.

(1) In addition to the powers which it may now have, any municipality, without any election of the qualified electors thereof, has power under this part 4:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend water facilities or sewerage facilities or both, wholly within or wholly without the municipality or partially within and partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To operate and maintain water facilities or sewerage facilities or both for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the municipality, but no water service or sewerage service or combination of them shall be furnished in any other municipality unless the approval of such other municipality is obtained as to the territory in which the service is to be rendered;

(c) To accept loans or grants or both from the United States under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations or studies,

surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of water facilities or sewerage facilities or both;

(d) To accept loans or grants or both from the United States under any federal law in force for the construction of necessary water facilities or sewerage facilities or both;

(e) To enter into joint operating agreements, contracts, or arrangements with consumers concerning water facilities or sewerage facilities or both, whether acquired or constructed by the municipality or consumer, and to accept grants and contributions from consumers for the construction of water facilities or sewerage facilities or both. When determined by its governing body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term but in no event exceeding fifty years, with any consumer for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of wastes by a consumer and the payment periodically by the consumer to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such consumer.

(f) To prescribe, revise, and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from such water facilities or sewerage facilities or both, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, tap fees, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies, including but not necessarily limited to interest on delinquencies from any date due at a rate of not exceeding one percent per month or fraction thereof, reasonable attorneys' fees, and other costs of collection without any modification, supervision, or regulation of any such rates, fees, tolls, or charges by any board, agency, bureau, commission, or official other than the governing body collecting them; and in anticipation of the collection of the revenues of such water facilities or sewerage facilities, or joint system, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of the water facilities or sewerage facilities, or both; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds;

(g) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the water facilities or sewerage facilities or both, including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired, as well as the revenues of existing water facilities or sewerage facilities or both;

(h) To enter into and perform contracts and agreements with other municipalities for or concerning the planning, construction, lease, or other acquisition and the financing of water facilities or sewerage facilities or both and the maintenance and operation thereof. Pursuant to any such contracts or agreements, such municipalities may obligate themselves to make payments in amounts which shall be sufficient to enable any municipality which finances such water facilities or sewerage facilities or both to meet its expenses, the interest and principal payments for its bonds, its reasonable reserves for debt service, operation and maintenance, and renewals and replacements, and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, ordinance, or other security instrument. Such contracts or agreements may contain such other terms and conditions as the municipalities may determine, including but not limited to provisions whereby a municipality is obligated to pay for the output, capacity, or use of any project irrespective of whether such output, capacity, or use is produced or delivered to the municipality or whether any project contemplated by any such agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output, use, or service of such project. Subject to local charter and state constitutional limitations, such contracts or agreements may also provide that if one or more of the municipalities default in the payment of its obligations under any such contract or agreement, the remaining municipalities which also have such agreements shall be required to accept and pay for, and shall be entitled proportionately to use or otherwise dispose of, the output, capacity, or use of the project contracted for by the defaulting municipalities. The obligations of a municipality under such contracts or agreements shall either constitute special obligations of the municipality, payable solely from the revenues and other moneys derived by the municipality from its water facilities, sewerage facilities, or both, and shall be treated as expenses of operating such facilities or, in the discretion of such municipality and subject to satisfaction of any requirements of law governing or limiting the incurrence of debt by such municipality, shall constitute a general obligation of such municipality. Notwithstanding the provisions of section 6 (3) of article XI of the state constitution, where such contract or agreement is to constitute a general obligation of such municipality and where such contract or agreement provides that the municipality shall be required to accept and pay for the output, capacity, or use of the project contracted for by a defaulting municipality, such contract or agreement shall not be entered into unless the question of incurring a general obligation for such project has been submitted to and approved at an election conducted by such municipality in accordance with the election laws applicable to such municipality. Any such municipalities so contracting may also provide in any contract or agreement for a board, commission, or such other body as they deem proper for the supervision and general management of the water facilities or sewerage facilities or both and for the operation thereof and may prescribe its powers and duties, including the power to issue revenue bonds pursuant to this part 4, and fix the compensation of the members thereof. For the purposes of this paragraph (h), "municipality" means a municipality as defined in part 1 of article 1 of this title and any other political subdivision of this state, including any entity formed pursuant to intergovernmental contract or

agreement, authorized by any law of this state to acquire, operate, and maintain the facilities which are the subject of such contract or agreement.

(i) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the municipality is created thereby, and if no property, other than money, of the municipality is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the municipality is thereby incurred in any manner for any purpose; and

(j) To issue water or sewer or joint water and sewer refunding revenue bonds to refund, pay, or discharge all or any part of its outstanding water or sewer or joint water and sewer revenue bonds issued under this part 4 or under any other law, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs, effecting a change in any particular year or years in the principal and interest payable thereon or in the related utility rates to be charged, effecting other economies, or modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any municipal water facilities or sewerage facilities, or both, as provided in section 31-35-412.

Source: L. 75: Entire title R&RE, p. 1251, § 1, effective July 1. **L. 83:** (1)(j) amended, p. 508, § 3, effective April 22. **L. 86:** (1)(h) amended, p. 1064, § 1, effective April 29.

Editor's note: This section is similar to former § 31-35-402 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "One Year Review of Real Property", see 36 Dicta 57 (1959). For comment, "Municipal Utilities in Colorado — Can They Charge Their Nonresident Customers More Than They Charge Their Resident Customers Just Because the Nonresident Lives on the Wrong Side of the Boundary?", see 60 U. Colo. L. Rev. 357 (1989).

A non-reciprocal provision for awarding attorneys' fees to the district is not a violation of equal protection. Crested Butte S. Metro. Dist. v. Hoffman, 790 P.2d 327 (Colo. 1990).

The general assembly has empowered municipalities to operate and maintain water facilities for the benefit of users within and without their territorial boundaries. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

Municipal utilities are not subject to PUC regulation for the provision of water service to users inside and outside municipalities. Bd. of County Comm'rs v. Denver Bd. of Water Comm'rs, 718 P.2d 235 (Colo. 1986).

However, a quasi-municipality is not obligated to furnish services to persons outside its district boundaries, but it may do so by contracts. Brownbriar Enters., Inc. v. City & County of Denver, 177 Colo. 198, 493 P.2d 352 (1972).

And municipalities are authorized to construct, operate, and maintain a sewerage system and to prescribe reasonable rates for the use of such facility. City of Aurora v. Bogue, 176 Colo. 198, 489 P.2d 1295 (1971).

As well as sell water. The general assembly has specifically defined selling water by a municipality both within and without its territorial boundaries to be a proper exercise of its powers. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

Express statutory authority permits a quasi-municipality to collect in advance charges for the direct or indirect connection with its facilities. Brownbriar Enters., Inc. v. City & County of Denver, 177 Colo. 198, 493 P.2d 352 (1972); Durango W. Metro. D. 1 v. HKS J. Venture, 793 P.2d 661 (Colo. App. 1990).

