

**AGENDA
DOLORES COLORADO
TOWN BOARD OF TRUSTEES MEETING
SEPTEMBER 23RD 2024, 5:30 P.M.**

**THE MEETING WILL BE HELD AT THE TOWN HALL 601 CENTRAL AVENUE.
IF YOU WISH TO ATTEND VIRTUALLY, PLEASE VISIT THE TOWN WEBSITE UNDER GOVERNMENT TOWN
BOARD MEETING FOR THE ZOOM LINK**

<https://townofdolores.colorado.gov>

WORKSHOP: 5:30 P.M.

- 1. Nina Williams:** Dolores Watershed Collaborative: to discuss Wildfire Risk Reduction, Reliability, and Asset Protection Project (WRAP).
- 2. Michelle Furi:** Montelores Coalition.

BOARD MEETING 6:30 P.M.

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. ACTION/APPROVAL OF THE AGENDA**
- 5. IDENTIFICATION OF ACTUAL OR PERCEIVED CONFLICTS OF INTEREST.**
- 6. ACTION/APPROVAL OF THE CONSENT AGENDA:** The Consent Agenda is intended to allow the Board by a single motion approve matters that are considered routine or non-controversial. Here will be no separate discussion of these items unless a Board Member requests an item to be removed from the Consent Agenda and considered separately. Items removed from the Consent Agenda will be Considered under specific Agenda item numbers. **No consent agenda at this time.**
- 7. REMOVED CONSENT AGENDA ITEMS:**

8. CITIZENS TO ADDRESS THE BOARD: This is an opportunity for Citizens to address the Board at this time or during a Public Hearing. Each Person will have 5 minutes. The Town Board encourages public comment by the following sources: Live at the Town Hall, virtually via ZOOM (see the Town Website for the link), or by submitting your comments, via email, to the Town Clerk at tammy@townofdolores.com any time before the dated Board meeting.

9. STAFF/COMMITTEE REPORTS/PRESENTATIONS:

9.1 Managers Report

9.2 Attorneys Report: Jon Kelly

9.3 Treasurers Report:

9.4 Commissioner: Jim Candelaria

10. TRUSTEES REPORTS AND ACTIONS:

10.1 Mayor Chris Holkestad

10.2 Trustee Kalin Grigg

10.3 Trustee Sheila Wheeler

10.4 Trustee Mark Youngquist

10.5 Trustee Chris Curry

10.6 Trustee Linnea Peterson

10.7 Trustee Marie Roan

11. PUBLIC HEARINGS/ORDINANCE ADOPTION:

11.1 Public Hearing/Second Reading: Ordinance 579 Series 2024 Amending Title 5 of the Dolores Municipal Code pertaining to Special Events.

11.2 Public Hearing/Second Reading: Ordinance 580 Series 2024 Amending Title 5 of the Dolores Municipal Code pertaining to the Regulation of Alcohol sales.

11.3 Public hearing/Second Reading: Ordinance 581 Series 2024 Authorizing the transfer of Town Owned Property located at 47 Railroad Avenue Dolores Colorado. (Dolores Fire Protection District).

12. ACTION/APPROVAL RESOLUTIONS:

12.1 Resolution R622 Series 2024: Letter for DWC-WRAP grant

13. ADMINISTRATIVE BOARD BUSINESS:

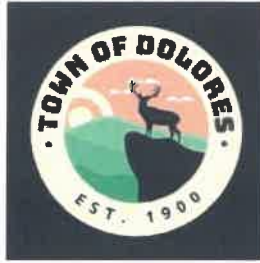
14. UPCOMING BOARD, COMMITTEE AND SPECIAL GROUP MEETINGS:

14.1 Planning and Zoning Meeting October 1st, 2024

14.2 Parks/Planning meeting October 10th, 2024

14.3 Dolores Community Center Committee meeting September 24th, 2024

15. ADJOURNMENT:



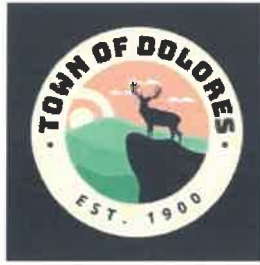
Town Manager's Report

Date: September 18th, 2024

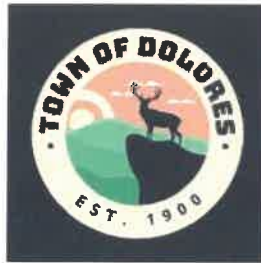
To: Board of Trustees

From: Leigh Reeves

- New Townhall – We are pouring new concrete with ADA compliant sidewalks around the building. The bollards are in so no one can hit the building again. Hopefully the concrete will be poured before our meeting on the 23rd.
- P&Z – You have the review of the FPD plat included in the packet. The Commissioners recommended moving forward with approval for this request. We will have a resolution/ordinance to insure we have right of first refusal if the FPD ever decides to vacate the property in perpetuity.
- We submitted the final GOCO application on September 11th, for \$776K. We will know by the end of the 2nd week of October if we are moving on to the final board review. The American Ramp Company called me, they have space in their schedule to do some of the work on the skate park in December. I am not sure we can move that fast but it is good to know.
- Before you on Monday will be the 2nd reading of Ordinance 579, which refines the special event permit process. We will have a public hearing this evening. This is part of the modernization of Ordinances we discussed at the Board Retreat. This ordinance grants the board greater flexibility, aligning with a more adaptable town ordinance structure.



- Before you will be Ordinance 580, 2nd reading and public hearing, which expands our festival liquor licensing rules, attracting a wider variety of vendors. This ordinance also paves the way for economic development, ensuring that we are prepared and proactive when opportunities arise.
- Ordinance 581 fulfills the wishes of the citizens by transferring ownership of the fire department property to them, while also ensuring that the town retains the right of first refusal if the FPD decides to relocate. This will be the 2nd reading and public hearing for this action.
- Also, Resolution 622 is a letter of support for the Grant action listed below. This will help DWR achieve the goal of a study on the upper Dolores River.
- Nina Williams and DWR need a letter of support for her grant request package. Additionally, she will be applying for financial support in this year's round of funding requests from the Town of Dolores. For those of you that are new, every year we give funding to several non-profits, such as four corners recycling. Nina will be here on Monday, Sept 23rd. She will be discussing the CWCB (CO Water Conservation Board) grant needed to provide a WRAP (Wildlife risk reduction, reliability, and asset protection project. It is a \$400K grant to study the upper Dolores.
- Michele Furi will also be joining the workshop to give an update on the Montelores Coalition's work toward land conservancy while encouraging recreational activities to promote economic development in the area.
- Working with the Mayor on understanding our expenses and ensuring we have two signatures on each check that gets paid. Upon my return from vacation, I



will be solely focused on budget 2025. I have found some errors in the data that need to be corrected for a more accurate budget analysis.

- While we don't have a formal treasurer's report, I can share that July's sales tax collection was \$111,405.78, which is a significant increase from our typical summer figures in the \$90K range. I will have a treasurer's report for the next meeting.
- The town has also accepted the resignation of RJ Cross, a long member of the team. He will be moving on to Texas where he will work in the power industry. If you would like to wish him well his last day is Wednesday, Sept 25th. He can be reached at RJ@townofdolores.com. He will be sorely missed by all. Unfortunately, we could not pay him enough to keep him in town.
- I will be on vacation in Italy, September 21st through 28th. Jon will be running Monday's meeting and workshop. Please call by Friday if you have any questions.

ORDINANCE NO 579

SERIES 2024

**AN ORDINANCE AMENDING TITLE 5 OF THE DOLORES MUNICIPAL CODE
PERTAINING TO SPECIAL EVENTS**

WHEREAS, Colorado Revised Statutes, § 31-15-401 grants general police powers to the Board of Trustees to promulgate ordinances for the health, safety, and welfare of the public, including regulation of lands owned by the Town within its corporate boundaries.

WHEREAS, Colorado Revised Statutes, § 31-35-402 grants general powers to the Board of Trustees to regulate festivals, events and the sale of alcohol and promulgate ordinances for the health, safety, and welfare of the public, including regulation of lands owned by the Town within its corporate boundaries.

WHEREAS, there is a need to amend and modernize the Town's ordinances pertaining to manner in which special event permits and sale of alcohol are issued.

WHEREAS, the Board of Trustees, in order to promote the health, safety, and welfare of the public in order balance the benefits and burdens that come with the Town's increasing popularity of special events, and changes to the manner in which alcohol is commonly sold, wishes to amend Section 5.04.040 and add additional section of the Dolores Municipal Code

NOW THEREFORE, BE IT ORDAINED BY TOWN OF DOLORES BOARD OF TRUSTEES THAT a new Chapter 5.04.040 to the Dolores Municipal Code as follows:

Section 1. Dolores Municipal Code Section 5.04.040 is repealed, replaced, and amended as follows:

5.04.040. - SPECIAL EVENTS BUSINESS LICENSE

Section 5.04.041. - Purpose.

The purpose of this chapter is to provide for and regulate the use of public property to minimize the impacts of large groups and to ensure that public property is reasonably available and safe for use by the public.

