



**TOWN OF PAONIA**  
**TUESDAY, JANUARY 22, 2019**  
**REGULAR TOWN BOARD MEETING AGENDA**  
**6:30 PM**

**Roll Call**

**Approval of Agenda**

**Announcements**

**Recognition of Visitors & Guests**

**Consent Agenda**

1. Regular Minutes - January 8, 2019

**Mayor's Report**

**Staff Reports**

Town Administrators Report

Public Works Report

Police Department Report

Town Treasurer Report

**Disbursements**

**Unfinished Business**

2. Memorandum of Understanding – DMEA/Elevate Public Access

**New Business**

3. Colorado Code Consulting – Building Code Update Proposal
4. Edesia Community Kitchen – Six Month Review
5. Paonia Park Memorial Wall – Update and Request for Support
6. Resolution 2019-03 Adopting a Policy Concerning the Destruction, Disposal, & Protection of Records Containing Personal Identifying Information
7. Ordinance 2019-02 Municipal Code Amendment – Fences, Hedges, & Walls
8. Resolution 2019-04 Fee Schedule
9. Town Administrator Contract Extension
10. At the Request of Bill Brunner – Claim by Bill Brunner That Mayor Stewart Violated Standards of Conduct for Elected Officials

**Committee Reports**

Finance & Personnel

Public Works/Utilities/Facilities

Governmental Affairs/Public Safety

Tree Board

**Adjournment**

I. RULES OF PROCEDURE

**Section 1. Schedule of Meetings.** Regular Board of Trustees meetings shall be held on the second and fourth Tuesdays of each month, except on legal holidays, or as re-scheduled or amended and posted on the agenda prior to the scheduled meeting.

**Section 2. Officiating Officer.** The meetings of the Board of Trustees shall be conducted by the Mayor or, in the Mayor's absence, the Mayor Pro-Tem. The Town Clerk or a designee of the Board shall record the minutes of the meetings.

**Section 3. Time of Meetings.** Regular meetings of the Board of Trustees shall begin at 6:30 p.m. or as scheduled and posted on the agenda. Board Members shall be called to order by the Mayor. The meetings shall open with the presiding officer leading the Board in the Pledge of Allegiance. The Town Clerk shall then proceed to call the roll, note the absences and announce whether a quorum is present. Regular Meetings are scheduled for three hours, and shall be adjourned at 9:30 p.m., unless a majority of the Board votes in the affirmative to extend the meeting, by a specific amount of time.

**Section 4. Schedule of Business.** If a quorum is present, the Board of Trustees shall proceed with the business before it, which shall be conducted in the following manner. Note that all provided times are estimated:

- (a) Roll Call - (5 minutes)
- (b) Approval of Agenda - (5 minutes)
- (c) Announcements (5 minutes)
- (d) Recognition of Visitors and Guests (10 minutes)
- (e) Consent Agenda including Approval of Prior Meeting Minutes (10 minutes)
- (f) Mayor's Report (10 minutes)
- (g) Staff Reports: (15 minutes)
  - (1) Town Administrator's Report
  - (2) Public Works Reports
  - (3) Police Report
  - (4) Treasurer Report
- (h) Unfinished Business (45 minutes)
- (i) New Business (45 minutes)
- (j) Disbursements (15 minutes)
- (k) Committee Reports (15 minutes)
- (l) Adjournment

\* This schedule of business is subject to change and amendment.

**Section 5. Priority and Order of Business.** Questions relative to the priority of business and order shall be decided by the Mayor without debate, subject in all cases to an appeal to the Board of Trustees.

**Section 6. Conduct of Board Members.** Town Board Members shall treat other Board Members and the public in a civil and polite manner and shall comply with the Standards of Conduct for Elected Officials of the Town. Board Members shall address Town Staff and the Mayor by his/her title, other Board Members by the title of Trustee or the appropriate honorific (i.e.: Mr., Mrs. or Ms.), and members of the public by the appropriate honorific. Subject to the Mayor's discretion, Board Members shall be limited to speaking two times when debating an item on the agenda. Making a motion, asking a question or making a suggestion are not counted as speaking in a debate.

**Section 7. Presentations to the Board.** Items on the agenda presented by individuals, businesses or other organizations shall be given up to 5 minutes to make a presentation. On certain issues, presenters may be given more time, as determined by the Mayor and Town Staff. After the presentation, Trustees shall be given the opportunity to ask questions.

**Section 8. Public Comment.** After discussion of an agenda item by the Board of Trustees has concluded, the Mayor shall open the floor for comment from members of the public, who shall be allowed the opportunity to comment or ask questions on the agenda item. Each member of the public wishing to address the Town Board shall be recognized by the presiding officer before speaking. Members of the public shall speak from the podium, stating their name, the address of their residence and any group they are representing prior to making comment or asking a question. Comments shall be directed to the Mayor or presiding officer, not to an individual Trustee or Town employee. Comments or questions should be confined to the agenda

item or issue(s) under discussion. The speaker should offer factual information and refrain from obscene language and personal attacks.

**Section 9. Unacceptable Behavior.** Disruptive behavior shall result in expulsion from the meeting.

**Section 10. Posting of Rules of Procedure for Paonia Board of Trustees Meetings.** These rules of procedure shall be provided in the Town Hall meeting room for each Board of Trustees meeting so that all attendees know how the meeting will be conducted.

## **II. CONSENT AGENDA**

**Section 1. Use of Consent Agenda.** The Mayor, working with Town Staff, shall place items on the Consent Agenda. By using a Consent Agenda, the Board has consented to the consideration of certain items as a group under one motion. Should a Consent Agenda be used at a meeting, an appropriate amount of discussion time will be allowed to review any item upon request.

**Section 2. General Guidelines.** Items for consent are those which usually do not require discussion or explanation prior to action by the Board, are non-controversial and/or similar in content, or are those items which have already been discussed or explained and do not require further discussion or explanation. Such agenda items may include ministerial tasks such as, but not limited to, approval of previous meeting minutes, approval of staff reports, addressing routine correspondence, approval of liquor licenses renewals and approval or extension of other Town licenses. Minor changes in the minutes such as non-material Scribner errors may be made without removing the minutes from the Consent Agenda. Should any Trustee feel there is a material error in the minutes, they should request the minutes be removed from the Consent Agenda for Board discussion.

**Section 3. Removal of Item from Consent Agenda.** One or more items may be removed from the Consent Agenda by a timely request of any Trustee. A request is timely if made prior to the vote on the Consent Agenda. The request does not require a second or a vote by the Board. An item removed from the Consent Agenda will then be discussed and acted on separately either immediately following the consideration of the Consent Agenda or placed later on the agenda, at the discretion of the Board.

## **III. EXECUTIVE SESSION**

**Section 1.** An executive session may only be called at a regular or special Board meeting where official action may be taken by the Board, not at a work session of the Board. To convene an executive session, the Board shall announce to the public in the open meeting the topic to be discussed in the executive session, including specific citation to the statute authorizing the Board to meet in an executive session and identifying the particular matter to be discussed “in as much detail as possible without compromising the purpose for which the executive session is authorized.” In the event the Board plans to discuss more than one of the authorized topics in the executive session, each should be announced, cited and described. Following the announcement of the intent to convene an executive session, a motion must then be made and seconded. In order to go into executive session, there must be the affirmative vote of two thirds (2/3) of Members of the Board.

**Section 2.** During executive session, minutes or notes of the deliberations should not be taken. Since meeting minutes are subject to inspection under the Colorado Open Records Act, the keeping of minutes would defeat the private nature of executive session. In addition, the deliberations carried out during executive session should not be discussed outside of that session or with individuals not participating in the session. The contents of an executive session are to remain confidential unless a majority of the Trustees vote to disclose the contents of the executive session.

**Section 3.** Once the deliberations have taken place in executive session, the Board should reconvene in regular session to take any formal action decided upon during the executive session. If you have questions regarding the wording of the motion or whether any other information should be disclosed on the record, it is essential for you to consult with the Town Attorney on these matters.

## **IV. SUBJECT TO AMENDMENT**

**Section 1. Deviations.** The Board may deviate from the procedures set forth in this Resolution, if, in its sole discretion, such deviation is necessary under the circumstances.

**Section 2. Amendment.** The Board may amend these Rules of Procedures Policy from time to time.

AGENDA SUMMARY FORM



Announcements

Summary:

Notes:

Possible Motions:

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

AGENDA SUMMARY FORM



Visitor's & Guests

Summary:

Notes:

Possible Motions:

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:



Regular Minutes - January 8, 2019

Summary:

Notes:

**Minutes**  
**Regular Town Board Meeting**  
**Town of Paonia, Colorado**  
**January 08, 2019**

**RECORD OF PROCEEDINGS**

**Roll Call**

PRESENT

Mayor Charles Stewart  
Trustee Mary Bachran  
Trustee William Bear  
Trustee Karen Budinger  
Trustee Dave Knutson

ABSENT

Mayor Pro-Tem Chelsea Bookout  
Trustee Samira Hart

**Approval of Agenda**

Motion made by Trustee Bear, Seconded by Trustee Budinger, to approve the agenda as amended, Removing Mr. Brunner request due to his absence. Motion carried.

**Announcements**

1. Announcement of Christmas Lighting Contest Winners  
Mayor Stewart provided a list of the Christmas light winners and honorable mentions.

Motion made by Trustee Knutson, Seconded by Trustee Bachran, to apply the Christmas awards as a payment to the winner's utility bill. Motion carried.

**Recognition of Visitors & Guests**

Suzanne Watson - Requested the opportunity to discuss Resolution 2017-06, standards of conduct for elected officials. Ms. Watson noted her nay vote as a Board member at the time of the approval of Resolution 2017-06 and expressed her disdain with what she considered a violation of the resolution by Mayor Stewart by writing a letter to the editor. Ms. Watson requested the Board review the resolution and see if the actions of the Mayor were appropriate.

Tomas Markle - Looks forward to benefiting from the new equipment and added the changes in the community room look great.

**Consent Agenda**

2. Regular Board Minutes, December 11, 2018  
Special Meeting Minutes, December 27, 2018  
Special Event Liquor License – Edesia Kitchen – Kid's Pasta Project

Trustee Knutson - requested to remove Edesia from consent Agenda.  
Motion made by Trustee Bachran, seconded by Trustee Budinger to approve the consent agenda regular minutes from December 11, 2018 as amended. Motion carried.

Special meeting minutes from December 27, 2018 as presented. Motion carried with an abstention from Trustee Bachran.

Special Event Permit request for the Kid's Pasta Project, to be held at the Edesia Kitchen – Discussion ensued regarding the application corrections and restrictions placed upon the kitchen.

Motion made by Trustee Knutson seconded by Trustee Budinger to approve the special event license with hours of operation concluding at 9pm. Motion carried.

### **Mayor's Report**

3. Appointment to the Planning Commission  
Mayor Stewart provided a brief history of the necessity to fill the vacated seat left from newly appointed Trustee Knutson. Three letters of interest were received from the public.  
Ms. Monica Foguth - Present  
Mr. Dave Bradford - Present  
Mr. Bill Brunner – Absent

Parties present were given the opportunity to address the Board.  
Mayor Stewart appointed Ms. Monica Foguth.

### **Staff Reports**

- Town Administrators Report  
Upcoming planning meeting scheduled on January 15th and February 5th.
  - DCED meeting upcoming in Cedaredge.
  - A phone hearing with the Town Attorney to discuss a well permit issued within the Town IGA area.
  - Trustee Bear questioned how the Town informs homeowners of their responsibility to shovel sidewalks.
  - Suzanne Watson - questioned if the well was a domestic water well or irrigation well.
  - Approximately \$9,000 in brick sales and a commitment from Delta County in the amount of \$2,500.
- Public Works Report
  - Started new 3-day trash route. It's a learning process for the public and the crew but anticipates it will be a better system.
  - Snow plowing has commenced and is going well.
  - IMG is complete, less the ridge cap which has not been delivered due to an error at the supply company. Once installed disinfection of tank and filling will begin.



- Police Department Report
  - Still accepting applications for part-time officer.
  - Officer Patterson started as School Resource Officer today.
  - Town awarded \$6,117. for the Grey and Black Marijuana grant with a deadline to expend by June 30, 2019.
  - Tamie Meck - DCI - asked for clarification for suspicious designation on the blotter.
  - Dave Bradford - Questioned a van parked in alley behind his property in alley right-of-way and procedures to have vehicles moved.
  
- Town Treasurer Report
  - Treasurer King provided an overview of the end-of-year payments made following Board prior approval at the December 11, 2018 meeting.
  - Administrator Knight executed the agreement for the new auditing firm.

Motion made by Trustee Budinger, Seconded by Trustee Bachran to approve end of year disbursements as provided. Motion carried.

**Disbursements**

Disbursements reviewed through January 8, 2019.

Motion made by Trustee Budinger, Seconded by Trustee Knutson Motion to approve disbursements as presented. Motion carried.

**Unfinished Business**

8. Memorandum of Understanding – DMEA/Elevate Public Access  
 Motion made by Trustee Bachran, Seconded by Trustee Knutson to table to the next the meeting for Attorney Nerlin available to provide the information. Motion carried.
  
9. Ordinance 2019-01 De-Annexation/Disconnection Municipal Code Addition  
 Mayor Stewart introduced for a second read proposed Ordinance 2019-01 was presented to the Board. Mayor Stewart read the title for the record. Motion made by Trustee Bear, Seconded by Trustee Bachran to adopt ordinance 2019-01. Motion carried.

**New Business**

10. Aaron W. Papke, dba Thomas Waldo’s – Transfer of Ownership – Liquor License  
 No issues noted. All documents and payments made. Chief Ferguson reminded the applicants of the requirement to report altercations that occur at the bar. Motion made by Trustee Budinger, Seconded by Trustee Bachran to approve the transfer of ownership application as presented. Motion carried.
  
11. Resolution 2019-01 – Designating Official Posting Location and Official Publication Newspaper. The annual updating the of the official posting place for Town business.  
 Motion made by Trustee Bear, Seconded by Trustee Budinger to adopt Resolution 2019-01 as presented. Motion carried.

12. Resolution 2019-02 – Mutual of Omaha 457 (b) Plan Amendment

Administrator Knight provided an overview of the amendment process and need to adopt changes to the Town retirement plan via resolution Motion made by Trustee Bachran, Seconded by Trustee Budinger to approve Resolution 2019-02 as presented. Motion carried.

13. Personnel Handbook Sections 202 & 209 Amendment – Access to Personnel Files and Medical Information Privacy – (Discussion Only)

Mayor Stewart described the issues he perceives with section 202 and 209 of the personnel handbook, noting that court rulings, including the Delta County Court decision, have altered what is protected records for personnel. Mayor Stewart noted his concern with the broad definition of a personnel file and potential liability, should the handbook agreement with staff be violated by release of documents the handbook defines as privileged. Motion made by Trustee Bear, Seconded by Trustee Bachran to direct the personnel committee and Town Attorney to review and bring a recommendation to the Board. Motion carried.

**Committee Reports**

- Finance & Personnel  
Nothing additional to report.
- Public Works/Utilities/Facilities  
Nothing to report.
- Governmental Affairs/Public Safety  
Meeting January 10th to sort a list of thirteen items and set priorities.
- Tree Board  
The Town has once again been awarded tree city designation.

**Adjournment**

Motion made by Trustee Bear, Seconded by Trustee Knutson to adjourn Motion carried.

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J. Corinne Ferguson, Town Clerk

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Charles Stewart, Mayor

AGENDA SUMMARY FORM



Administrator's Report

Summary:

Notes:

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

AGENDA SUMMARY FORM



Public Works Report

Summary:

Notes:

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

AGENDA SUMMARY FORM



Police Report

Summary:

Notes:

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

# Paonia Police Department

## Law Incident Table, by Date and Time

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**Date Occurred:** 01/01/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
00:17:41	FIREWORKS	200 Block Grand AVE., Paonia, CO	PPD	PPD	CIT
15:18:34	ANIMAL CONTROL	Pan american, ,	PPD		VW

**Total Incidents for this Date: 2**

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**Date Occurred:** 01/02/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
16:32:41	AGENCY ASSIST	HIGHWAY 133 MM8, Paonia, CO	PPD	DIST3	

**Total Incidents for this Date: 1**

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**Date Occurred:** 01/03/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
06:39:00	BURGLARY	3RD ST, Paonia, CO	PPD	PPD	
07:27:38	DOMESTIC	1ST ST & GRAND AVE, Paonia, CO 200	PPD	PPD	
10:58:08	SUSPICIOUS	GRAND AVE, Paonia, CO	PPD	PPD	
12:13:04	Traffic Stop	2ND ST; DONS SUPERMART, Paonia, CO	PPD	PPD	VW

**Total Incidents for this Date: 4**

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**Date Occurred:** 01/04/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
16:31:14	AUTO THEFT	Alder Dr, Paonia, CO	PPD	PPD	
17:20:06	AGENCY ASSIST	GRANGE RD, Paonia, CO	PPD	DIST3	
18:26:47	SHOPLIFTING	2ND ST; , Paonia, CO	PPD	PPD	VW
19:00:38	WELFARE CHECK	2ND ST, Paonia, CO	PPD	PPD	

**Total Incidents for this Date: 4**

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**Date Occurred:** 01/05/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
10:51:01	CIVIL PROBLEM	BOX ELDER AVE, Paonia, CO	PPD	PPD	
12:12:26	AGENCY ASSIST	HWY 133., Paonia, CO	PPD	DIST3	
12:58:19	CITIZEN ASSIST	GRAND AVE; PPD, Paonia, CO	PPD	PPD	
22:00:15	TRESPASS	GRAND AVE; LOUIES PIZZA, Paonia, CO	PPD	PPD	CIT

**Total Incidents for this Date: 4**

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**Date Occurred:** 01/06/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
09:26:07	CRIM MISCHIEF	MINNESOTA AVE, Paonia, CO	PPD	PPD	

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<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
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**Total Incidents for this Date: 1**

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**Date Occurred:** 01/07/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
17:23:32	Code Enforce	GRAND AVE, Paonia, CO	PPD	PPD	VW

**Total Incidents for this Date: 1**

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**Date Occurred:** 01/08/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
06:21:16	911	DORRIS AVE, Paonia, CO	PPD	PPD	
09:21:57	SUSPICIOUS	2ND ST; REEDYS, Paonia, CO	PPD	PPD	
10:30:00	Information	SAMUEL WADE RD, Paonia, CO	PPD	DIST3	
22:03:03	ALARM	3RD ST, Paonia, CO	PPD	PPD	