For services furnished. The power to impose fees under this statute presupposes the construction and operation of a sewerage facility, as the fees are for "services furnished". City of Aurora v. Bogue, 176 Colo. 198, 489 P.2d 1295 (1971).

Municipalities are not limited to the use of revenue bonds to finance future acquisitions and construction relating to their water systems, but may accumulate funds for future development through the imposition of connection fees. City of Arvada v. City & County of Denver, 663 P.2d 611 (Colo. 1983); Durango W. Metro. D. 1 v. HKS J. Venture, 793 P.2d 661 (Colo. App. 1990).

One-time development fee permitted. The charging of a one-time development fee on all persons connecting into a municipality's water system is within the general authorization of subsection (1)(f). City of Arvada v. City & County of Denver, 663 P.2d 611 (Colo. 1983).

The charging of a one-time sewer charge when they were connected to city's sanitary sewer system permissible even though fee charged for multiple dwelling units was more than a single family residence. Loup-Miller Const. Co. v. City & County of Denver, 676 P.2d 1170 (Colo. 1984).

Rates must not be per se unreasonable or excessive. A city operating its water system in its proprietary capacity may establish rates or charges not per se excessive or unreasonable for service within the municipality, including the expense of connections to its trunk lines. W. Heights Land Corp. v. City of Ft. Collins, 146 Colo. 464, 362 P.2d 155 (1961).

Rate charges cannot be considered taxes. The rates adopted by city ordinance with reference to its water and sewer service

cannot be considered as taxes even though imposed and collected by the city, such ordinance not being a revenue measure, but designed to defray expense of operating a utility directed against those using the services. W. Heights Land Corp. v. City of Ft. Collins, 146 Colo. 464, 362 P.2d 155 (1961).

Municipal fee for flood control was not a "special assessment" but instead was a service fee reasonably related and essential to the provision of flood control services benefiting all property within the municipal flood control district, including school lands. Therefore, imposition of the fee against the State Land Board did not contravene constitutional limitations on the board's authority to expend state funds. City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

Subsection (1)(f) expressly authorizes collection of service fees from the State Community Colleges Board. City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

List of enumerated charges in subsection (1)(f) is not exclusive. Some charges, while not specifically authorized, may nonetheless be within the general contemplation of the statute. City of Arvada v. City & County of Denver, 663 P.2d 611 (Colo. 1983); City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

The term "consumer" includes the state and its subdivisions for purposes of assessment of service fees under subsection (1)(f) of this section. City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

The veto power of a municipality is limited to a reasonable exercise thereof consistent with the police power in the protection of the health, safety, and welfare of the inhabitants of the municipality. Town of Sheridan v. Valley San. Dist., 137 Colo. 315, 324 P.2d 1038 (1958); S. Fork Water v. Town of S. Fork, 252 P.3d 465 (Colo. 2011).

A municipality cannot unreasonably withhold its approval for water service in an overlapping territorial area when it is not capable of furnishing that service and the other municipality is. S. Fork Water v. Town of S. Fork, 252 P.3d 465 (Colo. 2011).

The veto power section addresses service in overlapping shared territory as well as extraterritorial service. Because water and sewerage infrastructure is expensive to build and requires routine maintenance, the general assembly designed subsection (1)(b) to avoid inefficient duplication of facilities and increased costs in overlapping territorial areas. S. Fork Water v. Town of S. Fork, 252 P.3d 465 (Colo. 2011).

Despite a change to the statutory language since the decision, the rationale in Town of Sheridan v. Valley San. Dist., 137 Colo. 315, 324 P.2d 1038 (1958), governs the contours of the municipality's approval authority over another municipality's provision of water or sewerage service in the overlapping territory. S. Fork Water v. Town of S. Fork, 252 P.3d 465 (Colo. 2011).

A municipality does not have the absolute veto power over a project of a bordering sanitation district. The general assembly did not intend to authorize sewer districts and provide for their management,

operation, control, and financing on the one hand, and on the other give a municipality bordering on the district through which the facilities must of necessity be extended, either extensively or slightly, the absolute right of veto over a project. If such a right were vested in any municipality it could prevent the development of any area on the four sides of its boundaries. Town of Sheridan v. Valley San. Dist. 137 Colo. 315, 324 P.2d 1038 (1958).

This section cannot limit Denver's constitutional authority. The authority of the city and county of Denver being by constitutional grant, this section, if construed as limiting such power, would be of doubtful validity. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

Thus under § 1 of art. XX, Colo. Const., the city and county of Denver is not required to obtain the consent of an incorporated town before acquiring title and possession of rights-of-way through such town by condemnation proceedings, but may be required to comply with reasonable construction standards lawfully established by such town. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

However, Denver cannot, with impunity and without regard to local ordinances of a traversed municipality, construct its sewer lines in its streets irrespective of water lines, waterworks, sewers, or wells in line of or in the vicinity of the proposed construction. At the point where the public health and safety become involved, a municipality traversed can withhold its consent unless proper, safe, and healthful construction methods are followed. Denver may be bound and may be required to comply with reasonable construction standards lawfully established by a municipality traversed. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

Judicial review of the reasonableness of extraterritorial water service charges imposed by a municipality constitutes a prohibited regulation of that service pursuant to subsection (1)(f). Southgate Water District v. City & County of Denver, 862 P.2d 949 (Colo. App. 1992). Bennett Bear Creek Water & San. v. Denver, 907 P.2d 648 (Colo. App. 1995), aff'd in part, rev'd in part on other grounds, 928 P.2d 1254 (Colo. 1996).

The general assembly has provided in subsection (1)(f) that utility rate-making is a legislative function. Bennett Bear Creek Water Dist. v. Denver, 928 P.2d 1254 (Colo. 1996).

Rates and charges rationally related to the governmental utility purpose are within the authority of subsection (1)(f). City of Arvada v. City & County of Denver, 663 P.2d 611 (Colo. 1983); Bennett Bear Creek Water Dist. v. Denver, 928 P.2d 1254 (Colo. 1996).

31-35-403. Authorization of facilities and bonds.

(1) The acquisition, construction, reconstruction, lease, improvement, betterment, or extension of any water facilities or sewerage facilities or both and the issuance, in anticipation of the collection of revenues of such facilities, of bonds to provide funds to pay the cost thereof may be authorized under this part 4 by action of the governing body of the municipality taken at a regular or special meeting by a vote of a majority of the members of the governing body.

