

ORDINANCE NO. 1317

**AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO, REGARDING USES
OF THE PROPERTY LOCATED AT 328 MASSACHUSETTS AVENUE, BERTHOUD,
COLORADO**

WHEREAS, the Town of Berthoud (“Town”) is a municipal corporation possessing all powers granted to statutory towns by Title 31 of the Colorado Revised Statutes; and

WHEREAS, pursuant to Warranty Deeds dated May 8, 1929, April 19, 1944, November 1, 1954, and April 12, 1994, the Town owns the property located at 328 Massachusetts Avenue, Berthoud, Colorado (the “Old Town Hall Property”); and

WHEREAS, the Old Town Hall Property was previously used as the Town’s offices; and

WHEREAS, the Old Town Hall Property has not been used as the Town’s offices since 2016, and while it has been used by the Town for the storage of surplus property and the occasional parking of the Town’s shuttle bus, it has not been used for any governmental purpose since the Town’s offices moved to their new location; and

WHEREAS, the Town wishes to convey the Old Town Hall Property to a private developer for the purpose of mixed use development, which will promote economic growth, the creation of new jobs, increased sales tax revenues, enhanced retail opportunities, and generally promote the health, safety, and welfare of the people of the Town;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF
THE TOWN OF BERTHOUD, COLORADO:**

Section 1. Legislative Findings.

- (a) Section 31-15-713, C.R.S., grants the power to a governing body of a municipality such as the Town Board of Trustees to sell and dispose of property used or held for any governmental purpose. Before any “such sale” is made, the question of the sales and the terms and consideration thereof shall be submitted to a vote of the registered electors of the municipality at a regular or special election.
- (b) *In New Stanley Associates, LLLP v. Town of Estes Park*, 200 P.3d 118 (Colo. App. 2008), the Colorado Court of Appeals dealt with a lawsuit involving the sale of property (“Lot 4”) that had originally been purchased by the Town of Estes Park “for a municipal center” and any other use permitted by a prior development agreement. The lease and option to purchase had been acquired in 1997, after another third party entity had expressed an interest in buying the existing Town Hall building. However, that party withdrew its interest, but the Town continued to make lease payments until it exercised its option to purchase in 2004. Between 1999 and 2004, Estes Park considered various options for using the property, including as a post office, the

construction of a parking facility, and a relocation of the police facility. No action was taken with regard to any of these proposals. In 2004, Estes Park set up a “theater goal team” to study the feasibility of establishing a performing arts facility for the town. The team identified a site and recommended that Lot 4 be sold, and the proceeds used to pay for infrastructure around the new community theatre.

- (c) The Court of Appeals concluded that although Estes Park had held Lot 4 continuously since 1997, it did not use or hold it for any governmental purpose. The Court further reasoned that the Colorado legislature intended to distinguish between property held or used for any governmental purpose, the sale of which must be approved by election, and “any other real estate,” which, pursuant to section 31-15-713(b), C.R.S., may be sold by ordinance. Also, the Court held that while Estes Park had considered using its site for a parking facility, post office facility, or police facility, no action had been taken on those proposals, and the lot had not been actually held for governmental purposes.
- (d) The Trustees find that the Old Town Hall site is “other real estate” for the purposes of section 31-15-713, C.R.S. Although the Town has held portions of the property since 1929, it has not held any of it for a governmental purpose since 2016, when the Town offices moved to their current location. The Old Town Hall site may therefore be sold or otherwise disposed of by ordinance and without an election. This result is also in line with how other jurisdictions have dealt with the sale of property no longer held for governmental purposes. As a leading legal treatise on municipal law has said, “property which is not appropriated or devoted to a public use, which has ceased to be used or is not used by the public, or which is in excess of public need may be disposed of by a city without special statutory authorization.” 10 E. McQuillen, *The Law of Municipal Corporations*, §28.38.20 (rev.3d ed. 1990).

Section 2. Conveyance of Old Town Hall Property. The Trustees therefore order that the Old Town Hall site be conveyed by ordinance to a private purchaser for the purposes of mixed use development. The terms of sale or other disposition shall be negotiated by the Town Administrator and memorialized by a contract in a form mutually acceptable to the Town and the purchaser and approved by the Town Attorney. The terms and conditions of sale and final contract between the Town and the purchaser shall then be subject to approval by the Town Board of Trustees, without a prior vote of the registered electors of the Town.

Section 3. Severability Clause. Should any section, clause, or provision of this Ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the balance of this Ordinance.

Section 4. Findings Regarding Police Powers. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police powers of the Town of Berthoud, 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 Town Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED IN
FULL on this _____ day of _____, 2023.

TOWN OF BERTHOUD

By: William Karspeck
William Karspeck, Mayor

ATTEST:

By: Christian Samora
Christian Samora, Town Clerk