**Total Incidents for this Date: 4**

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**Date Occurred:** 01/10/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
16:24:44	Code Enforce	BOX ELDER AVE, Paonia, CO	PPD	PPD	WW
16:31:47	Code Enforce	3RD ST, Paonia, CO	PPD	PPD	WW
21:59:10	AGENCY ASSIST	OAK AVE, Paonia, CO	PPD	PPD	

**Total Incidents for this Date: 3**

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**Date Occurred:** 01/11/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
16:35:30	THEFT	NORTH FORK AVE, Paonia, CO	PPD	PPD	
17:12:21	Disturbance	MEADOWBROOK BLVD; PAONIA CARE AND REHABILITATION, Paonia, CO	PPD	PPD	
23:46:31	WELFARE CHECK	VISTA DR; Paonia, CO	PPD	PPD	

**Total Incidents for this Date: 3**

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**Date Occurred:** 01/12/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
09:40:51	THEFT	GRAND AVE; THE DINER, Paonia, CO	PPD	PPD	
11:06:30	SUSPICIOUS	MEADOWBROOK BLVD; PAONIA CARE AND REHABILITATION, Paonia, CO	PPD	PPD	
22:26:35	AGENCY ASSIST	OAK AVE, Paonia, CO	PPD	PPD	
22:42:27	HARASSMENT	ALDER DR, Paonia, CO	PPD	PPD	

**Total Incidents for this Date: 4**

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**Date Occurred:** 01/13/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
10:54:30	Medical/transfe	POPLAR AVE, Paonia, CO	PPD	PPD	
19:54:45	Code Enforce	100 ONARGA AVE, Paonia, CO	PPD	PPD	WW
<b>Total Incidents for this Date: 2</b>					

**Date Occurred:** 01/15/19

<u>Time</u>	<u>Nature</u>	<u>Address</u>	<u>Agency</u>	<u>Loctn</u>	<u>Dsp</u>
09:10:04	CIVIL PROBLEM	GRAND AVE, Paonia, CO	PPD	PPD	
17:18:32	Disturbance	MEADOWBROOK BLVD, Paonia, CO	PPD	PPD	
<b>Total Incidents for this Date: 2</b>					

Total reported: 35      VW=4, WW=3, CIT=2

**Report Includes:**

All dates between `00:00:01 01/01/19` and `00:00:01 01/16/19`, All agencies matching `PPD`, All disposition's, All natures, All location codes, All cities



AGENDA SUMMARY FORM



Treasurer's Report

Summary:

Notes:

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

AGENDA SUMMARY FORM



Disbursements

Summary:

Notes:

Possible Motions:

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

FSBC OPS DISBURSEMENT SUMMARY		
DESCRIPTION	DATES	AMOUNT
CURRENT FSBC OPS BALANCE		81,949.19
TRANSFER FROM COLOTRUST		250,000.00
ACCOUNTS PAYABLE	01/08/19-01/21/19	(111,743.37)
TRANSFER TO PAYROLL	1/15/2019	(16,905.27)
TRANSFER TO PAYROLL	1/29/2019	(20,000.00)
US BANK	WPA LEVERAGE LOAN PAYMENT DUE 2/1/19	(86,937.95)
PAYROLL TAXES	1/18/2019	(16,952.09)
BALANCE AFTER PAYMENT		79,410.51

FSBC SUMMIT DISBURSEMENT SUMMARY		
DESCRIPTION	DATES	AMOUNT
CURRENT FSBC SUMMIT BALANCE		827.91
CURRENT FSBC PAYROLL BALANCE		24.59
TRANSFER FROM OPS		16,905.27
PAYROLL (DIRECT DEPOSIT)	1/18/2019	(16,905.27)
BALANCE AFTER PAYMENT		852.50

FSBC LOC BALANCE		
FSBC CD#1 BALANCE	BRIDGE RESERVE	600,831.78
FSBC CD#2 BALANCE	GENERAL	400,964.56
CD TOTAL		1,001,796.34
LOC DRAW		
BALANCE AVAILABLE SECURING LOC		1,001,796.34

CREDIT CARD		
CHASE	12/23/2018	-
CITIBANK	12/25/2018	-
TOTAL		-

COLOTRUST		
CURRENT BALANCE		428,237.70
TRANSFER TO OPS		(250,000.00)
TOTAL		178,237.70

COLOTRUST RESTRICTED		
CURRENT BALANCE		513,168.36

COLOTRUST RESTRICTED		
CURRENT BALANCE		103,401.38

GRANT FUNDS IN PROCESS		
WPA	WATER PROJECT	184,778.38
TOTAL		184,778.38

BANK BALANCES		
	FSBC	COLOTRUST
AS OF: 1/18/2019		
WWTP	58,045.59	428,237.70
SPACE-TO-CREATE	88,410.06	514,250.18
INT GRANT	25.00	103,619.38
PAYROLL	24.59	
SUMMIT	827.91	
OPS	64,206.19	
CONS.TRUST	27,490.77	
PASS THRU	25.00	
PARK CONTRIBUTIONS	10,450.00	
CD#1	600,831.78	
CD#2	400,964.56	
	<u>1,251,301.45</u>	<u>1,046,107.26</u>
		2,297,408.71

Due Date	Vendor Number	Vendor Name	Invoice Number	Invoice Amount	Discount Amount	Partial Payments	Net Due Amount	Pay	Partial Pmt Amt	Part Pmt Disc Amt
01/22/2019	1043	Advance Plumbing	0404	90.00	.00	.00	90.00			
01/22/2019	1034	BLUE360 MEDIA	INV-39053	217.00	.00	.00	217.00			
01/22/2019	23	CIRSA	190487-P&C	56,454.56	.00	.00	56,454.56			
01/22/2019	23	CIRSA	EXCESS-190	255.00	.00	.00	255.00			
01/22/2019	23	CIRSA	WC-0101201	26,236.00	.00	.00	26,236.00			
01/22/2019	24	City of Delta	120518	311.00	.00	.00	311.00			
01/22/2019	1048	Colorado Code Co	11232	2,361.00	.00	.00	2,361.00			
01/22/2019	209	Colorado Rural Wa	14154	275.00	.00	.00	275.00			
01/22/2019	43	Delta Montrose Ele	1-2019-P	2,543.55	.00	.00	2,543.55			
01/22/2019	43	Delta Montrose Ele	1-2019-W	1,625.00	.00	.00	1,625.00			
01/22/2019	48	Don's Market	01-489960	43.97	.00	.00	43.97			
01/22/2019	368	Double J Disposal	35567-35569	288.00	.00	.00	288.00			
01/22/2019	368	Double J Disposal	35567-35569	288.00	.00	.00	288.00			
01/22/2019	50	Duckworks Auto P	11044-29931	236.78	.00	.00	236.78			
01/22/2019	986	Elevate Fiber	271710-0131	79.95	.00	.00	79.95			
01/22/2019	986	Elevate Fiber	66210-01311	79.95	.00	.00	79.95			
01/22/2019	1074	Hulto, Ellen	FINAL-01211	980.00	.00	.00	980.00			
01/22/2019	482	Larry D Gillenwate	909395	21.41	.00	.00	21.41			
01/22/2019	645	Mail Services, LLC	1669125	371.01	.00	.00	371.01			
01/22/2019	1076	Motorola Solutions	39738	4,664.81	.00	.00	4,664.81			
01/22/2019	122	Paonia Auto Parts	349118-3497	770.94	.00	.00	770.94			
01/22/2019	499	Phonz +	119	214.47	.00	.00	214.47			
01/22/2019	737	Ricoh USA Inc	31283987	127.42	.00	.00	127.42			
01/22/2019	145	Robert's Enterprise	010119-0228	80.00	.00	.00	80.00			
01/22/2019	931	Roop Excavating L	010219-0103	4,360.00	.00	.00	4,360.00			
01/22/2019	931	Roop Excavating L	010719	500.00	.00	.00	500.00			
01/22/2019	931	Roop Excavating L	011419	300.00	.00	.00	300.00			
01/22/2019	931	Roop Excavating L	121918-1220	1,900.00	.00	.00	1,900.00			
01/22/2019	956	SGS North Americ	521-6010619	72.23	.00	.00	72.23			
01/22/2019	956	SGS North Americ	521-6010620	240.08	.00	.00	240.08			
01/22/2019	156	TDS Telecom	1-2019	530.73	.00	.00	530.73			
01/22/2019	162	United Companies	1276557	2,174.57	.00	.00	2,174.57			
01/22/2019	441	USA Blue Book	777196	2,432.32	.00	.00	2,432.32			
01/22/2019	171	Weekender Sports,	33690	605.90	.00	.00	605.90			
01/22/2019	171	Weekender Sports,	33756	12.72	.00	.00	12.72			
Grand Totals:				35	111,743.37	.00	.00	111,743.37		

Cash Requirements Summary

Date	Invoice Amount	Discount Amount	Partial Payments	Net Due Amount	Net Cumulative Amount		
01/22/2019	111,743.37	.00	.00	111,743.37	111,743.37		
Grand Totals:				111,743.37	.00	.00	111,743.37



December 31, 2018

JANE BERRY, TOWN MANAGER  
TOWN OF PAONIA  
PO BOX 460  
PAONIA, CO 81428

RE: Colorado Water Resources and Power Development Authority  
Drinking Water Revolving Fund (DWRf) Leveraged Loan Program

Ladies and gentlemen:

Below is a breakdown of your loan repayment(s) due: 2/1/2019

<u>Loan Number</u>	<u>Principal</u>	<u>Net Interest *</u>	<u>Total</u>
D14A212	\$63,903.73	\$23,034.22	\$86,937.95
<u>Total Amount Due</u>	<u>\$63,903.73</u>	<u>\$23,034.22</u>	<u>\$86,937.95</u>

\* Net interest includes administrative fee (see Exhibit C of Loan Agreement)

Payment instructions for wire and ACH transfer are as follows.  
Please note: If the ACH form requires a payment type, use "DDA."

**Wire and ACH Instructions**

RBK: US BANK NA  
ABA: 091000022  
BNF: US BANK NA  
777 E WISCONSIN AVE  
MILWAUKEE, WI 53202  
DDA: 104792954745  
Additional Info: REF 14878100

If you have any further questions, or you are unable to comply with this procedure, please contact me prior to the payment date at (651) 466-6137 or lucy.vang@usbank.com.

Thank you,

Lucy Vang

Cc: Valerie Lovato, Colorado Water Resources and Power Development Authority

## Report Criteria:

Unpaid transmittals included

Begin Date: ALL

End Date: ALL

Transmittal Number	Name	Invoice Number	Pay Per Date	Pay Code	Description	GL Account	Amount
2							
2	IRS Tax Deposit		01/11/2019	74-00	Federal Tax Deposit Social Security	10-0216	1,010.07
2	IRS Tax Deposit		01/11/2019	74-00	Federal Tax Deposit Social Security	10-0216	1,010.07
2	IRS Tax Deposit		01/11/2019	75-00	Federal Tax Deposit Medicare Pay P	10-0216	311.40
2	IRS Tax Deposit		01/11/2019	75-00	Federal Tax Deposit Medicare Pay P	10-0216	311.40
2	IRS Tax Deposit		01/11/2019	76-00	Federal Tax Deposit Federal Withhold	10-0216	1,489.88
Total 2:							4,132.82
4							
4	Aflac		01/11/2019	63-01	January Coverage	10-0225	240.36
4	Aflac		01/11/2019	63-02	January Coverage	10-0225	49.80
Total 4:							290.16
6							
6	Colorado Dept of Labor		12/28/2018	98-00	SUTA State Unemployment Tax Pay	10-0218	78.71
6	Colorado Dept of Labor		01/11/2019	98-00	SUTA State Unemployment Tax Pay	10-0218	64.80
Total 6:							143.51
9							
9	Colorado Dept of Revenue		12/28/2018	77-00	State Withholding Tax Pay Period: 12/	10-0217	843.00
9	Colorado Dept of Revenue		01/11/2019	77-00	State Withholding Tax Pay Period: 1/1	10-0217	667.00
Total 9:							1,510.00
31							
31	Mutual of Omaha		01/11/2019	51-01	Group# MOORetirement Plan Pay P	10-0220	413.30
31	Mutual of Omaha		01/11/2019	51-01	Group# MOORetirement Plan Pay P	10-0220	587.38
31	Mutual of Omaha		01/11/2019	51-02	Group# MOO Loan Payment Pay Pe	10-0220	66.18
Total 31:							1,066.86
33							
33	FPPA - Fire & Police Pensi		01/11/2019	50-00	FPPA Pay Period: 1/11/2019	10-0219	559.88
33	FPPA - Fire & Police Pensi		01/11/2019	50-00	FPPA Pay Period: 1/11/2019	10-0219	426.57
33	FPPA - Fire & Police Pensi		01/11/2019	90-00	Death & Disability Pay Period: 1/11/2	10-0219	149.30
Total 33:							1,135.75
70							
70	Rocky Mountain HMO		01/11/2019	60-01	February Coverage	10-0223	7,831.43
70	Rocky Mountain HMO		01/11/2019	60-04	January Coverage	10-0223	54.60
Total 70:							7,886.03
71							
71	The Harford		01/11/2019	65-01	Group#013307460001	10-0226	77.83
Total 71:							77.83

Transmittal Number	Name	Invoice Number	Pay Per Date	Pay Code	Description	GL Account	Amount
73							
73	Delta Dental of Colorado		01/11/2019	60-05	Dental RMHMO - Dental Pay Period:	10-0223	193.85
73	Delta Dental of Colorado		01/11/2019	60-05	Dental	01-0223	658.79
Total 73:							852.64
Grand Totals:							17,095.60

Report Criteria:

Unpaid transmittals included  
Begin Date: ALL  
End Date: ALL



Employee Number	Name	85-00 Net Pay Emp Amt
1054	Beardslee, Dominic D	1,172.92
1052	Edwards, Roger	928.53
1002	Ferguson, J. Corinne	1,451.31
1020	Ferguson, Neil	1,674.67
1022	Hinyard, Patrick	718.03
1001	Jones, Cynthia	1,609.10
1000	Knight, Kenneth D	1,758.77
1010	Kolman, Bradley K	277.05
1050	Loberg, Travis	2,243.32
1003	Mojarro-Lopez, Amanda	987.27
1025	Patterson, Taffine A	1,021.81
1055	Redden, Jordan	409.53
1051	Reich, Dennis	984.22
1056	Voight, Steven P	888.60
1024	Winnett, Lorin E	779.94
Grand Totals:		
		15 16,905.27

AGENDA SUMMARY FORM



Memorandum of Understanding – DMEA/Elevate Public Access

Summary:  
Continued agenda item from December 11<sup>th</sup>.

Notes:



Colorado Code Consulting – Building Code Update Proposal

Summary:

Colorado Code Consulting, in conjunction with several other Western Slope communities, are proposing a joint building code update to facilitate cost sharing as well as a set of standard multi-jurisdictional building codes.

Notes:

FYI: The individual costs for meeting attendance will be necessary should CCC President Steve Thomas need to travel to Paonia for a meeting. The project cost will be divided amongst each participating jurisdiction.

Possible Motions:

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:



# Colorado Code Consulting, LLC

## Main Office

4610 S Ulster, Ste. 150  
Denver, CO 80237  
(303) 400-6564  
Fax: (303) 693-0630

## Southern Office

17890 Woodhaven Dr.  
Colorado Springs, CO 80908  
303-895-9988

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December 19, 2018

Ms. Lynn Black, County Administrator  
San Miguel County

Ms. Jennifer Coates, Town Manager  
Town of Ridgeway

Mr. Bill Bell, City Manager  
City of Montrose

Mr. Greg Brinck, Town Manager  
Town of Cedaredge

Ms. Melissa Oelke, City Administrator  
Orchard City

Mr. Ken Knight, Town Manager  
Town of Paonia

Re: Code Adoption Assistance Proposal

Ladies & Gentlemen:

Colorado Code Consulting, LLC (CCC) is highly qualified in the areas of building code administration, plan review and consulting. We are pleased to submit this proposal to provide building code consulting services for your towns on this project. We believe that the code should be used to its fullest. We have staff that are involved at the national level of code development and can provide that level of services to your combined jurisdictions.

Our staff possesses more than 100 combined years of in construction code compliance and enforcement experience. Our staff are experts in their fields and can address most any type of code related issue that arises. Our code consulting team works with our clients to develop innovative solutions to resolve code conflicts where multiple building codes or standards apply to a project and conflict with the design concepts or objectives. We work closely with all of our clients to develop professional relationships that greatly enhance cooperation and the resolution of matters regarding life safety, energy, fire protection, green codes, ADA as well as many other codes, laws and ordinances.

With four offices located in The Denver Tech Center, Colorado Springs, Montrose and Leadville, we are nearby to provide immediate support as we have for other governmental agencies throughout Colorado. We propose two key individuals to be involved in your project. Steve

Thomas and Dan Reardon will be responsible for completing the work outlined in the scope of services below.

Colorado Code Consulting (CCC) will provide the following services:

- CCC will review the current code adoption ordinances and recommend changes based on updated codes.
- CCC will work with the building department staff to develop a code adoption ordinance that is specific to each of your jurisdictions and addresses your needs.
- CCC will work with the collective group to develop a uniform set of amendments between the jurisdictions.
- We request that the jurisdiction provide CCC with a word version of the existing building code adoption ordinance within the municipal code so that it can be updated to 2018 codes. CCC will provide redline updates, deletions and clarifications within this document.
- The jurisdiction will review the redline recommendations and discuss with CCC's team so that it is clearly understood what significant changes are recommended.
- CCC will provide the building code updated as found within the Town's or City's municipal code.
- It is anticipated that all work will be conducted in CCC's offices in the Denver and Montrose area. However, in-person meetings involving Steve Thomas in the jurisdictions have been included in this proposal if needed. Dan Reardon will attend meetings at the hourly rate.

### **Compensation for Code Consulting Services**

#### Schedule of Charges

Those services outlined above will be provided at a proposed fee outlined below. These costs include all travel expenses incurred.

<b>Service</b>	<b>Proposed Fee</b>
Code Consulting Services	\$135.00 per hour not to exceed \$16,875.00
In person meetings if necessary	\$1,250.00 per day

I appreciate your serious consideration of this proposal. If you would like the scope of the services revised, please let us know. If the proposal is acceptable, a contract can be developed prior to starting the work. We look forward to the opportunity to provide our expert services to your firm.

