



TOWN OF ELIZABETH

PATRICK G. DAVIDSON, TOWN ADMINISTRATOR

TO: Honorable Mayor, Mayor Pro Tem, and Board of Trustees
FROM: Patrick Davidson, Town Administrator
DATED: **April 4, 2024 – UPDATED**
SUBJECT: **Division of Elizabeth into Wards for Representation**

BACKGROUND

Traditionally, the Town of Elizabeth has made use of “at-large” elected positions for the Mayor and Board of Trustees. This means that each citizen has the right to vote for all open positions during an election. This process is somewhat unique, as many municipalities across Colorado and the United States have moved to a Ward or District-based system. Under such a system, a municipality is geographically divided into Wards, each having equitable [not necessarily equal] representation, with the position of Mayor being selected from the Town at-large.

Should the Board of Trustees desire such a change, now is the time to do so. With 6 of the 7 Board seats [including Mayor] being open for an election this year, it is the best opportunity since the Town’s formation to contemplate such a change. Additionally, with the substantial growth which has occurred during the past several years, the transition to Wards also allows for portions of the Town to better reflect their desires on projects and positions taken by the elected officials.

Any discussion regarding the use of Wards for elections, must necessarily take into consideration the residential growth that is likely to occur within the current jurisdictional boundaries of the Town of Elizabeth. As the Board is aware, the Town is considered “landlocked” in many respects, meaning that substantial expansion of the current Town into the County is fairly unlikely. However, there are considerable building locations remaining *within* the Town which likely will be built-out and developed over the next 3-5 years. As such, the Ward boundary lines being proposed consider reasonable expectations of growth.

ANALYSIS

Passage of Both a Resolution and an Ordinance.

Wards, in this instance, may be created by resolution, while the inclusion of additional territory within a ward requires an ordinance. As Wards were not provided during the formation of the Town of Elizabeth, both a resolution and an ordinance will be required to complete the process. See generally, C.R.S. §§31-2-104(1) and 31-4-104. Therefore, if the Board seeks to proceed in this manner, a resolution is adopted to create the Wards, and an ordinance is then used to codify the process.

Mayor Position.

The mayor’s position does not change from the proposed conversion to Wards. This position remains town-wide as an at-large position, and elections would remain on the current election schedule which has been used in the past.

Ward Represented by Trustee Einspahr.

Trustee Einspahr's seat is not up for election during the November 2024 election cycle. In order to preserve both the equal representation and equal protection of the proposed redistricting, Trustee Einspahr would remain in his current elected position, subject to swearing in to the new board after the election. Trustee Einspahr would then hold this seat until the 2026 election for his Ward.

Wards Not Represented by Trustee Einspahr.

In the case of the Wards not associated with Trustee Einspahr, elections would be held in November 2024 [as scheduled] with the two candidates receiving the highest number of votes in each Ward being elected. The candidate with the highest number of votes would receive the 4-year term position, and the candidate receiving the second highest number of votes receiving the 2-year term position. Afterwards, each Ward will have one seat open for election every two (2) years.

Boundary Lines for the Wards.

Generally, if the Board was to consider the existing residential properties in the Town, the Wards could be as identified as in Exhibit A. This provides a balance of existing populations combined with future residential development that is currently under review, as well as that reasonably expected in the next few years.

STAFF RECOMMENDATION

Staff strongly recommends the Board of Trustees take this matter into consideration for several reasons. First, this is the most opportune time in which to look at any form of conversion, as 6 of the 7 seats are open for election in November 2024. Second, the proposed Wards will take into consideration not only the current make-up of the Town, but also takes into consideration further development which *may* occur within the existing Town boundaries. Finally, it proposes the most equitable means of ensuring the impact of particular votes within the Town of Elizabeth. More specifically, it proposes to increase direct accountability between citizens and elected officials, while at the same time ensuring a consistent balance of power between neighborhoods and subdivisions within the Town itself.

BUDGET CONSIDERATION

Any budget concerns in this matter are negligible.

