

A RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, CALLING AN ELECTION ON NOVEMBER, 8, 2016 FOR A BALLOT QUESTION REGARDING WHETHER THE TOWN MAY RE-ESTABLISH ITS RIGHT TO PROVIDE TELECOMMUNICATIONS SERVICES, ADVANCED SERVICES, AND CABLE TELEVISION SERVICES EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS

**Town of Basalt, Colorado
Resolution No. 34
Series of 2016**

RECITALS

WHEREAS, affordable, reliable, and innovative telecommunication services are essential for residents and businesses in today's economic environment and for quality of life; and

WHEREAS, until 2005, municipalities throughout Colorado enjoyed the right and authority to use municipal fiber optic infrastructure to provide high-speed Internet, advanced telecommunications, and cable television services to their residences and businesses; and

WHEREAS, in 2005, the State Legislature enacted Senate Bill 05-152 (codified in Article 27 of Title 29, C.R.S.) to revoke and deny all Colorado municipalities the right of using municipal facilities, improvements, and fiber optic infrastructure to provide directly or indirectly high-speed Internet, advanced telecommunications, and cable television services to residents and businesses; and

WHEREAS, Senate Bill 152, codified at C.R.S. 29-27-101, et seq., further provides that a local government may re-authorize the local right to provide telecommunications services, advanced services, or cable television services, provided an election is held on the question of whether the local government shall provide the services and that the electorate votes in favor thereof; and

WHEREAS, the Town Council finds that re-establishing the Town's telecommunications rights would allow the Basalt community to implement local communication solutions to provide needs based access to benefit the residents and businesses of the Town; and

WHEREAS, the ballot question must be approved by a majority vote before becoming effective; and

WHEREAS, action of the Town Council to submit ballot issues is not required to be made by Ordinance in the Town Charter; and

WHEREAS, the Council has determined to call an election to be held on November 8, 2016, and to set the ballot title for the ballot issue to be submitted at the election; and

WHEREAS, pursuant to the criteria for ballot titles set forth at Section 31-11-111, C.R.S., in fixing this ballot title, the Council finds that the title set forth in Appendix A is not misleading, clearly identifies the effect of a "yes" or "no" vote, does not conflict with title of any other measure that will appear on the ballot, and correctly and fairly expresses the true intent and meaning of the measure.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, AS FOLLOWS:

1. At a special election of the Town to be held on Tuesday, November 8, 2016, there shall be submitted to the eligible electors of the Town a ballot issue concerning the Town's ability to provide directly or indirectly through private companies high-speed internet, advanced telecommunications, or cable television services, as authorized by C.R.S. 29-27-201 which ballot issue shall be in substantially the form attached hereto as Appendix A. Appendix A is hereby incorporated into this Resolution as if set forth in full herein.
2. For purposes of Section 1-11-203.5, C.R.S. and Section 31-11-111, C.R.S., this Resolution shall serve to set the title and content for the ballot issue set forth herein and the ballot title for such ballot issue shall be the text of the ballot issue itself. Pursuant to Section 1-11-203.5, C.R.S., any contest by a person of the form or content of a ballot title must be filed within five days of the Council's final action concerning the ballot title.
4. The Town Clerk, as well as the appropriate officers and employees of the Town, are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution. Among other matters, the Town Clerk shall certify the order of the ballot and ballot content, arrange for the required notices of election, and direct that all other appropriate actions be accomplished.
5. All actions not inconsistent with the provisions of this Resolution, heretofore taken by the members of the Council and the officers and employees of the Town, directed toward holding the election for the purposes stated herein are hereby ratified, approved and confirmed.
6. All prior acts, orders or resolutions, or parts thereof, by the Town in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.
7. If any section, paragraph, clause or provision of this Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections,

paragraphs, clauses or provisions of this Resolution, it being the intention that the various parts hereof are severable.

8. This Resolution shall take effect immediately upon its passage.

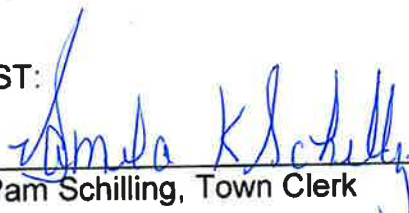
READ AND ADOPTED on a vote of 6 to 0 this 9th day of August, 2016.