(2) The governing body, in determining such cost, may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; interest which it is estimated will accrue during the construction or other acquisition period and for a period of not exceeding one year thereafter on money borrowed or which it is estimated will be borrowed pursuant to this part 4; any discount on the sale of the bonds; costs of financial, professional, and other estimates and advice; contingencies; any administrative, operating, and other expenses of the municipality prior to and during such acquisition period and for a period of not exceeding one year thereafter, as may be determined by the governing body; all such other expenses as may be necessary or incident to the financing, acquisition, improvement, equipment, and completion of any water or sewerage facilities, joint water and sewer system, or part thereof, and the placing of the same in operation; such provision or reserves for working capital, operation, maintenance, or replacement expenses or for payment or security of principal of or interest on any bonds during or after such an acquisition or improvement and equipment as the governing body may determine; and also reimbursements to the federal government or any agency, instrumentality, or corporation thereof of any moneys theretofore expended for or in connection with any such water or sewerage facilities or both.

Source: L. 75: Entire title R&RE, p. 1253, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-403 as it existed prior to 1975.

31-35-404. Bond provisions.

(1) Revenue bonds issued under this part 4 shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually or annually, and evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the municipality; except that the first coupon appertaining to any bond may evidence interest not in excess of one year. The resolution authorizing the issuance of such bonds shall specify the maximum net effective interest rate. Such bonds may be issued in one or more series, may bear such date, may mature at such time not exceeding the estimated life of the water facilities or

sewerage facilities or both, to be acquired with the bond proceeds, as determined by the governing body, but in no event beyond forty years from their respective dates, may be in such denomination, may be payable in such medium of payment, at such place within or without the state, including but not limited to the office of any county treasurer in which the municipality is located wholly or in part, may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denomination, may be so reissued, without modification of maturities and interest rates, and may be in such form, either coupon or registered, as may be provided by the governing body.

(2) (a) The governing body may provide for preferential security for any bonds, both principal and interest, to be issued under this part 4 to the extent deemed feasible and desirable by such governing body over any bonds that may be issued thereafter.

(b) Said bonds may be sold at, above, or below the principal amounts thereof, but they may not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(c) Said bonds may be sold at public or private sale upon such terms and conditions as the governing body shall determine; except that, if said bonds are sold at public sale, notice of such sale shall be published once at least five days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in either Denver, Colorado; San Francisco, California; Chicago, Illinois; or New York, New York.

(3) Bonds may be issued with privileges for conversion or registration or both, for payment as to principal or interest or both, and where interest accruing on the bonds is not represented by interest coupons, the bonds may provide for the endorsing of payments of interest thereon; and the bonds generally shall be issued in such manner, in such form, either coupon or registered, with such recitals, terms, covenants, and conditions, and with such other details as may be provided by the governing body, except as otherwise provided in this part 4.

(4) Subject to the payment provisions specifically provided in this part 4, said bonds, any interest coupons thereto attached, and any temporary bonds shall be fully negotiable within the meaning of and for all the purposes of article 8 of title 4, C.R.S., except as the governing body may otherwise provide; and each holder of each such security, by accepting such security, shall be conclusively deemed to have agreed that such security, except as otherwise provided, is and shall be fully negotiable within the meaning and for all purposes of article 8 of title 4, C.R.S.

(5) Notwithstanding any other provision of law, the governing body in any proceedings authorizing bonds under this part 4:

(a) May provide for the initial issuance of one or more bonds, referred to in this subsection (5) as "bond", aggregating the amount of the entire issue;

(b) May make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) May provide for the making of any such bond, payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond; and

(d) May further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest, or both.

(6) If lost or completely destroyed, any security authorized in this part 4 may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing, to the satisfaction of the governing body: Proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new security.

(7) Any officer authorized to execute any bond, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed, with a facsimile signature in lieu of his manual signature, any bond authorized in this part 4 if such a filing is not a condition of execution with a facsimile signature of any interest coupon and if at least one signature required or permitted to be placed on each such bond, excluding any interest coupon, is manually subscribed. An officer's facsimile signature has the same legal effect as his manual signature.

(8) The clerk of the municipality may cause the seal of the municipality to be printed, engraved, stamped, or otherwise placed in facsimile on any bond. The facsimile seal has the same legal effect as the impression of the seal.

(9) The ordinance or resolution authorizing any bonds or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing revenue bonds, including, without limiting the generality of the foregoing, covenants designated in section 31-35-407.

Source: L. 75: Entire title R&RE, p. 1253, § 1, effective July 1; (4) amended, p. 219, § 62, effective July 16. **L. 81:** (2)(c) amended, p. 1541, § 1, effective March 4.

Editor's note: This section is similar to former § 31-35-404 as it existed prior to 1975.

31-35-405. Signatures on bonds.

(1) The bonds and any coupons bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations of the municipality, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the municipality issuing the same.

(2) Any officer authorized or permitted to sign any bond or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the bond or coupons appertaining thereto or upon both the bond and such coupons.

Source: L. 75: Entire title R&RE, p. 1255, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-405 as it existed prior to 1975.

31-35-406. Tax exemption.

The bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

Source: L. 75: Entire title R&RE, p. 1256, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-406 as it existed prior to 1975.

31-35-407. Covenants in bond ordinance.

(1) Any ordinance or resolution authorizing the issuance of bonds under this part 4 or trust indenture or other instrument appertaining thereto to finance in whole or in part the acquisition, construction, reconstruction, improvement, betterment, or extension of water facilities or sewerage facilities or both may contain covenants as to:

(a) The rates, fees, tolls, or charges or combination thereof to be charged for the services, facilities, and commodities of said water facilities or sewerage facilities or both, and the use and disposition thereof, including but not limited to the foreclosure of liens for and collection of delinquencies; the discontinuance of services, facilities, or commodities or use of any water

system, any sewer system, or any joint system; prohibition against free service; the collection of penalties and collection costs, including disconnection and reconnection fees; and the use and disposition of any revenues of the municipality derived or to be derived from any water facilities or sewerage facilities or both;

(b) The creation and maintenance of reserves or sinking funds and the regulation, use, and disposition thereof to secure the payment of the principal of and interest on any bonds or of operation and maintenance expenses of any water system, sewer system, or joint system or part thereof; the determination or definition of revenues from any water system, sewer system, or joint system and of the expenses of operation and maintenance of such system; and the source, custody, security, use, and disposition of any such reserves or sinking funds, including but not limited to the powers and duties of any trustee with regard thereto;

(c) A fair and reasonable payment by the municipality to the account of said water facilities or sewerage facilities or both for the services, commodities, or facilities furnished said municipality or any of its departments by said water facilities or sewerage facilities or both;

(d) The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of such water facilities or sewerage facilities or both; the payment of the principal of and interest on any bonds and the sources and methods thereof, the rank or priority of any bonds as to any lien or security for payment, or the acceleration of any maturity of any bonds, or the issuance of other or additional bonds payable from or constituting a charge against or lien upon any revenues pledged for the payment of bonds and the creation of future liens and encumbrances thereagainst and limitations thereon; and the purpose to which the proceeds of the sale of bonds may be applied and the custody, security, use, expenditure, application, and disposition thereof;