Section 5.04.042. - Definitions.

As used in this chapter, the following terms shall have the following meanings:

Demonstration means a rally, picketing, protest, speechmaking, march, vigil, religious service or

Public property means any property owned or controlled by the Town and open to the public or available for public use, including without limitation public streets, rights-of-way, sidewalks, parks, open space, facilities, and public buildings.

Special event means a planned event involving a gathering of 50 or more people which occurs on parks, streets, or other public property, including without limitation block parties, parades, festivals, walks, running or bicycle races, fundraisers, picnics, or sports tournaments, but excluding demonstrations.

Section 5.04.043. - Permit required.

It is unlawful for any person to stage, hold, present, or conduct a special event within the Town without a valid permit issued under this chapter.

Section 5.04.044. - Exemptions.

The provisions of this chapter shall not apply to an indoor event or including an event at the Dolores Community Center.

Section 5.04.043. - Application.

A. Any person desiring to sponsor or conduct a special event shall file an application with the Town Manager's office on a form supplied by the Town.

B. Each application shall be accompanied by a signed indemnification agreement stating that the applicant, in exchange for issuance of the permit, agrees to reimburse the Town for any costs incurred by the Town in repairing damages to public property caused by the applicant, sponsors, invitees, or participants of the special event or demonstration and agreeing to defend the Town against, and indemnify and hold the Town harmless from, any liability to any person or property that arises from or is related to the special event or demonstration.

C. Each application shall be accompanied by a nonrefundable application fee in such amount established by resolution of the Town Council. Demonstration permits shall not be subject to an application fee.

D. Each application from an entity shall provide a certificate of good standing from the Colorado Secretary of State.

E. Each application from a not for profit organization shall provide proof of its tax exempt status.

F. Each application from an entity shall disclose the name, address, phone number and email address of the event organizer authorized to act on behalf of the entity and be accompanied by a resolution signed by the governing board of the organization.

Section 5.04.044. - Review; decision.

A. Upon receipt of a complete application, the Town Manager shall transmit copies of the application to such persons, agencies, or departments as the Town Manager deems appropriate. Within ten days, the referral agencies shall provide the Town Manager with any comments concerning the application.

B. The Town Manager shall recommend approval, denial or conditional approval an application for a special event permit to the Board of Trustees within 40 days of receipt of the completed application.

Section 5.04.045. - Criteria for denial; conditions.

A. The Board of Trustees shall apply the following criteria in determining whether to grant or deny special event permit:

1. Whether information contained in the application or supplemental information obtained from the applicant is found to be false in any material detail;
2. Whether the applicant is not legally competent to contract under Colorado law;
3. Whether the applicant or the person on whose behalf the application is made has failed to pay costs, fees, or deposits for a previous special event or demonstration permit within the preceding five years; or the applicant has failed to pay the Town for damages arising from a previous special event or demonstration held by the applicant, regardless of when such event was held;
4. Whether the applicant has failed to abide by the requirements or conditions of a previous permit within the preceding five years;
5. Whether the special event will conflict with: a special event or demonstration for which a permit has already been issued; a Town-sponsored event; or an annual special event which is reasonably expected to be held again, but for which an application has yet to be submitted.
6. Whether the location of the special event will substantially interfere with any scheduled construction or maintenance work;
7. Whether the special event will cause significant disruption in the ability of the Town to deliver or provide essential governmental services;
8. Whether adequate sanitation and other required health facilities are not and cannot be made available at or sufficiently near the proposed special event or demonstration area(s); or
9. Whether sufficient parking is not available near the location of the special event or demonstration to accommodate the number of vehicles reasonably expected, and an acceptable transportation and parking plan to provide adequate parking has not been submitted.

B. The Board of Trustees may impose reasonable conditions on approval of a special event, when necessary to protect the public health, safety, and welfare of the public, including without limitation:

1. Alteration of the date, time, duration, frequency, route, or location of the special event;
2. A deposit in an amount the Board of Trustees finds is appropriate based upon an estimate of the actual costs to be incurred by the Town in the clean-up of the special event;
3. Proof of insurance demonstrating that the permittee has in effect a policy of general liability insurance in an amount determined by the Town Manager based upon issues routinely considered by the Town in evaluating loss exposures;
4. Conditions concerning parking, pedestrian, or vehicular traffic, including without limitation restricting the special event or demonstration to only a portion of a street or right-of-way;

5. Traffic control requirements, such as traffic cones, barricades, or other traffic control devices;
6. Provision of emergency access and first aid or sanitary facilities;
7. Supplemental fire protection or law enforcement personnel to be present at the special event;
8. Notice of the special event or demonstration to surrounding neighborhoods;
9. Restrictions on the number and type of vehicles, animals or structures and inspection and prior approval of floats, structures and decorated vehicles;
10. Required trash receptacles, cleanup, and restoration of property;
11. Restrictions on amplified sound;
12. Designation of a contact person with decision-making authority who will be continuously available to law enforcement personnel and present at the special event or demonstration;
13. Provide proof that a sales tax has been obtained by the applicant or that the applicant is exempt from sales tax;
14. Require that event vendors obtain a sales tax license unless taxes are collected by the event sponsor or organizer;
15. Require that the event sponsor or organizer submit to the town clerk within thirty days after the conclusion of the special event a written financial report reflecting, at a minimum, total sales of goods and/or services generated at the special event and the total sales tax revenues collected. Compliance with the reporting requirements in this subsection shall be in addition to any required sales tax reporting due to the Colorado Department of Revenue.

Section 5.04.046. - Duties of permittee; posting.

In connection with the holding of the special event for which a permit is issued, a permittee shall:

- A. Comply with all of the terms and conditions of the permit and all applicable Town ordinances, the rules, regulations, and policies adopted by the Town Manager pursuant to Section 5.04.050, and state and federal law;
- B. Permit inspection of its records and special event facilities by the Town Manager for the purpose of determining the permittee's compliance with the terms and conditions of the permit; and
- C. Ensure that a copy of the permit is continuously posted in a conspicuous location at the site of the special event throughout the duration of the event.
- D. Notify and ensure that all vendors of the special event are notified of the rules and conditions of the permit and where applicable of their duty to obtain a sales tax license.

Section 5.04.047. - Suspension; revocation.

A. The Board of Trustees or the Town Manager may suspend or revoke a permit at any time prior to the special event or demonstration if: conditions change or facts come to light so that the application could have been denied in the first instance; or the terms of a conditional permit have not been satisfied in the time specified for meeting the condition.

B. The Town Manager may suspend or revoke a permit during the course of the special event or demonstration if: continuation of the special event or demonstration presents a clear and present danger to the participants or the public health, safety or welfare; or the special event or demonstration fails to comply with any condition of the permit or any applicable law.

C. In deciding whether a permit should be suspended or revoked, the Board of Trustees or Town Manager shall consider: the nature and seriousness of the issue; the corrective action, if any, taken by the permittee; and the likelihood of recurrence.

D. No application fees paid by a permittee in connection shall be refunded if such permit is suspended or revoked.

Section 5.04.048. - Permit non-transferable.

A permit is non-transferable and non-assignable. Any attempt to transfer or assign such permit voids the permit.

Section 5.04.049. - Relationship to other ordinances.

A. The permittee shall ensure that the special event or demonstration complies with all other applicable law. Specifically:

1. A permit issued under this chapter is not a special events liquor license. If alcoholic beverages are to be served, the permittee must obtain the required permit or approval.

2. A development permit or building permit may be required depending upon the size and scale of any temporary structures proposed to be used in connection with the special event or demonstration.

3. Notwithstanding the foregoing, a permit issued under this chapter may authorize the permittee to display temporary signage in connection with the special event or demonstration, if the signage is included in the application and approved as part of the permit.

Section 5.04.050. - Rules, regulations, and policies.

The Town Manager is authorized to adopt administrative rules, regulations and policies as may be necessary for the proper administration of this chapter.

Section 05.04.051. - Violation and penalty.

A. It is unlawful to violate any provision of this chapter. Violations of this chapter shall be punished as set forth in Chapter 1.12.010.

B. In addition to all other available remedies, a special event without a valid permit issued pursuant to this chapter may be enjoined by any court of competent jurisdiction.

Section 2. The Town Trustees hereby finds, determine, and declare that this Ordinance is promulgated under the general police power of the Town of Dolores, 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 Trustees further determine that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 5. This Ordinance shall take effect immediately upon adoption. The Town of Dolores Board of Trustees hereby finds, determines, and declares this ordinance is necessary for immediate preservation of the health, safety, and welfare of its citizens.

PUBLIC HEARING. This ordinance shall be considered for second or final reading on the 9th day of September 2024, in the Town Board Chambers in Town Hall, Dolores, Colorado, at which time and place all persons may appear and be heard concerning the same.

Passed adopted and approved on the first reading this 9th day of September 2024.

DOLORS BOARD OF TRUSTEES:

By: _____

Mayor Chris Holkestad

Attest

By: _____

Town Clerk Tammy Neely

Passed adopted and approved on the second and final reading this 23rd day of September 2024.

