

**Resolution No. 37
Series of 2019**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF VAIL AND EAGLE COUNTY REGARDING THE
TABOR NOTICE FOR THE NOVEMBER 5, 2019 ELECTION**

WHEREAS, the Town of Vail (the “Town”) is not participating in the coordinated election and instead intends to submit a ballot issue on its own municipal ballot in its own non-coordinated election, which ballot issue will require a notice pursuant to the Taxpayer Bill of Rights at Article X, Section 20 of the Colorado Constitution (hereinafter, a “TABOR Notice”);

WHEREAS, the Eagle County (the “County”) is also preparing a combined TABOR Notice for political subdivisions participating in the coordinated election;

WHEREAS, Colo. Const. art. X, § 20(3)(b) authorizes designated elected officials to mail at the least cost, and as a package where districts overlap, TABOR Notices addressed to “All Registered Voters” at each address of one or more active registered electors; and

WHEREAS, for purposes of efficiency and to result in the “least cost” to both entities, the Town and County desire to combine their mailings of the respective TABOR Notices and wish to enter into an Intergovernmental Agreement (the “IGA”) which clarifies their responsibilities.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO THAT:

Section 1. The Council hereby approves the IGA and authorizes the Town Manager to enter into the IGA with the County on behalf of the Town in substantially the same form as attached hereto as **Exhibit A** and in a form approved by the Town Attorney.

Section 2. This Resolution shall take effect immediately upon its passage.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Vail held this 3rd day of September, 2019.

Dave Chapin
Town Mayor

ATTEST:

Tammy Nagel
Town Clerk

**Intergovernmental Agreement
Between the Eagle County Clerk and Recorder and
The Town of Vail, Colorado
Concerning the TABOR Notice for the Tuesday, November 5, 2019 Election**

This Intergovernmental Agreement between the Eagle County Clerk and Recorder (“Clerk”) and the Town of Vail, Colorado (“TOV”) concerning the Tuesday, November 5, 2019 Election TABOR Notice mailing is made on _____.

RECITALS

WHEREAS, pursuant to C.R.S. § 1-7-116 (1) (a) the Clerk will serve as the coordinated election official for the Coordinated Election, and in accordance with state law, will conduct the Coordinated Election on behalf of all participating political subdivisions having jurisdiction within the boundaries Eagle County; and

WHEREAS, the TOV is not participating in the coordinated election and instead intends to submit a ballot issue on its own municipal ballot in its own non-coordinated election, which ballot issue will require a notice pursuant to the Taxpayer Bill of Rights at Article X, Section 20 of the Colorado Constitution (hereinafter, a “TABOR Notice”); and

WHEREAS, the Clerk is also preparing a combined TABOR Notice for political subdivisions participating in the coordinated election; and

WHEREAS, C.R.S. § 1-7-905(2) authorizes the designated election officials of overlapping political subdivision conducting an election other than a coordinated election to confer concerning the preparation of TABOR notices before the election, and to provide for preparation of any required ballot issue notice package by agreement in a form substantially as provided in section 1-7-116; and

WHEREAS, Colo. Const. art. X, § 20(3)(b) authorizes designated elected officials to mail at the least cost, and as a package where districts overlap, TABOR Notices addressed to “All Registered Voters” at each address of one or more active registered electors; and

WHEREAS, for purposes of efficiency and to result in the “least cost” to both entities, the TOV and Clerk desire to combine their mailings of the respective TABOR Notices and wish to clarify their responsibilities and memorialize their agreement with respect to the same.

NOW THEREFORE, in consideration of the above premises and the promises contained herein, the parties agree as follows:

I. Coordinated and Designated Election Officials

- A. Each party shall conduct their own election in accordance with the requirements of Colorado law; the TOV expressly acknowledges it will not be participating in the coordinated election under C.R.S. § 1-7-116.
- B. For purposes of coordinating the combined TABOR Notice, the TOV shall name a *Designated Election Official* (“DEO”) who shall act as the primary liaison between the TOV and the Clerk. Nothing herein shall be deemed or construed to relieve the Clerk or the Governing Body of the TOV from their official responsibilities for the conduct of their respective elections.
- C. The Clerk hereby designates Stacey Jones, Eagle County Chief Deputy Clerk and Recorder (stacey.jones@eaglecounty.us; phone 970-328-8726), as the “Contact Officer” to act as the Clerk’s primary liaison with the TOV for all purposes relating to the coordination of the TABOR Notice. The Contact Officer shall act under the authority of the Clerk.

II. Clerk Responsibilities

The Clerk will perform all duties in substantial compliance with applicable provisions of the Election Code of 1992, Colorado Title 1, C.R.S. as amended (“Election Code”); the Election Rules promulgated by the Colorado Secretary of State, as amended; and policy directives of the Colorado Secretary of State, if applicable.

A. Preparation for TABOR Notice Mailing

- 1. The Clerk hereby provides the TOV with a Street Locator Report (Appendix B), listing all residential street addresses situated within the TOV’s boundaries, as currently configured in Colorado’s statewide voter registration database (“SCORE”).

B. Ballot Issue Notice (“TABOR Notice”)

- 1. The Clerk shall prepare and mail a combined ballot issue notice in substantial compliance with Article X, Section 20 of the Colorado Constitution (“TABOR”) and applicable provisions of the Election Code and Election Rules. The Clerk shall have complete and sole discretion as she deems appropriate to ensure clarity for voters to determine the location within the TABOR Notice where notice related to the TOV issue will appear so as to maintain a distinction between issues appearing on the respective district ballots.
- 2. The Clerk shall mail the ballot issue notice not less than thirty (30) days prior to the Election, pursuant to Colorado Constitution Article X, Section 20(3)(b) and 1-1-106 C.R.S. The Clerk shall determine the least cost method for mailing the ballot issue notice, but at a minimum, the ballot issue notice shall be addressed and mailed to eligible voters at each address in Eagle County where one or more registered voters of the TOV and of any other participating entity resides. Nothing herein shall preclude the Clerk from mailing the TABOR Notice to persons other than voters of the TOV if such mailing arises from the Clerk's efforts to mail the combined TABOR Notice for all

participating entities at the least cost.

III. TOV Responsibilities

A. Contact Liaison

1. The TOV shall identify a "Designated Election Official" (DEO) to act as a liaison between the TOV and the Clerk/Contact Officer. The DEO shall be responsible for the final approval of TABOR Notice content. **To meet statutory and printing deadlines, the DEO shall respond to all Election-related written correspondence, electronic correspondence, phone calls, or any other communication from the Clerk/Contact Officer within 18 hours from the time of delivery by the Clerk/Contact Officer.** If the DEO cannot respond within 18 hours, an alternative official may respond on the DEO's behalf. Failure to respond to correspondence with 18 hours shall constitute approval allowing the Clerk to move forward.
2. The TOV has designated _____
whose mailing address is _____
and whose phone number is _____
and whose email address is _____
and whose fax number is _____
as its DEO for the purpose of coordinating the TABOR Notice..

B. Certification of Address Ranges

1. The TOV shall verify and certify to the Clerk (Appendix C) that all address ranges and street names actually situated in the TOV are accurately and completely stated in the Street Locator Report attached hereto as Appendix B.
2. In connection with such Street Locator Report verification and certification, the TOV shall note any address ranges or street names within the TOV that are inaccurately or incompletely stated in or omitted from the Street Locator Report, and certify on the Statement of Certification (Appendix C) the accuracy and completeness of the remainder of the Street Locator Report.
3. If the certification is not provided by the date specified herein, the TOV may not participate in the TABOR Notice mailing or the Clerk may build the mailing on the assumption that the Street Locator Report attached hereto as Appendix B is both complete and accurate, as the Clerk in her discretion may decide. The TOV shall deliver to the Clerk its Statement of Certification (Appendix C) and accuracy of the Street Locator Report, with notations regarding inaccuracies and omissions by, **Tuesday, September 3, 2019.**

C. Ballot Content

1. The TOV shall be solely responsible for all the content of all ballot issues, ballot questions and candidate contests in its conduct of its own municipal ballot in its own non-coordinated election.

D. Ballot Issue Notice (“TABOR Notice”)

1. The TOV shall receive, store and prepare TABOR Notice content according to the provisions set forth in Article X, Section 20 of the Colorado Constitution (TABOR Amendment) and 1-7-901, 1-7-902, 1-7-903, 1-7-904, and 1-7-908 C.R.S.
2. The DEO shall transmit via email the summaries, fiscal information, and any other required material to the Clerk no later than forty-three (43) days, **Monday, September 23, 2019** (Appendix A) before the Election.
3. The TOV shall certify its ballot content via email to the Clerk and Contact Officer in conformance with the following formatting guidelines:
 - Software: Microsoft Word '03 or later (**not PDF**)
 - Spacing: Single
 - Font Type: Arial Narrow
 - Font Size: 8 point
 - Justification: Left
 - All Margins: 0.5 inches
 - Language: English (Spanish translation encouraged)
 - Delivery Medium: Email attachment to regina.obrien@eaglecounty.us and stacey.jones@eaglecounty.us

Submissions not meeting these requirements will be rejected by the Clerk.

4. The TOV shall incorporate in its TABOR Notice content a local office address and telephone number specific to the TOV or the TOV DEO to enable voters to reach the TOV directly. The Clerk shall respond to all correspondence and inquiries that the Clerk receives within its expertise relating to the mailing of the TABOR Notice, but the Clerk shall refer inquiries concerning the substance of the conduct of the TOV’s Election, ballot issues, ballot questions, candidates, or the operations of the TOV to the TOV’s DEO.
5. The TOV has the responsibility to proofread and edit the text of the TABOR Notice proof before the Clerk will authorize printing of the TABOR Notice. **From the time the Clerk delivers via email the TABOR Notice proof, the TOV has 18 hours to proofread, correct if necessary, sign, and return the proof to the Clerk.** The TOV’s failure to disapprove and correct errors within that time shall constitute an approval of the TABOR Notice proof. After final approval of the TABOR Notice proof, the TOV assumes all responsibility and cost for any judicial proceedings related to any errors within the text of their issue or information presented on the TABOR Notice.