Sincerely,



Stephen L. Thomas  
President

**From:** Dan Reardon

**To:**

**Subject:** Group Code adoption / Colorado Code Consulting Proposal

**Date:** Friday, January 18, 2019 10:08:54 AM

**Attachments:** [Energy Code Implementation plan-revised.pdf](#)

Good morning all:

Based on conversations at our Western Colorado Code Professionals' meeting Tuesday afternoon, all jurisdictions included in this communication are interested in pursuing an update to their adopted Codes. I see by Wednesday's DCI newspaper article that Orchard City is already capitalizing on the guidelines offered (for the first time) for Tiny Homes in the 2018 IRC. As we go forward with this process, each jurisdiction will judge for themselves what fits best for their community; there is value in the more current Codes having incorporated clearer language and recognition of updated materials, technology and ideas into these documents. Plan to use these documents to your best advantage - we highly recommend that you not adopt what you are not prepared to enforce (in a **phased-in** manner as suggested in the closing paragraph).

A common question has been: ***How does this go forward as a group when some jurisdictions could choose not to go forward with updates at this time?*** Not wanting any jurisdiction to feel forced into going forward as a group, we offer the following details as an addendum to the original December 19, 2018 proposal offered by Stephen L. Thomas, President of Colorado Code Consulting, LLC. Steve suggested that each jurisdiction use the Legal Department of their community to formulate a final contract that incorporates the following language into what will then be a unique contract not directly bound to any other jurisdiction.

The final contract is to be based on the 12/19/18 proposal of \$135.00/hour for all CCC work associated with this adoption process, with a cap of \$16,875.00 as a total to be split equally between six jurisdictions (a cap of \$2812.90 each). Meetings for individual jurisdictions where CCC is requested to participate **in person** will be an additional fee of \$135.00/hour if Dan Reardon is asked to participate, or \$1500.00/day if Steve Thomas (or any other geographically-distant CCC employee) is asked to participate. That **in person** consulting fee is to be paid by the jurisdiction requesting our presence at a staff and/or public meeting.

Each community will be given until June 28, 2019 to commit to being a participant in the group adoption.

Should only five (5) communities agree to participate by the 6/28/19 deadline, then the same basic fees will apply (including the cap of \$16,875.00) and will be divided equally. The new individual cap will be \$3379.00. Should the full anticipated time be used to complete our contractual work with your community, the balance of \$566.00 will be due within 30 days of final billing.

Should only four (4) communities agree to participate by the 6/28/19 deadline, then the same basic fees will apply (including the cap of \$16,875.00) and will be divided equally. The new individual cap will be \$4218.75. Should the full anticipated time be used to complete our contractual work with your community, the balance of \$1405.89 will be due within 30 days of final billing.

There will be a guarantee that the individual cap will not exceed \$4218.75 even if fewer than four (4) communities agree to this proposal.

The advantage of doing this as a group is that much of the basic, common ground-work will be

one effort and is figured into the proposal as such. If only four communities sign up it will not change the time invested in the basic ground-work needed for the common interest. We are confident that our group of professionals can provide the assistance needed to get you through the process of updating to the 2018 I-Codes ***as your community chooses to adopt them.***

Gil Rossmiller is a CCC employee who has helped many jurisdictions with Code Education and adoption. Gil is an EXPERT in the field of Energy Conservation as well as every other discipline in the I-Codes - he shared with me a mindset (please see the [attached](#) document) that is helpful in easing contractors, building owners, code-officials and Administrators into the changes associated with adopting and implementing newer Codes. It is advised that the same ***phase-in*** approach be used for all updates to your adopted Codes. Keep in mind that education is a key component in all of this - as a group you can agree to bring in someone like Steve Thomas or Gil Rossmiller to a central location and share the cost of a full-day seminar (if fees for local accommodations are needed, they would have to be considered).

We appreciate your consideration in allowing CCC to be a part of this important process in partnership with your community. Please let me know if you have any questions. Best wishes,  
Dan Reardon

Colorado Code Consulting, LLC  
[www.coloradocode.net](http://www.coloradocode.net)  
[dreardon@coloradocode.net](mailto:dreardon@coloradocode.net)  
1-970-275-4937



## REMEMBER

Patience, do not get in a hurry

Education, Continuous for staff, builders and designers

Partnering, You the builder and the designer are after the same results

Empathy, this is not simple for you, your staff or the builder

Options, the code provides options, let the designer make those choices

## Support Energy Efficiency!

For more information about energy efficiency or energy code compliance, or training contact Colorado Code Consulting or your local building department.

[hmedina@coloradocode.net](mailto:hmedina@coloradocode.net)

[gilrossmiller@coloradocode.net](mailto:gilrossmiller@coloradocode.net)

COLORADO CODE CONSULTING, LLC



Colorado Code Consulting  
4610 Ulster Street, Suite 150  
Denver, Colorado 80237  
303-400-6564

Brochure created by  
Colorado Code Consulting  
with a grant from Xcel Energy



# A Phased Implementation Plan for Energy Code Compliance



If you have adopted an energy code for the first time or would like to start a process for energy code compliance, this stepped approach has been used successfully by many jurisdictions.



Good looking air barrier behind a tub and shower. This must happen prior to the installation of the tub and shower base



# A step by step process

## The Process:

Each step will require training. Many manufactures will provide this training for free. Both contractors and building staff should attend the trainings. Learning at the same place and time helps with consistent compliance and less confusion in the field.



After each training a deadline must be set for compliance.

Another basic requirement is to select a staff member to be your 'Energy Code Champion'. Just like you have a plumbing or mechanical champion, there needs to be that go-to person for the energy code when questions arise.

Fit the energy inspections into your normal routine. For example during a residential rough frame inspection the air barrier details can be verified.

Know that there is not any time limit on finding compliance. Make certain both the trade contractor and your staff are on the same page before moving to the next step.

## 1. Building Shell:

Before an energy compliance process can begin a critical piece is the building shell. This includes the exterior wall cladding, water resistive barriers, flashing and roofing. These items must be clearly detailed on the construction documents and an inspection process is in place. The logic here is that if any bulk water is allowed to enter the building assemblies, all the effort in finding compliance with the energy code would be wasted if the building simply rots from the inside out.

## 2. Building Thermal Envelope:

Construction plans shall include a depiction of the building thermal envelope. What is separating the conditioned space from unconditioned space. (e.g. floors, ceilings, walls, etc.) Compliance for this and air barriers can be done during a rough frame inspection.

## 3. Insulation Installation:

Plans shall indicate the type and R value for all insulation creating the building's thermal envelope. After training, allow two weeks or more for a 'practice run'. This allows trade contractors and building staff to adapt to the new inspection process.

## 4. Residential HVAC Design:

Only after steps 1, 2 and 3 have become part of the normal routine should you begin this step. The finest HVAC design cannot perform properly without a reasonably constructed thermal envelope.

## Example Residential Timeline:

### 1. Building Shell

3 to 6 months. Details on plans and an inspection process in place.

### 2. Building Thermal Envelope

4 to 7 months. Details on plans and an inspection process in place.

### 3. Insulation Installation

3 to 6 months. Details on plans and an inspection process in place.

### 4. Residential HVAC Design

6 to 12 months. Manual J, S and D details on plans and an inspection process in place. This step can take the most training and implementation. Look to the HVAC suppliers for help with training.

---

PLEASE CONTACT US WITH ANY QUESTIONS OR TRAININGS NEEDS ON THIS PROCESS

Colorado Code Consulting, LLC.

[hmedina@coloradocode.net](mailto:hmedina@coloradocode.net)

[gilrossmiller@coloradocode.net](mailto:gilrossmiller@coloradocode.net)



Edesia Community Kitchen – Six Month Review

Summary:

Upon the conditional approval of the 395 Clark Avenue – Edesia Kitchen Special Review – a six-month review was requested to review compliance.

Notes:

**Since Public Hearing, July 2018**

Clerk Note: No issues reported

Administrators Note: No issues reported

Police Note: No complaints reported

Possible Motions:

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

January 16, 2019

VIA ELECTRONIC MAIL ONLY

Board of Trustees, Town of Paonia  
P.O. Box 460  
Paonia, Colorado 81428

RE: Special Review Application – 395 Clark Avenue #A;  
Six Month Review

Dear Trustees:

I represent Callie West and John Cowell who own property and reside within two hundred feet of the warehouse located on 395 Clark Avenue, # A (Edesia). Thank you for placing some limits on Edesia's special uses and for conducting a six (6) month review. Below is a review of your decision to allow Edesia a significant expansion of permitted uses and a six month review from my clients' perspective.

#### Review of Decision

You conducted a public hearing that commenced on July 24, 2018, and continued on July 30, 2018, to consider a variety of expanded uses proposed by Edesia beyond what is allowed by the Paonia Land Use Code (PLUC). As a reminder, Edesia was forced to file a special review application by the Town Administrator after operating in violation of the PLUC. The application submitted did not adhere to Article 4 in any meaningful way. I have attached Exhibit 1, which is a table of the decisions on uses and limitations issued by the Trustees, and Exhibit 2, which are the approved minutes of both meetings with highlights.

#### Six Month Review

To date, there is a lack of compliance as to most of the conditions and limitations of use set by the Trustees. Below, and not necessarily in order of importance, each condition is addressed.

1. Traffic and Parking. Edesia is located at the end of Clark Avenue and there is only one way in and out. The traffic on Clark Avenue has increased substantially due to the expanded uses at the warehouse. There is no parking plan for the warehouse, which is a safety hazard. Edesia was ordered to place signs directing users of the warehouse to park only on warehouse grounds and warning that persons who park on Clark Avenue may be ticketed or towed. This has not been done. Edesia placed handwritten signs, which are not noticeably visible, not permanent, and do not comply with the conditions the Trustees placed on them. Cars ignore the handwritten signs and park on Clark Avenue on both sides. Once in the parking lot, people park wherever there is a spot and there is no organized parking. If a fire were ever to occur, EMS would have a hard time getting to the fire with vehicles parked every which way on Edesia property and with vehicles parked on both sides of Clark Avenue. When the restaurant is open or a special event occurs, Edesia should be required to have a parking attendant to direct traffic. The attached Exhibit 3 contains photographs evidencing this non-compliance
2. Lighting. The lighting has not been redirected, modified, or shielded in any way to mitigate the impact to the residential neighborhood. Lighting which minimizes glare while reducing light trespass on the neighboring properties must be installed. The Edesia lights are on a sensor so when bakery traffic happens in the middle of the night, the Edesia lights go on and off each time bakery staff come and go. These lights are visible to the neighboring properties. PLUC 16-4-50 requires lights be located so as not be distracting to adjoining properties. The attached Exhibit 4 contains photographs evidencing the lack of redirected or shielded lighting.
3. Fire Code Compliance. There is no evidence that the building is compliant with fire code. There is no emergency plan. Upon information and belief, the Town does not have a fire code despite requiring Edesia to comply with it. The fire chief visited Edesia to provide suggestions, none of which have been implemented. The Trustees should query the fire chief about what suggestions were made and make them a condition of operation.
4. Inspections. There have not been any inspections except a commercial kitchen inspection. Whenever there are expanded uses such as a restaurant there should be an inspection and a requirement the premises be brought up to code.

5. Handicap Access. Upon information and belief, there is no handicap access provided such that the building is not ADA compliant. An inspection would identify this issue. There is no visible handicap parking. To allow a new restaurant to operate without handicap accessibility and parking is against federal law.
6. Bakery Operation. The bakery operates all night long and traffic to and from the facility for the bakery disrupts the residential character of the surrounding neighborhood, not to mention the previously discussed issues with the motion lighting caused by this bakery traffic.
7. Restaurant. The restriction that daily operations cease at 9:00 p.m. and noise not be heard in neighboring buildings after 9:00 p.m. is not being followed. The restaurant does not close to the public early enough to stop operations and noise by 9:00 p.m. Often the restaurant staff and cleanup crew are on the premises after 10:00 p.m. The noise after 9:00 p.m. interferes with my clients' efforts to go to sleep at night.
8. Storm Water Drainage. While not a condition placed on Edesia by the Trustees, there is not appropriate storm water drainage control that adheres to County standards. As a result large pools of water collect on the Edesia property and flood the neighboring properties. The PLUC requires storm drainage control approval by the town engineer. PLUC 16-4-50-d.
9. Refuse Screening. While not a condition placed on Edesia by the Town, there is not adequate screening of Edesia's refuse. This is a requirement of the PLUC and is a blight on the surrounding residential character of the neighborhood. The attached Exhibit 5 contains photographs evidencing the lack of screening of Edesia's refuse area.
10. Liability Insurance. Upon information and belief, there has been no proof of adequate liability insurance provided. The Trustees left the amount of required insurance to be determined by the Town Administrator and proof of insurance should be provided as required.

11. Code Compliance. There has been a complete lack of compliance with Article 4 special review application requirements and Edesia has ignored many of the required conditions the Trustees placed on Edesia on July 30, 2018.
12. Paving or Dust Mitigation. The parking lot is noisy, especially when vehicles go from pavement to gravel. There has been no paving. While Edesia placed additional gravel on the parking lot, they have not done any dust mitigation. Adding gravel does not mitigate dust, it just adds more dust and noise.
13. Site Plan. No site plan was provided after the review as required by PLUC 16-4-30.
14. Title Policy. No title policy was provided as is required under PLUC 16-4-30-14.

Given that Edesia continues to limp along without expending any monies to comply with federal, state, Delta County or Paonia's town code, the special use approval should be revoked until such time as Edesia can provide a site plan that complies with all laws, including: handicap access, a parking and traffic plan, lighting redirection, storm water drainage mitigation, some fire mitigation, adequate liability insurance and screening of refuse.

Edesia should not be allowed to operate its expanded uses until it addresses these issues and the building is inspected. The PLUC exists to provide adequate public safety. It is negligent to ignore the code. If Edesia cannot afford to operate within the laws, they should not be allowed the expanded uses.

Sincerely,



Carol A. Viner

Enclosures

cc: Callie West and John Cowell

**TABLE 1 - TRUSTEES DECISIONS AND LIMITATIONS**

No.	TYPE OF USE	LIMITS ON USE
1.	Fabrication and Manufacturing of Prepared and Packaged Food	Approved with no limits; after discussion of hour of operation limit
2.	Fruit and Produce Processing	No limits
3.	Restaurant	only Thurs - Sunday, 7 am-9 pm; no alcohol outside premises; designated smoking area; handicap access; no noise after 9:00 pm; signage identifying Edesia parking; signage no parking on Clark Ave; signage no loitering in parking area; redirect lighting; pave or mitigate dust - parking lot; limit odors
4.	Special Events	Allowed seven (7) days per week up to five (5) times per month; Provide calendar each month
5.	Retail Sales	Seven (7) days per week 7 am - 9 pm
6.	Wholesale	No limits
7.	Class	No limits
8.	Liability Insurance	Annual proof; Limits set by Town Administrator
9.	Fire Code Compliance	No exceptions
10.	Handicap Access	No exceptions
11.	Six Month review	January 30, 2019



**Minutes**  
**Town Board Regular Meeting**  
**Town of Paonia, Colorado**  
**July 24, 2018**

**RECORD OF PROCEEDINGS**

The Regular Meeting of the Town Board of Trustees held Tuesday, July 24, 2018 was called to order at 6:30 PM by Mayor Charles Stewart, followed by the Pledge of Allegiance.

Roll Call:

Trustees present were as follows:

Charles Stewart  
Mary Bachran  
Bill Bear  
Chelsea Bookout  
Karen Budinger  
Samira Hart  
Barry Pennell

Town Staff present were as follows:

Town Administrator Ken Knight  
Clerk Corinne Ferguson  
Finance Officer Cindy Jones  
Police Chief Neil Ferguson  
Public Works Director Travis Loberg  
Treasurer Ross King



A quorum was present, and Mayor Charles Stewart proceeded with the meeting.

**Approval of Agenda**

Mayor Stewart informed the Board that special review co-applicant Mary George was delayed due to a cancelled flight. Discussion ensued regarding notice requirements, the sixty (60) day cease and desist notice, and options regarding the scheduled special review.

Trustee Bookout advised the Board of a potential conflict of interest regarding Edesia Community Kitchen and recused herself from all discussion and action.

Trustee Pennell and Bachran added while it had been intimated publicly of a potential conflict, none exists, and full participation is planned.

Suzanne Watson – Delta Avenue – added her opinion that a conflict of interest exists for the town, due to involvement with Space to Create.

Motion by Trustee Bear, supported by Trustee Bachran to continue with the public hearing as scheduled. Motion carried with five (5) ayes, zero (0) nays, and one (1) abstention.

Motion by Trustee Hart, supported by Trustee Budinger to approve the agenda as presented. Motion carried unanimously.

**Announcements**

Clerk Corinne Ferguson administered the oath of office to Nicholas Rogers, newly hired officer for the Paonia Police Department.

**Recognition of Visitors & Guests**

Bill Brunner – Second Street – stated that he does not believe that laughter, booing, or speaking



out is a disruption of a meeting. He stated it is unlawful to hinder speech and he hopes such outbursts like Mayor Stewarts at the previous meeting will not repeat themselves.

### **Consent Agenda**

Regular Meeting June 26, 2018  
Regular Meeting July 10, 2018  
Special Meeting July 16, 2018  
Aaron W. Papke dba Thomas Waldo's Liquor License Renewal  
Linda M. Little dba 3<sup>rd</sup> Street Bistro Liquor License Renewal

Motion by Trustee Bear, supported by Trustee Hart to approve the consent agenda as presented.  
Motion carried unanimously.

### **Mayor's Report**

Attended the BMW Rally closing ceremony. Mayor Stewart added that attendees are a generous group and he appreciates the contribution to the community.

### **Town Administrator's Report**

1. Town was awarded \$50,000 in grant funding from the Colorado Creative Industries.
2. Town has received over \$100,000 in funding for the Space to Create project so far.
3. Hotchkiss and Paonia have been selected to host the 2019 Rural Philanthropy Days. Trustees are encouraged to participate on a steering or hospitality committee.
4. The used paint pick-up date is August 23<sup>rd</sup> from 9am to finish in the parking lot behind Town Hall.

### **Public Works Department Report**

1. Apple Valley flood clean-up is on-going.
2. Sidewalks and road repair are underway and anticipated to be complete by end of August.
3. The water tank repair begins Monday and anticipated to be complete by end of August.
4. In-Town waterline project begins tomorrow on Dorris Avenue.
5. Stewart Ditch water is low due to the water call for the river. This may impact watering Town Parks and properties.

Suzanne Watson – Delta Avenue – questions regarding the ditch gates being locked.

### **Police Department Report**

1. The current blotter is included in packet.
2. The department call volume is high, 81 calls in two weeks.
3. Code Enforcement/red tags for weeds and junk continue.
4. No issues with the BMW Rally.
5. Officers will be out for training and vacation over the next few weeks.

### **Treasurer's Report**

1. Disbursements and payroll have been reviewed.
2. No updates for title search on old sewer plant have been received.
3. A request for extension for the 2017 audit has been submitted.
4. No official audit firm RFP responses have been received.