DOLORS BOARD OF TRUSTEES:

By: _____

Mayor Chris Holkestad

Attest:

By: _____
Town Clerk Tammy Neely

First Amendment Issues Around Special Event Permits

Speech by the government versus

- Municipal government has broad discretion to express its views subject to restrictions such as the Establishment Clause. *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995)
- Granting an event permit to a private entity is NOT considered speech or endorsement of speech by the government

Regulation of Speech by the government

- Issuing a permit to hold an event on government property is regulation of speech by the government. *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974)
- The next question is where the speech occurs -- is the speech in a Traditional Public Forum?

Is the permit to use a park a Traditional Forum?

- A traditional public forum includes streets and public parks. *Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939) and *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983)
- Government has very limited ability to regulate speech in a Traditional Public Forum

Restrictions in Traditional Public Forums

- Local governments MAY impose limited licensing requirements, including fees, and regulate the time, place and manner of events and speech in the Traditional Public Forum.
- Governments may NOT make arbitrary decisions on who is able to speak and may NOT regulate the content of the speech in the Traditional Public Forum.
- *Forsyth County, Ga. V. Nationalist Movement*, 505 U.S. 123, (1992).

Does the Town Violate the Establishment Clause when a vendor allows political Speech?

- No. The Town issued a special event permit to a private entity that chose to allow political Speech. This is not an endorsement by the Town of the views expressed by the permit holder or its vendors.

May the Town regulate Speech by vendors at special events?

- No. The town may NOT adopt regulations that restrict the type or content of Speech permitted by vendors at a special event permitted by the Town in a Traditional Public Forum such as a parade.

- *Recall that parks and streets are traditional public forums for free speech*
 - *Parades are considered a traditional public forum*
 - *Municipalities and other government entities may not regulate the content of speech in a traditional public forum*
 - *Municipalities may impose reasonable regulations on the time place and manner of the speech such as requiring permits*
 - *Municipalities may NOT prohibit political messages in parades*
 - *But non government parade organizers MAY regulate speech. For example in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston (1995)*. In a unanimous opinion delivered by Justice David H. Souter, the Court held that the parade organizers—various veterans’ groups—had a free speech right to exclude an Irish gay group from participating in a St. Patrick’s Day parade in Boston.*
 - *While some municipalities have banned parades altogether, Courts, including a recent federal district court case out of Philadelphia have not approved of such policies where similar types of events are permitted. See *Philadelphia Vietnam Veterans Memorial Society City of Philadelphia*.*
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- *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston* (1995). In a unanimous opinion delivered by Justice David H. Souter, the Court held that the parade organizers—various veterans’ groups—had a free speech right to exclude an Irish gay group from participating in a St. Patrick’s Day parade in Boston.
- The gay group argued that their exclusion violated both the state and federal constitutions and the state public accommodations law, which prohibited “any distinction, discrimination or restriction on account of . . .sexual orientation . . .relative to the admission of any person to, or treatment in any place of public accommodation, resort or amusement.” But the Court said that being forced to include groups, such as a gay and lesbian group, would alter “the parade’s expressive content and thereby violated the fundamental First Amendment rule that a speaker has the autonomy to choose the content of his own message and, conversely, to decide what not to say.”

The Public Forum.

In 1895, while on the highest court of Massachusetts, future Justice Oliver Wendell Holmes rejected a contention that public property was by right open to the public as a place where the right of speech could be recognized,[1444](#) and on review the United States Supreme Court endorsed Holmes’ view.[1445](#) Years later, beginning with *Hague v. CIO*,[1446](#) the Court reconsidered the issue. Justice Roberts wrote in *Hague*: “Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.” Although this opinion was not itself joined by a majority of the Justices, the Court subsequently endorsed the view in several opinions.[1447](#)

The Roberts view was called into question in the 1960s, however, when the Court seemed to leave the issue open,[1448](#) and when a majority endorsed an opinion by Justice Black asserting his own narrower view of speech rights in public places.[1449](#) Later decisions restated and quoted the Roberts language from *Hague*, and that is now the position of the Court.[1450](#) Public streets and parks,[1451](#) including those adjacent to courthouses[1452](#) and foreign embassies,[1453](#) as well as public libraries[1454](#) and the grounds of legislative bodies,[1455](#) are open to public demonstrations, although the uses to which

public areas are dedicated may shape the range of permissible expression and conduct that may occur there.¹⁴⁵⁶ Moreover, not all public properties are public forums. “[T]he [First Amendment](#) does not guarantee access to property simply because it is owned or controlled by the government.”¹⁴⁵⁷ “The crucial question is whether the manner of expression is basically compatible with the normal activity of a particular place at a particular time.”¹⁴⁵⁸ Thus, by the nature of the use to which the property is put or by tradition, some sites are simply not as open for expression as streets and parks are.

¹⁴⁵⁹ But if government does open non-traditional forums for expressive activities, it may not discriminate on the basis of content or viewpoint in according access.¹⁴⁶⁰ The Court, however, remains divided with respect to the reach of the public forum doctrine.¹⁴⁶¹

Speech in public forums is subject to time, place, and manner regulations that take into account such matters as control of traffic in the streets, the scheduling of two meetings or demonstrations at the same time and place, the preventing of blockages of building entrances, and the like.¹⁴⁶² Such regulations are closely scrutinized in order to protect free expression, and, to be valid, must be justified without reference to the content or subject matter of speech,¹⁴⁶³ must serve a significant governmental interest,¹⁴⁶⁴ and must leave open ample alternative channels for communication of the information.¹⁴⁶⁵ The Court has written that a time, place, or manner regulation “must be narrowly tailored to serve the government’s legitimate, content-neutral interests but that it need not be the least restrictive or least intrusive means of doing so. Rather, the requirement of narrow tailoring is satisfied . . . [s]o long as the means chosen are not substantially broader than necessary to achieve the government’s interest”¹⁴⁶⁶ A content-neutral time, place, and manner regulation of the use of a public forum must also “contain adequate standards to guide the official’s decision and render it subject to effective judicial review.”¹⁴⁶⁷ Unlike a content-based licensing scheme, however, it need not “adhere to the procedural requirements set forth in *Freedman*.”¹⁴⁶⁸ These requirements include that the “burden of proving that the film [or other speech] is unprotected expression must rest on the censor,” and that the censor must, “within a specified brief period, either issue a license or go to court to restrain showing the film. Any restraint imposed in advance of a final judicial determination on the merits must similarly be limited to preservation of the status quo for the shortest fixed period compatible with sound judicial resolution.”¹⁴⁶⁹

A corollary to the rule forbidding regulation based on content is the principle—a merging of free expression and equal protection standards—that government may not discriminate between different kinds of messages in affording access.¹⁴⁷⁰ In order to ensure against covert forms of

discrimination against expression and between different kinds of content, the Court has insisted that licensing systems be constructed as free as possible of the opportunity for arbitrary administration.¹⁴⁷¹ The Court has also applied its general strictures against prior restraints in the contexts of permit systems and judicial restraint of expression.¹⁴⁷²

It appears that government may not deny access to the public forum for demonstrators on the ground that the past meetings of these demonstrators resulted in violence,¹⁴⁷³ and may not vary a demonstration licensing fee based on an estimate of the amount of hostility likely to be engendered,¹⁴⁷⁴ but the Court's position with regard to the "heckler's veto," the governmental termination of a speech or demonstration because of hostile crowd reaction, remains unclear.¹⁴⁷⁵

The Court has defined three categories of public property for public forum analysis. First, there is the traditional public forum— places such as streets and parks that have traditionally been used for public assembly and debate, where the government may not prohibit all communicative activity and must justify content-neutral time, place, and manner restrictions as narrowly tailored to serve a legitimate interest.¹⁴⁷⁶ Second, there is the designated public forum, where the government opens property for communicative activity and thereby creates a public forum. Such a forum may be limited— hence the expression "limited public forum"—for "use by certain groups, e.g., *Widmar v. Vincent* (student groups), or for discussion of certain subjects, e.g., *City of Madison Joint School District v. Wisconsin PERC* (school board business),"¹⁴⁷⁷ but, within the framework of such legitimate limitations, "a content-based prohibition must be narrowly drawn to effectuate a compelling state interest."¹⁴⁷⁸ Third, with respect to "[p]ublic property which is not by tradition or designation a forum for public communication," the government "may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on [sic] speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view."¹⁴⁷⁹ The distinction between the first and second categories, on the one hand, and third category, on the other, can therefore determine the outcome of a case, because speakers may be excluded from the first and second categories only for a "compelling" governmental interest, whereas exclusion from the third category need only be "reasonable."