(e) Books of account, the inspection and audit thereof, and other records appertaining to a water system, sewer system, or joint system; the insurance to be carried by the municipality and use and disposition of insurance moneys; the acquisition of completion or surety bonds appertaining to any project, funds, or personnel and the use and disposition of any proceeds of such bonds; the assumption or payment or discharge of any indebtedness, other obligation, lien, or other claim relating to any part of a water system, sewer system, or joint system, or any securities having or which may have a lien on any part of any revenues of such system; and limitations on the powers of the municipality to acquire or operate or permit the acquisition or operation of any plants, structures, facilities, or properties which may compete or tend to compete with the water system, sewer system, or joint system;

(f) The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations; defining events of default; the payment of costs or expenses incident to the enforcement of the bonds or of the provisions of the ordinance or resolution authorizing the bonds or any trust indenture or other instrument appertaining thereto or of any covenant or contract with the holders of the bonds; the procedure, if any, by which the

terms of any covenant or contract with or duty to the holders of bonds, the bond ordinance or resolution, or any trust indenture or other instrument may be amended or abrogated, the amount of bonds the holders of which, or any trustee, must consent to, and the manner in which such consent may be given or evidenced; and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(g) The terms and conditions upon which the holders of the bonds or any portion or percentage of them may enforce any covenants or provisions made under this part 4 or duties imposed thereby; and

(h) All such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the discretion of the governing body of the municipality, tend to make the bonds more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this part 4, it being the intention of this part 4 to give a municipality power to do all things in the issuance of bonds and for their security consistent with continued public ownership of the sewerage facilities or water facilities or both.

Source: L. 75: Entire title R&RE, p. 1256, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-407 as it existed prior to 1975.

31-35-408. No municipal liability on bonds.

Revenue bonds issued under this part 4 shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitations. Each bond issued under this part 4 shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitations.

Source: L. 75: Entire title R&RE, p. 1257, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-408 as it existed prior to 1975.

31-35-409. Remedies of bondholders.

(1) Subject to any contractual limitations binding upon the holders of any issue of bonds or the trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds or trustee therefor has the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) To enforce his rights against the municipality and its governing body and any of its officers, agents, and employees by an action in the nature of mandamus or other suit, action, or proceeding at law or in equity and to require and compel such municipalities or such governing body or any such officers, agents, or employees to perform and carry out their duties and obligations under this part 4 and their covenants and agreements with the bondholders;

(b) To require the municipality and the governing body thereof to account as if they were the trustee of an express trust by action or suit in equity;

(c) To enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders by action or suit in equity; and

(d) To bring suit upon the bonds.

(2) No right or remedy conferred by this part 4 upon any holder of bonds or any trustee therefor is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part 4 or by any other law.

Source: L. 75: Entire title R&RE, p. 1257, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-409 as it existed prior to 1975.

31-35-410. Construction of part 4.

The powers conferred by this part 4 are in addition and supplemental to and not in substitution for, and the limitations imposed by this part 4 shall not affect, the powers conferred by any other law. Bonds may be issued under this part 4 without regard to the provisions of any other law. The water facilities or sewerage facilities or both may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this part 4 for said purposes, notwithstanding that any law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions

contained in any other law, including, but not limited to, any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. Insofar as the provisions of this part 4 are inconsistent with the provisions of any other law, the provisions of this part 4 shall be controlling.

Source: L. 75: Entire title R&RE, p. 1258, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-410 as it existed prior to 1975.

ANNOTATION

Powers in relation to other laws. The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not affect the powers conferred by any other law. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

Applied in City of Thornton v. Pub. Utils. Comm'n, 157 Colo. 188, 402 P.2d 194 (1965).

31-35-411. Pledge of other utility revenues.

Any municipality having surplus and unpledged revenues of any municipal utility has the power to pledge such revenues for and deposit them in the fund created to pay the interest on and principal of revenue bonds issued pursuant to this part 4.

Source: L. 75: Entire title R&RE, p. 1258, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-411 as it existed prior to 1975.

31-35-412. Refunding bonds.

(1) Any bonds issued for any refunding purpose authorized in section 31-35-402 (1)(j) may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided for in section 31-35-404.

(2) No bonds may be refunded under this part 4 unless they either mature or are callable for prior redemption under their terms within fifteen years from the date of issuance of the refunding

bonds or unless the holders thereof voluntarily surrender them for exchange or payment. The final maturity of the bonds refunded may not be extended over fifteen years. The rates of interest on such refunding bonds shall be determined by the governing body. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds by such amount or amounts as are useful to effect the refunding if the aggregate principal and interest costs of the refunding bonds for the period ending on the scheduled final maturity date of the bonds refunded, without regard to any redemptions that may be made prior to such scheduled maturity date, do not exceed such unaccrued costs of the bonds refunded for the same time period, excluding from the computation of the aggregate principal and interest cost of the refunding bonds the amount of the principal of any refunding bonds issued to pay any interest in arrears or about to become due on the bonds refunded and to pay any interest on the refunding bonds.

(3) The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow to be applied to the payment of the bonds upon their presentation therefor. Any escrowed proceeds, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient to pay the bonds refunded as they become due at their respective maturities or due at prior redemption dates, as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom.

(4) Refunding revenue bonds may be made payable from any revenues derived from the operation of any water facilities or sewerage facilities or of both water facilities and sewerage facilities comprising a joint water and sewer system, notwithstanding that the pledge of any such revenues for the payment of the outstanding bonds issued by the municipality which are to be refunded is thereby modified.

(5) Bonds for refunding and bonds for any other purpose authorized in this part 4 may be issued separately or issued in combination in one series or more.

(6) Except as expressly provided or necessarily implied in this section and in section 31-35-402 (1)(j), the relevant provisions in this part 4 pertaining to revenue bonds not issued for refunding purposes shall be equally applicable in the authorization and issuance of refunding revenue bonds, including their terms and security, the bond ordinance or resolution, rates, fees, tolls, service charges, and other aspects of the bonds; except that the governing body may include, in determining the amount of the refunding bonds, an amount sufficient to pay interest, which is estimated will accrue on the refunding bonds for a period not exceeding five years from the date of the refunding bonds, and the governing body may pay such interest on the refunding bonds from the proceeds of the refunding bonds.

(7) The determination of the governing body that the limitations under this part 4 imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Source: L. 75: Entire title R&RE, p. 1258, § 1, effective July 1. **L. 83:** (2) and (6) amended, p. 508, § 4, effective April 22. **L. 89:** (3) amended, p. 1116, § 30, effective July 1.

Editor's note: This section is similar to former § 31-35-412 as it existed prior to 1975.

31-35-413. Incontestable recital in bonds.

Any ordinance or resolution authorizing or any trust indenture or other instrument appertaining to any bonds under this part 4 may provide that each bond therein authorized shall recite that it is issued under authority of this part 4. Such recital shall conclusively impart full compliance with all of the provisions of this part 4, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 75: Entire title R&RE, p. 1259, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-413 as it existed prior to 1975.