E. Cancellation of Election

1. In the event that the TOV resolves not to hold the Election, notice of such resolution shall be provided to the Clerk immediately.
2. The TOV shall provide notice by publication of the cancellation of the Election and a copy of the notice shall be posted in the Office of the Clerk, in the office of the Designated Election Official, in

the primary building of the TOV, and, if the TOV is a special district, in the office of the division of local government. The TOV is responsible for delivering such postings to each entity.

3. The TOV shall be responsible for all expenses incurred on its behalf to the date that cancellation notice was received by the Clerk together with all expenses incurred thereafter which could not be avoided by reasonable effort. All costs incurred or contracted for by the Clerk to support the TOV's portion of the TABOR Notice shall be reimbursed by the TOV.
4. Upon receipt of the invoice, the TOV shall promptly pay the Clerk the full actual costs of the activities of the Clerk relating to the Election incurred both before and after the Clerk's receipt of such notice.

F. Other Responsibilities

1. The TOV shall exercise all reasonable diligence, care, and control in providing information to the Clerk.
2. The TOV shall give assistance and information to the Clerk on any matter to ensure the smooth and efficient operation of the Election (such information not to include legal advice).
3. The TOV shall adhere to all applicable provisions of C.R.S. which are necessary or appropriate to the performance of the above duties.

IV. Miscellaneous

A. Costs

1. The Clerk shall charge to the TOV its pro rata share of all costs and expenses reasonably incurred in connection with the preparation, printing, labeling, postage, and mailing of the TABOR Notice. Said expenses shall be prorated among all political subdivisions participating in the ballot issue notice.
2. The Clerk shall charge and allocate to the TOV its pro rata share of all direct and indirect costs and expenses incurred by the Clerk to remedy, resolve, or reconcile the TOV's failure or omission to timely perform any of its obligations under this Agreement, without regard to whether TOV rescinds its intent to conduct an Election.
3. The TOV assumes all responsibility and cost for any judicial proceedings regarding whether or not issues legally belong on the ballot and any other challenges, both pre- and post-election, relating to the question of the TOV.
4. The Clerk shall submit to the TOV an invoice for the TOV's pro rata share of direct and indirect costs incurred in connection with the TOV's inclusion in the TABOR Notice within ninety (90) days after the Election.
5. The TOV shall remit all payments due to the County upon receipt of an itemized statement by **February 28, 2020** (Appendix A).

B. Indemnification

To the extent permitted by law, the TOV agrees to indemnify, defend, and hold harmless the County, its officers and employees, from any and all losses, costs, demands, or actions arising out of or related to any actions, errors or omissions of the TOV in completing its responsibilities relating to the Election and related tasks.

C. Reasonable Care

The County and its employees, agents, representatives, or other persons acting under the direction or control of the County shall use reasonable care in carrying out their obligations under this Agreement.

D. Notices

Any and all notices required to be given by this Agreement, unless otherwise set forth herein, are deemed to have been received and to be effective:

- three days after they have been mailed by certified mail, return receipt requested to the address as set forth below; or
- immediately upon hand delivery to Regina O’Brien, Clerk; or
- immediately upon receipt of confirmation that a fax or e-mail was received.

To Clerk: Regina O’Brien
 Eagle County Clerk and Recorder
 P.O. Box 537
 Eagle, CO 81631
 Fax: 970-328-8716
 Email: regina.obrien@eaglecounty.us

To TOV:

fax: _____

email: _____

Appendix A

CALENDAR OF EVENTS AND DEADLINES FOR TABOR NOTICE COORDINATION NOVEMBER 5, 2019 COORDINATED MAIL BALLOT ELECTION

While this calendar may not include all election dates, some key dates are identified for your reference. Dates in **RED** are key delivery dates of information from you to the Clerk's office.

Political Subdivisions planning to coordinate ballot issue notice ("TABOR Notice") with the Clerk's office should be aware of the following deadlines:

- **Tuesday, September 3, 2019** – 70 days prior - Political subdivisions participating in the election must return signed IGAs to the county clerk and recorder. Political subdivisions must verify and certify that all address ranges situated in political subdivision (Appendix B) are accurate and complete, note any changes or inaccuracies, and certify no later than Tuesday, September 3, 2019 (Appendix C).
- **Monday, September 23, 2019** – 43 days prior - Political subdivisions shall deliver the full text of any required ballot issue notices (e.g. TABOR Notice) and pro/con statement summaries to the Clerk in order to be included in the issue mailing. C.R.S. 1-7-904
- **Friday, October 4, 2019** – 30 days prior – Last day for the Clerk to mail out TABOR Notice(s). C.R.S. 1-1-106(5)
- **Monday, February 3, 2020** – Last day for the Clerk to mail invoices to districts for their share of TABOR notice costs.
- **Friday, February 28, 2020** – Last day for districts to submit payment for TABOR notice costs to Clerk's office.

Appendix B

**STREET LOCATOR REPORT FOR THE TOWN OF VAIL
TABOR NOTICE COORDINATION – NOVEMBER 5, 2019 ELECTION**