The Court held that a school system did not create a limited public forum by opening an interschool mail system to use by selected civic groups "that engage in activities of interest and educational relevance to students," and that, in any event, if a limited public forum had thereby been created a teachers union rivaling the exclusive bargaining representative could still be excluded as not being "of a similar character" to the civic groups.¹⁴⁸⁰ Less

problematic was the Court's conclusion that utility poles and other municipal property did not constitute a public forum for the posting of signs.¹⁴⁸¹ More problematic was the Court's conclusion that the Combined Federal Campaign, the Federal Government's forum for coordinated charitable solicitation of federal employees, is not a limited public forum. Exclusion of various advocacy groups from participation in the Campaign was upheld as furthering "reasonable" governmental interests in offering a forum to "traditional health and welfare charities," avoiding the appearance of governmental favoritism of particular groups or viewpoints, and avoiding disruption of the federal workplace by controversy.¹⁴⁸² The Court pinpointed the government's intention as the key to whether a public forum has been created: "The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a non-traditional forum for public discourse."¹⁴⁸³ Under this categorical approach, the government has wide discretion in maintaining the nonpublic character of its forums, and may regulate in ways that would be impermissible were it to designate a limited public forum.¹⁴⁸⁴

Application of these principles continues to raise often difficult questions. In *United States v. Kokinda*, a majority of Justices, who ultimately upheld a ban on soliciting contributions on postal premises under the "reasonableness" review governing nonpublic fora, could not agree on the public forum status of a sidewalk located entirely on postal service property.¹⁴⁸⁵ Two years later, in *International Society for Krishna Consciousness, Inc. v. Lee*, the Court similarly divided as to whether non-secured areas of airport terminals, including shops and restaurants, constitute public fora.¹⁴⁸⁶ A five-Justice majority held that airport terminals are not public fora and upheld regulations banning the repetitive solicitation of money within the terminals.¹⁴⁸⁷

A decade later, the Court considered the public forum status of the Internet. In *United States v. American Library Association, Inc.*, a four-Justice plurality held that "Internet access in public libraries is neither a 'traditional' nor a 'designated' public forum."¹⁴⁸⁸ The plurality therefore did not apply strict scrutiny in upholding the Children's Internet Protection Act, which provides that a public school or "library may not receive federal assistance to provide Internet access unless it installs software to block images that constitute obscenity or child pornography, and to prevent minors from obtaining access to material that is harmful to them."¹⁴⁸⁹

More recently, in *Packingham v. North Carolina*, the Court appeared to equate the Internet to traditional public fora like a street or public park. Specifically, Justice Kennedy, writing for the Court, observed that, "[w]hile in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is

clear. It is cyberspace—the ‘vast democratic forums of the Internet’ in general, and social media in particular.”[1490](#) Consequently, the Court struck down a North Carolina law making it a felony for registered sex offenders to use commercial social networking websites that allow minor children to be members, such as Facebook. Applying strict scrutiny, the Court held that the North Carolina law impermissibly restricted lawful speech as it was not narrowly tailored to serve the government’s interest in protecting minors from registered sex offenders because it “foreclose[d] access to social media altogether,” thereby “prevent- [ing] the user from engaging in the legitimate exercise of [First Amendment](#) rights.”[1491](#)

Nevertheless, although Internet access in public libraries is not a public forum, and particular Web sites, like particular newspapers, would not constitute public forums, the Internet as a whole might be viewed as a public forum, despite its lack of a historic tradition. The Supreme Court has not explicitly held that the Internet as a whole is a public forum, but, in *Reno v. ACLU*, which struck down a prohibition in the Communications Decency Act of 1996 on “indecent” material on the Internet, the Court noted that the Internet “constitutes a vast platform from which to address and hear from a worldwide audience of millions of readers, viewers, researchers, and buyers. Any person or organization with a computer connected to the Internet can ‘publish’ information.”[1492](#)

Footnotes

1444

Commonwealth v. Davis, 162 Mass. 510, 511 (1895). “For the Legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of rights of a member of the public than for the owner of a private house to forbid it in the house.” ↗

1445

Davis v. Massachusetts, [167 U.S. 43](#), 48 (1897). ↗

1446

[307 U.S. 496 \(1939\)](#). Only Justice Black joined the Roberts opinion, but only Justices McReynolds and Butler dissented from the result. ↗

1447

E.g., *Schneider v. Town of Irvington*, [308 U.S. 147](#), 163 (1939); *Kunz v. New York*, [340 U.S. 290](#), 293 (1951). ↗

1448

Cox v. Louisiana, [379 U.S. 536](#), 555 (1965). For analysis of this case in the broader context, see Kalven, *The Concept of the Public Forum: Cox v. Louisiana*, 1965 SUP. CT. REV. 1. ↗

1449

Adderley v. Florida, [385 U.S. 39 \(1966\)](#). See id. at 47–48; Cox v. Louisiana, [379 U.S. 559](#), 578 (1965) (Justice Black concurring in part and dissenting in part); Jamison v. Texas, [318 U.S. 413](#), 416 (1943) (Justice Black for the Court). ↗

1450

E.g., Shuttlesworth v. City of Birmingham, [394 U.S. 147](#), 152 (1969); Grayned v. City of Rockford, [408 U.S. 104](#), 115 (1972); Carey v. Brown, [447 U.S. 455](#), 460 (1980). ↗

1451

Hague v. CIO, [307 U.S. 496 \(1939\)](#); Niemotko v. Maryland, [340 U.S. 268 \(1951\)](#); Kunz v. New York, [340 U.S. 290 \(1951\)](#); Shuttlesworth v. City of Birmingham, [394 U.S. 147 \(1969\)](#); Coates v. City of Cincinnati, [402 U.S. 611 \(1971\)](#); Grayned v. City of Rockford, [408 U.S. 104 \(1972\)](#); Greer v. Spock, [424 U.S. 828](#), 835–36 (1976); Carey v. Brown, [447 U.S. 455 \(1980\)](#). ↗

1452

Narrowly drawn statutes that serve the state’s interests in security and in preventing obstruction of justice and influencing of judicial officers are constitutional. Cox v. Louisiana, [379 U.S. 559 \(1965\)](#). A restriction on carrying signs or placards on the grounds of the Supreme Court is unconstitutional as applied to the public sidewalks surrounding the Court, since it does not sufficiently further the governmental purposes of protecting the building and grounds, maintaining proper order, or insulating the judicial decisionmaking process from lobbying. United States v. Grace, [461 U.S. 171 \(1983\)](#). ↗

1453

In Boos v. Barry, [485 U.S. 312 \(1988\)](#), the Court struck down as content-based a District of Columbia law prohibiting the display of any sign within 500 feet of a foreign embassy if the sign tends to bring the foreign government into “public odium” or “public disrepute.” However, another aspect of the District’s law, making it unlawful for three or more persons to congregate within 500 feet of an embassy and refuse to obey a police dispersal order, was upheld; under a narrowing construction, the law had been held applicable only to congregations directed at an embassy, and reasonably believed to present a threat to the peace or security of the embassy. ↗

1454

Brown v. Louisiana, [383 U.S. 131 \(1966\)](#) (sit-in in library reading room). ↗

1455

Edwards v. South Carolina, [372 U.S. 229 \(1963\)](#); Jeanette Rankin Brigade v. Capitol Police Chief, 342 F. Supp. 575 (D.C. 1972) (three-judge court), *aff’d*, [409 U.S. 972 \(1972\)](#) (voiding statute prohibiting parades and demonstrations on United States Capitol grounds). ↗

1456

E.g., Grayned v. City of Rockford, [408 U.S. 104 \(1972\)](#) (sustaining ordinance prohibiting noisemaking adjacent to school if that noise disturbs or threatens to

disturb the operation of the school); *Brown v. Louisiana*, [383 U.S. 131 \(1966\)](#) (silent vigil in public library protected while noisy and disruptive demonstration would not be); *Tinker v. Des Moines Independent School District*, [393 U.S. 503 \(1969\)](#) (wearing of black armbands as protest protected but not if it results in disruption of school); *Cameron v. Johnson*, [390 U.S. 611 \(1968\)](#) (preservation of access to courthouse); *Frisby v. Schultz*, [487 U.S. 474 \(1988\)](#) (ordinance prohibiting picketing “before or about” any residence or dwelling, narrowly construed as prohibiting only picketing that targets a particular residence, upheld as furthering significant governmental interest in protecting the privacy of the home). ↗

1457

United States Postal Serv. v. Council of Greenburgh Civic Assn’s, [453 U.S. 114 \(1981\)](#). ↗

1458

Grayned v. City of Rockford, [408 U.S. 104](#), 116 (1972). ↗

1459

E.g., *Adderley v. Florida*, [385 U.S. 39 \(1966\)](#) (jails); *Lehman v. City of Shaker Heights*, [418 U.S. 298 \(1974\)](#) (advertising space in city rapid transit cars); *Greer v. Spock*, [424 U.S. 828 \(1976\)](#) (military bases); *United States Postal Service v. Council of Greenburgh Civic Ass’ns*, [453 U.S. 114 \(1981\)](#) (private mail boxes); *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, [460 U.S. 37 \(1983\)](#) (interschool mail system); *ISKCON v. Lee*, [505 U.S. 672 \(1992\)](#) (publicly owned airport terminal). ↗