31-35-414. Application of bond proceeds.

(1) All moneys received from the issuance of any bonds authorized in this part 4 shall be used solely for the purpose for which issued and the cost of any project thereby delineated.

(2) Any accrued interest and any premium shall be applied to the payment of the interest on or the principal of the bonds or both interest and principal or shall be deposited in a reserve therefor, as the governing body may determine.

(3) Any unexpended balance of such bond proceeds remaining after the completion of the acquisition or improvement and equipment of the project or the completion of the purpose for which such bonds were issued shall be paid immediately into the fund created for the payment of the principal of said bonds and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the bonds and the proceedings authorizing or otherwise appertaining to their issuance, or into a reserve therefor.

(4) The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement and equipment of the project or the proper completion of any project for which the bonds are issued.

(5) The purchaser of the bonds shall in no manner be held responsible for the application of the proceeds of the bonds by the municipality or any of its officers, agents, and employees.

Source: L. 75: Entire title R&RE, p. 1259, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-414 as it existed prior to 1975.

31-35-415. Continuing rights of bondholders.

The failure of any holder of any bond or coupon issued under this part 4 to proceed as provided in section 31-35-409 or in any proceedings appertaining to the issuance of such bond or coupon shall not relieve the municipality, its governing body, or any of its officers, agents, and employees of any liability for failure to perform or carry out any duty, obligation, or other commitment.

Source: L. 75: Entire title R&RE, p. 1260, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-415 as it existed prior to 1975.

31-35-416. Validation.

All revenue bonds and any coupons appertaining thereto relating to a water system, sewer system, or joint water and sewer system issued or purportedly issued prior to March 13, 1962, and all acts and proceedings had or taken or purportedly had or taken prior to said date by or on behalf of municipalities, under law or under color of law, preliminary to and in the authorization, execution, sale, and issuance of all water revenue bonds, sewer revenue bonds, and joint water and sewer revenue bonds, including any coupons appertaining thereto, the authorization and execution of all other contracts, and the exercise of other powers in this part 4 are validated, ratified, approved, and confirmed by this section except as provided in section 31-35-417, notwithstanding any lack of power, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities, other than constitutional, in such securities, acts, and proceedings, in such authorization, execution, sale, and issuance, and in such exercise of

powers; and such securities and other contracts are and shall be binding, legal, valid, and enforceable obligations of such municipality to which they appertain in accordance with their terms and their authorization proceedings.

Source: L. 75: Entire title R&RE, p. 1260, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-416 as it existed prior to 1975.

31-35-417. Effect of and limitations upon validation.

This part 4 shall operate to supply such legislative authority as may be necessary to validate any such securities issued and other contracts executed prior to March 13, 1962, of such municipalities and any acts and proceedings taken appertaining to the issuance of such securities or execution of other contracts by such municipalities or otherwise prior to said date which the general assembly could have supplied or provided for in the law under which such securities were issued or such other contracts were executed and such acts or proceedings were taken; but this part 4 shall be limited to the validation of such securities, other contracts, acts, and proceedings to the extent to which the same can be effectuated under the state and federal constitutions. This part 4 shall not operate to validate, ratify, approve, confirm, or legalize any bond or coupon, other contract, act, proceeding, or other matter, the legality of which is being contested, or inquired into in any legal proceeding now pending and undetermined and shall not operate to confirm, validate, or legalize any bond or coupon, other contract, act, proceeding, or other matter which, prior to March 13, 1962, has been determined in any legal proceeding to be illegal, void, or ineffective.

Source: L. 75: Entire title R&RE, p. 1260, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-417 as it existed prior to 1975.

PART 5

MUNICIPAL WATER AND SEWER BOARDS

31-35-500.3. Definitions.

As used in this part 5, unless the context otherwise requires:

(1) "Board" means a board of commissioners created pursuant to section 31-35-501 (1).

Source: L. 2025: Entire section added, (SB 25-275), ch. 377, p. 2093, § 275, effective August 6.

31-35-501. Creation of board.

(1) The governing body of any city or town, organized under a special act or home rule charter or under the general laws of the state, has the power to create, by ordinance, a nonpolitical local legislative body designated as a board of commissioners to have complete charge and control of the sewerage facilities or water facilities or joint water and sewer system of such city or town, as designated in such ordinance, in which board are vested all powers, rights, privileges, and duties vested in the city or town creating the board and pertaining to the type of facilities or system designated in such ordinance.

(2) The exercise of any and all executive, administrative, and ministerial powers may be delegated and redelegated by the board to officials and employees of the city or town employed by the board.

(3) The board shall indicate the capacity in which the city or town is acting when such actions are taken by the board, e.g., "the city (town) of ....., acting by and through its board of water and sewer commissioners".

Source: L. 75: Entire title R&RE, p. 1261, § 1, effective July 1. **L. 2025:** (1) amended, (SB 25-275), ch. 377, p. 2093, § 276, effective August 6.

Editor's note: This section is similar to former § 31-35-418 as it existed prior to 1975.

31-35-502. Board - appointments - removal - bonds - meetings.

The municipality shall by ordinance prescribe the number of commissioners, their qualifications, their terms of office, methods for their election or appointment or removal, the amount and nature of any fidelity bond required to be given, the number of meetings required to be held, their compensation, if any, the selection and term of office of its officers, and such other matters concerning the board as are not in conflict with this part 5.

Source: L. 75: Entire title R&RE, p. 1261, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-419 as it existed prior to 1975.

31-35-503. Oath - officers.

Each commissioner, before assuming the duties of his office, shall take and subscribe an oath or affirmation before an officer authorized to administer oaths that he will support the constitutions and laws of the United States and of this state and that he will faithfully and impartially discharge the duties of his office to the best of his ability. Such oath or affirmation shall be filed in the office of the clerk or secretary of the municipality.

Source: L. 75: Entire title R&RE, p. 1261, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-420 as it existed prior to 1975.

31-35-504. Board's administrative powers.

(1) The board, on behalf and in the name of the municipality, has the following powers:

(a) To fix the time and place at which its regular meetings shall be held within the municipality and to provide for the calling and holding of special meetings;

(b) To adopt and amend or otherwise modify bylaws and rules for procedure;

(c) To prescribe by resolution a system of business administration, to create any and all necessary offices, and to establish and reestablish the powers, duties, and compensation of all officers, agents, and employees and other persons contracting with the board, subject to the provisions of any ordinance adopted pursuant to section 31-35-502; but, except as may be otherwise therein provided, such compensation shall be established at prevailing rates of pay for equivalent services.

Source: L. 75: Entire title R&RE, p. 1261, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-421 as it existed prior to 1975.

31-35-505. Meetings of board.

(1) All meetings of the board shall be held within the municipality and shall be open to the public.