ATTACHMENT(S)

Resolution Dividing the Town of Elizabeth into Three Wards
Ordinance Dividing the Town into Three Wards, Specifying Wards, and Mayor At-Large
Memorandum from Town Attorney Regarding Division of Town into Wards

RESOLUTION 24R16

A RESOLUTION DIVIDING THE TOWN OF ELIZABETH INTO THREE WARDS AND, THEREIN, CHANGING THE BOARD OF TRUSTEES FROM AT-LARGE POSITIONS TO ELECTION BY WARD

WHEREAS, a statutory town may be divided into wards by Resolution pursuant to C.R.S. § 31-2-104 (1); and

WHEREAS, the Board of Trustees of the Town of Elizabeth (the "Board") desires to divide the Town into three (3) wards.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ELIZABETH, COLORADO AS FOLLOWS:

Section 1. The Town of Elizabeth is hereby divided into three (3) wards, each with the following initial boundaries and numbered from North to South commencing with the number 1:

Ward 1: All that part of the territory within the Town located North of Highway 86/West Kiowa Avenue, and located to the East of South Tabor Street, is hereby constituted and numbered as Ward 1.

Ward 2: All that part of the territory within the Town located to the South of Highway 86/West Kiowa Avenue, with its Eastern Boundary being South Tabor Street, and its Western Boundary being located as identified on the map identified in attached Exhibit A, is hereby constituted and numbered as Ward 2.

Ward 3: All that part of the territory within the Town located to the South of Highway 86/West Kiowa Avenue, with its Eastern Boundary being adjacent to Ward 2, and its Western Boundary being identified as the Western jurisdictional boundary of the Town, is hereby constituted and numbered as Ward 3.

d. A map of the Town wards labeled as **Exhibit A** is attached to this Resolution. This map shall be the official map of the Town of Elizabeth wards and shall be referred to as the "Town Ward Map." In case of a conflict between the map and the descriptions set forth above, the description shall prevail.

Section 2. Each ward shall be represented by two (2) Trustees, each elected on staggered four (4) year terms, beginning at the November 2024 general election.

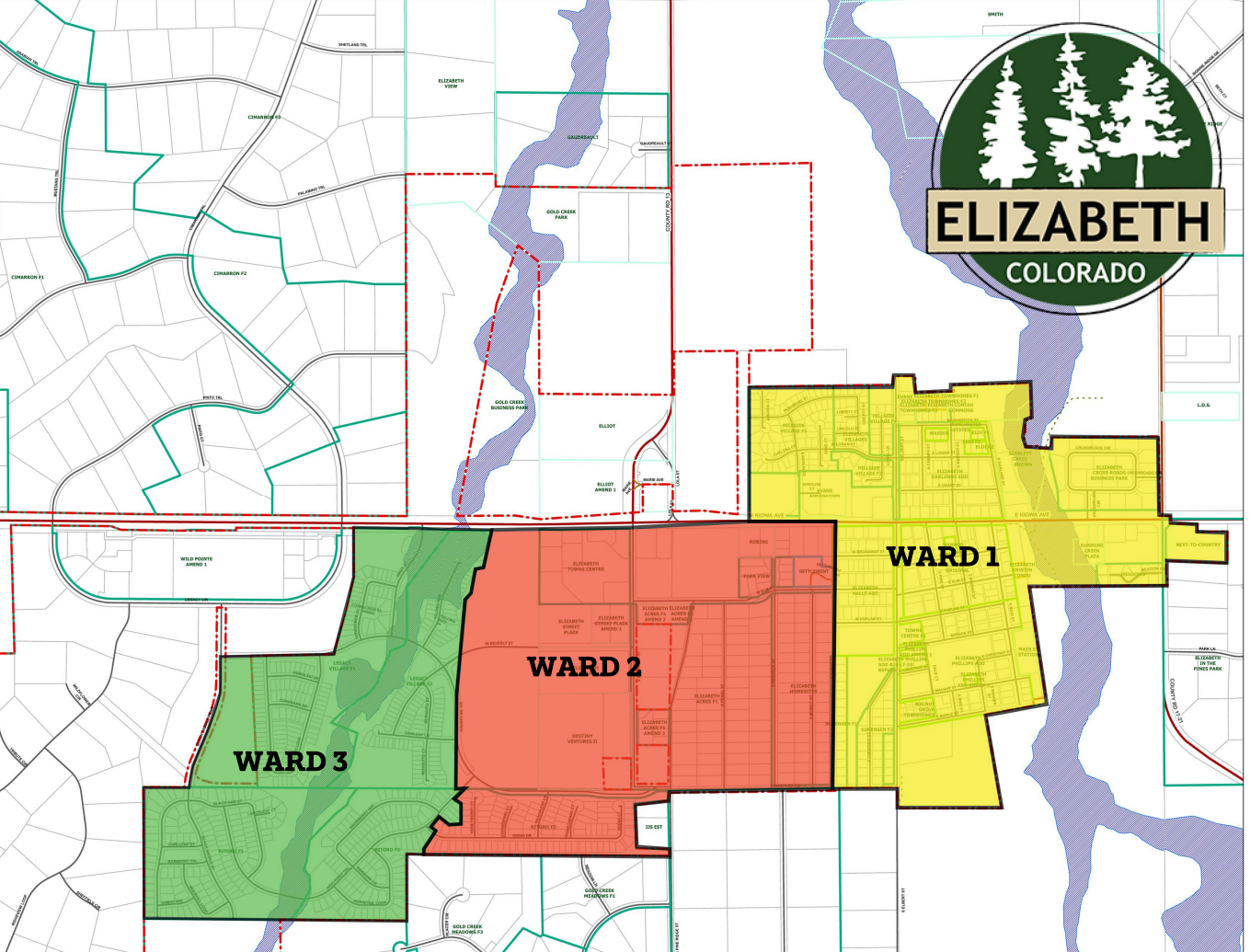
PASSED, APPROVED, and ADOPTED this ___ day of _____ 2024, by the Board of Trustees of the Town of Elizabeth, Colorado, on first and final reading, by a vote of ____ for and _____ against.