1460

E.g., *Southeastern Promotions, Ltd. v. Conrad*, [420 U.S. 546 \(1975\)](#) (municipal theater); *Madison School District v. WERC*, [429 U.S. 167 \(1976\)](#) (school board meeting); *Heffron v. ISKCON*, [452 U.S. 640 \(1981\)](#) (state fair grounds); *Widmar v. Vincent*, [454 U.S. 263 \(1981\)](#) (university meeting facilities). ↗

1461

Compare *United States Postal Service v. Council of Greenburgh Civic Ass’ns*, [454 U.S. 114](#), 128–31 (1981), *with* *id.* at 136–40 (Justice Brennan concurring), and 142 (Justice Marshall dissenting). For evidence of continuing division, *compare* *ISKCON v. Lee*, [505 U.S. 672 \(1992\)](#) *with* *id.* at 693 (Justice Kennedy concurring). ↗

1462

See, e.g., *Heffron v. ISKCON*, [452 U.S. 640](#), 647–50 (1981), and *id.* at 656 (Justice Brennan concurring in part and dissenting in part) (stating law and discussing cases); *Clark v. Community for Creative Non-Violence*, [468 U.S. 288 \(1984\)](#) (prohibition of sleep-in demonstration in area of park not designated for overnight camping). ↗

1463

Niemotko v. Maryland, [340 U.S. 268 \(1951\)](#); *Cox v. Louisiana*, [379 U.S. 536 \(1965\)](#); *Police Dep’t of Chicago v. Mosle*, [408 U.S. 92 \(1972\)](#); *Madison School*

District v. WERC, [429 U.S. 167 \(1976\)](#); Carey v. Brown, [447 U.S. 455 \(1980\)](#); Widmar v. Vincent, [454 U.S. 263 \(1981\)](#). In Lehman v. City of Shaker Heights, [418 U.S. 298 \(1974\)](#), a divided Court permitted the city to sell commercial advertising space on the walls of its rapid transit cars but to refuse to sell political advertising space. ↗

1464

E.g., the governmental interest in safety and convenience of persons using public forum, Heffron v. ISKCON, [452 U.S. 640](#), 650 (1981); the interest in preservation of a learning atmosphere in school, Grayned v. City of Rockford, [408 U.S. 104](#), 115 (1972); and the interest in protecting traffic and pedestrian safety in the streets, Cox v. Louisiana, [379 U.S. 536](#), 554–55 (1965); Kunz v. New York, [340 U.S. 290](#), 293–94 (1951); Hague v. CIO, [307 U.S. 496](#), 515–16 (1939). ↗

1465

Heffron v. ISKCON, [452 U.S. 640](#), 654–55 (1981); Consolidated Edison Co. v. PSC, [447 U.S. 530](#), 535 (1980). ↗

1466

Ward v. Rock Against Racism, [491 U.S. 781](#), 798–99, 800 (1989). ↗

1467

Thomas v. Chicago Park Dist., [534 U.S. 316](#), 323 (2002). ↗

1468

534 U.S. at 322, citing Freedman v. Maryland, [380 U.S. 51 \(1965\)](#). See National Socialist Party v. Village of Skokie, [432 U.S. 43 \(1977\)](#). ↗

1469

Freedman v. Maryland, [380 U.S. 51](#), 58–59 (1965). ↗

1470

Police Dep't of Chicago v. Mosle, [408 U.S. 92 \(1972\)](#) (ordinance void that barred all picketing around school building except labor picketing); Carey v. Brown, [447 U.S. 455 \(1980\)](#) (same); Widmar v. Vincent, [454 U.S. 263 \(1981\)](#) (striking down college rule permitting access to all student organizations except religious groups); Niemotko v. Maryland, [340 U.S. 268 \(1951\)](#) (striking down denial of permission to use parks for some groups but not for others); R.A.V. v. City of St. Paul, [505 U.S. 377 \(1992\)](#) (striking down ordinance that prohibited symbols, such as burning crosses, that constituted fighting words that insult on the basis of some factors, such as race, but not on the basis of other factors). These principles apply only to the traditional public forum and to the governmentally created "limited public forum." Government may, without creating a limited public forum, place "reasonable" restrictions on access to nonpublic areas. See, e.g., Perry Educ. Ass'n v. Perry Local Educators' Ass'n, [460 U.S. 37](#), 48 (1983) (use of school mail system); and Cornelius v. NAACP Legal Defense and Educational Fund, [473 U.S. 788 \(1985\)](#) (charitable solicitation of federal employees at workplace). See also Lehman v. City of Shaker Heights, [418 U.S. 298 \(1974\)](#) (city may sell commercial advertising space on the walls of its rapid

transit cars but refuse to sell political advertising space); Capitol Square Review Bd. v. Pinette, [515 U.S. 753 \(1995\)](#) (denial of permission to Ku Klux Klan, allegedly in order to avoid Establishment Clause violation, to place a cross in plaza on grounds of state capitol); Rosenberger v. University of Virginia, [515 U.S. 819 \(1995\)](#) (University's subsidy for printing costs of student publications, available for student "news, information, opinion, entertainment, or academic communications," could not be withheld because of the religious content of a student publication); Lamb's Chapel v. Center Moriches School Dist., [508 U.S. 384 \(1993\)](#) (school district rule prohibiting after-hours use of school property for showing of a film presenting a religious perspective on child-rearing and family values, but allowing after-hours use for non-religious social, civic, and recreational purposes). ↴

1471

E.g., Hague v. CIO, [307 U.S. 496](#), 516 (1939); Schneider v. Town of Irvington, [308 U.S. 147](#), 164 (1939); Cox v. New Hampshire, [312 U.S. 569 \(1941\)](#); Poulos v. New Hampshire, [345 U.S. 395 \(1953\)](#); Staub v. City of Baxley, [355 U.S. 313](#), 321–25 (1958); Cox v. Louisiana, [379 U.S. 536](#), 555–58 (1965); Shuttlesworth v. City of Birmingham, [394 U.S. 147](#), 150–53 (1969). Justice Stewart for the Court described these and other cases as "holding that a law subjecting the exercise of [First Amendment](#) freedoms to the prior restraint of a license without narrow, objective, and definite standards to guide the licensing authority is unconstitutional." *Id.* at 150–51. A person faced with an unconstitutional licensing law may ignore it, engage in the desired conduct, and challenge the constitutionality of the permit system upon a subsequent prosecution for violating it. *Id.* at 151; Jones v. Opelika, [316 U.S. 584](#), 602 (1942) (Chief Justice Stone dissenting), adopted per curiam on rehearing, [319 U.S. 103 \(1943\)](#). *See also* City of Lakewood v. Plain Dealer Publishing Co., [486 U.S. 750 \(1988\)](#) (upholding facial challenge to ordinance vesting in the mayor unbridled discretion to grant or deny annual permit for location of newsracks on public property); Riley v. National Fed'n of the Blind, [487 U.S. 781 \(1988\)](#) (invalidating as permitting "delay without limit" licensing requirement for professional fundraisers); Forsyth County v. Nationalist Movement, [505 U.S. 123 \(1992\)](#). *But see* Walker v. City of Birmingham, [388 U.S. 307 \(1967\)](#) (same rule not applicable to injunctions). ↴

1472

In Shuttlesworth v. City of Birmingham, [394 U.S. 147 \(1969\)](#), the Court reaffirmed the holdings of the earlier cases, and, additionally, both Justice Stewart, for the Court, *id.* at 155 n.4, and Justice Harlan concurring, *id.* at 162–64, asserted that the principles of Freedman v. Maryland, [380 U.S. 51 \(1965\)](#), governing systems of prior censorship of motion pictures, were relevant to permit systems for parades and demonstrations. The Court also voided an injunction against a protest meeting that was issued *ex parte*, without notice to the protestors and with, of course, no opportunity for them to rebut the representations of the seekers of the injunction. Carroll v. President and Comm'rs of Princess Anne, [393 U.S. 175 \(1968\)](#). ↴

1473

The only precedent is *Kunz v. New York*, [340 U.S. 290 \(1951\)](#). The holding was on a much narrower basis, but in dictum the Court said: "The court below has mistakenly derived support for its conclusions from the evidence produced at the trial that appellant's religious meetings had, in the past, caused some disorder. There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder and violence." *Id.* at 294. A different rule applies to labor picketing. See *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies*, [312 U.S. 287 \(1941\)](#) (background of violence supports prohibition of all peaceful picketing). The military may ban a civilian, previously convicted of destroying government property, from reentering a military base, and may apply the ban to prohibit the civilian from reentering the base for purposes of peaceful demonstration during an Armed Forces Day "open house." *United States v. Albertini*, [472 U.S. 675 \(1985\)](#). ↗

1474

Forsyth County v. Nationalist Movement, [505 U.S. 123 \(1992\)](#) (a fee based on anticipated crowd response necessarily involves examination of the content of the speech, and is invalid as a content regulation). ↗