(2) No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least a majority of the total membership of the board is present.

(3) Any action of the board shall require the affirmative vote of a majority of the directors present and voting thereon.

(4) A smaller number of directors than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the board may provide by resolution or by law.

Source: L. 75: Entire title R&RE, p. 1262, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-422 as it existed prior to 1975.

31-35-506. Additional administrative powers.

(1) The board, on behalf and in the name of the municipality, also has the following powers:

(a) To require and fix the amount of all official fidelity and completion bonds necessary or desirable and convenient in the opinion of the board for the protection of the funds and property of the municipality under the jurisdiction of the board, subject to the provisions of any ordinance adopted pursuant to section 31-35-502 regarding fidelity bonds for commissioners;

(b) To prescribe a method of auditing and allowing or rejecting claims and demands subject to the provisions of section 31-35-507;

(c) To provide a method for the letting of contracts on a fair and competitive basis for the construction of works, the facilities, or any project or any interest therein or the performance or furnishing of labor, materials, or supplies as required in part 4 of this article and this part 5 and to require a contractor's bond in the manner required of a governing body and a municipality in sections 38-26-105 to 38-26-107, C.R.S.;

(d) To designate an official newspaper published in the municipality or, if none, of general circulation therein and to publish any notice or other instrument in any additional newspaper where the board deems that it is necessary or advisable to do so; and

(e) To make and pass resolutions and orders on behalf of the municipality not repugnant to the provisions of part 4 of this article and this part 5 which are necessary or proper for the government and management of the affairs of the municipality, for the execution of the powers vested in the municipality, and for carrying into effect the provisions of part 4 of this article and this part 5 in connection with the facilities or joint system designated in the ordinance creating the board.

Source: L. 75: Entire title R&RE, p. 1262, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-423 as it existed prior to 1975.

31-35-507. Budgets, accounts, and audits.

The board, in connection with the facilities or joint system under the board's jurisdiction, shall adopt a budget for each fiscal year of the municipality, shall maintain accounts, and shall cause an annual audit to be made pertaining to the financial affairs of the board as provided in parts 1, 5, and 6 of article 1 of title 29, C.R.S., except as otherwise provided in part 4 of this article and this part 5.

Source: L. 75: Entire title R&RE, p. 1262, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-424 as it existed prior to 1975.

31-35-508. Records of board.

(1) On all resolutions and orders, the roll shall be called, and the ayes and noes shall be recorded. All resolutions and orders, as soon as may be after their passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer of the board and the secretary or secretary pro tem.

(2) Every legislative act of the board of a general or permanent nature shall be by resolution.

(3) The book of resolutions and orders shall be a public record. A record shall also be made of all other proceedings of the board, minutes of the meetings, certificates, contracts, bonds given by officers, employees, and any other agents of the municipality under the board's jurisdiction, and all corporate acts, which record shall also be a public record.

(4) The treasurer shall keep strict and accurate accounts of all moneys received by and disbursed for and on behalf of the board in a permanent record, which also shall be a public record.

(5) Any permanent record of the municipality under the board's jurisdiction shall be open for inspection by any elector thereof, by any other interested person, or by any representative of the federal government, the state, or any other public body.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-425 as it existed prior to 1975.

31-35-509. Conflicts in interest prohibited.

No commissioner nor officer, employee, or agent of the municipality under the board's jurisdiction shall be interested in any contract or transaction with the municipality except in his official representative capacity or as is provided in his contract of employment with the municipality, subject to the provisions of any ordinance adopted pursuant to section 31-35-502.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-426 as it existed prior to 1975.

31-35-510. Authorization of facilities.

The municipality, acting by and through the board, may acquire, improve, equip, relocate, maintain, and operate the facilities or joint system under the board's jurisdiction, any project, or any part thereof for the benefit of the municipality and the inhabitants thereof after the board has made such preliminary studies and otherwise taken such action as it determines to be necessary or desirable as preliminaries thereto.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-427 as it existed prior to 1975.

31-35-511. Implementing powers.

The board, in connection with the facilities or joint system of the municipality under the board's jurisdiction and any project pertaining thereto, may from time to time condemn, otherwise acquire, improve, equip, operate, maintain, and dispose of property within or without or both within and without the municipality.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-428 as it existed prior to 1975.

31-35-512. Additional powers of municipality.

(1) The municipality, acting by and through the board, has the following powers:

(a) To have the duties, privileges, immunities, rights, liabilities, and disabilities pertaining to a body corporate and politic and constituting a municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety, and general welfare;

(b) To have perpetual existence and succession;

(c) To adopt, have, and use a corporate seal and to alter the same at pleasure;

(d) To sue and to be sued and to be a party to suits, actions, and proceedings;

(e) To commence, maintain, intervene in, defend, comprise, terminate by settlement or otherwise, otherwise participate in, and assume the cost and expense of any and all actions and proceedings pertaining to the municipality, its board, its officers, agents, or employees, or any of the municipality's powers, duties, privileges, immunities, rights, liabilities, and disabilities, the facilities or joint system, or any project pertaining thereto or any property of the municipality;

(f) To enter into contracts and agreements, including but not limited to contracts with the federal government, the state, and any other public body; and

(g) To trade, exchange, purchase, condemn, or otherwise acquire, operate, maintain, and dispose of real property and personal property, including interest therein, either within or without or both within and without the territorial limits of the municipality.

Source: L. 75: Entire title R&RE, p. 1263, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-429 as it existed prior to 1975.

31-35-513. Financial powers of municipality.

(1) The municipality, acting by and through the board, also has the following powers:

(a) To borrow money and to issue municipal securities evidencing any loan to or amount due by the municipality, to provide for and secure the payment of any municipal securities and the rights of the holders thereof, and to purchase, hold, and dispose of municipal securities; and

(b) To fund or refund any loan or obligation of the municipality and to issue funding or refunding securities to evidence such loan or obligation without any election.

Source: L. 75: Entire title R&RE, p. 1264, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-430 as it existed prior to 1975.

31-35-514. Other powers of board.

The delineation of powers in this part 5 which may be exercised by the board does not by implication deny any other powers which are otherwise granted to the municipality by law.

Source: L. 75: Entire title R&RE, p. 1264, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-431 as it existed prior to 1975.

PART 6

SEWER CONNECTIONS - COMPULSORY

31-35-601. Owner to be notified.

In addition to the powers already had by municipalities, they have the following powers: When the governing body of a municipality having a public sewerage system deems it necessary for the protection of public health that owners of one or more premises connect their premises with the public sewer, thirty days' notice in writing shall be given to said owners, by registered mail, notifying them to connect their premises with the sewer, the date of the notice to begin as of the date of registering the same for mailing. If the work of making the connection is not begun within thirty days, the mayor shall notify the municipal engineer to prepare plans and specifications for making the connection with the public sewer, including water and service pipe for flushing purposes, if the owner has given notice and proof to the governing body or mayor of his financial inability to make the connection himself and if it is only for the necessary connection of a water closet or a privy in an outhouse or both.