Tammy Payne, Mayor

ATTEST:

Michelle M. Oeser, Town Clerk

Exhibit A
Town Ward Map



WARD 3

WARD 2

WARD 1

ORDINANCE 24-03

AN ORDINANCE DIVIDING THE TOWN INTO THREE WARDS FOR PURPOSES OF ELECTING MEMBERS TO THE BOARD OF TRUSTEES, WITH TWO TRUSTEES REPRESENTING EACH WARD AND A MAYOR REPRESENTING THE TOWN AT-LARGE

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF ELIZABETH, COLORADO, THAT:

Section 1. The Town of Elizabeth Municipal Code is hereby amended by the addition thereto of a new Section 2-2-15 to read as follows:

Sec. 2-2-15. Election Wards.

(a) For the purpose of electing members to the Board of Trustees, the Town is hereby divided into three (3) wards as follows:

(1) Ward 1: All that part of the territory within the Town located North of Highway 86/West Kiowa Avenue, and located to the East of South Tabor Street, is hereby constituted and numbered as Ward 1.

(2) Ward 2: All that part of the territory within the Town located to the South of Highway 86/West Kiowa Avenue, with its Eastern Boundary being South Tabor Street, and its Western Boundary being located as identified on the map identified in attached Exhibit A, is hereby constituted and numbered as Ward 2.

(3) Ward 3: All that part of the territory within the Town located to the South of Highway 86/West Kiowa Avenue, with its Eastern Boundary being adjacent to Ward 2, and its Western Boundary being identified as the Western jurisdictional boundary of the Town, is hereby constituted and numbered as Ward 3.

(b) When territory is annexed to the Town, such territory shall be included in the ward within which boundaries the annexed territory is located.

Section 2. Section 2-2-10 of the Town of Elizabeth Municipal Code is hereby amended to read as follows:

(a) Terms. The Board of Trustees shall consist of six (6) Trustees and the Mayor. Each ward shall be represented by two (2) Trustees. Trustees shall be elected to serve four (4) year terms. The terms of the Trustees shall be staggered so that one (1) Trustee per ward shall be elected during any election. The terms of Trustees shall expire upon the first meeting of the Board following certification of the biennial election.