1475

Dicta indicate that a hostile reaction will not justify suppression of speech, *Hague v. CIO*, [307 U.S. 496](#), 502 (1939); *Cox v. Louisiana*, [379 U.S. 536](#), 551 (1965); *Bachellar v. Maryland*, [397 U.S. 564](#), 567 (1970), and one holding appears to point this way. *Gregory v. City of Chicago*, [394 U.S. 111 \(1969\)](#). Yet the Court upheld a breach of the peace conviction of a speaker who refused to cease speaking upon the demand of police who feared imminent violence. *Feiner v. New York*, [340 U.S. 315 \(1951\)](#). In *Niemotko v. Maryland*, [340 U.S. 268](#), 273 (1951) (concurring opinion), Justice Frankfurter wrote: "It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd whatever its size and temper and not against the speaker." ↗

1476

"[A]lthough a park is a traditional public forum for speeches and other transitory expressive acts, the display of a permanent monument in a public park is not a form of expression to which forum analysis applies. Instead, the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause." *Pleasant Grove City, Utah v. Summum*, 555 U.S. at 464.. ↗

1477

Perry Educ. Ass'n v. Perry Local Educators' Ass'n, [460 U.S. 37](#), 45, 46 n.7 (1983). ↗

1478

460 U.S. at 46. ↗

1479

460 U.S. at 46. Candidate debates on public television are an example of this third category of public property: the "nonpublic forum." *Arkansas Educational Television Comm'n v. Forbes*, [523 U.S. 666](#), 679 (1998). "Although public

broadcasting as a general matter does not lend itself to scrutiny under the forum doctrine [*i.e.*, public broadcasters ordinarily are entitled to the editorial discretion to engage in viewpoint discrimination], candidate debates present the narrow exception to this rule." Id. at 675. A public broadcaster, therefore, may not engage in viewpoint discrimination in granting or denying access to candidates. Under the third type of forum analysis, however, it may restrict candidate access for "a reasonable, viewpoint-neutral" reason, such as a candidate's "objective lack of support." Id. at 683. ↗

1480

Perry Educ. Ass'n v. Perry Local Educators' Ass'n, [460 U.S. 37 \(1983\)](#). This was a 5–4 decision, with Justice White's opinion of the Court being joined by Chief Justice Burger and by Justices Blackmun, Rehnquist, and O'Connor, and with Justice Brennan's dissent being joined by Justices Marshall, Powell, and Stevens. See also *Hazelwood School Dist. v. Kuhlmeier*, [484 U.S. 260 \(1988\)](#) (student newspaper published as part of journalism class is not a public forum). ↗

1481

City Council v. Taxpayers for Vincent, [466 U.S. 789 \(1984\)](#) (upholding an outright ban on use of utility poles for signs). The Court noted that "it is of limited utility in the context of this case to focus on whether the tangible property itself should be deemed a public forum." Id. at 815 n.32. ↗

1482

Cornelius v. NAACP Legal Defense and Educational Fund, [473 U.S. 788 \(1985\)](#). The precedential value of *Cornelius* may be subject to question, because it was decided by 4–3 vote, the non-participating Justices (Marshall and Powell) having dissented in *Perry*. Justice O'Connor wrote the opinion of the Court, joined by Chief Justice Burger and by Justices White and Rehnquist. Justice Blackmun, joined by Justice Brennan, dissented, and Justice Stevens dissented separately. ↗

1483

473 U.S. at 802. Justice Blackmun criticized "the Court's circular reasoning that the CFC is not a limited public forum because the Government intended to limit the forum to a particular class of speakers." Id. at 813–14. ↗

1484

Justice Kennedy criticized this approach in *ISKCON v. Lee*, [505 U.S. 672](#), 695 (1992) (concurring), contending that recognition of government's authority to designate the forum status of property ignores the nature of the [First Amendment](#) as "a limitation on government, not a grant of power." Justice Brennan voiced similar misgivings in his dissent in *United States v. Kokinda*: "public forum categories— originally conceived of as a way of *preserving First Amendment* rights—have been used . . . as a means of upholding restrictions on speech." 497 U.S. at 741 (citation omitted). ↗

1485

[497 U.S. 720](#), 727 (1990) (“[R]egulation of speech activity where the Government has not dedicated its property to [First Amendment](#) activity is examined only for reasonableness.”). ↗

1486

[505 U.S. 672 \(1992\)](#). ↗

1487

Id. at 683 (“[N]either by tradition nor purpose can the terminals be described as satisfying the standards we have previously set out for identifying a public forum.”). ↗

1488

[539 U.S. 194](#), 205–06 (2003) (“We have ‘rejected the view that traditional public forum status extends beyond its historic confines.’ The doctrines surrounding traditional public forums may not be extended to situations where such history is lacking.” (quoting *Ark. Educ. TV Comm’n v. Forbes*, [523 U.S. 666](#), 679 (1998))). While decided on constitutional vagueness grounds, in *Reno v. American Civil Liberties Union*, the Court struck down a provision of the Communications Decency Act of 1996 that prohibited the use of an “interactive computer service” (i.e., the Internet) to display indecent material “in a manner available to a person under 18 years of age.” [521 U.S. 844](#), 860 (1997). The Court did not consider the Internet’s status as a forum for free speech, but observed that the Internet “constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers. Any person or organization with a computer connected to the Internet can ‘publish’ information.” *Id.* at 853. ↗

1489


American Library Association, 539 U.S. at 199; *see also id.* at 206 (“A public library does not acquire Internet terminals in order to create a public forum for Web publishers to express themselves, any more than it collects books in order to provide a public forum for the authors of books to speak.”). ↗

1490

Packingham v. North Carolina [582 U.S. ____](#), [No. 15-1194](#), slip op. at 4–5 (2017) (quoting *Am. Civil Liberties Union*, 521 at 868); *see also id.* at ____, slip op. at 6 (“This case is one of the first this Court has taken to address the relationship between the [First Amendment](#) and the modern Internet. As a result, the Court must exercise extreme caution before suggesting that the [First Amendment](#) provides scant protection for access to vast networks in that medium.”). ↗

1491

Id. at ____, slip op. at 6, 8; *see id.* at 7 (“[G]iven the broad wording of the North Carolina statute at issue, it might well bar access not only to commonplace social media websites but also to websites as varied as Amazon.com, Washingtonpost.com, and Webmd.com.”). The Court was careful to point out, however, that its opinion should not be read as barring states from enacting laws more specific than that of North Carolina, noting that “[s]pecific criminal acts are

not protected speech even if speech is the means for their commission." *Id.* (citing *Brandenburg v. Ohio*, [395 U. S. 444](#), 447–49 (1969)). Indeed, "it can be assumed that the [First Amendment](#) permits a State to enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor." *Id.* 

1492

521 U.S. at 853. A federal court of appeals wrote: "Aspects of cyberspace may, in fact, fit into the public forum category, although the Supreme Court has also suggested that the category is limited by tradition. *Compare Forbes*, 523 U.S. at 679 ('reject[ing] the view that traditional public forum status extends beyond its historic confines' [to a public television station]) with *Reno v. ACLU*, [521 U.S. 844](#), 851–53 (1997) (recognizing the communicative potential of the Internet, specifically the World Wide Web)." *Putnam Pit, Inc. v. City of Cookeville*, [221 F.3d 834](#), 843 (6th Cir. 2000) (alternate citations to *Forbes* and *Reno* omitted). In *Putnam Pit*, the city denied a private Web site's request that the city's Web site establish a hyperlink to it, even though the city's Web site had established hyperlinks to other private Web sites. The court of appeals found that the city's Web site was a nonpublic forum, but that even nonpublic forums must be viewpoint neutral, so it remanded the case for trial on the question of whether the city's denial of a hyperlink had discriminated on the basis of viewpoint.

ORDINANCE NO 580

SERIES 2024

**AN ORDINANCE AMENDING TITLE 5 OF THE DOLORES MUNICIPAL CODE
PERTAINING TO THE REGULATION OF ALCOHOL SALES**

WHEREAS, Colorado Revised Statutes, § 31-15-401 grants general police powers to the Board of Trustees to promulgate ordinances for the health, safety, and welfare of the public, including regulation of lands owned by the Town within its corporate boundaries.

WHEREAS, Colorado Revised Statutes, § 31-35-402 grants general powers to the Board of Trustees to regulate festivals, events and the sale of alcohol and promulgate ordinances for the health, safety, and welfare of the public, including regulation of lands owned by the Town within its corporate boundaries.

WHEREAS, there is a need to amend and modernize the Town's ordinances pertaining to the manner in which special event permits and sale of alcohol are issued.

WHEREAS, the Board of Trustees, in order to promote the health, safety, and welfare of the public in order balance the benefits and burdens that come with the Town's increasing popularity of special events, and changes to the manner in which alcohol is commonly sold, wishes to amend Section 5.04.040 and add additional section of the Dolores Municipal Code

NOW THEREFORE, BE IT ORDAINED BY TOWN OF DOLORES BOARD OF TRUSTEES THAT the following provisions shall be added to the Dolores Municipal Code:

Section 1. The following sections are added to the Dolores Municipal Code:

Section 5.24.150. - Festival permits.