Source: L. 75: Entire title R&RE, p. 1264, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-501 as it existed prior to 1975.

31-35-602. Resolution adopted.

The plans or specifications shall be filed in the clerk's or engineer's office, and a resolution shall be adopted by the governing body ordering or prescribing in general terms the contemplated sewerage connections, giving location of the premises and the name of the owner, and authorizing the clerk to advertise for bids. The advertisement for bids shall be the same as is now provided for in other cases in which municipalities receive bids. The governing body shall let the contract to the lowest responsible bidder who furnishes satisfactory security, but it has the right to reject all bids.

Source: L. 75: Entire title R&RE, p. 1264, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-502 as it existed prior to 1975.

31-35-603. Cost of connection ascertained.

The entire costs of all sewerage and water connections, closets, equipment pipe, sewer pipe, labor, and necessary engineering, legal, and publication expenses shall be ascertained by the governing body, including an additional amount of six percent for costs of inspection, collections, and other incidentals. The cost to each owner shall be determined according to the material used and work done under the contract in connecting such property to the public sewer and water main. The engineering, legal, and publication expenses shall be charged in such proportion as each connection bears to the whole.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-503 as it existed prior to 1975.

31-35-604. Work accepted - assessment - certified copy filed - lien.

Upon the final completion of the work, the governing body shall accept the same by ordinance and provide for an assessment against the properties connected according to the rules of apportionment as provided in section 31-35-603. Each assessment shall be separately numbered. Thirty days after the last publication of said ordinance, a certified copy of it shall be filed with the county treasurer of the county in which the property is situated and when so filed shall operate as a perpetual tax lien in favor of the municipality and shall be superior to all other liens except general tax liens.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-504 as it existed prior to 1975.

31-35-605. Appropriation from general fund.

The governing body may make adequate appropriations from the general fund to defray such costs until such time as the taxes are received, and when received, the general fund shall be reimbursed to the amount of any such appropriation.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-505 as it existed prior to 1975.

31-35-606. Assessments payable - proviso.

The assessment shall be due and payable within thirty days after final publication of the assessing ordinance without demand; except that all assessments, at the election of the owner, may be paid in installments, as provided in section 31-35-608.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-506 as it existed prior to 1975.

31-35-607. Payment in installments optional.

Failure to pay the whole assessment within said thirty days shall be conclusively considered and held to be an election on the part of the persons interested, whether under disability or not, to pay in such installments. All persons so electing to pay in installments shall be conclusively held and considered as consenting to said improvements, and such election shall be conclusively held and considered as a waiver of any right to question the power or jurisdiction of the municipality to construct the improvement, the quality of the work, the regularity or sufficiency of the proceedings, or the validity or the correctness of the assessments or the validity of the lien thereof.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-507 as it existed prior to 1975.

31-35-608. Installment payments - due date - interest.

In case of such election to pay in such installments, the assessment shall be payable in two or more equal annual installments of principal, the first of which installments shall be payable as prescribed by the governing body in not more than one year, with interest in all cases on the unpaid principal, payable semiannually, at a rate not exceeding six percent per annum. The

number of installments, the period of payment, and the rate of interest shall be determined by the governing body and set forth in the assessing ordinance.

Source: L. 75: Entire title R&RE, p. 1265, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-508 as it existed prior to 1975.

31-35-609. Default in payment - penalty.

Failure to pay any installment, whether of principal or interest, when due shall cause the whole of the unpaid principal to become due and collectible immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of one percent per month or fraction of a month until the date of sale, as provided in section 31-35-611. At any time prior to the date of sale, the owner may pay the amount of all unpaid installments, with interest at one percent per month or fraction of a month, and all penalties accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any property not in default as to any installment or payment may at any time pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-509 as it existed prior to 1975.

31-35-610. Discount for cash payment.

Payments may be made to the municipal treasurer at any time within thirty days of the final publication of the assessing ordinance, and an allowance of five percent shall be allowed on all payments made during such period, but not thereafter. At the expiration of the thirty-day period, the municipal treasurer shall return the local assessment roll to the clerk, therein showing all payments made thereon with the date of each payment.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-510 as it existed prior to 1975.

31-35-611. Payment of assessments - default - sale.

The county treasurer shall receive payment of all assessments on the assessment roll, with interest, and, in the case of default in the payment of any installment of principal or interest when due, shall advertise and sell any and all property concerning which such default is suffered for the payment of the whole of the unpaid assessments thereon. The advertisements and sales shall be at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as is provided by general law for sales of real property in default of payment of general and special taxes.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-511 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

31-35-612. Owner of interest may pay his share.

The owner of any divided or undivided interest in the property assessed may pay his share of any assessment upon producing evidence of the extent of his interest which is satisfactory to the treasurer having the roll in charge.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-512 as it existed prior to 1975.

31-35-613. When collections paid to municipality.

All collections made by the county treasurer upon such assessment roll in any calendar month shall be accounted for and paid over to the municipal treasurer on or before the tenth day of the next month, with separate statements for all such collections for each improvement.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-513 as it existed prior to 1975.

31-35-614. Construction of part 6.

Nothing in this part 6 shall be considered as amending or repealing any other power the municipalities may have, but this part 6 confers additional powers of which the municipality may take advantage.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-514 as it existed prior to 1975.

31-35-615. Governing body to fix rates and charges.

The governing body of any municipality or incorporated sewer or sanitary district may by ordinance fix such rates and charges for the connections with and use of the sewer or sewerage systems of said municipalities or districts as may be just, reasonable, and necessary, and it may provide the manner of levying and collecting such rates and charges.

Source: L. 75: Entire title R&RE, p. 1266, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-515 as it existed prior to 1975.

31-35-616. Revenue kept in separate fund.

(1) The revenue derived from the connections with said sewer or sewerage systems shall be placed in the treasury of the municipality or district and may be kept in a separate fund. If the revenue is placed in a separate fund, it shall not be paid out or distributed except for the purpose of operating, renewing, improving, or extending the sewerage system and the payment of the salaries of the employees engaged in operating said sewerage system. At any time there is a surplus of such funds, it shall be semiannually placed in a sinking fund for the purposes of acquiring, renewing, or extending such sewerage system or making renewals or extensions thereto or for retiring the bonded indebtedness upon said sewerage system; but if said surplus fund is used to retire outstanding sewer bonds, the same shall be in addition to the money derived by taxation for such retirement of sewer bonds as is provided by law.

(2) Any municipality or incorporated sewer or sanitary district which is being provided with services by the governing body fixing such rates and charges is subject to the same charges and rates established as provided in this part 6 or to charges and rates established in harmony therewith for service rendered such municipality or incorporated sewer or sanitary district and shall pay such rates or charges when due, and the same shall be deemed to be a part of the revenues of the works and shall be applied as provided in this section for the application of such revenues.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-516 as it existed prior to 1975.