### **Public Hearing – Edesia Warehouse – Edesia Community Kitchen Special Review**

Mayor Stewart opened the public hearing for Edesia Warehouse/Edesia Community Kitchen at 7:06pm.

Mayor Stewart explained the public hearing and special review process as well as a brief overview of the purpose for the hearing. A time restriction of fifteen (15) minutes was allotted to the applicant and primary opposing party. A time restriction of two (2) minutes was allotted to

public speakers.

Administrator Knight provided information regarding the property zone and neighboring zones, what is permitted by right versus what is permitted by special review, preliminary report regarding application submittal, review, and accepted filing with the Town, proper posting and publication requirements. In addition, Administrator Knight noted the request by applicant is not a re-zone or variance.

Barbara Heck, chair of the Planning Commission, provided a brief history of the planning meeting held July 9, 2018. Following a four (4) hour meeting the Planning Commission recommended to the board to approve all requested uses with certain restrictions, as stipulated by Administrator Knight and outlined in the draft planning minutes.

Applicant presentation:

John Maddox, co-applicant and co-owner of Edesia Warehouse gave a presentation regarding the informational packet included for the Board. The applicants are requesting the Town Board review the findings and recommendations of the planning commission and Town staff regarding the approval of special review, with restrictions, as provided. Mr. Maddox provided an overview of the permit process working with the town prior to opening the warehouse businesses. The location is primarily used as a business incubator, with an area open for special events as well. Currently Edesia supports six (6) small businesses and over thirty (30) jobs. The restaurant use is currently three (3) nights per week, with food service ending by 8pm.

Open for Board Question and Comment:

Topics discussed were:

- Noise levels
- Review options
- Revoke options
- Business size before unable to host at Edesia
- Attendees
- Parking
- Special Event Calendar
- Retail Sales items
- Screening options
- Fire department input
- Potential setting of precedent
- 1-way street – parking concern

Opposition Presentation:

The floor was opened to Carol Viner, attorney for resident on Clark Avenue, Callie West. MS. Viner provided a packet of information for the Board. Ms. Viner stated Administrator Knight does not have authority to grant an extension for the activities going on at Edesia that have not been Board approved and that activities have continued beyond the cease and desist order sent by the Town Attorney dated June 20<sup>th</sup>. A description of the requested change of uses as well as explanation of potential issues with special events was given. Ms. Viner added concern with emergency entry and exit from the location and along Clark Avenue and noted that according to the municipal code all activities within the I-1 zone must cease at 9pm. Ms. Viner concluded that Ms. West was willing to discuss limits made to approval.

Areas of concern noted:

- Dust mitigation
- Noise mitigation
- Insurance proof
- Inadequate application
- Lack of shared parking agreement
- Parking
- HVAC sound

Open for Board Question and Comments:

Trustee Bear questioned if client would be satisfied should the review be granted with limitations. Ms. Viner stated yes.

Opened for public comment:

Five (5) people spoke in favor of Edesia Warehouse special review request. Topics stated were:

- Opportunity to grow businesses
- Positive growth
- Other uses in area
- Meeting new people
- Place to meet
- Employment
- Economic Development

Seven (7) people spoke hopes the Board can make a good compromise for the neighborhood.

Five (5) people spoke against Edesia Warehouse special review request. Topics stated were:

- Location issues
- Outside of core commercial area
- Speed
- Traffic
- Noise

Mayor Stewart closed the public hearing at 8:56PM.

Mayor Stewart added that should the Board wish to hear any more testimony the public hearing would need to be re-opened.

Motion by Trustee Hart, supported by Trustee Pennell to recess. Motion carried unanimously. Meeting reconvened at 9:10pm

### **Unfinished Business**

None

### **New Business**

#### **Board of Trustees Decision – Edesia Warehouse - Edesia Community Kitchen Special Review Request**

Mayor Stewart read Municipal Code sections 16-2-90 and 16-4-50, the description of light industrial use, site plan review criteria, and performance standards. The staff recommendation was read for the record by Administrator Knight. Mayor Stewart added his wish to address each special review request individually.

**Motion by Trustee Budinger, supported by Trustee Bachran to approve fabrication and manufacturing industry.**

Discussion ensued regarding what fabrication and manufacturing is, and the current manufacturing of food products.

**Motion to amend main motion by Trustee Pennell, supported by Trustee Bachran to approve the fabrication and manufacturing of prepared and packaged food. Motion carried with five (5) ayes, zero (0) nays, and one (1) abstention.**

Motion to amend main motion by Trustee Bear to limit hours 7am to 5pm. Motion failed for lack of second.

Motion to amend main motion by Trustee Hart, supported by Trustee Bear to limit hours 7am to

9pm. Motion withdrawn.

Main amended motion to approve the fabrication and manufacturing of prepared and packaged food carried with four (4) ayes, one (1) nay, and one (1) abstention.

Motion by Trustee Bachran, supported by Trustee Hart to approve fruit and produce processing. Motion carried with five (5) ayes, zero (0) nays, and one (1) abstention.

Discussion ensued regarding manufacturing, with the board determining the issue was included in the decision for fabrication and manufacturing.

Discussion ensued regarding the request for public/private schools. Issues noted were:

- Number of attendees
- Effect on community
- Liquor licensing

Motion by Trustee Bachran, supported by Trustee Hart to extend meeting until 10pm. Motion carried unanimously.

Discussion continued regarding safety plan, bread baking and restaurant use, and signage.

Motion by Trustee Bear, supported by Trustee Hart to set a special meeting to continue deliberation of the special review on July 30, 2018 at 6pm. Motion carried unanimously.

Motion by Trustee Budinger, supported by Trustee Pennell to extend the meeting until 10:30pm.

### **Disbursements**

Motion by Trustee Budinger, supported by Trustee Bookout to authorize the disbursements as reviewed by the Town Treasurer and Finance Committee for July 24, 2018 in the amounts of, \$129,383.36 accounts payable, \$18,406.47 payroll taxes, \$18,991.92 for payroll direct deposit, and \$120,000 transfer. Motion carried unanimously.

**Finance and Personnel:** Trustees Bookout & Budinger:  
Nothing additional to report.

**Public Works:** Trustees Bear & Bachran:

- Met July 19<sup>th</sup>.
- Planning agenda discussion in near future regarding annexation of property to Grand Avenue bridge.

**Governmental Affairs:** Trustees Pennell & Hart:  
Nothing additional to report.

**S2C:** Trustees Budinger & Pennell:  
Received arts market survey and are currently sending in modification suggestions.

**Tree Board:** Trustee Hart:  
Meeting July 25<sup>th</sup>.

### **Adjournment**

Motion by Trustee Bear, supported by Trustee Hart to adjourn the meeting. Motion carried unanimously.

The meeting was adjourned by Mayor Stewart at 10:10pm

s/s \_\_\_\_\_  
J. Corinne Ferguson, Town Clerk

s/s \_\_\_\_\_  
Charles Stewart, Mayor

**Minutes**  
**Town Board Special Meeting**  
**Town of Paonia, Colorado**  
**July 30, 2018**

**RECORD OF PROCEEDINGS**

The Special Meeting of the Town Board of Trustees held Monday, July 30, 2018 was called to order at 6:30 PM by Mayor Charles Stewart, followed by the Pledge of Allegiance.

Trustees present were as follows:

Charles Stewart  
Mary Bachran  
Bill Bear  
Karen Budinger  
Sam Hart  
Barry Pennell

Town Staff present were as follows:

Ken Knight – Town Administrator  
Corinne Ferguson – Town Clerk

A quorum was present, and Mayor Stewart proceeded with the meeting.

**Approval of Agenda**

Motion by Trustee Bachran, supported by Trustee Hart to approve the agenda as presented.  
Motion carried unanimously.

**Unfinished Business**

**Continuation of Board of Trustees Decision – Edesia Warehouse – Edesia Community Kitchen Special Review**

Mayor Stewart noted the Board decision to continue the special review hearing from July 24, 2018. The hearing is closed, and this is an opportunity for the Board to finish deliberation and decision making regarding the special review requests. Trustee Bookout recused herself from discussion and voting at the last meeting and will not be in attendance today. Mary George and John Maddox were present on behalf of Edesia Warehouse.

A synopsis of discussion at the previous meeting was given and discussion ensued regarding the advantage of discussing each request individually.

Motion by Trustee Bachran, supported by Trustee Pennell to discuss restaurants, special events, and public/private schools as one (1) topic. Motion failed with two (2) ayes and three (3) nays.

Public/Private Schools:

Discussion ensued regarding:

- Special events
- Liquor licenses
- Classes vs. workshops

Motion by Trustee Pennell, supported by Trustee Hart to re-open hearing to establish the applicants intent regarding public/private schools. Motion carried unanimously.

The public hearing was opened at 6:16pm.

Mary George stated the school designation was requested due to relationship between Edesia,

Engage, and Technical College of the Rockies and is not intended for regular traditional classroom space.

The public hearing was closed at 6:17pm.

Motion by Trustee Bachran, supported by Trustee Hart to deny the request for use as a public/private school. Motion carried unanimously.

Restaurants:

Discussion ensued regarding:

- Definition of a restaurant
- Traffic
- Noise
- Odor
- Parking issues
- Municipal Code section 16-2-90
- Smoking area

Motion by Trustee Bachran, supported by Trustee Hart to approve restaurant use.

Motion to amend main motion by Trustee Budinger, supported by Trustee Hart to approve restaurant use with conditions. Motion carried unanimously.

Main amended motion to approve restaurant use with conditions carried unanimously.

Staff recommendations included in packet were discussed. Conditions discussed were:

- o Signs directing users of the warehouse, either clients or customers, to park only on warehouse grounds and warning that persons who park on Clark Ave. or within any of the surrounding residential neighborhoods may be ticketed or towed.
- o Lighting shall be focused onto the warehouse site and parking area and away from the surrounding residential neighborhoods and shielding for said lighting may need to be affixed to achieve this affect.
- o Noise shall be limited so as not to interfere with the surrounding residential neighborhoods. Any recorded or live music after 9:00 pm should not be evident within a neighboring building.
- o Odors shall be limited to the greatest extent possible.
- o Alcohol – Any use of alcohol will only be allowed with Special Event Permit approved by the Board of Trustees. There shall be prominent signs posted detailing where alcohol is and is not allowed – it shall be the responsibility of the operator of the warehouse that the holder of the Special Event Permit follow these restrictions. No alcohol will be allowed in the ‘front’ parking lot. No alcohol will be served after 10:00 pm without expressed written approval of the Board of Trustees, signs to this effect will be posted within the building.
- o The operators of the warehouse and accompanying businesses therein will endeavor to limit deliveries to between 7:00 am and 5:00 pm.
- o A designated Smoking Area be established away from the Parking Lot and ‘Main’ entrance to the building away from neighboring buildings and residences.
- o Other conditions as believed reasonable by the Planning Commission and/or the Board of Trustees.
- o Signs against loitering in the parking area.
- o Parking lot paving or dust control plan.

Motion by Trustee Budinger, supported by Trustee Bachran to approve restaurant use including the recommendation of conditions provided by Administrator Knight.

Motion to amend main motion by Trustee Pennell to discuss conditions one-by-one. Motion failed for lack of second.

Main motion to approve restaurant use including the recommendation of conditions provided by Administrator Knight failed with one (1) aye and four (4) nays.

Motion by Trustee Pennell, supported by Trustee Bachran to require signage identifying Edesia parking area. Motion carried unanimously.

Motion by Trustee Bear, supported by Trustee Budinger to limit parking on Edesia property and not along Clark Avenue. Motion carried with four (4) ayes and one (1) nay.

Motion by Trustee Bear, supported by Trustee Hart to require the applicant take action to pave or mitigate dust in parking lot. Motion carried with four (4) ayes and one (1) nay.

Motion by Trustee Hart, supported by Trustee Bachran to require no loitering signs be placed in parking area. Motion carried unanimously.

Motion by Trustee Bachran, supported by Trustee Hart to direct lighting at warehouse on property and away from the surrounding areas, specifically the residential neighborhood. Motion carried unanimously.

Motion by Trustee Bachran, supported by Trustee Hart that noise be limited so not to interfere with neighbors or be heard in neighboring buildings after 9pm. Motion carried unanimously.

Noise as a nuisance ordinance was discussed.

Motion by Trustee Bear, supported by Trustee Budinger to require odors be limited/mitigated as much as possible. Motion carried with four (4) ayes and one (1) nay.

Motion by Trustee Bear, supported by Trustee Hart that no alcohol be permitted outside of the warehouse.

Motion to amend main motion by Trustee Bachran, supported by Trustee Hart that no alcohol be permitted outside of the warehouse and seating area. Motion to amend was a roll call tie vote.

Aye – Trustees Hart, Bachran  
Nay – Trustees Pennell, Bear  
Abstain – Trustee Budinger

Mayor Stewart broke tie with a nay vote. Motion to amend failed.

Main motion of no alcohol be permitted outside of the warehouse carried with four (4) ayes and one (1) nay.

Motion by Trustee Pennell, supported by Trustee Hart to restrict restaurant use from Thursday through Sunday, 7am to 9pm. Motion carried unanimously.

Motion by Trustee Hart, supported by Trustee Budinger to require a designated smoking area away from the residential neighborhood. Motion carried unanimously.

Motion by Trustee Bear, supported by Trustee Pennell to require the warehouse include provisions for handicapped access as required by the building code and other Town ordinances. Motion carried unanimously.

Motion by Trustee Pennell, supported by Trustee Bachran to approve the use of the warehouse for special events seven (7) days a week, 7am to 9pm.

Motion by Trustee Bear, supported by Trustee Hart to re-open the public hearing to ask a specific question regarding special events only. Motion carried unanimously.

The public hearing was opened at 7:23pm.

Ms. George stated the special events are for non-profit fundraising and are on a limited basis.

The public hearing was closed at 7:25pm.

The motion was re-stated for discussion. Motion by Trustee Pennell, supported by Trustee

Bachran to approve the use of the warehouse for special events seven (7) days a week, 7am to 9pm.

Motion to amend main motion by Trustee Bachran, supported by Trustee Hart to limit special events to once per week.

Motion to amend amendment by Trustee Budinger, supported by Trustee Bachran to limit special events to five times per month. Amended amendment carried with three (3) ayes and two (2) nays.

Main amended motion to approve the use of the warehouse for special events seven (7) days a week from 7am to 9pm up to five times per month carried with four (4) ayes and one (1) nay.

Retail Business:

Discussion ensued regarding:

- Business hours
- Sales taxes

Motion by Trustee Bachran, supported by Trustee Hart to approve retail sales.

Motion to amend main motion by Trustee Bear to limit to 8am to 5:30pm. Motion failed for lack of second.

Motion to amend main motion by Trustee Pennell, supported by Trustee Bachran to limit hours 7am to 9pm, seven (7) days a week. Motion carried with three (3) ayes and two (2) nays.

Main amended motion carried with three (3) ayes and two (2) nays.

Motion by Trustee Budinger, supported by Trustee Hart to permit wholesale use. Motion carried unanimously.

Motion by Trustee Bachran, supported by Trustee Budinger to approve class use.

Discussion ensued regarding classroom use and workshops.

Motion carried with four (4) ayes and one (1) nay.

Discussion ensued regarding insurance for property and businesses.

Motion by Trustee Budinger, supported by Trustee Bachran to open hearing for question specific to insurance. Motion carried unanimously.

The public hearing was opened at 7:50pm.

Ms. George provided an overview of the type of insurance Edesia carried.

The public hearing was closed at 7:51pm.

Motion by Trustee Budinger, supported by Trustee Hart to require general liability insurance be provided annually for Edesia Warehouse and the businesses using the location, insurance amount to be determined by the Town Administrator. Motion carried unanimously.

Motion by Trustee Bear, to implement storm water drainage requirements in section 16-4-50(d) in the municipal code. Motion failed for lack of second.

Motion by Trustee Bear, supported by Trustee Bachran that the applicant provide documentation showing they are compliant with fire code and fire department recommendations. Motion carried unanimously.

Discussion ensued regarding enforcement and review procedures.



Motion by Trustee Budinger, supported by Trustee Hart to set a Board review for six (6) months.  
Motion carried unanimously.

Motion by Trustee Bachran, supported by Trustee Hart to require Edesia supply a calendar of event to Town staff each month. Motion carried unanimously.

**Adjournment**

Motion by Trustee Hart, supported by Trustee Bachran to adjourn the meeting. Motion carried unanimously. Meeting adjourned at 8:15pm.

\_\_\_\_\_  
s/s  
J. Corinne Ferguson, Town Clerk

\_\_\_\_\_  
s/s  
Charles Stewart, Mayor



**EXHIBIT**  
**3**





















**EXHIBIT**  
**4**







**EXHIBIT**  
**5**







January 19, 2019

In reply to the letter from Masters and Viner attorney for Callie West.

1. Traffic and Parking, We have placed no parking signs where we said we would, we have more than ample parking on our lot and whenever we have a large event we do have someone outside to direct parking. We always ask that our customers not park on Clark Ave. It is not our job to police parking on a public street and cannot control who parks on Clark Ave and if anyone is violating the town rules then the town should put up appropriate signage. We have spoken with the Paonia Fire Dept. and they have approved our buildings parking plan and have no concern about safety. Much of the parking going on at this time on Clark Ave has been associated with the Silver Leaf development.
2. Our lighting is on a motion sensor for safety and security reasons, this ensures the lights do not get left on at night to distract neighbors. The sensors shut lights off after a few minutes. The lights all face down toward the ground.



3. We have again spoken with the fire department about fire code and we have complied with all codes. We also have fire sensors and a contract with Superior Fire Alarm to ensure we have the best protection possible.

4. The town manager has been to Edesia several times and I am not sure what other inspections are required, we are certified by the Delta County Health Department and have passed all building inspections by the town building inspector for any permits pulled for projects or renovations. We have placed signage where we said we would about parking, loitering and smoking as requested.



5. We have provided handicap parking space that is marked, we have doors accessible to wheelchair access and handicap access bathroom facilities.



6. Yes the bakery does operate sometimes in early hours but not all night long. At this time the bakery only works until 6pm.
7. Yes, there are people working at the kitchen sometimes after 9pm. We are very considerate about noise and many times have walked outside to check with our decibel meter. We have never had a complaint from any other neighbor.
8. Storm drainage is a problem on the right of way in front of the building especially since the road was paved at Ms. West's insistence and all of the water drains off the pavement and into the right of way. Our parking lot is graded in such a way that it does not drain into the right of way where the drainage problem exists. It is possible some of that water is drainage from the Silverleaf project and is being addressed as they finish their landscaping plans.
9. Refuse screening, we have new trash barrels with lids, trash is never out of the barrels or strewn on the ground. We have moved all of our recycle to the rear of the building and have a weekly pickup service. The photo included in the lawyers letter is hardly offensive.