A. Permit required. A licensee who wishes to host a festival shall first obtain a permit from the State and the Town, except a limited winery or winery licensee need not obtain a festival permit from the Town. A licensee applying for both a festival permit and a special event permit from the State need not obtain a festival permit from the Town.

B. Eligible licensees. The following license types are eligible to apply for a festival permit:

1. Beer and wine.
2. Brew pub.
3. Distillery pub.
4. Hotel and restaurant.
5. Manufacturer.
6. Tavern.
7. Vintner's restaurant; and

8. Wholesaler.

C. Participation. The licensee who hosts the festival shall be the licensee who files the application for the festival permit; provided that other licensees of the types described in subsection B hereof may jointly participate under the permit.

D. Number. Each festival permit shall allow the licensee to hold nine festivals during the 12-month period following the permit is issued.

E. Hours. In no case shall a festival be held for longer than 72 hours.

F. Application—Application for issuance of a festival permit. The applicant for a festival permit must:

1. Specify the licensed premises for the festival to be held; and
2. File the application with the Town Clerk at least 30 days before the festival is to be held.
3. Identify controlled access and boundaries to the festival for alcohol consumption, comply with security requirements deemed necessary by the Town, agree to adherence to nuisance issues, including trash removal and noise.
4. Pay the required application fee as set by the fee schedule pursuant to Section 2.34.010 of the Code.

G. Denial. The Town Clerk may deny an application for the following reasons:

1. A documented history of liquor violations.
2. The filing of an incomplete or late application; or
3. A finding that the application, if granted, would result in violation of State or local laws, rules, or regulations.

H. Supplemental applications. To hold any additional festival after the initial festival, which was described in the initial application, the permittee must notify the State and the Town Clerk at least 30 days prior to the additional festival being held of an intent to host a subsequent festival. If the Town is notified at least 30 days in advance of the subsequent festival, the subsequent festival is presumed to be approved unless the Town Clerk has grounds to deny the subsequent festival provided by subsection G of this section.

Chapter 5.25- Entertainment District

Section 5.25.010. - Definitions.

As used in this Chapter, the following words shall have the following meanings:

Common consumption area means a pedestrian area located wholly within the Entertainment District and approved by the Local Licensing Authority that uses physical barriers to close the area to motor vehicle traffic and limit pedestrian access.

Common Consumption Area Law means Sections 44-3-301(11), 44-3-309, 44-3-910 of the Colorado Revised Statutes, as amended.

Entertainment District means the Town of Dolores Entertainment District with a size no more than one hundred (100) acres and containing at least twenty thousand (20,000) square feet of premises licensed as a tavern, hotel and restaurant, brew pub or vintner's restaurant at the time said District is created.

Licensee means a person to whom a license is granted by the Local Licensing Authority to manufacture or sell alcoholic beverages as provided under the Colorado Liquor Code.

Local Licensing Authority means the Board of Trustees of the Town of Dolores.

Promotional Association means an association that is incorporated within the State of Colorado that organizes and promotes entertainment activities within a common consumption area, is organized or authorized by two (2) or more persons who own or lease property within the Entertainment District and is certified by the Local Licensing Authority.

In addition to the definitions provided above, the other defined terms in Section 44-3-103, C.R.S. are incorporated into this Article by reference.

Section 5.25.020. - Creation of entertainment district and general requirements.

A. In order to exercise the Town's local option to allow common consumption areas in the Town and to effectuate the purposes and intent of Section 44-3-301(11), C.R.S., there is hereby designated the "Town of Dolores Entertainment District" whose boundaries are Central Avenue to the north, Third Avenue to the west, Railroad Avenue to the South; and Sixth Avenue to the east which is intended to include all properties within and adjoining said streets.

B. Properties may be included or excluded from the Entertainment District by resolutions of the Board of Trustees. By establishing the Entertainment District, the Town authorizes the licensing of designated common consumption areas in which alcoholic beverages may be sold and consumed subject to the requirements of this Article, the Code and the Common Consumption Area Law.

C. The Local Licensing Authority has the following powers with respect to common consumption areas and promotional associations:

1. Designate one (1) or more common consumption areas;

2. Certify or decertify a promotional association.

3. Authorize, de-authorize or refuse to authorize or reauthorize a licensee's attachment of licensed establishment to a common consumption area.

4. Impose reasonable conditions of approval on the licensing of common consumption areas, certification of promotional associations or the attachment of licensed establishments to common consumption area; and

5. Exercise all powers necessary to effectuate the purposes of the Common Consumption Area Law.

D. The standards for common consumption area licenses issued to promotional associations shall be in addition to all other standards applicable under this Article, the Code and the Colorado Liquor Code.

E. Decisions on applications for common consumption areas, promotional associations and inclusions and exclusions from the common consumption area shall be made by the Local Licensing Authority within thirty (30) days of receipt of a complete application therefor. A decision to deny any such application by the Local Licensing Authority shall be in writing and shall be provided to the applicant within five (5) business days of the decision having been rendered.

Section 5.25.030. - Communal outdoor dining areas.

A. Licensees eligible. The following types of licensees are eligible to have a communal outdoor dining area:

1. Beer and wine licenses.
2. Beer wholesaler that operates a sales room authorized under C.R.S. § 44-3-407(1)(b)(I), as amended.
3. Brew pub;
4. Distillery pub;
5. Fermented malt beverage retailer licensed for consumption on the premises;
6. Hotel and restaurant;
7. Limited winery;
8. Lodging and entertainment facility;
9. Manufacturer that operates a sales room authorized under C.R.S. § 44-3-402(2) or (7), as amended;
10. Optional premises;
11. Tavern; and
12. Vintner's restaurant.

B. Authorized. Communal outdoor dining areas are hereby authorized provided that at least two licensees have applied to share the communal outdoor dining area, and each licensee has:

1. Obtained a permit from the State Licensing Authority;
2. Obtained the following approvals from the State Licensing Authority and the local licensing authority:
 - i. For the attaching of the liquor license of the licensee to the communal outdoor dining area; and

ii. For a modification of the licensee premises to include the communal outdoor dining area.

3. Established that the communal outdoor dining area is within 1,000 feet of the permanent licensed premises of each licensee;

4. Have a right to occupy the premises sought for the communal outdoor dining area; and

5. Established the physical boundaries of the communal outdoor dining area in a manner to assure to the satisfaction of the local licensing authority that alcohol beverages will be kept within the physical boundaries of the communal outdoor dining area.

6. Paid the required application fee as set by the fee schedule pursuant to Section 2.34.010 of the Code.

C. Special event permittees. Special event permittees may hold a special event in a communal outdoor dining area, provided that such permit holder agrees, in writing, to comply with all State and local liquor laws, rules, and regulations and has written permission of the licensees of the communal outdoor dining area to hold the special event in the communal outdoor dining area.

D. State rules. Each licensee with an approved communal outdoor dining area shall comply with all applicable State rules, as amended.

Section 2. The Town Trustees hereby finds, determine, and declare that this Ordinance is promulgated under the general police power of the Town of Dolores, 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 Trustees further determine that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 5. This Ordinance shall take effect immediately upon adoption. The Town of Dolores Board of Trustees hereby finds, determines and declares this ordinance is necessary for immediate preservation of the health, safety and welfare of its citizens.

PUBLIC HEARING. This ordinance shall be considered for second or final reading on the 9th day of September 2024, in the Town Board Chambers in Town Hall, Dolores, Colorado, at which time and place all persons may appear and be heard concerning the same.

Passed adopted and approved on the first reading this 9th day of September 2024.

DOLORIS BOARD OF TRUSTEES:

By: _____

Mayor Chris Holkestad

Attest:

By _____

Town Clerk Tammy Neely

Passed adopted and approved on the second and final reading this 23rd day of September 2024.

DOLORIS BOARD OF TRUSTEES:

By: _____

Mayor Chris Holkestad

Attest:

By: _____

Town Clerk Tammy Neely

**TOWN OF DOLORES
ORDINANCE NO 581
SERIES 2024**

**AN ORDINANCE AUTHORIZING THE TRANSFER OF TOWN-OWNED PROPERTY
LOCATED AT 47 Railroad Ave., Dolores, Colorado**

WHEREAS, the Town Trustees find that it has no present governmental use for certain real property owned by the Town, located at 47 Railroad Ave., Dolores, Colorado and known as the Dolores Fire Station and legally described in the attached deed (the “Property”).

WHEREAS, the Town Trustees find that the Property should be donated to the Dolores Fire Protection District for the betterment of the community.

WHEREAS, CRS Section 31-15-713 provides that voter approval is required before the Town may sell or otherwise dispose of such real property that used for a governmental purpose at a general or special election.

WHEREAS, CRS Section 33-14.5-101 provides that any municipality may determine at a regular or special election to meet the publication requirements 31-16-106 by publishing ordinances by title only rather than by publishing the ordinance in full at a special election where other issues are present on the ballot.

WHEREAS, the Board of Trustees referred the question of whether said property would be donated to the Dolores Fire Protection District to the registered electors of the Town of Dolores.

WHEREAS, the electors approved by majority vote the donation of the Property at the November 7, 2023, Coordinated Election the results of which have been officially certified by the County Clerk of Montezuma County, Colorado.

WHEREAS, Colorado Revised Statutes § 31-15-713(b) authorizes the Town to sell real property, by ordinance, upon such terms and conditions as the Town Trustees may determine at a regular or special meeting.

WHEREAS, the Town Trustees hereby determines that conveyance of the Property as set forth in this Ordinance is compatible with the Town’s Comprehensive Plan and vision.

WHEREAS, the Town Trustees has determined that it is in the best interests of the Town to donate the Property upon the terms and conditions set forth in the attached Special Warranty Deed to the Dolores Fire Protection District.

WHEREAS, the Town Trustees determine that it is in the public interest to include a reversionary clause in the Special Warranty Deed.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN TRUSTEES OF THE TOWN OF DOLORES, COLORADO, THAT:

Section 1. That the Mayor and Town Manager are hereby authorized to execute the attached Special Warranty Deed and to execute each and every other document necessary or desirable to effectuate the transfer of the Property in accordance with the terms and conditions of the Agreement, or to such other person or entity willing to purchase the property on similar terms or conditions.

Section 2. All other ordinances or portions thereof inconsistent or conflicting with this ordinance, or any portion hereof, are hereby repealed to the extent of such inconsistency or conflict.

Section 3. Safety Clause. The Town Trustees hereby find, 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, that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare, and that this ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. Effective Date. This ordinance shall become effective five (5) days after final publication.

INTRODUCED AND READ on first reading at the regular meeting of the Trustees of the Town of Dolores on September 9, 2024, at Dolores, Colorado. Passed adopted and approved on the first reading this 9th day of September 2024.

DOLORES BOARD OF TRUSTEES:

By: _____

Attest:

By: _____

PUBLIC HEARING. This ordinance shall be considered for second or final reading on the 23rd day of September 2024, in the Town Board Chambers in Town Hall, Dolores, Colorado, at which time and place all persons may appear and be heard concerning the same.

Passed adopted and approved on the second and final reading this 24th day of September 2024.

DOLORES BOARD OF TRUSTEES:

By: _____

Attest:

By: _____

Holkestad and Leigh Reeves. Witness my hand and official seal. My commission expires:

Notary Public



On September 3, 2024 a public hearing was held for the Planning Commission to review the subdivision application from the Dolores Fire Protection District to claim the property that has been under their use and control and which was approved by vote majority in the November 11, 2023 coordinated election.

The Commissioners recommend to the Board of Trustees to approve the preliminary plat for the Fire Department Subdivision with the following findings and conditions and motion with votes:

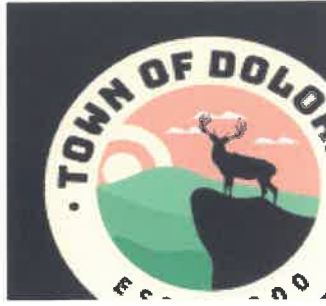
Chairperson Robinson moved and Commissioner Kelly seconded to recommend that the Town Board approve the preliminary plat for the Dolores Fire Protection District Subdivision on property located in the N1/2 of Section 16, T37N R 15W, NMPM, as submitted by the Dolores Fire Protection District, following findings and conditions:

Findings:

1. The physical arrangement of the subdivision is appropriate for the terrain, existing and proposed lands uses and zoning.
2. The street right of way and alignment is appropriate for the proposed subdivision with the proposed dedication.
3. With the conditions below, easements are adequate for the existing and any proposed future uses.
4. The proposed subdivision meets all requirements of the land use code and comprehensive plan.
5. The notice of public hearing was published in the newspaper and on the town website, posted on site and in the town hall public posting board, and mailed to the 250-foot neighbors on August 15, 2024.

Conditions:

1. All requirements of utility providers, Town departments, CDOT and affected districts must be satisfied, as outlined in adopted Town Codes and other regulatory documents.
2. Prior to recordation of the final plat, the plat shall be revised to dedicate easements for existing gas lines.
3. Prior to recordation of the final plat, the plat shall be revised to ensure the southern portion of the property line between lots 2 and 3 is adequate for Town sewer needs and the northern



boundary has adequate easements for the water main.

4. The ordinance required for this land transfer includes a revert clause in the event the Fire Protection District ever moves away.

Yes: Robinson, Tucker, Nemanic, Kelly and Powell.

No: none

In addition to these conditions and findings was the local gas company's request to include the gas lines within the subdivision on the final plat.



LAND USE APPLICATION

OVERVIEW

This form provides the basic information about a project proposal. This application form is only one of the items required for a complete project submittal. It is the responsibility of the applicant to ensure that all other required materials are submitted. It is also the responsibility of the applicant to clearly demonstrate through narrative, visual representations, and other materials that the proposed activity complies with the Town of Dolores' Land Use Code. Incomplete or substandard applications may cause delays. All applications shall include digital files as well as the hard copy unless otherwise determined by staff.

PROJECT TYPE (select one or more)

- | | |
|--|--|
| <input type="checkbox"/> Administrative Adjustment | <input checked="" type="checkbox"/> Major Subdivision Plat, Preliminary |
| <input type="checkbox"/> Administrative Determination | <input type="checkbox"/> Major Subdivision Plat, Final |
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Plat Amendment |
| <input type="checkbox"/> Appeal of Administrative Determination | <input type="checkbox"/> Planned Unit Development |
| <input type="checkbox"/> Areas and Activities of State Interest (1041) | <input type="checkbox"/> Sign Permit |
| <input type="checkbox"/> Comprehensive Plan Amendment | <input checked="" type="checkbox"/> Site Plan Review <i>Wrong</i> |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Special Exception |
| <input type="checkbox"/> Grading and Erosion Control Permit | <input type="checkbox"/> Special Exception, Subdivision |
| <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> Temporary Use Permit |
| <input type="checkbox"/> LUC Interpretation | <input type="checkbox"/> Variance |
| <input type="checkbox"/> LUC Text Amendment | <input type="checkbox"/> Variance, Subdivision |
| <input type="checkbox"/> Location and Extent Review | <input type="checkbox"/> Vested Property Right |
| <input type="checkbox"/> Minor Subdivision Plat | <input type="checkbox"/> Zoning Development Permit |
| <input type="checkbox"/> Major Subdivision Plat | <input type="checkbox"/> Zoning Map Amendment (Rezoning) or LUC Text Amendment |
| | <input type="checkbox"/> Other: |

PROJECT DESCRIPTION

PROJECT NAME:

Dolores Fire Dept Protection District Subdivision

PROJECT LOCATION:

PROJECT SUMMARY (Additional details must be included in other application materials)

Transfer of land from Town of Dolores to
Dolores Fire Protection District.

LAND USE APPLICATION

SITE INFORMATION

PROPERTY ID Number: 535916200031 + 535916200031
CURRENT ZONING: P-2 PROPOSED ZONING: /
CURRENT USE: _____ PROPOSED USE: /

PROJECT CONTACT INFORMATION

APPLICANT: Dolores Fire Protection District AGENT: Tracy Montgomery
ADDRESS: Box 599 Dolores, Co 81323 ADDRESS: _____
PHONE: 970-882-4096 PHONE: 970-749-8295
E-MAIL: _____ E-MAIL: tracy@doloresfire.org
PROPERTY OWNER(S) (Authorization from all property owners is required if different from the applicant):

ACKNOWLEDGMENT AND AUTHORIZATION

The undersigned authorizes the Town of Dolores to proceed with processing this application under the requirements of the Town of Dolores Land Use Code (LUC). The undersigned acknowledges that the information provided herein is accurate to the fullest extent of their knowledge.

The accuracy of this information is the applicant's responsibility and improper notification of adjacent property owners, when applicable, can result in delayed processing of this application.

Applicant: Eric Brutenbach Date: 6/26/2024

DEPARTMENT USE ONLY

Application Received By: Leigh Reeves Date: 6/26/24 Project #: DFPD Subdivision
Fee Required: Waived Paid On: _____ Receipt #: _____
Application Accepted as Complete for Processing on: 7-29-31

USA-DOLORES PROJECT C/O
USFS - TRES RIOS OFFICE

29211 HWY 184

DOLORES, CO. 81323

PETTINGILL, WILLIAM ERLE L. &
FRANK

493 E. 100 N.

RICHFIELD, UT, 84701

ADAMS, ANNE D.

PO BOX 966

SILVERTON, CO, 81433

DOLORES CEMETERY ASSOC

PO BOX 67

DOLORES, CO, 81323

DUFUR, JESS DANIEL

P.O. BOX 885

CORTEZ, CO, 81321

WOLF, MOLLIE L.

P O BOX 355

DOLORES, CO, 81323

HAAS-VAUGHN, PAULINE &
VAUGHN, BRIAN

33817 EAGLET RD

MARANA, AZ, 85653

DUFUR, MARY C.

PO BOX 1

DOLORES, CO, 81323