



# Town of Johnstown

## TOWN COUNCIL AGENDA COMMUNICATIONS

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**AGENDA DATE:** December 18, 2023

**SUBJECT:** Public Hearing – First Reading Ordinance 2023-264: An Ordinance Submitting To The Registered Electors Of The Town Of Johnstown At The General Municipal Election To Be Held On April 2, 2024, A Charter Amendment Conforming The Limits On Allowing Persons With Felony Convictions To Hold Council Office To Those Set Forth In The Colorado Constitution

**ACTION PROPOSED:** Consider Approval of Ordinance 2023-264 on First Reading

**ATTACHMENTS:** 1. Ordinance 2023-264

**PRESENTED BY:** Matt LeCerf, Town Manager

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### AGENDA ITEM DESCRIPTION:

Proposed for Council's review and consideration is an ordinance that would authorize a ballot measure at the April 2, 2024 election. This ballot measure would propose a modification to individuals running for elected office in the Town of Johnstown to be compliant with the qualifications outline in the Colorado Constitution. If the ballot were to be approved by the voters, it would amend our Home Rule Charter (HRC).

Based on recent court cases, there is a high probability that our current HRC which identifies that an individual convicted of any felony does not qualify to run for office is not legal. In an effort to be compliant both legally and with the Colorado Constitution the following modification to the HRC is proposed.

### FROM

No person who has been convicted of a felony or a willful violation of this Charter shall be qualified to serve as Mayor or Councilmember.

### TO

No person prohibited by the Colorado Constitution from serving in public office or who has been convicted of a willful violation of this Charter shall be qualified to serve as Mayor or Councilmember.

*The Community That Cares*

[johnstown.colorado.gov](http://johnstown.colorado.gov)

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

**LEGAL ADVICE:**

The Town Attorney drafted the Ordinance based on feedback from Town Council.

**FINANCIAL ADVICE:**

NA

**RECOMMENDED ACTION:** Approve Ordinance 2023-264 upon first reading.

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**SUGGESTED MOTIONS:**

**For Approval:** I move to approve Ordinance No. 2023-264, upon first reading.

**For Denial:** I move to deny Ordinance No. 2023-264, upon first reading.

*Reviewed and Approved for Presentation,*



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Town Manager

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**TOWN OF JOHNSTOWN, COLORADO**  
**ORDINANCE NO. 2023-264**

An Ordinance Submitting To The Registered Electors Of The Town Of Johnstown At The General Municipal Election To Be Held On April 2, 2024, A Charter Amendment Conforming The Limits On Allowing Persons With Felony Convictions To Hold Council Office To Those Set Forth In The Colorado Constitution

**WHEREAS**, the Town of Johnstown, Colorado ("Town") is a municipal corporation duly organized and existing under its Home Rule Charter ("Charter") adopted pursuant to Article XX of the Constitution of the State of Colorado; and

**WHEREAS**, the Town Council is vested with authority to administer the affairs of the Town; and

**WHEREAS**, Section 2.3.D of Article 2 of the Charter disqualifies a person convicted of a felony from serving as the Mayor or a Councilmember; and

**WHEREAS**, the U.S. Court of Appeals for the Tenth Circuit and the Colorado Supreme Court have determined that the right to seek and hold public office is a fundamental civil right under federal and state law; and

**WHEREAS**, under Colorado law, individuals lose the rights to vote and run for public office during their incarceration for a felony conviction, and upon completion of a sentence, rights of citizenship, such as the right to run for public office, are restored; and

**WHEREAS**, Colorado Constitution Article XII, Section 4, provides a permanent exception to the restoration of rights where the underlying felony conviction was for: (i) embezzlement of public monies; (ii) bribery; (iii) perjury; (iv) solicitation of bribery; or (v) subornation of perjury; and

**WHEREAS**, broad and permanent disqualifications from office for any felony conviction, like that included in the Charter, have been subject to criticism and legal attack in recent years; and

**WHEREAS**, the City of Aurora recently lost a lawsuit challenging its broad disqualification provision based on the conflicting provision in the Colorado Constitution; and

**WHEREAS**, the Town Council desires to amend the Charter to address the legal issue posed by the current overbroad disqualification of those with any felony conviction from running for or serving on the Town Council; and

**WHEREAS**, the Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property and that this Ordinance is in the best interests of the citizens of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:**

**Section 1.** The Town Council hereby submits and refers to the registered electors of the Town a proposed amendment to Article 2 of the Charter to amend Section 2.3.D, to read in its entirety as follows:

**ARTICLE 2 – TOWN COUNCIL**

**Section 2.3. - Mayor and Councilmembers – Qualifications**

...

- D. No person prohibited by the Colorado Constitution from serving in public office or who has been convicted of a willful violation of this Charter shall be qualified to serve as Mayor or Councilmember.

**Section 2.** The question of amending the Charter for the purposes stated herein shall be submitted to the registered electors of the Town in substantially the following form:

SHALL SECTION 2.3.D OF ARTICLE 2 OF THE JOHNSTOWN HOME RULE CHARTER, DISQUALIFYING A PERSON CONVICTED OF A FELONY FROM SERVING ON THE TOWN COUNCIL, BE AMENDED TO CONFORM THE CHARTER TO THE COLORADO CONSTITUTION, WHICH SPECIFIES THE FELONIES RESULTING IN DISQUALIFICATION FROM SERVING IN PUBLIC OFFICE (CURRENTLY INCLUDING EMBEZZLEMENT OF PUBLIC MONIES, BRIBERY, PERJURY, SOLICITATION OF BRIBERY AND SUBORNATION OF PERJURY)?

\_\_\_ YES

\_\_\_ NO

**Section 3.** The election shall be a general municipal election conducted by mail ballot on April 2, 2024. Pursuant to Section 6.4 of Article 6 of the Charter, the Town Clerk is hereby authorized to be in charge of all activities and duties related to the election. In addition, the officers and employees of the Town are hereby authorized and directed to take all necessary and appropriate action to effectuate the provisions of this Ordinance.

**Section 4.** If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**Section 5.** This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the

Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Charter. Copies of the entire Ordinance are available at the office of the Town Clerk.

**INTRODUCED, AND APPROVED** on first reading by the Town Council of the Town of Johnstown, Colorado, this 18 day of December, 2023.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: Hannah Hill

Hannah Hill, Town Clerk



By: Troy D. Mellon

Troy D. Mellon, Mayor

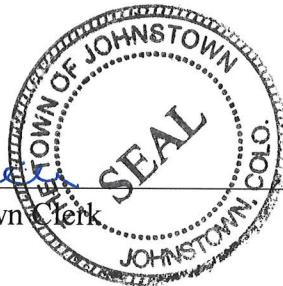
**PASSED UPON FINAL APPROVAL AND ADOPTED** on second reading by the Town Council of the Town of Johnstown, Colorado, this 3rd day of January, 2024.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: Hannah Hill

Hannah Hill, Town Clerk



By: Troy D. Mellon

Troy D. Mellon, Mayor