10. Lack of Liability Insurance. I will drop off copies of our insurance policies for both 395 Clark LLC and HMF Inc. to the town on Monday before the meeting. We have always had insurance since the day we purchased the building and this is an outright lie to say that we don't have insurance and is libelous.
11. Code compliance, no details as to what we are in violation of.
12. Paving or dust mitigation. Our graveling of the parking lot was our best effort of dust mitigation as it was previously just dirt, uneven and quite dusty. We do not have the resources to pave the lot nor was this a requirement. I don't know why they have included pictures of our parking lot with snow covering it. Yes it does snow on our lot and we have had it plowed, is there something else we are supposed to do about the snow?
13. We have provided a site plan and a title plan to the town as per request last summer.

After reading the accusations from Ms. West's attorney and seeing that they are blatantly lying and not getting the facts correct (and not for the first time) we find that they are not very credible in their work and ask that the town disregard their request for us to shut down operations at Edesia.

Our intention all along has been to be good neighbors and to comply by town/county laws. Ms. West has never once approached us as a neighbor to make a request about anything. I don't find this to be very neighborly or respectful. We have always been open to making changes or helping to solve problems if they are legitimate and we can control them. We are still open to changes if the town sees a problem with any other issues that come up.

Ms. West built her home next to this building with it's parking lot and it's industrial identification.

Thank you for reviewing our responses and we are open to questions and any suggestions that are reasonable. Our goal is to comply in full with the Town rules and regulations.

Mary George

Manager/Owner 395 Clark LLC

Owner HMF Inc.



Paonia Park Memorial Wall – Update and Request for Support

Summary:

Dave Bradford – member of the Miner’s Stature Memorial Park committee requested at the last Board meeting to be placed on the agenda for a request for support from the Town.

Notes:

Financials:

2018 – Initial projection for Miner’s Park entry upgrade: Approx. \$25,000  
 2018 – End of year expenditures for Miner’s Park Entry: Approx. \$38,000, which includes \$8,000, re-allocated by Travis from public works projects, which is to be allocated back to his projects once the miner’s wall reaches full funding.

2019 – No funds were budgeted for the Memorial Entry during the fall budget season. All park funds are designated to a specific project per the approved budget. Currently no discretionary funds are available.

Possible Motions:

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

ACCT#	ACCOUNT DESCRIPTION	2017 ACTUAL	2018 BUDGET	2018 BUDGET	2018 ACTUAL	10		2019 BUDGET	NOTES
						2018 ANNUALIZED	2018 EST BUDGET		
<b>GENERAL FUND - PARKS</b>									
16	SALES TAX - TOWN			17,000.00	17,000.00	17,000.00	17,000.00	66,056.00	
16 1-33-07	SEVERANCE TAX	7,547.58	7,500.00	7,500.00	7,093.79	7,093.79	7,093.00	7,050.00	
16 1-33-08	MINERAL LEASING	9,372.72	9,300.00	9,300.00	6,002.47	6,002.47	6,002.00	6,000.00	
16 1-35-01	RENTS & ROYALTIES	10,706.50	10,841.00	10,841.00	3,860.00	4,632.00	5,500.00	5,900.00	
16 16-35-09	PARK CONTRIBUTIONS			300.00	7,600.00	9,120.00	2,500.00	-	
		<b>27,626.80</b>	<b>27,641.00</b>	<b>44,941.00</b>	<b>41,556.26</b>	<b>43,848.26</b>	<b>38,095.00</b>	<b>85,006.00</b>	
16	TOTAL PAYROLL	2,772.69	2,679.05	9,607.07	850.18	1,020.22	1,200.00	33,811.00	
	WORK COMP				467.00		467.00	475.00	
16 1-46-15	OFFICE SUPPLIES	-	-	125.00	80.93	97.12	85.00	100.00	
16 1-46-16	OPERATING SUPPLIES	4,968.23	3,710.00	3,710.00	3,460.33	4,152.40	4,250.00	4,750.00	
	GENERAL								4,600.00
	ARBOR DAY TREE								150.00
16 1-46-17	POSTAGE	-	100.00	100.00	25.00	30.00	50.00	100.00	
16 1-46-20	LEGAL SERVICES	-	3,500.00	3,500.00	125.00	150.00	125.00	500.00	
16 1-46-22	REPAIRS & MAINTENANCE	7,546.74	9,545.00	9,545.00	5,641.48	6,769.78	6,650.00	14,470.00	
	GENERAL								
	TREE TRIMMING								
	FILTRATION								
	DITCH BOX LID								
16 1-46-23	VEHICLE EXPENSE	42.77	1,000.00	1,000.00	407.56	489.07	450.00	500.00	
16 1-46-24	RENTALS	80.00	500.00	1,501.50	1,651.50	1,981.80	1,700.00	2,000.00	
16 1-46-25	SHOP EXPENSE	-	100.00	100.00	1,321.64	1,585.97	1,400.00	1,775.00	
16 1-46-26	TRAVEL & MEETINGS	-	-	-	-	-	-	-	
16 1-46-27	INSURANCE & BONDS	4,179.91	3,382.27	3,474.00	3,473.18	4,167.82	3,475.00	3,500.00	
16 1-46-28	UTILITIES	7,303.72	7,200.00	7,200.00	6,018.66	7,222.39	7,225.00	7,200.00	
16 1-46-29	TELEPHONE	105.68	106.00	106.00	88.06	105.67	110.00	100.00	
16 1-46-30	PUBLISHING & ADS	-	-	10.00	9.50	11.40	10.00	25.00	
16 1-46-32	FEES & PERMITS	749.75	490.00	510.00	658.74	790.49	660.00	700.00	
16 1-46-40	MISCELLANEOUS	-	-	-	-	-	-	-	
16 1-46-42	CONTRACT SERVICES	43,928.00	2,000.00	2,000.00	2,000.00	2,400.00	2,000.00	2,000.00	
16 1-46-70	CAPITAL OUTLAY	-	-	-	-	-	-	13,000.00	
	GRANT MATCH								12,000.00
	TREE BOARD								1,000.00
16 1-49-99	TRANSFER IN - (OUT)	-	-	-	-	-	-	-	
	PARKS	71,677.49	34,312.32	42,488.57	26,278.76	30,974.11	29,857.00	85,006.00	
		<b>(44,050.69)</b>	<b>(6,671.32)</b>	<b>2,452.43</b>	<b>15,277.50</b>	<b>12,874.15</b>	<b>8,238.00</b>	<b>0.00</b>	

71

DRAFT @ 11/13/18		2017	2018	2018	2018	10	2018	2019	NOTES
ACCT#	ACCOUNT DESCRIPTION	ACTUAL	BUDGET	BUDGET	ACTUAL	ANNUALIZED	EST BUDGET	BUDGET	
<b>CONSERVATION TRUST FUND</b>									
40 4-38-01	CONSERVATION TRUST-REV.	8,175.67	7,800.00	7,800.00	6,248.68	8,331.57	8,200.00	8,000.00	
40 4-38-02	INTEREST	9.44	9.00	9.00	7.33	11.00	11.00	15.00	
	TOTAL INCOME	8,185.11	7,809.00	7,809.00	6,256.01	8,342.57	8,211.00	8,015.00	
40 4-46-20	EXPENDITURES-CTF	4,221.50	26,050.00	26,050.00	25,150.00	30,180.00	27,115.50	8,015.00	TOWN PARK
	TOTAL EXPENDITURES	4,221.50	26,050.00	26,050.00	25,150.00	30,180.00	27,115.50	8,015.00	PLAYGROUND
		3,963.61	(18,241.00)	(18,241.00)	(18,893.99)	(21,837.43)	(18,904.50)	-	
	CONS TRUST BEGINNING RESER	14,940.89	18,904.50	18,904.50	18,904.50	18,904.50	18,904.50	0.00	
	CONS TRUST INCOME	8,185.11	7,809.00	7,809.00	6,256.01	8,342.57	8,211.00	8,015.00	
	CONS TRUST EXPENSE	4,221.50	26,050.00	26,050.00	25,150.00	30,180.00	27,115.50	8,015.00	
	AUDIT ADJUSTMENT								
	NET CHANGE	3,963.61	(18,241.00)	(18,241.00)	(18,893.99)	(21,837.43)	(18,904.50)	-	
	CONS TRUST ENDING RESERVE	18,904.50	663.50	663.50	10.51	(2,932.93)	0.00	0.00	



- 1) THE PAONIA TOWN PARK MEMORIAL WALLS –  
Dedicated to all who settled in the North Fork Valley, contributed to its development and built the businesses and industries that created the Town of Paonia and the Paonia Town Park. (227 characters) 12" x 12" space \$250
- 2) THE NORTH FORK VALLEY – originally part of the homeland of the indigenous people named the Utes. Calling themselves Nuchuu, meaning the People, they lived in western Colorado until 1881. (188 characters) 12" x 12" space \$250
- 3) DELTA COUNTY - established by the Colorado Legislature on February 11, 1883. (76 characters) 4" x 8" space \$100
- 4) THE FIRST FRUIT TREES AND ORCHARDS – established by Samuel Wade in the 1880s. Wade is also considered the founder of the Town of Paonia. (137 characters). 12" x 12" space, with art \$300
- 5) CATTLE RANCHING – started in the 1880s; sheep ranching came later. (69 characters). 8" x 8" space, with art \$250
- 6) NORTH FORK VALLEY COAL – first discovered by geologist Ira Q. Sanborn in 1893 near present day Somerset. (87 characters). 8" x 8" space, with art \$250
- 7) TOWN OF PAONIA - incorporated on September 3, 1902. (53 characters) 8" x 8" space, with art \$250
- 8) DENVER & RIO GRANDE RAILROAD - built a line into the North Fork Valley in 1902, greatly increasing economic opportunities for the valley. (139 characters) 8" x 8" space \$200.
- 9) PAONIA TOWN PARK – hayfields owned by the Clark Family from 1890 to 1921. Citizen efforts initiated the creation of a town park in 1922 and were successful when the Paonia Town Board accepted the park on May 6, 1924 – Mayor A.S. McKee, Trustees – Bradshaw, Cady, Crissman, Erickson, Furnoy and Sweet. (300 characters) 12" x 12" space \$250
- 10) THE COAL MINER STATUE - created by sculptor Gary Prazen of Richfield, Utah in 1982. The purpose of the statue is to commemorate the hard-working coal miners who lost their lives in the North Fork coal mines. The statue was paid for by contributions from miners, the United Mine Workers Union and North Fork coal mines. Installed on November 3, 1982 and dedicated on Memorial Day May 30, 1983 – Mayor Donald Wood, Trustees – Ken Byers, Richard Kinser, John Meckes, Jim Minerich, Max Moody, and Forrest Wheeler. (511 characters) 2-12" x 12" spaces \$500

11) PAONIA TOWN PARK COAL MINERS PLAZA AND ENTRANCE - reconstructed in May 2018. Project approved by Paonia Town Board – Mayor Charles Stewart, Trustees – William Bear, Chelsea Bookout, David Bradford, Karen Budinger, Barry Pennel and Suzanne Watson. (249 characters). 12" x 12" space \$250

Total Cost \$2,850

Space Required for Information:

7-12"x 12" = 1,008 sq.in.

4 – 8"x 8" = 256 sq.in.

1 – 4"x8" = 32 sq.in.

Total 1,296 sq. in. (87% of the space available on a single panel.)

Space Available per panel:

5 -12"x 12" = 720 sq.in.

7 – 8"x 8" = 448 sq.in.

10 – 4"x8" = 320 sq.in.

22 Total 1,488 sq. in. Each panel can generate \$3,650.

Prices:

4"x8" 80 characters \$100.

8"x 8" 160 characters \$200; with art 80 characters \$250.

12"x 12" 320 characters \$250; with art 225 characters \$300.

AGENDA SUMMARY FORM



Resolution 2019-03 Adopting a Policy Concerning the Destruction, Disposal, & Protection of Records Containing Personal Identifying Information

**Summary:**  
House Bill 18-1128 compliance, adopting a procedure for the handling of personal information.

**Notes:**

**Possible Motions:**

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

**TOWN OF PAONIA, COLORADO  
RESOLUTION 2019-03**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF PAONIA, COLORADO, ADOPTING A POLICY CONCERNING THE DESTRUCTION, DISPOSAL AND PROTECTION OF RECORDS CONTAINING PERSONAL IDENTIFYING INFORMATION**

**WHEREAS**, during the 2018 legislative session, the state of Colorado adopted House Bill 18-1128, which was enacted as C.R.S. § 6-1-713, 713.5, 716 for certain covered entities and § 24-73-101, *et seq.* (the "Act") for government entities, and went into effect on September 1, 2018; and

**WHEREAS**, the Act requires all "governmental entities," which includes statutory towns, to adopt and maintain a written policy for the destruction or disposal of paper and electronic documents containing "Personal Identifying Information;" and

**WHEREAS**, the Act also sets forth requirements regarding the protection of Personal Identifying Information and procedures to follow in the event of a breach; and

**WHEREAS**, in order to ensure compliance with the Act, the Board of Trustees of the Town of Paonia ("Town") desires to adopt a policy concerning the destruction, disposal and protection of Personal Identifying Information that shall apply to all employees and elected officials of the Town.

**NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF TRUSTEES HEREBY ADOPTS THE TOWN OF PAONIA POLICY CONCERNING THE DESTRUCTION, DISPOSAL AND PROTECTION OF RECORDS CONTAINING PERSONAL IDENTIFYING INFORMATION, AS SET FORTH BELOW:**

**Section 1.** The Town hereby adopts the attached Policy Concerning the Destruction, Disposal and Protection of Records Containing Personal Identifying Information attached hereto and incorporated herein as Exhibit A.

**APPROVED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019, by the Board of Trustees for the Town of Paonia at a duly called regular meeting of the Board of Trustees.

**TOWN OF PAONIA, COLORADO**

By: \_\_\_\_\_  
Charles Stewart, Mayor

**ATTEST:**

By: \_\_\_\_\_

J. Corinne Ferguson, Town Clerk  
**POLICY CONCERNING THE DESTRUCTION, DISPOSAL AND PROTECTION OF  
RECORDS CONTAINING PERSONAL IDENTIFYING INFORMATION**

**ARTICLE I. PURPOSE**

The purpose of this Policy Concerning the Destruction, Disposal and Protection of Records Containing Personal Identifying Information (“**Policy**”) is to provide guidance to Town of Paonia employees, department heads and elected officials (collectively referred to herein as the “**Town Parties**”) for the proper handling of Personal Identifying Information, as required by C.R.S. § 24-73-101, *et. seq.* (the “**Act**”).

This Policy shall establish a written policy for the destruction or proper disposal of paper and electronic records containing Personal Identifying Information (defined below) and set forth requirements regarding the protection of Personal Identifying Information, and procedures should a breach regarding Personal Identifying Information occur.

This Policy shall apply to all Town Parties.

**ARTICLE II. DEFINITIONS**

1. “**Biometric Data**” means unique biometric data generated from measurements or analysis of human body characteristics for the purpose of authenticating the individual when he or she accesses an online account.
2. “**Departments**” means all current Town departments and any department added after the adoption of this Policy.
3. “**Determination that a Security Breach Occurred**” means the point in time at which there is sufficient evidence to conclude that a security breach has taken place.
4. “**Encrypted**” means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.
5. “**Medical Information**” means any information about a consumer’s medical or mental health treatment or diagnosis by a health care professional.
6. “**Notice**” means:
  - a. Written notice to the postal address listed in the Town records;
  - b. Telephonic notice;
  - c. Electronic notice, if a primary means of communication by the Town with a Colorado resident is by electronic means or the notice provided is consistent with the provisions regarding electronic records and signatures set forth in the federal

"Electronic Signatures in Global and National Commerce Act," 15 U.S.C. sec. 7001 *et seq.*; or

- d. Substitute notice, if the Town demonstrates that the cost of providing notice will exceed two hundred fifty thousand dollars, the affected class of persons to be notified exceeds two hundred fifty thousand Colorado residents, or the Town does not have sufficient contact information to provide notice. Substitute notice consists of all of the following:
  - i. E-mail notice if the Town has e-mail addresses for the members of the affected class of Colorado residents;
  - ii. Conspicuous posting of the notice on the Town website; and
  - iii. Notification to major statewide media.
7. **"Personal Identifying Information"** means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; Biometric data, as defined in C.R.S. § 24-73-103(1)(a); an employer, student, or military identification number; or a financial transaction device, as defined in C.R.S. § 18-5-701(3), or date and place of birth, mother's maiden name, criminal, medical records, financial records, and educational transcripts (see 2 C.F.R. § 200.82).
8. **"Personal Information"** means:
  - a. A Colorado resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident, when the data elements are not encrypted, redacted, or secured by any other method rendering the name or the element unreadable or unusable: social security number; driver's license number or identification card number; student, military, or passport identification number; medical information; health insurance identification number; or Biometric data, as defined above;
  - b. A Colorado resident's username or e-mail address, in combination with a password or security questions and answers, that would permit access to an online account; or
  - c. A Colorado resident's account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to that account.
  - d. **"Personal Information"** does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.
9. **"Security Breach"** means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of Personal Information maintained by the Town. Good faith acquisition of Personal Information by an employee or agent of the Town for the purposes of the Town is not a security breach if the Personal Information is not used for a purpose unrelated to the lawful government purpose or is not subject to further unauthorized disclosure.

10. **“Third-Party Service Provider”** means an entity that has been contracted to maintain, store, or process Personal Identifying Information on behalf of the Town.

The definitions set forth in the Act are hereby incorporated into this Policy to the extent not set forth above. In the event of any conflict between a definition in the Act and a definition in this Policy, the definition in the Act shall control.

### **ARTICLE III. DISPOSAL OF PERSONAL IDENTIFYING INFORMATION**

Section 1. Disposal and Destruction. Unless otherwise required by state or federal law or regulation, after a record has met the minimum retention period as defined in the Town’s Records Retention Schedule, as amended from time to time, paper or electronic records within the custody or control of the Town that contain Personal Identifying Information will be destroyed by either shredding, erasing, or otherwise modifying the Personal Identifying Information to make the Personal Identifying Information unreadable or indecipherable through any means. Each Town department shall implement procedures and policies to address the specific nature of its records to ensure compliance with this Policy and the Act. The Town shall not be responsible for ensuring destruction of Personal Identifying Information by any Town Party that is required by state or federal agencies to use one or more software programs, which may include storage of data, located on servers not within the immediate control of the Town.