* * *

(c) Qualifications. Each Trustee shall be a resident of the Town ward they represent and a registered elector therein. If a Trustee, during the term of their office,

moves from or becomes a nonresident of their ward, they shall be deemed thereby to have vacated their office.

(d) Vacancies. In case of the death, resignation, vacation or removal for cause of any of the Trustees during their term of office, the Board of Trustees, by a majority vote of all remaining members thereof, may select and appoint, from among the duly qualified electors of the ward, a suitable person to fill the vacancy. The person so appointed shall hold office until the next regular election and until their successor is elected and qualified. If the term of the person creating the vacancy was to extend beyond the next regular election, the person elected to fill the vacancy shall be elected for the unexpired term. Where two (2) vacancies exist in a single ward and successors are to be elected at the next election to fill the unexpired terms, the candidate for Trustee of the ward receiving the highest number of votes shall be elected to a four (4) year term, and the candidate receiving the next highest number of votes shall be elected to fill the remainder of the unexpired term.

Section 2. Section 2-2-20 of the Town of Elizabeth Municipal Code is hereby amended to read as follows:

(a) The Mayor shall be elected to serve a term of four (4) years via a Town-wide election comprised of all wards. The Mayor shall otherwise meet the same qualifications as a Trustee and, in the event of a vacancy in the office of Mayor, such vacancy shall be filled in the same manner as a vacancy in the office of Trustee, as set forth in Section 2-2-10 herein.

* * *

Section 3. Severability. If any section, paragraph clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or enforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 4. The Board of Trustees hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. This Ordinance shall become effective thirty (30) days after publication.

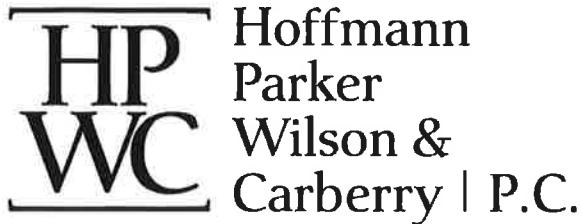
Read and approved at a meeting of the Board of Trustees of the Town of Elizabeth, Colorado, this _____ day of _____, 2024.

Passed by a vote of _____ for and _____ against and ordered published.

Tammy Payne, Mayor

ATTEST

Michelle M. Oeser, Town Clerk



Corey Y. Hoffmann
Kendra L. Carberry
Jefferson H. Parker
M. Patrick Wilson
Hilary M. Graham
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Bria I. May
Nicholas A. Hartman

TOWN OF ELIZABETH
MEMORANDUM

**TO: MAYOR AND BOARD OF TRUSTEES
PATRICK DAVIDSON, TOWN ADMINISTRATOR**

**FROM: COREY Y. HOFFMANN, CITY ATTORNEY 
NICHOLAS A. HARTMAN, ESQ.**

DATE: MARCH 25, 2024

RE: DIVISION OF THE TOWN INTO WARDS

This memorandum addresses the Town's ability to create a ward system, including various secondary legal questions therein on the rules governing it.

The Town may divide the town into constitutionally apportioned wards contemplated by Colorado law applicable to statutory towns. This division should be by resolution and ordinance no later than May 9, 2024, because it will create new seats that implicate variable amounts of term lengths.

As set forth below and in the attached, the Town shall then take the top two candidates receiving votes from the wards not containing Trustee Einspahr and assign them four- and two-year terms, in descending order of votes received. Trustee Einspahr should move to represent the ward he resides in until 2026, and the other spot should be elected to a four-year term. The mayoral position will not substantially change, and merely needs a small rewrite to conform with references to wards.

Statutory Authority

Town Authority to Create Wards

Colorado law does not contain a single reference to ward structure and rules in its subpart on statutory Towns. *See* C.R.S. § 31-4-301, *et seq.* However, "ward" is defined in the general

provisions governing municipal organization as a "district, the boundaries of which have been established pursuant to Section 31-2-104 or 31-4-104, from which a member of the governing body of the City or Town is elected." C.R.S. § 31-1-101 (14).

The statutory scheme for municipal corporations further provides that, during the organization of a new City or Town, incorporation election commissioners "shall" divide Cities, by resolution, into wards, and "may" divide Towns into wards. C.R.S. § 31-2-104 (1). These wards shall conform to constitutional apportionment requirements regarding equal districting and representation under the Equal Protection Clause. *Reynolds v. Sims*, 377 U.S. 533 (1964). Therefore, authority exists for the Town to divide itself into wards. Although the relevant authority contemplates this division to coincide with incorporation, there is nothing expressly limiting a Town from dividing at a later date – especially since language is so permissive in terms of formation.

Colorado law interestingly provides that wards shall be created by resolution, and that territory added to wards shall be done by ordinance. C.R.S. §§ 31-2-104 (1); 31-4-104. Therefore, the Town should pass a resolution creating the wards and codify the wards with procedures by ordinance.

Timing of Ward Formation, Election, and Trustee Qualifications

The language of C.R.S. § 31-4-301 (5) provides that four-year overlapping terms of office for trustees may be enacted by ordinance at least 180 days before the next regular election. C.R.S. § 31-4-301 (5). Terms may not be lengthened or shortened to fit this change, except to realign with the regular election schedule in the event of a vacancy. *Id.* Although a change to a ward system is not a change to term length, the Board's current make-up and recent vacations will require a mix of two- and four-year terms. Therefore, the Board should pass the Resolution and Ordinance establishing the ward system by May 9, 2024. Boundaries of the wards may be changed up to 90 days prior to an election. C.R.S. § 31-10-502 (2).

As stated previously, only statutory cities have specific statutory requirements for wards. However, to be safe, the Town should follow such procedures for its own ward system. C.R.S. § 31-4-106 provides that wards candidates shall have resided in the ward for which they are a candidate for at least 12 consecutive months prior to the election and shall be a registered elector therein. The elected ward members may not become a nonresident of the ward at any time during their tenure. *Id.* Any vacancy to a ward Trustee position may be filled either through appointment or election provided by C.R.S. § 31-4-108 (2)(b) until the next general election for that seat, as long as the appointed or elected individuals conform to the residency requirements. *Id.*

The Mayoral Position

Statutory cities and towns each provide for a mayor in addition to the Board. C.R.S. §§ 31-4-102 (1); 31-4-301 (1). The Mayor must reside in the Town and may be elected town-wide.

Id. Therefore, the Town's Mayor position merely needs updated in Code to reflect the specific town-wide/at large nature of the role.

Application to Town

The Town will be electing five of the six individuals on the Board this November, making this an opportune time to switch to a ward system if the Town determines to do so. As discussed herein, the mayoral position will remain a town-wide, at-large position and may stay on its current schedule. The five Trustee positions may be reassigned to wards and elected therein, subject to residency requirements.

The sixth Trustee position belonging to Trustee Einspahr, which is not up for election, creates a novel question of law. Because Colorado law contemplates wards being created upon incorporation, there is no dispositive authority on how to convert an at-large Trustee to a ward representative. Further, terms may not be shortened or extended by ordinance. C.R.S. § 31-4-301 (5). Therefore, the top two vote-getting candidates for the two wards not including Trustee Einspahr should fill the seats akin to how vacancies are currently handled at Code Section 2-2-10 (d). The three-ward structure implemented this Spring will therefore look something like this:

- Wards not represented by Trustee Einspahr: One election at the November 2024 election, with the candidate receiving the highest number of votes receiving the four-year term and the candidate receiving the second-highest number of votes receiving the shortened two-year term. The second seat will then fall back onto schedule in 2026.
- Ward containing Trustee Einspahr: One election at the November 2024 election for a four-year term.

Similar to a redistricting at the State level, Trustee Einspahr should then begin to represent the ward he currently resides in upon swearing in to the new Board, as a matter of equal representation and equal protection.

Conclusion

The Town may, at its election, create a constitutionally apportioned ward system contemplated by Colorado law. That ward system should be passed the Town's Resolution and Ordinance no later than May 9, 2024, because it will create new seats that implicate variable amounts of years. The Town shall then take the top two candidates receiving votes from the wards not represented Trustee Einspahr and assign them four- and two-year terms, respectively. Trustee Einspahr shall move to represent the ward he resides in, and the other seat should be elected to a four-year term. The mayoral position will not substantially change, and merely needs a small rewrite to conform with references to wards.