31-35-617. Failure to pay rates and charges - lien.

In the event any user of said sewerage system neglects, fails, or refuses to pay the rates and charges fixed by said governing body for the connection with and use of said sewer, said user shall not be disconnected from said sewerage system or refused the use of said sewer unless the user is outside the municipal limits, but the rates and charges due therefor may be certified by the clerk or the proper authority of the district to the board of county commissioners of the county in which said delinquent user's property is located and shall become a lien upon the real property so served by said sewer connection. The amount due shall be collected in the manner as though they were part of the taxes.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-517 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

31-35-618. Prior rates and charges declared valid.

Any such rates and charges for the connections with and use of the sewer or sewerage systems of any municipality or incorporated sewer or sanitary district declared or established by ordinance of said governing body on or before May 1, 1957, are declared to be valid and are hereby ratified.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-518 as it existed prior to 1975.

31-35-619. Surplus revenue diverted to general fund.

The municipality may by ordinance divert to the general fund any surplus moneys in excess of the amounts reasonably required for the purpose of operating, renewing, improving, or extending the sewer system of any municipality.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-519 as it existed prior to 1975.

PART 7

SEWER RATES - AREA OUTSIDE CITIES OR TOWNS

31-35-701. Cities or towns may provide service outside boundaries.

Any city or town owning an established sewerage system may, by ordinance, fix just, reasonable, and necessary rates for the connection with and use of the sewerage system, directly or indirectly, by owners of property situated in unincorporated territory without the boundaries of said city or town.

Source: L. 75: Entire title R&RE, p. 1267, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-601 as it existed prior to 1975.

ANNOTATION

Law reviews. For article, "Utility Services in Subdivisions Outside Municipal Boundaries", see 28 Rocky Mt. L. Rev. 483 (1956).

31-35-702. Governing body agency of state.

The governing body of such city or town is declared and determined to be an agency of the state of Colorado for the sole purpose of securing to owners of property situated in unincorporated territory without the boundaries of such city or town adequate sewerage service at just and reasonable rates and for the performance of the duties and functions set forth by this part 7.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-602 as it existed prior to 1975.

31-35-703. Publication of ordinance.

Notice of such rates shall be given by publication of the ordinance fixing the same, to which publication there shall be appended a special notice to owners of property in unincorporated

territory without the boundaries of said city or town and using the sewerage system especially directing attention to said ordinance.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-603 as it existed prior to 1975.

31-35-704. Contents of ordinance.

Such ordinance and notice shall be published in conformity to law with reference to the times and publication of ordinances of such city or town. The ordinance shall contain a description of the property, the names of the owners thereof, as near as may be, and the annual rate charged to each such property for sewerage service. No error in the name of any property owner shall affect the validity of said ordinance.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-604 as it existed prior to 1975.

Cross references: For requirements for passage of an ordinance, see part 1 of article 16 of this title.

31-35-705. Protest - board of adjustment.

Any owner of property affected by the terms of said ordinance may protest in writing to the governing body of such city or town as to the amount of the rate affecting such property at any time within two weeks after the first publication of said ordinance and notice. The governing body shall sit as a board of adjustment, pursuant to the authority of this part 7, and shall hear and determine all such protests and determine the fairness of said rates. If the rates prescribed in the proposed ordinance are determined to be unreasonable, the governing body shall amend such ordinance before final passage to conform to its findings in the premises. The final determination of the governing body shall be conclusive in the premises.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-605 as it existed prior to 1975.

31-35-706. Continuing annual charges.

The rates and charges so established shall be annual charges and shall be continuing annual charges from year to year until such ordinance is amended or repealed. The use of said sewerage system on or after the passage of said ordinance shall be conclusive evidence of the assent of the owner of the property to the provisions of said ordinance and of the acceptance of such service on the conditions and terms imposed thereby not in conflict with this part 7.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-606 as it existed prior to 1975.

31-35-707. Date and place of payment.

Such ordinance shall provide, among other things, that the rates so established per annum may be paid before October 1 of each year, at the offices of the municipal treasurer, and after said day payment thereof shall be delinquent.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-607 as it existed prior to 1975.

31-35-708. Nonpayment - penalty - lien.

In the event any person using said sewerage system neglects, fails, or refuses to pay when due the rates and charges as fixed by said ordinance, the property of such delinquent person shall not be disconnected from said sewerage system or denied the use thereof, but the rates and charges due and unpaid therefor shall be certified by the clerk to the board of county commissioners of the county in which said delinquent user's property is located on or before November 1 of each

year and thereupon and until paid shall be a lien upon the real property so served by said sewerage connections. The lien shall be levied, certified, received, or collected by sale, annually from year to year by the proper county officials, as are county taxes, and the proceeds thereof shall be remitted each month to such city or town.

Source: L. 75: Entire title R&RE, p. 1268, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-608 as it existed prior to 1975.

31-35-709. Voluntary discontinuance by owner.

Nothing in this part 7 shall deny any property owner affected by such ordinance voluntary discontinuance of the service of such sewerage system. Such discontinuance of service shall be evidenced by disconnection of said property from said sewer system and not otherwise. In the event of such discontinuance, it is the duty of the governing body to abate all rates or charges accruing thereafter by the terms of such ordinance, and thereafter no such charge shall be certified for collection.

Source: L. 75: Entire title R&RE, p. 1269, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-609 as it existed prior to 1975.

31-35-710. Duty to maintain system.

Nothing in this part 7 shall impose upon any such city or town the duty of maintaining sewers or a sewerage system not owned by it or required for the use of its inhabitants. Such city or town shall maintain, during the life of the ordinance provided for in section 31-35-701, its own sewerage system for the adequate use and benefit of property owners in unincorporated territory without the boundaries thereof whose property has been made subject to such ordinance.

Source: L. 75: Entire title R&RE, p. 1269, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-610 as it existed prior to 1975.

31-35-711. Rates may be collected by action.

Rates imposed upon property which by reason of its ownership, character, or use is not subject to taxation or lien under the state constitution and laws of this state may be collected by any appropriate legal action begun in the district court in the county in which such property is located.

Source: L. 75: Entire title R&RE, p. 1269, § 1, effective July 1.

Editor's note: This section is similar to former § 31-35-611 as it existed prior to 1975.

31-35-712. Owner to obtain permit - penalty.

Any person making or causing to be made a connection of sewers serving property in any unincorporated territory, directly or indirectly, with a sewerage system of any city or town without a permit from said city or town and after the passage of the ordinance provided for in section 31-35-701 commits a class 2 misdemeanor.

Source: L. 75: Entire title R&RE, p. 1269, § 1, effective July 1. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3257, § 543, effective March 1, 2022.

Editor's note: This section is similar to former § 31-35-612 as it existed prior to 1975.