Section 2. Litigation Holds. A **“Litigation Hold”** refers to a period of time when Town Parties have a duty to preserve certain records that may be pertinent to anticipated, pending or ongoing litigation. Such period of time commences when the litigation involving the Town is initiated or reasonably anticipated or foreseeable. During such period, Town Parties shall preserve all records directly or indirectly related to such pending or threatened litigation and suspend deletion, destruction or disposal of such records. A Litigation Hold overrides a record that is eligible for destruction under the Town Records Retention Schedule or Article III of this Policy.

### **ARTICLE IV. PROTECTION OF PERSONAL IDENTIFYING INFORMATION**

Section 1. Protection by the Town. The Town shall protect Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction. Each department shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Personal Identifying Information given the nature and size of the Town.

Section 2. Third Party Service Providers. The Town shall require any Third-Party Service Provider it engages to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Personal Identifying Information disclosed to the Third-Party Service Provider and reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction. Each department shall ensure that in all contracts with Third Party Service Providers that either do, or could result in, the exchange of personal identifying information, contain contractual terms to ensure such Third Party Service Providers are subject to and abiding by the terms of the Act and this Policy.

It shall not be considered a disclosure of Personal Identifying Information to a Third-Party Service Provider if the Town retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the Personal Identifying Information and the Town implements and maintains technical controls reasonably designed to help protect the Personal Identifying Information from unauthorized access, modification, disclosure, or destruction; or effectively eliminate the Third-Party Service Provider's ability to access the Personal Identifying Information, notwithstanding the Third-Party Service Provider's physical possession of the Personal Identifying Information.

#### **ARTICLE V. INTERNAL NOTIFICATION AND INVESTIGATION OF SUSPECTED SECURITY BREACH OF PERSONAL INFORMATION**

If any Town Party suspects that a Security Breach may have occurred, it must immediately notify the Town Manager and conduct a good faith and prompt investigation to determine the likelihood that Personal Information has been or will be misused.

Unless the investigation determines that the misuse of information regarding a Colorado resident has not occurred and is not reasonably likely to occur, the Town shall give Notice to the affected Colorado residents, as provided in Article VI and take further action as necessary under Article VII. If the investigation determines that the misuse of information regarding a Colorado resident has not occurred and is not reasonably likely to occur, the Town shall not take further action pursuant to this Policy.

#### **ARTICLE VI. NOTICE OF BREACH IF MISUSE OF INFORMATION HAS OCCURRED OR IS REASONABLY LIKELY TO OCCUR**

If the Town determines that a Security Breach occurred, the Town shall provide Notice to affected Colorado residents as set forth in this Article VI.

Section 1. Timing of Notice. Notice shall be in the most expedient time possible and without unreasonable delay, but no later than thirty (30) days after the date of determination that a Security Breach occurred. Provision of Notice shall be consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the Security Breach and to restore the reasonable integrity of the computerized data system.

Section 2. Content of Notice. If the Town is required to provide Notice, it shall provide the following information to all affected Colorado residents:

1. The date, estimated date, or estimated date range of the Security Breach;
2. A description of the Personal Information that was acquired or reasonably believed to have been acquired as part of the Security Breach;
3. Information that the resident can use to contact the Town to inquire about the Security Breach;
4. The toll-free numbers, addresses, and websites for consumer reporting agencies;
5. The toll-free number, address, and website for the Federal Trade Commission; and



6. A statement that the resident can obtain information from the Federal Trade Commission and credit reporting agencies about fraud alerts and security freezes.

If the investigation determines that the type of Personal Information that was misused or is reasonably likely to be misused is a Colorado resident's username or e-mail address, in combination with a password or security questions and answers, that would permit access to an online account, the Town shall, in addition to the Notice otherwise required above, in the most expedient time possible and without unreasonable delay, but not later than thirty (30) days after the date of determination that a security breach occurred, consistent with the legitimate needs of law enforcement and consistent with any measure necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system:

1. Direct the person whose Personal Information has been breached to promptly change his or her password and security question or answer, as applicable, or to take other steps appropriate to protect the online account with the person or business and all other online accounts for which the person whose Personal Information has been breached uses the same username or e-mail address and password or security question or answer.
2. If the Security Breach pertains to the log-in credentials of an email account furnished by the Town, rather than giving notice via email, the Town may comply with this section by providing notice by other methods specified under "Notice" in Article II or by clear and conspicuous notice delivered to the resident online when the resident is connected to the online account from an internet protocol address or online location from which the Town knows the resident customarily accesses the account.

The breach of encrypted or otherwise secured Personal Information must be disclosed in accordance with this section if the confidential process, encryption key, or other means to decipher the secured information was also acquired in the Security Breach or was reasonably believed to have been acquired.

Section 3. Costs. The Town shall not charge the cost of providing such Notice to individuals.

Section 4. Third-Party Service Providers. If the Town uses a Third-Party Service Provider to maintain computerized data that includes Personal Information, the Town shall require that the Third-Party Service Provider give notice to and cooperate with the Town in the event of a Security Breach that compromises such computerized data. Compliance shall include notifying the Town of any Security Breach in the most expedient time and without unreasonable delay following discovery of a Security Breach, if misuse of Personal Information about a Colorado resident occurred or is likely to occur. Cooperation includes sharing with the Town information relevant to the Security Breach; except that such cooperation does not require the disclosure of confidential business information or trade secrets.

Section 5. Delay by Law Enforcement. Notice required by this section may be delayed if a law enforcement agency determines that such Notice will impede a criminal investigation and

the law enforcement agency has directed the Town not to send the Notice required by this section.

## **ARTICLE VII. FURTHER REPORTING REQUIREMENTS**

Section 1. Notice to Colorado Attorney General. If the Security Breach is reasonably believed to have affected five hundred (500) Colorado residents or more, the Town shall provide notice of such Security Breach to the Colorado Attorney General in the most expedient time possible and without unreasonable delay, but not later than thirty (30) days after determination of that a Security Breach occurred.

Section 2. Notice to Consumer Reporting Agencies. In the event the Town is required to provide Notice, as defined in Article II, to more than one thousand (1,000) Colorado residents, the Town shall also notify, in the most expedient time possible and without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p), of the anticipated date of the notification to the residents and the approximate number of residents who are to be notified. The Town is not required to provide to the consumer reporting agency the names or other Personal Information of Security Breach Notice recipients.

## **ARTICLE VIII. WAIVER**

Any waiver of these notification rights or responsibilities is void as against public policy. The Town shall not elicit or accept any waiver of these notification rights or responsibilities.

AGENDA SUMMARY FORM



Ordinance 2019-02 Municipal Code Amendment – Fences, Hedges, & Walls

Summary:

An ordinance amending chapter 18 of the Municipal code and establishing the review of fence projects within Town limits.

Notes:

Possible Motions:

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

**ORDINANCE NO. 2019-02**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF PAONIA, COLORADO, AMENDING CHAPTER 18, ARTICLE 9, SECTION 10 TO THE TOWN OF PAONIA MUNICIPAL CODE**

**RECITALS:**

**WHEREAS**, the Town of Paonia (the “**Town**”), in the County of Delta and State of Colorado, is a municipal corporation duly organized and existing under the laws of the State of Colorado; and

**WHEREAS**, pursuant to C.R.S. § 31-23-301, the Town has the power to regulate buildings and other structures for the purposes of promoting health, safety and the general welfare of the community; and

**WHEREAS**, the Board of Trustees determines that it is in the best interest of the community and the public health, safety and welfare of the citizens of the Town to amend the Town Code to add this provision to the Municipal Code.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF PAONIA, COLORADO, AS FOLLOWS:**

**Section 1. Legislative Findings.**

The recitals to this Ordinance are adopted as findings of the Board of Trustees in support of the enactment of this Ordinance.

**Section 2. Amendment of Town Code.**

Sec. 18-9-10 shall be repealed and amended to the Town Code as follows:

- (1) All fences and walls are subject to the applicable sections of the IBC.
- (2) Prior to the installation of a new fence, the property owner or their agent shall file for a fence review with the Town Building Official and shall pay the appropriate review fee as may be set by the Town Board of Trustees via resolution. The purpose of the Town requiring a fence review and fee is to allow the Town Building Official to inspect the proposed fence plan to confirm that it meets the provisions of the Town Code, the IBC, and that the fence does not encroach on a public right-of-way.
- (3) No fence, hedge or wall may extend beyond or across a property line unless it is done with the joint agreement of the abutting property owners. It shall be the responsibility of the property owner to locate all property lines.

- (4) No fence, hedge or wall shall encroach upon a public right-of-way or a public sidewalk.
- (5) No barbed wire, sharp-pointed or electrically charged fence shall be permitted in the R-1, R-2, R-3, MH, C-1 or C-2 Districts.
- (6) Fences, hedges or walls shall not exceed four (4) feet in height from the front edge of the house to the property line. Rear yard fences, hedges or walls shall not exceed six (6) feet in height in the R-1, R-2, R-3 or MH Districts. The height shall be measured at the finished grade on the side of the fence nearest the street or abutting property.
- (7) On corner lots, no fence, hedge or wall exceeding thirty-six (36) inches in height shall be placed in a triangular area formed by three (3) points as established by:
  - a. The intersection of the property lines at the corner (Point A); and
  - b. Points B and C measured thirty (30) feet along the property lines from Point A.

### **Section 3. Severability.**

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and, to this end, the provisions of this Ordinance are declared to be severable.

### **Section 4. Repeal of Prior Ordinances.**

All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

### **Section 5. Ordinance Effect.**

Existing ordinances or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and any and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, provided, however, that the repeal of any ordinance or parts of ordinances of the Town shall not revive any other section of any ordinance or ordinances hereto before repealed or superseded and further provided that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

### **Section 6. Effective Date.**

This Ordinance shall take effect thirty days after publication.

**INTRODUCED, READ AND REFERRED for second read before the Board of Trustees of the Town of Paonia, Colorado, on the 22nd day of January 2019.**

**TOWN OF PAONIA, COLORADO, A MUNICIPAL CORPORATION**

By: \_\_\_\_\_  
CHARLES STEWART, Mayor

ATTEST:

\_\_\_\_\_  
CORINNE FERGUSON, Town Clerk

**HEARD AND FINALLY ADOPTED by the Board of Trustees of the Town of Paonia, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.**

**TOWN OF PAONIA, COLORADO, A MUNICIPAL CORPORATION**

By: \_\_\_\_\_  
CHARLES STEWART, Mayor

ATTEST:

\_\_\_\_\_  
J. CORINNE FERGUSON, Town Clerk

AGENDA SUMMARY FORM



Resolution 2019-04 Fee Schedule

Summary:

Resolution 2019-03 incorporates fees updated since the adoption of original Resolution Fee Schedule 2015-13 and includes recommended fee changes. The resolution also removes the penalty assessments associated with the police department and municipal court, which will be updated and presented for review at a future meeting.

Notes:

FYI: The addition of fee(s) for business licenses will need to be set at the time of licensing procedure approval.

Possible Motions:

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

Green – Already Board Approved Change

Yellow – Recommended Change for Approval

TOWN OF PAONIA, COLORADO

RESOLUTION 2019-04

A RESOLUTION OF THE TOWN OF PAONIA AMENDING THE TOWN FEE SCHEDULE

WHEREAS, the Town of Paonia has determined it has become necessary to increase certain fees to more accurately reflect the costs of the services performed by the Town; and

WHEREAS, administration of the Town’s functions and operations demand a substantial amount of time, effort and resources by the Town Staff the purpose of delivering services to the community; and

WHEREAS, the Town of Paonia has previously established fees for some of these services and desires to amend the previously established fees as those fees have been determined to be inadequate to recover a portion of the costs of providing these services; and

WHEREAS, the Police Department and Municipal Court fines and penalties should be set by their own Resolution; and

WHEREAS, the following Town of Paonia Fee Schedule has been amended by Town Staff to reflect the appropriate charges for services; and

NOW THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF PAONIA, to adopt the Town of Paonia Fee Schedule as follows:

	500+Actual	RECOMMENDATIONS
Annexation	500+Actual	
<b>Discontinuance/De-Annexation</b>	<b>500+Actual</b>	
Community Center Rental (Per Hour)	40/60	
Dog Tag - Spayed/Neutered	5	10
Dog Tag - Untouched	15	25
Dog Tag - Replacement/Duplicate	10	
<b>Dog Tag – Early Registration (Dec)</b>		<b>5</b>
Liquor License Fee – Local New	1000	
Transfer of Location/Ownership	750	
License Renewal	100	
Expired License Renewal	500	
<b>Report of Change</b>		<b>75</b>
Liquor License Fee - On Premise	150	
Liquor License Fee - Special Event (Per Day/Max)	50/150	
Large Group Park Event Fee	100/175+5/Vendor	
Special Meeting Fee	250	
Insufficient Funds/Bad Check Charge	25	
Code Book/ <del>Disc</del> Copy	50	75
Zoning Board of Adjustment	250	
Boundary Adjustment	200	
Building Official Plan Review	100+Actual	
Building Permit Fee	35 + Formula	70 + Formula
Conditional Use Permit	100	



**Green** – Already Board Approved Change  
 Consulting  
 Establish or Expand Mobile Home Park  
 Flood Plain Variance  
 Home Occupations  
 Major Subdivision  
 Minor Subdivision  
 Mobile Home Park License (Annual)  
 Planned Unit Development - Final Plan  
 Planned Unit Development - Preliminary Plan  
 Zoning/LDR Amendments

**Yellow** – Recommended Change for Approval  
 Actual Cost  
 Actual Cost  
 250  
 150  
 1000+Actual Costs  
 500+Actual Costs  
 250  
 1000+Actual Costs  
 500+Actual Costs  
 500+ Actual Costs

**Fence Review**

**50**

Sign Permit 75  
 Site Plan Actual Costs  
 Site Plan Appeal to Town Board of Trustees 1000  
 Sketch Plan Review 250  
 Special Review 250+Actual Costs  
 Sidewalk Business Use (Annual) 25  
 Vacation of Right-of-Way or Easement 250+Actual Costs

**BE IT FURTHER RESOLVED** the Town Administrator and Town Clerk are hereby authorized and directed to take all necessary and appropriate action to implement and administer the adopted Town of Paonia Fee Schedule.

**ADOPTED** this 22<sup>nd</sup> day of January 2019, by the Board of Trustees of the Town of Paonia.

**TOWN OF PAONIA, COLORADO**

\_\_\_\_\_  
 Charles Stewart, Mayor

**ATTEST:**

\_\_\_\_\_  
 J. Corinne Ferguson, Town Clerk



Town Administrator Contract Extension

**Summary:**  
Suggesting a month to month extension under the existing contract pending performance review.

**Notes:**

**Possible Motions:**

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

## FIRST AMENDMENT TO PROFESSIONAL EMPLOYMENT AGREEMENT

This FIRST AMENDMENT TO PROFESSIONAL EMPLOYMENT AGREEMENT (this “Amendment”) is made and entered into this \_\_\_\_ day of January 2019, by and between the Town of Paonia, a Colorado statutory town (the “Town”), and Kenneth D. Knight (the “Administrator”).

### RECITALS

- A. **WHEREAS**, the Town and the Administrator entered into a Professional Employment Agreement, dated January 12, 2017 (the “Employment Agreement”) (a copy of which is attached hereto as Exhibit “A”), wherein the Administrator became the Town Administrator for the Town; and.
- B. **WHEREAS**, the Employment Agreement is in full force and effect, and the Town Administrator is an employee in good standing with the Town; and
- C. **WHEREAS**, the Employment Agreement is set to expire on or before February 1, 2019; and
- D. **WHEREAS**, the Town, by and through its Board of Trustees, would like to undertake a Performance Evaluation of the Town Administrator before offering the Town Administrator an extension of the Employment Agreement; and
- E. **WHEREAS**, the Board of Trustees will not have the opportunity to undertake an evaluation of the Town Administrator prior to the expiration of the Employment Agreement; and
- F. **WHEREAS**, the Town would like to extend the term of the Employment Agreement for an additional time period, to April 23, 2019, and the Town Administrator is willing to serve as Town Administrator during this time.

**NOW THEREFORE**, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Amendment to the Employment Agreement. The term of the Employment Agreement shall be until April 23, 2019, subject to early termination as provided for in the Employment Agreement.

Section 2. Performance Evaluation. The Town Board of Trustees shall undertake a Performance Evaluation in accordance with Section 10 of the Employment Agreement prior to determining if it is appropriate to offer the Town Administrator a new or a renewed employment agreement as Town Administrator.

Section 3. Binding Effect. Except as amended in this Amendment the Employment Agreement shall remain in effect and be binding on the Town and the Town Administrator.

IN WITNESS WHEREOF, the parties have executed, acknowledged, sealed and delivered this Amendment on the date first above written.

TOWN OF PAONIA

By: \_\_\_\_\_  
Charles Stewart, Mayor

**ATTEST:**

By: \_\_\_\_\_  
J. Corinne Ferguson, Town Clerk

TOWN ADMINISTRATOR

By: \_\_\_\_\_  
Kenneth D. Knight, Town Administrator

## PROFESSIONAL EMPLOYMENT AGREEMENT

### Introduction

This Employment Agreement ("Agreement"), dated this 12 day of January, 2017, is by and between the Town of Paonia ("Town"), a Colorado statutory municipality, located in the County of Delta, State of Colorado, and Kenneth D. Knight ("Administrator"), presently at 742 Chilton Street, Marlin, TX 76661, an individual who has the education, training and/or experience in local government management and who is a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

### Section 1: Terms

A. The terms of this Agreement shall be for two (2) years from the effective date subject to early termination as provided below.

B. Notwithstanding anything to the contrary within this agreement, the Administrator shall be deemed to be an employee at will, and nothing in this agreement shall prevent or otherwise interfere with the right of the Board of Trustees to terminate the services of the Administrator at any time, subject only to the applicable provisions of this agreement. Likewise, nothing in this agreement shall prevent or otherwise interfere with the right of the Administrator to resign at any time as the Town Administrator.

### Section 2: Duties and Authority

A. Town agrees to employ Kenneth D. Knight as Town Administrator to perform the functions and duties in accordance with the Paonia Municipal Code and the Job Description, attached to this Agreement as Exhibit "A" and to perform other legally permissible and proper duties and functions as prescribed by Colorado State Statute as well as the Board of Trustees from time to time.

### Section 3: Compensation

A. Base Salary: Town agrees to pay Administrator an annual base salary of Eighty Thousand Dollars (\$80,000.00) ("Base Salary"), which shall be paid periodically on the same regular paydays applicable to all other Town employees.

B. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required pursuant to the Town's compensation policies and/or this Agreement.

### Section 4: Employees Benefits

During the term of this Agreement, and thereafter when specifically provided herein, the Administrator, in addition to the Base Salary provided for in Section 3, shall have and be entitled to receive from the Town the following employee benefits:

- A. Vacation leave to the extent such is provided for under the Town's employee benefit package provided that the Administrator shall commence employment with the Town on the effective date of this Agreement with three (3) weeks already accrued annual vacation leave, which is available for immediate use and three (3) weeks annual vacation leave each year thereafter;
- B. Sick leave to the extent such is provided for under the Town's employee benefit package provided that the Administrator shall commence employment with the Town on the effective date of this Agreement;
- C. Disability coverage to the extent such is provided for under the Town's employee benefit package;
- D. Health, dental and vision benefits to the extent such is provided under the Town's employee benefit package;
- E. Life, accidental death and dismemberment insurance to the extent such is provided under the Town's employee benefit package; and
- F. Retirement benefits on the same basis as all other non-police, full-time employees of the Town.

**Section 5: General Business Expenses**

- A. The Town agrees to reasonably budget for and to pay for professional dues and subscriptions of the Administrator for the continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for the Administrator's continued professional participation, growth and advancement and for the good of the Town, which shall include, at a minimum, the annual dues for the International City/County Administrators Association and the Colorado City/County Administrators Association.
- B. The Town agrees to reasonably budget for and to pay for travel and subsistence expenses of Administrator for professional and official travel, meetings, and occasions to adequately continue the professional development of Administrator and to pursue necessary official functions for the Town, including but not limited to the Colorado Municipal League Annual Conference, and such other state and local governmental groups and committees in which Administrator serves as a member. Any such travel by Administrator shall be in accordance with the Town's travel policy, as the same may be amended from time to time.
- C. The Town agrees to provide a cellular phone for the Administrator.
- D. The Town further agrees to reimburse the Administrator for automobile expenses incurred for the use of his own personal vehicle for work-related travel at the rate which is set from time to time by the Internal Revenue Service. Administrator shall use a Town-owned vehicle for work-related, out-of-town travel whenever feasible.

## **Section 6: Moving and Relocation Expenses**

Administrator agrees to establish residence within the 81428 Zip Code within nine (9) months of employment, and thereafter to maintain residence within the area. The Town shall reimburse Administrator the cost of relocation once moved in an amount not to exceed \$7,000.00.

## **Section 7: Termination**

For the purpose of this Agreement, termination shall occur when:

- A. The majority of the governing body votes to terminate the Administrator at a duly authorized public meeting and provides a minimum of thirty (30) days written notice to the Administrator;
- B. If the Town reduces the Base Salary, compensation or any other financial benefit of the Administrator, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as a termination;
- C. If the Administrator resigns following an offer to accept resignation by the Town, then the Administrator may declare a termination as of the date of the acceptance of the resignation;
- D. Breach of contract declared by either party with a 30-day cure period for either Administrator or Town. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 17, or
- E. Cause as determined by the Board of Trustees. Cause under this Agreement shall include, but not be limited to, the following:
  - a. Failure to comply with applicable material provisions of the Paonia Municipal Code or the Town of Paonia Employee Resource Guide;
  - b. Disclosure of confidential information, documents or correspondence without authorization;
  - c. Indulging in repeated offensive conduct or abusive conduct directed at Town employees or members of the public.
  - d. Failure to comply with applicable provision of the standards of conduct for local governmental officials contained in CRS 24-18-101 to 24-18-206;
  - e. Any conduct that results or could result, in the reasonable judgment of the Town, in the conviction of a felony, or crime involving fraud, theft, or misappropriation;
  - f. Failure to perform job duties following prior written notice, or conduct which constitutes insubordination or dereliction of duties, in either case in the reasonable judgment of the Board of Trustees.

### **Section 8: Severance**

A. Severance shall be paid to the Administrator when employment is terminated as defined in Section 7 A, B, or C, except that such severance shall not be paid if Administrator is terminated prior to the end of six (6) months following the effective date of this Agreement.

B. If the Administrator is terminated after six (6) months following the effective date of this Agreement, the Town shall provide a severance payment equal to three (3) month's Base Salary at the then current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Town and the Administrator.

C. The Administrator shall also be compensated for all accrued leave time. The Town agrees to make a contribution to the Administrator's retirement account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.

D. In order to receive any severance payment, the Administrator agrees to execute a General Release and Separation Agreement, releasing the Town, its elected official, appointed officials, employees and agents from any and all causes of action, claims or demands.

E. If the Administrator is terminated as a result of a conviction of a felony, other malfeasance, breach of contract, or cause as determined by the Board of Trustees, then the Town is not obligated to pay severance benefits under this section.

### **Section 9: Resignation**

The Administrator may elect to terminate this Agreement without cause by giving the Town written notice of his intention to terminate. The Administrator shall not be entitled to any severance if he makes such an election for any reason other than the circumstances described in Section 7(C). Such notice shall specify a termination date that shall not be less than thirty (30) days from the date the notice is given. Unless otherwise agreed in writing by both parties, the Administrator shall continue to perform the duties of Town Administrator, as described herein, on a full time basis until the termination date specified in the notice. The Administrator shall continue to receive compensation and benefits herein provided for so long as he continues to perform such duties. All compensation and employee benefits shall cease to accrue on the termination date or upon such earlier date when the Administrator is no longer performing the duties of his office as described herein.

### **Section 10: Performance Evaluation**

The Administrator's performance of his duties as Town Administrator shall be evaluated on or about the anniversary of employment utilizing a form that is mutually approved by both parties.



The Administrator agrees to cooperate with the evaluation process and to provide the Town with any documentation or information that the Town may request in connection with the evaluation. The purpose of the evaluation will be to determine whether the Administrator's performance of his duties under this Agreement remains satisfactory to the Town and is in compliance with the terms and provisions hereof.

#### **Section 11: Work Plan**

Administrator agrees to develop a "Work Plan" and to accomplish specific tasks, as specified and approved by the Board of Trustees from time-to-time, in a timely and professional manner. Such specific tasks shall be discussed with the Administrator and said Work Plan will be adopted by motion by the Board as frequently as the Board may choose but no less than annually. Once approved, such specific tasks and work plans shall then be considered a part of this Agreement.

#### **Section 12: Hours of Work**

The Town expects and the Administrator agrees that the Administrator's hours of employment must be flexible and sometimes will be long and irregular. The Administrator's duties hereunder will often require his attendance at and participation in meetings and other functions which occur during evening hours and occasionally on weekends. The Administrator understands and agrees that he will not be entitled to overtime pay, or any other form of financial remuneration over and above the Base Salary and benefits provided for herein with respect to the performance of his duties and his long hours of service hereunder, and that he shall be deemed an "exempt" employee under the provisions of the Fair Labor Standards Act.

#### **Section 13: Outside Activities**

The employment provided for by this Agreement shall be the Administrator's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Town and the community, the Administrator may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

#### **Section 14: Indemnification**

The Town Administrator shall be defended and indemnified in his actions undertaken in his official capacity as Town Administrator pursuant to all insurance coverage's maintained by the Board and pursuant to the terms of the Colorado Governmental Immunity Act. The Town Administrator shall, however, not be indemnified for any act or omission that is willful and wanton, as those terms are defined under the Colorado Governmental Immunity Act.

#### **Section 15: Bonding**

Town shall bear the full cost of any fidelity or other bonds required of the Administrator under any law or ordinance.

## **Section 16: Other Terms and Conditions of Employment**

The Town, only upon agreement with Administrator, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Administrator, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Municipal Code or any other law.

## **Section 17: Notices**

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) TOWN:                      Town of Paonia  
   Charles Stewart, Mayor  
   P. O. Box 460  
   Paonia, CO 81428
  
- (2) EMPLOYEE:                Kenneth D. Knight  
   742 Chilton Street  
   Marlin, TX 76661


Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

## **Section 18: General Provisions**

- A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Town and the Administrator relating to the employment of the Administrator by the Town. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement during the term of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
  
- B. **Binding Effect.** This Agreement shall be binding on the Town and the Administrator as well as their heirs, assigns, executors, personal representatives and successors in interest.
  
- C. **Effective Date.** This Agreement shall become effective on February 1, 2017.
  
- D. **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not effect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

- E. Waiver. The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.
- F. The parties agree and acknowledge that in the event of a dispute concerning this Agreement or Administrator's employment, venue for any such dispute shall be proper in Delta County District Court. Further, the parties agree that prior to becoming involved in any litigation regarding this agreement or Administrator's employment, they shall first attend mediation to attempt to resolve any such dispute and use their best efforts to resolve the same. To the extent mediation fails, and/or litigation ensues, the party that substantially prevails shall be entitled to full reimbursement of all reasonable legal fees and costs, including expert fees if any, whether related to mediation or litigation.

ATTEST:

  
\_\_\_\_\_  
~~Corinne Ferguson, Town Clerk~~  
Corinne

TOWN OF PAONIA

By:   
\_\_\_\_\_  
Charles Stewart, Mayor

By:   
\_\_\_\_\_  
Kenneth D. Knight, Town Administrator

AGENDA SUMMARY FORM



At the Request of Bill Brunner – Claim by Bill Brunner That Mayor Stewart Violated Standards of Conduct for Elected Officials

Summary:

Notes:

Possible Motions:

Motion by: \_\_\_\_\_ 2<sup>nd</sup>: \_\_\_\_\_ vote: \_\_\_\_\_

Vote:	Trustee Bachran:	Trustee Bear:	Trustee Bookout:
Trustee Budinger:	Trustee Hart:	Trustee Knutson:	Mayor Stewart:

**TOWN OF PAONIA**  
**REQUEST TO BE PLACED ON AGENDA**

PO Box 460  
Paonia, CO  
81428  
970/527-4101  
[paonia@townofpaonia.com](mailto:paonia@townofpaonia.com)

Here are things you need to know:

- You must contact the Town Clerk prior to coming to Board. Quite often the issue can be resolved by staff action.
- No charges or complaints against *individual* employees should be made. Such charges or complaints should be sent to the employee's Department Head in writing with your signature.
- Remarks that discriminate against anyone or adversely reflect upon the race, color, ancestry, religious creed, national origin, political affiliation, disability, sex, or marital status of any person are *out of order* and may end the speaker's privilege to address the Board.
- Defamatory, abusive remarks or profanity are *out of order* and will not be tolerated.

Please complete the following information and return this form no later than the Tuesday prior to the Board meeting to the above address or bring it to the Town Hall at 214 Grand Avenue.

Office hours are Monday through Friday, 8:00 a.m. to 4:30 p.m.

Regular Board meetings are scheduled for the second and fourth Tuesdays of each month.

Name of person making presentation      Bill Brunner      \_\_\_\_\_

Organization, if speaking on behalf \_\_\_\_\_

Is this a request for Board action?      Yes    No

Please provide a summary of your comments:

For the second regular meeting in January: Presentation of formal written complaint to Charles Stewart and the Board, as outlined in Ethics, Liability & Best Practices Handbook for Elected Officials(attached). The complaint involves Mr. Stewart's behavior and published statements that violate the normal forms of decorum and are violations of the Standards of Conduct for Elected Officials (Resolution 2017-06) adopted by the Board at Mr. Stewart's request. I am asking the Board to initiate a formal investigation of my complaint.

What staff member have you spoken to about this? Please summarize your discussion:

Contact information

Name:                      Bill Brunner      \_\_\_\_\_

Mailing Address      po box 172      \_\_\_\_\_

E-mail:                      bill@paoniairon.com      \_\_\_\_\_

Daytime Phone:      5274641      \_\_\_\_\_

# Ethics, Liability & Best Practices Handbook for Elected Officials

Tami A. Tanoue  
CIRSA General Counsel/Claims Manager

Robert Widner  
Widner Michow & Cox LLP



## Chapter 6

# Ethical Conduct in Local Government

By: Robert Widner, Widner Michow & Cox LLP

# Chapter 6

## Ethical Conduct in Local Government

### Introduction

Citizens have a right to expect ethical behavior from local government officials. In the municipal context, “ethical behavior” generally means the conduct of public business in a manner that will preserve or restore the public’s trust in government. In many instances, local government officials are unaware of the rules and guidelines governing their official behavior. This chapter outlines a basic regulatory framework for ethical behavior for local government officials and advocates on the premise that limited but enforceable local regulation is necessary to protect the public trust. The first part of this chapter focuses upon “*what*” ethical activity should be regulated at the local level. The second part focuses upon “*how*” local ethical standards should be enforced.

Although the vast majority of public officials ably conduct official business without ethical missteps, a single publicized violation can cast a cloud upon the entire government organization and raise suspicion that other public officials are engaged in similar misconduct.

### Why Regulate Local Ethics?

Both media stories and national studies of local government decision-making highlight the need for regulation of ethical behavior by local government officials. Unfortunately, ethical violations do occur at all levels of government and may range from the use of a public office to help a friend secure special treatment from the government to corruption, self-dealing, or just plain poor decision-making. Although the vast majority of public officials ably conduct official business without ethical missteps, a single publicized violation can cast a cloud upon the entire government organization and raise suspicion that other public officials are engaged in similar misconduct. Simply put, ethical violations erode public trust.

Colorado state law attempts to describe appropriate “standards of conduct” for local government officials in Title 18, Article 24 of the Colorado Revised Statutes. Unfortunately, the state law fails in many respects to articulate clearly the standards for ethical behavior or to define key statutory phrases, such as what constitutes “personal or private interest.” State law further fails to serve the needs of local government by delegating the enforcement of alleged local ethical violations to the local district attorney’s office. This delegation often proves ineffective as it requires district attorneys to divert their limited resources from the enforcement of criminal conduct to the investigation and enforcement of state misdemeanor ethical misconduct. Moreover, enforcement of statutory standards of conduct against elected public officials by elected district attorneys can – fairly or unfairly – lead observers to assume that politics, rather than justice, will dictate the outcome.



Municipalities may overcome these state statutory shortcomings through local regulation and enforcement of ethical behavior. Effective local regulation of public officials' ethics necessarily involves two distinct elements. The first is a set of clearly written directives identifying what constitutes unacceptable or unethical behavior. The second is a process for enforcing the written directives in a reasonable, fair, and efficient manner.

## What Should be Regulated?

The most common problems with local rules of ethical conduct are vagueness and overbreadth. Sweeping general statements such as "city officials should comport themselves at all times in a professional manner" are too vague to help either the officials or their constituents understand what is and is not acceptable. Likewise, regulations that attempt to set standards for the officials' personal life may seem admirable, but are really beyond the scope of good ethical regulation. Consequently, any set of ethical regulations should focus on the conduct of public officials while performing their public duties and should be specific enough to clearly define what constitutes an ethical violation.

Engaging in criminal conduct while in the course of one's public responsibilities should always be an ethical violation. However, criminal acts committed by public officials outside of their official role and in their private capacity are best left to local law enforcement or, as discussed below, the public's right of recall. It may be true that a public official's criminal activity unrelated to public office can still undermine public trust, but if your ethical code provides that "any felony or misdemeanor criminal activity" committed by a public official constitutes an ethical violation, are you prepared to sanction a board or council member who receives a jaywalking ticket?

A criminal act committed by a public official in his or her private life will typically only call into question the qualifications of that particular public official to serve the public. To that end, state law provides a remedy in the right of recall, a process by which the voters can decide whether that individual should continue to serve. Local ethical regulations, however, should avoid putting members of the municipal governing body in the role of overseeing and enforcing the private activities of one of their own.

It is also customary, and a good idea, for local ethics regulations to incorporate as an ethical violation any failure of the public official to adhere to important provisions of the municipal charter or ordinances, such as provisions that prohibit elected officials' interference with the city manager's supervisory role over city employees. In addition, ethics regulations should prohibit:

- the intentional disclosure of confidential governmental information;
- the acceptance of gifts of substantial value;
- the misuse of public resources or public equipment; and
- engaging in contractual relationships for the personal benefit of the public official and/or the official's relatives.

In summary, local ethical regulations should prohibit the conduct that will most directly impair the public's trust in the local government organization as a whole. If drafted with appropriate attention to specificity, effective local regulation will put public officials on notice of precisely what constitutes inappropriate behavior related to their public service, and will clearly inform constituents of what is expected of their local representatives. Accompanying the regulations should be well-defined terms and phrases designed to avoid vagueness and ambiguity.

## How Should Ethics Codes be Enforced?

Ethics regulations effectively inform officials what conduct is permitted and prohibited in public service. However, without a means to enforce the ethical requirements, the regulations become largely meaningless.

Creating a process to enforce ethical regulations requires careful thought. Ensuring that the regulations are enforced fairly is a paramount concern. Fair enforcement is fostered when regulations clearly articulate the requirements and expectations of every step of the enforcement action. Where a step is optional, such as whether an investigation of the ethics complaint will be performed, the criteria and procedures for determining whether or not the step will be employed should be clearly identified and followed. The regulations should contemplate the need for issuing subpoenas for documents and compelling witness testimony and attendance.

The typical process will include a complaint, the identification of the hearing body or hearing officer, an initial review, investigation, a hearing, a decision and, if appropriate, a penalty.

### Complaint

The initiation of the process to enforce an ethical standard should require a written complaint or allegation of unethical conduct. The form of the written complaint is important. The person charged with unethical conduct has a right to know what conduct is alleged to have violated the ethical rules.

At a minimum, the complaint should include a detailed description of the action alleged to have violated the rules and citation to the ethical rules alleged to be violated by such conduct. Requiring the complaining party to verify or certify under penalty of perjury or other sanction that the allegations are truthful may aid in preventing complaints that are merely intended to harass or which might be politically motivated. Once received, the complaint must be formally delivered or served upon the person alleged to have violated the rules.

### Hearing Body or Officer

A critical decision for any ethical enforcement action is the selection of the appropriate hearing body or officer to hear the allegations, render a decision, and impose a penalty, if appropriate. The enforcement regulations should identify the process for selection, composition, and qualifications of the hearing body or hearing officer. The options are numerous. The hearing body might, for example, be composed of the entire governing body of the local government, a governing body

subcommittee, a citizen ethics board, or an independent hearing officer. Moreover, the decision of the hearing body or officer can be considered advisory and made subject to final review and ratification by the governing body.

Each option presents advantages and disadvantages. The elected governing body is a logical selection when judging the conduct of its fellow members or public servants due to its role as representing the citizens who demand ethical action by government. However, selecting the governing body or individual members of the governing body risks injecting elements of political favoritism into the ethics process. Similarly, while citizen members have a direct interest in ethical governmental action, citizens can oftentimes be politically aligned with elected officials or lack the experience to understand the allegations in the context of public service. Individual hearing officers, while perhaps free of any political motivations, may lack accountability to the citizens.