As always, please feel free to contact us with any questions.

ORDINANCE 24-

AN ORDINANCE DIVIDING THE TOWN INTO THREE WARDS FOR PURPOSES OF ELECTING MEMBERS TO THE BOARD OF TRUSTEES, WITH TWO TRUSTEES REPRESENTING EACH WARD AND A MAYOR REPRESENTING THE TOWN AT-LARGE

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(2) Ward 2: All that part of the territory within the Town located _____ is hereby constituted and numbered as Ward 2.

(3) Ward 3: All that part of the territory within the Town located _____ is hereby constituted and numbered as Ward 3.

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* * *

(c) Qualifications. Each Trustee shall be a resident of the Town ward they represent and a registered elector therein. If a Trustee, during the term of their office, moves from or becomes a nonresident of their ward, they shall be deemed thereby to have vacated their office.

(d) Vacancies. In case of the death, resignation, vacation or removal for cause of any of the Trustees during their term of office, the Board of Trustees, by a majority vote of all remaining members thereof, may select and appoint, from among the duly qualified electors of the ward, a suitable person to fill the vacancy. The person so appointed shall hold office until the next regular election and until their successor is elected and qualified. If the term of the person creating the vacancy was to extend beyond the next regular election, the person elected to fill the vacancy shall be elected for the unexpired term. Where two (2) vacancies exist in a single ward and successors are to be elected at the next election to fill the unexpired terms, the candidate for Trustee of the ward receiving the highest number of votes shall be elected to a four (4) year term, and the candidate receiving the next highest number of votes shall be elected to fill the remainder of the unexpired term.

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(a) The Mayor shall be elected to serve a term of four (4) years via a Town-wide election comprised of all wards. The Mayor shall otherwise meet the same qualifications as a Trustee and, in the event of a vacancy in the office of Mayor, such vacancy shall be filled in the same manner as a vacancy in the office of Trustee, as set forth in Section 2-2-10 herein.

* * *

Section 3. Severability. If any section, paragraph clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or enforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 4. The Board of Trustees hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. This Ordinance shall become effective thirty (30) days after publication.

Read and approved at a meeting of the Board of Trustees of the Town of Elizabeth, Colorado, this _____ day of _____, 2024.

Passed by a vote of _____ for and _____ against and ordered published.

Tammy Payne, Mayor

ATTEST

Michelle M. Oeser, Town Clerk

RESOLUTION 24R _____

A RESOLUTION DIVIDING THE TOWN OF ELIZABETH INTO THREE WARDS AND, THEREIN, CHANGING THE BOARD OF TRUSTEES FROM AT-LARGE POSITIONS TO ELECTION BY WARD

WHEREAS, a statutory town may be divided into wards by Resolution pursuant to C.R.S. § 31-2-104 (1); and

WHEREAS, the Board of Trustees of the Town of Elizabeth (the "Board") desires to divide the Town into three (3) wards.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ELIZABETH, COLORADO AS FOLLOWS:

Section 1. The Town of Elizabeth is hereby divided into three (3) wards, each with the following initial boundaries and numbered from North to South commencing with the number 1:

- a. Ward 1: _____
- b. Ward 2: _____
- c. Ward 3: _____

d. A map of the Town wards labeled as **Exhibit A** is attached to this Resolution. This map shall be the official map of the Town of Elizabeth wards and shall be referred to as the "Town Ward Map." In case of a conflict between the map and the descriptions set forth above, the description shall prevail.

Section 2. Each ward shall be represented by two (2) Trustees, each elected on staggered four (4) year terms, beginning at the November 2024 general election.

PASSED, APPROVED, and ADOPTED this ___ day of _____ 2024, by the Board of Trustees of the Town of Elizabeth, Colorado, on first and final reading, by a vote of _____ for and _____ against.

Tammy Payne, Mayor

ATTEST:

Michelle M. Oeser, Town Clerk

Exhibit A
Town Ward Map