TOWN OF BASALT

By 

Jacques R. Whitsitt, Mayor

ATTEST:

By 

Pam Schilling, Town Clerk

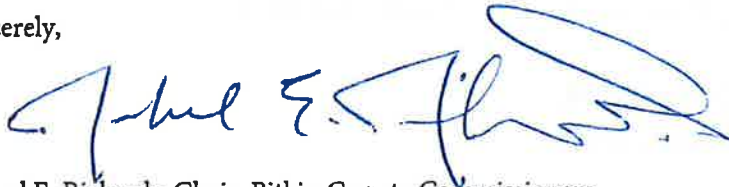


APPENDIX A

SHALL THE TOWN OF BASALT, COLORADO, WITHOUT INCREASING TAXES, BE AUTHORIZED TO PROVIDE, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC AND/OR PRIVATE SECTOR PARTNER(S), ALL SERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES DESCRIBED AS HIGH-SPEED INTERNET SERVICES (ADVANCES SERVICE), TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES, TO FOSTER THE EXPANSION OF SUCH SERVICES, INCLUDING BUT NOT LIMITED TO ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICE(S) BASED ON FUTURE TECHNOLOGIES, TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES WITHOUT LIMITING ITS HOME RULE AUTHORITY?

SB-152 opt-out vote on this November's ballot is a crucial and timely first step. Each political subdivision must notify their county clerk, in writing, by Friday, July 29th of its intent to ask an opt-out question on the November general election ballot. On behalf of Pitkin County and in the regional public interest of improved broadband service, I respectfully request that you consider placing an SB-152 opt-out question on this November's ballot.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rachel E. Richards", with a large, stylized flourish at the end.

Rachel E. Richards, Chair, Pitkin County Commissioners

Enclosures. CML/CCI Joint Memo; Map of votes to exempt; Pitkin County ballot question

cc: Eagle County
Aspen
Basalt
Carbondale
Snowmass Village

SB 152 and Statutory Prohibitions on Local Government Broadband Infrastructure

One of the biggest impediments to local governments enhancing broadband infrastructure is a law passed in 2005, which has since been commonly referred to as "Senate Bill (SB) 152" (SB05-152, attached to this memorandum and codified at sections 29-27-101-304, C.R.S.). SB 152 prohibits most uses of municipal or county money for infrastructure to improve local broadband service, without first going to a vote of the people. The hurdles put in place by this statute are not insurmountable; indeed, in the past few years ten municipalities and three counties have placed measures on the ballot to override the prohibitions in SB 152. These measures have passed handily in virtually every jurisdiction - with the support of citizens who are frustrated and want timely action on broadband service in their communities.

Continued dissatisfaction over a lack of adequate broadband is resulting in more and more jurisdictions considering going to the ballot with SB 152 questions. Late in 2014, CML and CCI began meeting with local government officials, economic development professionals and telecommunication experts from jurisdictions whose voters had approved SB 152 questions at the ballot. One outcome of these conversations is the development of this memorandum and materials designed to help interested local government officials and staff to frame the issue and consider the impacts of preparing their own ballot questions.

SB 152 Frequently Asked Questions (FAQ's)

What does a SB 152 election accomplish?

SB 152 requires that an election be held before a local government may "engage or offer to engage in providing" various telecommunication services. The term "providing" is given an expansive definition in the statute, which restricts both the direct and "indirect" provision of service ("indirect", in turn, is given its own, broadly restrictive definition). Fortunately, through a successful SB 152 election, a local community can clear away this legal impediment to a wide variety of local broadband initiatives.

It is important to point out that the vast majority of local governments who have passed SB 152 questions (or are considering going to the ballot in the near future) are **not** interested in hooking up homes and businesses and providing actual broadband services themselves. By and large, these jurisdictions are working to enhance local broadband infrastructure in order to *attract* service providers who would otherwise be unwilling or unable to serve their communities. The local broadband initiatives in the jurisdictions passing SB 152 questions to date usually involve some form of public-private partnerships between local governments, economic development agencies and the industry.

Is referring a SB 152 question to the ballot expensive?

No more so than any other referred measure. Most jurisdictions have referred their questions when the municipality or county was *already* having an election. Accordingly, the addition of the SB 152 issue did not significantly increase costs. In a coordinated election, a particular jurisdiction's costs would be affected by the terms of the IGA regarding election cost allocation between the county and participating local governments.

Are there any additional election requirements that distinguish a SB 152 question from other matters routinely referred to the ballot by a county or municipality?

No (but again, please confer with your legal counsel). As always, attention should be paid to the requirements of the Fair Campaign Practices Act (Section 1-45-117, C.R.S.), which forbids use of public funds for advocacy in elections. This restriction is a prudent consideration in planning any campaign for a successful SB 152 election.

Does voter approval of a county SB 152 ballot question have the effect of authorizing the provision of such services by municipalities within that county?