## Initial Review

A preliminary or initial review of the complaint may be a beneficial step. A complaint may fail to assert any actions by the public servant that constitute an ethical misstep or may assert actions that are unrelated to the servant's public duties. In addition, a complaint may, on its face, be submitted for the sole purpose of harassing the public servant. At a preliminary review, the hearing body or officer can elect to dismiss the complaint, thereby saving the local government time and money in processing spurious or specious allegations. Any decision to dismiss the complaint should be made in writing and provided to the complaining party and the person against whom the allegations were raised.

## Investigation

For some but not all complaints, an investigation might be warranted. If warranted and approved by the hearing body or officer, the investigation should be undertaken by an independent and neutral party. This investigation might involve the interview of witnesses and review of the evidence, and may culminate in a written summary of disputed and undisputed facts relevant to the issues to be decided by the hearing body or officer.

## Hearing

For complaints that warrant prosecution, a hearing should be held to consider the complaint. In some circumstances, the hearing may include a preliminary stage whereby the hearing body or officer reviews the investigative report and, if appropriate, may elect to dismiss the allegations if the investigation established that the evidence does not support a finding of wrongdoing. Conducted in a manner similar to a judicial proceeding, the hearing should permit the presentation of evidence to support the allegations of unethical conduct and an opportunity to provide a defense against the allegations. The local government may employ a prosecutor to present the allegations and evidence. Any decision by the hearing body or officer should be made in writing to ensure an adequate record and formally conclude the proceeding.

## Decision and Penalty

In the event that the hearing body or officer finds a violation of the ethical standards, a penalty may be in order. Obviously, the severity of the penalty can vary depending upon the seriousness of the violation. Penalties may range from a simple letter of admonition or censure, to removal of the public servant from certain duties or responsibilities, to more drastic action including removal from elective office. It is exceedingly rare for ethical violations to result in a monetary fine. A monetary fine is most appropriate where the ethical violation caused probable financial harm to the community. These types of violations are best prosecuted by the district attorney under the public trust provisions of state law.

Importantly, removal from office is a power best reserved for the governing body which holds the power of removal pursuant to state law. Moreover, it is important to acknowledge that elected officials remain accountable to the citizens and are subject to recall from office should their constituents feel the ethical standards of their official are lacking. For that reason, removal from office should be considered only in the most egregious cases.<sup>1</sup>

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### Footnotes:

<sup>1</sup> Please see Chapter 4 for a discussion of the removal power in a statutory town.

TOWN OF PAONIA, COLORADO  
RESOLUTION NO. 2017-06

**A RESOLUTION ESTABLISHING STANDARDS OF CONDUCT  
FOR ELECTED OFFICIALS OF THE TOWN**

**WHEREAS**, the Board of Trustees believes that the members of the Board, including the Mayor, must act at all times within the scope of their lawful authority, in accordance with the highest ethical standards, and in a manner that accords all persons with respect and dignity; and

**WHEREAS**, the Board desires to establish for itself, and for each member of the Board, including the Mayor, minimum standards of conduct to assure the same; and

**WHEREAS**, the failure to comply with such standards would constitute serious misconduct that would reflect poorly on the Town, and would detrimentally affect the credibility of the Board and the effectiveness of the Town in serving the community; and

**WHEREAS**, the Board intends that the standards of conduct established herein be enforceable by such consequences as will assure compliance therewith;

**NOW THEREFORE, BE IT RESOLVED** by the Board of Trustees of the Town of Paonia, Delta County, Colorado, that the following Board of Trustees Standards of Conduct are hereby adopted:

**PAONIA BOARD OF TRUSTEES  
STANDARDS OF CONDUCT**

Section 1. **Scope of Authority.** The Mayor and each Trustee has only such authority as is conferred by applicable state statutes, and ordinances not inconsistent with such statutes. No member of the Board of Trustees, including the Mayor, shall act in a manner that exceeds such authority, including but not limited to:

- a. No member shall purport to speak on behalf of the Board on any matter on which the Board has not taken a position, or represent a Board position inaccurately.
- b. No member shall make commitments or promises individually on any matter for which a vote or consensus of the Board is required.
- c. At Board meetings, no one member shall attempt to dominate the discussion. Each member shall strive to speak once on any topic, and then allow each other member to speak on that topic before speaking again. Members shall seek recognition from the presiding officer before speaking. Members shall primarily direct remarks at Board meetings to the Board as a whole, rather than engaging in back-and-forth arguments with another member.
- d. No member shall act or attempt to act on any matter which is encompassed within the responsibilities of the Town Administrator or other staff member.
- e. No member shall give orders to any staff member who reports directly or indirectly to the Town Administrator.

- f. Excepting the provision in the Town Administrator's contract that he/she works under the "general supervision" of the Mayor; no member shall individually direct the work of the Town Administrator or other direct report of the Board. Any such directions shall only be given by the Board as a whole, and such direct reports shall be held accountable only for directions given by the Board as a whole.
- g. The Mayor (or in the Mayor's absence the Mayor pro tem) shall be responsible for presiding over meetings of the Board. Except as otherwise specifically granted by the state statutes or ordinances not inconsistent therewith, the Mayor (and in the Mayor's absence the Mayor pro tem) shall, for all other purposes, have only the same powers as any other member of the Board.
- h. Individual members may make reasonable inquiries to the Town Administrator concerning matters pertaining to their decision-making responsibilities, but shall be careful to avoid giving orders or directions.
- i. Except where applicable laws or Town ordinances or resolutions specifically provide otherwise, no member shall allow or encourage any employee to disregard the chain of command within the Town, or involve himself or herself in employment matters below the level of the Board's direct reports.
- j. No member shall direct or request the hiring or firing of any employee to or from any position that reports directly or indirectly to the Town Administrator.

Section 2. **Personal Conduct.** The Board of Trustees desires to serve as a positive example for civility, respect, and dignity in its dealings with one another, the Town's staff, citizens, and the business community. To that end, each member shall comply with the following standards of personal conduct:

- a. Each member shall respect the rights of others to be heard and given due consideration of their views.
- b. Each member shall recognize that the Mayor has the right, in consultation with the Town Administrator, to establish the agenda for all meetings.
- c. No member shall berate, intimidate, or belittle others for expressing their opinions or viewpoints, or engage in speech that is inflammatory, defamatory, demeaning, bullying, or threatening.
- d. No member shall make disparaging remarks about any Town employee in a public setting. While criticism about job performance may be a valid topic of discussion, members shall choose a setting appropriate for such discussion.
- e. No member shall fail to comply with any provision of the Town's employee handbook with respect to the treatment of employees, including but not limited to provisions concerning prohibited harassment, discrimination, and bullying.
- f. Each member shall direct all inquiries or requests for staff support to the Town Administrator, and shall respect the time limits on staff support.
- g. Each member shall comply at all times with applicable state statutes, the Paonia Municipal Code and the Rules of Procedure adopted by the Board.



## MAYOR'S RESPONSE TO BILL BRUNNER'S COMPLAINT

January 21, 2019

To the Town of Paonia Board of Trustees and members of the public:

The board is in receipt of a complaint from Bill Brunner that I violated the Standards of Conduct for Elected Officials. Before I address the specifics of his allegations, I must note the irony that Mr. Brunner, who has portrayed himself as a champion of open government, is attempting to have me sanctioned for discussing a matter of public concern. Apparently, Mr. Brunner can say what he wishes, but everyone else must remain silent.

On December 19, 2018, the Delta County Independent published an editorial that I wrote entitled "Paonia Mayor Explains Why Town Filed Suit". In the editorial I explained why the town board, in a 6-0 vote, elected to file a declaratory action with the Delta District Court in response to Mr. Brunner's threat to sue the town. For those who have not read it, a copy is attached. In the first line of the editorial, I make it clear that I am speaking as the mayor. As mayor, I not only have the right, but the obligation, to speak out on matters that I believe are of public concern. As independently elected public officials, each member of this board has the same right and obligation.

In an attempt to better define the rights and obligations of the elected officials of the town, in 2017, the town board passed a Resolution Establishing Standards of Conduct for Elected Officials of the Town. Section 1(a) provides that no member of the board "shall purport to speak on behalf of the board on any matter on which the board has not taken a position, or represent the board inaccurately".

In my editorial, I am clear that I am speaking in my role as mayor. I do state the reasons why the board elected to seek declaratory relief from the Delta District Court. However, this is an accurate statement of the position taken by the board during a year of litigation. The statements made in my editorial are the same statements made during three public hearings and in several court briefs filed by the town. Mr. Brunner acknowledges this in his complaint, and the town's attorneys can confirm this.

Mr. Brunner is upset that in my editorial I stated that former town administrator Jane Berry, in a state civil rights action she filed against the town, accused Mr. Brunner, then a town trustee, of harassment. This is a statement of fact. The reason for including the statement in the editorial was to make sure that the public understood why the town was reluctant to release



Ms. Berry's personnel records to Mr. Brunner without a court order. In its Employee Resource Guide the town had promised to keep the records confidential. Releasing Jane Berry's personnel records to a person accused of harassing Ms. Berry, without a court order, could have easily resulted in liability for the town.

Mr. Brunner claims that I violated the confidentiality of an executive session by stating that Ms. Berry had accused him of harassment. Mr. Brunner's claim is false. The fact that Ms. Berry accused Mr. Brunner of harassment in a civil rights proceeding was testified to in open court and referred to in several briefs filed with the court. Further, the determination letter issued by the Colorado Civil Rights Division is a public record. Finally, under the position taken by Mr. Brunner and adopted by the Delta County District Court, the determination letter issued by the Colorado Civil Rights Division is a public record under CORA and not subject to any exception from disclosure.

As mayor, I must be able to communicate with the public. I am often asked questions by the press and by citizens. Often, I must clarify actions taken by the board. In doing so, I try to be thoughtful. I attempt to distinguish, as much as possible, my position as mayor from the position of the board. I am mindful of the Rules of Conduct and I maintain the confidentiality of executive sessions. In an abundance of caution, prior to publication of my editorial, I sent a copy of my editorial to both Town Attorney, Bo Nerlin and Special Counsel for the town, Nick Poppe. Neither attorney saw an issue with the publication of my editorial.

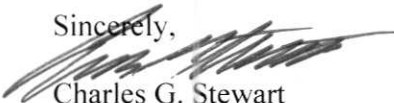
Mr. Brunner's allegations against me are a blatant attempt to silence me from speaking about matters of public concern. Each member of this board will, at some point in time, find it necessary to speak out about a matter that he or she believes is important to the public. We have some basic rules of conduct; however, neither I nor any member of this board has abdicated their rights under the first amendment.

The second allegation that Mr. Brunner makes against me is that I violated the Standards of Conduct for Elected Officials during a brief conversation that I had with his wife seven weeks ago. Mr. Brunner was not present during the conversation. In an attempt to answer any questions, I will describe the conversation. On December 2nd, I was jogging at the River Park. As I was going down the trail, Mrs. Brunner was coming up the trail. No one else was present. I did not wish to be rude to Mrs. Brunner so as I approached her, I asked her, "how are you doing?" Mrs. Brunner did not respond. When I passed her, I stated, "You could be civil." Mrs. Brunner responded, "Exactly". We were a few feet apart and voices were not raised. That

was the total conversation. Mr. Brunner's claim that I demanded that Mrs. Brunner "salute" me is bizarre, to say the least. The day after the conversation, Mr. Brunner sent me an e-mail. In the e-mail he confirmed the content of the conversation but irrationally claimed that my statements constituted a "grotesque demand" that his wife "owes me a salute". Later that day, given Mr. Brunner's irrational claims, I advised both the town attorney and the town administrator of the conversation I had with Mrs. Brunner. Both the town attorney and the town administrator can confirm what I told them. I have attached a copy of Mr. Brunner's e-mail and an affidavit signed by me attesting to the contents of my conversation with Mrs. Brunner.

Over the last three years, Mr. Brunner has made numerous false allegations against me. These false allegations have been made in open meetings, editorials, radio shows and in newscasts. As an elected official I understand that there will be unfounded attacks. However, board members are not punching bags. We have every right to openly discuss matters of public concern and respond to attacks as necessary. Mr. Brunner's complaint has been brought to harass me and should be summarily dismissed.

Sincerely,



Charles G. Stewart  
Mayor

# Paonia mayor explains why town filed suit

**Dear Editor:**

As mayor, I think it is important to explain why the Paonia Board of Trustees decided to file a lawsuit in response to Bill Brunner's demand that documents related to an employee complaint be made public.

On July 11, 2016, Eric Pace, a town employee, filed a complaint against former town administrator, Jane Berry, claiming that she harassed him in regard to a worker's compensation claim he was asserting against the town.

When the complaint was filed, it was forwarded to CIRSA, the town's insurance carrier. It was forwarded to CIRSA for two reasons. First, failure to timely report a claim can result in a denial of coverage. Second, CIRSA could provide expert direction on how to handle the matter.

CIRSA's direction was to have a third party professional investigator investigate Mr. Pace's claim against Ms. Berry. CIRSA's rationale was that the investigation needed to be done properly and free from town politics. CIRSA paid for the investigation. It would not have been proper for Ms. Berry to communicate with Mr. Pace regarding the matter and therefore, as mayor, I was asked by CIRSA to communicate with Ms. Berry and Mr. Pace regarding the investigation. The entire board, including then Trustee Brunner, was advised of what was happening and provided with copies of all relevant documents.

The investigator hired by CIRSA was a retired police chief who had conducted hundreds of investigations. The investigator contacted Mr. Pace twice. Both times, Mr. Pace refused to speak with him. The investigator completed his investigation and found that Ms. Berry did not engage in any wrongdoing. Once the investigation was complete, Mr. Pace was advised of the results and was told to review the Employee Resource Guide if he wanted to pursue the matter further. Pursuant to the Employee Resource Guide, Mr. Pace could have requested a hearing with the Personnel Liaison Group, a town committee consisting of a town board member, an

employee and a citizen. He did not request a hearing. Therefore, procedurally, the matter was closed.

On July 26, 2016, Ms. Berry resigned. After doing so, she filed a civil rights complaint against the town claiming, in part, that she had been harassed by Trustee Brunner.

Ten months later, on May 31, 2017, Trustee Brunner filed a Colorado Open Records request for the documents related to Mr. Pace's complaint against Jane Berry. His purpose was to make the documents public.

As Mr. Brunner was well aware, the town's Employee Resource Guide provided that "the Town Clerk maintains personnel files on all employees. The file includes any training certificates, awards, commendations, personnel actions and performance reviews. Your personnel file is confidential and can be reviewed only by your Department Head, yourself, the Town Clerk and Town Manager." The Employee Resource Guide further provided that "medical documents will be held in a confidential separate file and can only be accessed by you and the Town Clerk."

Because the records were personnel files containing medical information that could not be disclosed under the Employee Resource Guide and, in the opinion of the town, personnel files containing medical data that were exempt from disclosure under CORA, the Town denied Mr. Brunner's CORA request.

Five months later, on Oct. 11, 2017, Mr. Brunner's attorney sent the town a letter advising it that if it did not release the documents in 14 days Mr. Brunner would sue the town.

In response to Mr. Brunner's threat to sue the town, the town could have released the documents and been sued by Ms. Berry and Mr. Pace for releasing their personnel records and medical information, it could have refused to release the records and been sued by Mr. Brunner under CORA, or it could have filed a declaratory action in the district court. A declaratory action is a request to have the court make a decision when you are uncertain as to how

to proceed. The filing of a declaratory action is specifically authorized under CORA. The town board, in a 6-0 vote, elected to file a declaratory action seeking direction from the court. All interested parties, Ms. Berry, Mr. Pace and Mr. Brunner were served with the complaint seeking declaratory relief. Each party, with an interest in whether the documents should be made public, was given an opportunity to make their arguments before the court. Given the town's potential liability the town took the only reasonable action available to it.

In a desire to be hailed as a "whistle blower," Mr. Brunner placed the town in a position where it had to choose between potential liabilities. As Mr. Brunner knew, there was no wrongdoing. In the end, all Mr. Brunner has done is reveal that an employee filed a complaint against another employee, the complaint was reported to the town's insurance carrier, the insurance carrier correctly directed that a professional, independent investigation be done, that the insurance carrier paid for the investigation, that the employee who filed the complaint did not cooperate with the investigator and did not request a hearing before the Personnel Liaison Group.

A more problematic and larger concern is the continuing deterioration of public employee privacy rights. This is a serious issue created by the courts, that will need to be addressed either through the appellate process or by the state legislature.

**Charles Stewart  
Mayor  
Town of Paonia**

**Subject:** Civility

**Date:** Monday, December 3, 2018 at 8:13:03 AM Mountain Standard Time

**From:** bill

**To:** Mayor Stewart

Mr. Stewart

I must register deep protest at your behavior toward my wife last evening at the River Park. Silence was the most polite response she could muster to your gratuitous "good day". You continued on, then turned and shouted "You could at least be civil!"

For you to act, in public, as though she owes you some pleasantry, while in her words, "you have a knife in her back" reveals an astounding level of hubris, even for you.

Your demand that my wife owes you a salute as you pass is grotesque.

Your public taunts are infantile and reveal the true depth of your "professionalism".

You have, again, violated the Code of Conduct for Elected Officials by gross disrespect, unprofessional conduct and shouted insults, in public, to a citizen who chose silence as the most civil response to your presence.

I will refrain from shouting at your wife.

Bill Brunner

**AFFIDAVIT OF CHARLES STEWART**

I, CHARLES STEWART, being first duly sworn state:

1. On December 2, 2018, I was jogging at River Park.
2. As I was going down the trail, Mrs. Brunner was coming up the trail.
3. No one else was present.
4. I did not wish to be rude to Mrs. Brunner so as I approached her, I asked her, "how are you doing?"
5. Mrs. Brunner did not respond.
6. When I passed her, I stated, "You could be civil."
7. Mrs. Brunner responded, "Exactly".
8. We were a few feet apart and voices were not raised.
9. That was the total conversation.

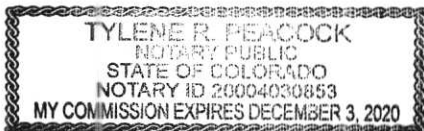
January 21, 2019


  
\_\_\_\_\_  
Charles G. Stewart

Subscribed and sworn to before me this 21<sup>st</sup> day of January, 2019, by Charles Stewart.

Witness my hand and official seal.

My commission expires: 12/03/20



  
\_\_\_\_\_  
Tylen R. Peacock  
Notary Public



Adjournment

Summary:

Notes: