

TOWN OF BLUE RIVER, COLORADO

STAFF REPORT

TO: Mayor Decicco & Members of the Board of Trustees

THROUGH: Michelle Eddy, Town Manager

FROM: Bob Widner, Town Attorney

DATE: October 8, 2024

SUBJECT: **ORDINANCE 2024-04**
BOARD CONDUCT WITH STAFF AND CONTRACTORS

This Staff Report introduces proposed Ordinance No. 2024-04 which would amend the Municipal Code's current provisions addressing the Board of Trustees' relationship to administrative staff and contractors.

As a general practice of municipal governance efficiency, there is a recognized need for a division between the policy making body and administrative staff. You will find below background information that best describes the general practice and reasons for the practice. In short, the governing body is restricted in its authority to direct or order administrative staff and contractors to avoid circumstances where staff is directed by more than one supervisor, avoid inconsistent directives, avoid a Board member from contravening the will of the other Board members, and to avoid breach of contract where governing body members direct contractors to perform in violation of the contract.

Currently, Section 2-3-80 of the Town Code¹ deals with the Board's relationship to the Town Manager and staff. Consistent with sound governance and efficiency, this section explicitly states that a Board member is not authorized to give orders to Town administrative staff members. However, this section of the Code should also include contractors or consultants as personnel that the members of the Board should not order performance. Moreover, this section would more appropriately reside in Article 2 of Chapter 2 which includes the requirements placed upon the Board of Trustees.

The attached ordinance will relocate current Section 2-3-80 to Article 2 as new Section 2-2-140. In addition, the proposed ordinance would better define the Board's role in terms of its interactions with Town staff and contractors, thereby eliminating any potential blurring of responsibilities, which will help ensure the relationship between the Board and the Town Manager is based on clearly defined roles and preserve the allocations of authority under the council-manager form of government.

¹ **Sec. 2-3-80. Relationship of Town Board to administrative service.** Neither the Town Board nor any member of the Board shall have authority to require or prohibit the hiring, promotion, discipline, suspension, transfer, or termination of any person by the Town Manager. Except for the purpose of making specific inquiries, all members of the Town Board shall deal with administrative personnel or consultants solely through the Town Manager or the Town Manager's designee and no member of the Town Board shall give orders to any employee of the Town.

Below is a ~~redline/strikeover~~ form of the text of the proposed ordinance to assist the Board in identifying the changes to the current section 2-3-80:

~~Section 2-3-80. Relationship of Town Board to administrative service~~

Sec. 2-2-140. Board Conduct with Staff and Contractors.

- (a) Neither the Town Board nor any member of the Board shall have authority to require or prohibit the hiring, promotion, discipline, suspension, transfer, or termination of any **administrative staff** person by the Town Manager.
- (b) Except for the purpose of making specific inquiries **to obtain information**, all members of the ~~Town~~ Board shall deal with administrative **staff persons** ~~personnel or consultants~~ solely through the Town Manager or the Town Manager's designee and no member of the Town Board shall give orders **or directions** to any **administrative staff person** ~~employee~~ of the Town.
- (c) **The Board shall not give orders or directions to a Town contractor. Board members seeking information related to the performance of a contractor shall direct requests solely through the Town Manager or the Town Manager's designee.**
- (d) **For purposes of this section, "administrative staff person" shall mean all employees of the Town other than the Town Manager or Town Clerk. A "contractor" shall mean a company or a person other than an administrative staff person performing services for the Town but shall not include the Town Attorney.**

I will be in remote attendance at the October 15 Board of Trustee meeting to present this matter and to answer any questions. If you have questions beforehand, please contact me by telephone or email.

Background

The council-manager form of government is in widespread use and, according to a 2008 ICMA article, continues to expand in use across all U.S. cities.² In fact, the council-manager form has a higher share of the cities with fewer than 5,000 inhabitants than the mayor-council form of government. Moreover, when compared with mayor-council cities, studies show that council-manager cities are more likely to have greater efficiency, sounder finances, and stronger management performance.³ These studies have also shown that council-manager forms "have greater representation of minority groups in staff positions . . . are more likely to pursue long-term

² Svava, James. H and Nelson, Kimberly L., *Taking Stock of the Council-Manager Form at 100*, ICMA Public Management Magazine, August 2008, 8-9, available for download at <https://icma.org/documents/taking-stock-council-manager-form-100>.

³ *Id.* at 10.

goals, use strategic planning, base service delivery on need and other professional standards, have ethics codes and boards, integrate management functions, and adopt innovative management practices.” In sum, the council-manager form “makes a difference in process and performance”⁴ and is how most efficient local governments operate.

The Town of Blue River is a council-manager form of government.

Under the council-manager form of government, there is a clear distinction between the administrative role of the Town Manager and the political and policy roles of the Board of Trustees. The day-to-day operations of the Town reside with the Town Manager, allowing elected officials to devote their time and energy to policy development and the assessment of the effectiveness of those policies within the community. Indeed, this allocation of authority is the defining feature of the council-manager form of government.

It is the Town Manager that is directly responsible for following the direction and orders of the Board of Trustees as determined by the Board majority. The Board is the Town Manager’s supervisor. The Town Manager, in turn, is responsible for implementing the Board’s directions and to do so deciding how to allocate staff time, knowledge, and expertise to a given project or direction. The Manager is the supervisor of the administrative staff. If the Board is dissatisfied with the Manager’s implementation of the Board’s direction, the issue is one for the Board to raise with the Manager and not with administrative staff. It is inefficient and potentially problematic to have individual members of the Board direct administrative staff members. Administrative staff cannot serve multiple supervisors and perform efficiently.

As for contractors, contractors are required to perform in accordance with the underlying contract. It is the Board of Trustees that approves the contract, and the Town Manager is commissioned with the obligation to administer the contract in accordance with its terms. Where a contractor fails to perform, the Manger is required to address

⁴ *Id.*