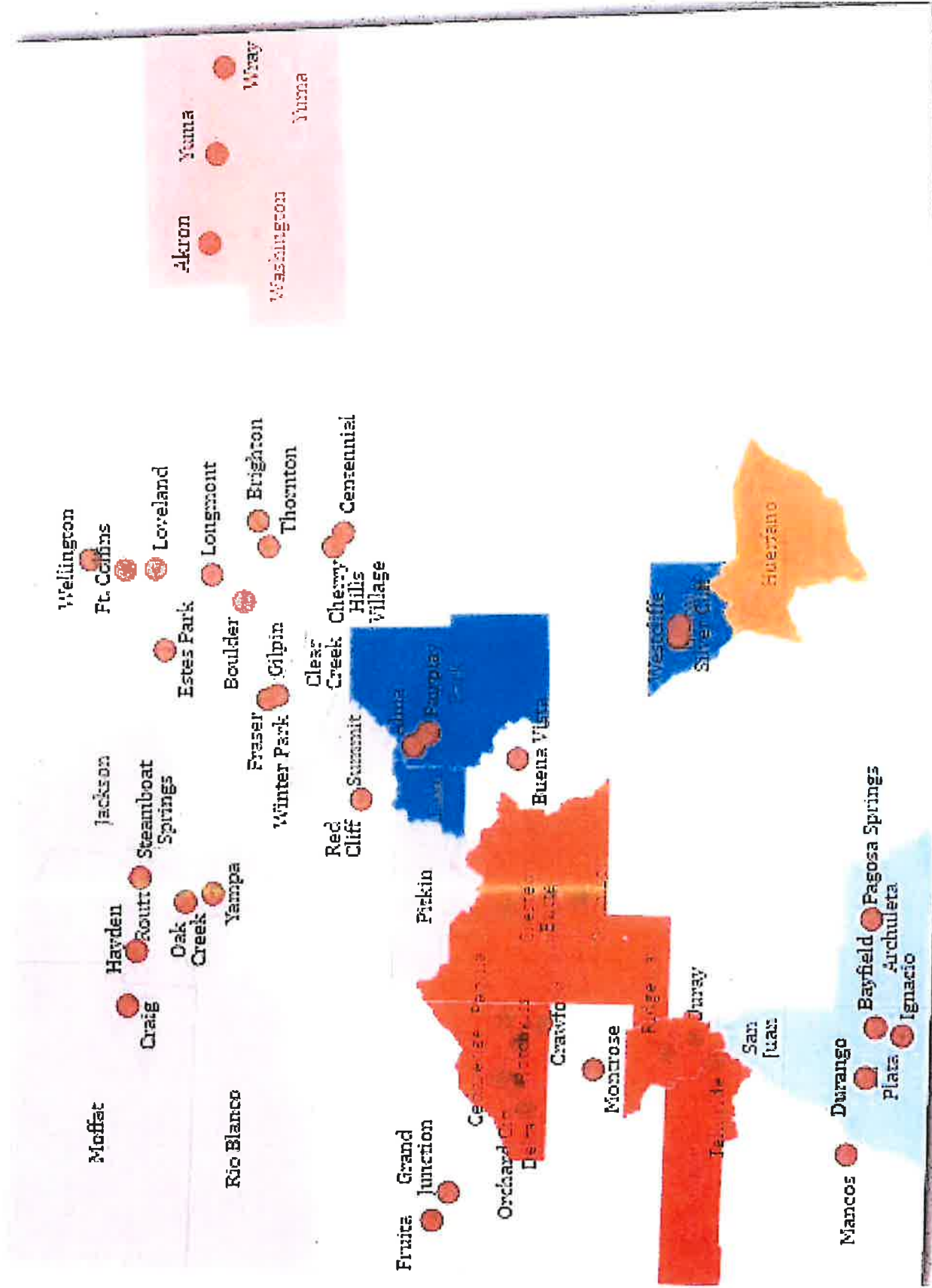
No. SB 152 requires voter approval by each jurisdiction participating in the provision of covered services.

Does a jurisdiction need to approve a SB 152 ballot question in order to qualify for broadband infrastructure grant funds from the Department of Local Affairs (DOLA)?

It depends. DOLA's broadband grant program provides funding for regional planning and "middle mile" infrastructure projects (i.e., projects that do not provide "last mile" connections to customers). The guidance in DOLA's broadband grant policies suggests that each jurisdiction must determine whether it is in compliance with the statutory restrictions set forth in SB 152. DOLA requires any grantee to be in compliance with any applicable laws and regulations. DOLA itself will not make that determination, nor does the awarding of a grant confer any certainty or acknowledgment of compliance on DOLA's part to the grantee. DOLA's broadband grant policy guidelines can be found at: <http://dola.colorado.gov/demog-cms/content/dola-broadband-program>.

The broadband landscape in Colorado is changing rapidly, and local government policies regarding broadband and economic development will need to evolve to keep pace with this change. CCI and CML will be providing additional research and guidance over the course of the year on this important policy issue. If your jurisdiction is moving forward on a SB 152 ballot question, please notify either CCI or CML. If you have additional questions or comments, please contact Geoff Wilson at CML at 303.831.6411 (e-mail: gwilson@cml.org) or Eric Bergman at CCI at 303.861.4076 (e-mail: ebergman@ccionline.org).

Votes to Exempt from SB05-152



Source: Department of Local Affairs