

February 7, 2018

Town of Marble Trustees,  
Opinion, Objections and Issues for the SGB Lease:  
Continued request for Municipal Court and enforcement.

Greetings:

Ryan became Mayor, April 2018, as such he should recuse himself and leave the room for this lease discussion and have his manager present.

Ron Leach became the town administrator/clerk 2018.

The town submitted a supplemental budget for 2018 with a deficit.

Two CORA requests were requested on this lease with SGB (1) 2018 and (1) 2019. No evidence showing the Town Administrator requested SGB to pay any funds to the town for a lease, (ever) nor is there any evidence produced in either document production request showing any urgency by the (TA) requesting a lease to be finalized or a proper insurance certificate to be issued to the town.

The lease was not placed on the agenda during the year 2018.

SGB took the additional land over 4 yrs. ago, modified the parking to the east across the street for the restaurant patrons, (Piffer property and town ROW)

He has repeatedly taken W. Main St for his business use, for parking and delivery trucks even beyond the measured amount of 24' contained in the proposed lease. Will Handville told Ryan in a 2017 fall public meeting to not park the catering truck perpendicular to the garage bay doors as it protruded past the center line of West Main St. creating a traffic hazard. The lease only allows 24.' Ryan refused to comply and will not self-regulate.

SGB has made no payments on any lease, or for any of the use of the ROW to the town since he took it 5-7 years ago.

There is no evidence that there was a mistake in the survey until recently. (simply Bluster) The restaurant parking plan enclosed in the CORA documents prepared by Ryan years ago for the lease was flawed.

SGB owes the lease payment to the town of a min of 6500 per year for 2015-2018 and now 2019, and should pay this amount before a business license is issued.

If no payment is made, this is an example of "unjustly enriched."

The Town Council can not arbitrarily just dismiss this without a discussion of their fiduciary duty as trustees as it relates to Ethics and Conflicts of Interest. Geoffrey Wilson CML General Council.

The Kettle needs to be moved off the ROW, as it violates law Sept 5, 2018 complaint. Noise concerns that violates state law, letter August 2, 2017.

Traffic control is deficient and negligent lacking adequate signage, for the safety of drivers, pedestrians, bicycles, ATV'S and does not meet federal and state standards. Trash, continuing issue with dumpster in Main Street.

Parking in the residential areas, where he has been repeatedly asked to stop employee parking.

No continuation if the building is sold. Anything could happen. Future issues.

There is no enforcement, impaired drivers in the basin, 98% of the time come back through town and through the intersection at W 1<sup>st</sup> and Main St.

Traffic regulation in and around the corner of W 1st and Main St. lacks documented engineering. This creates a contributory negligence on the part of many.

SGB has controlled the intersection for their benefit and sole advantage.

Failed to put in fence,

Failed to Paint the crosswalk,

Signs are misplaced or simply not installed per state and federal guidelines and regulations. SGB self-modified the existing traffic control.

The restaurant, does not want anyone stopping because it creates additional fumes near the kitchen and outside dining. SGB does not want the diesel trucks hauling ATV'S to stop and restart.

He does not want the fumes from the vehicles but expects the residents of the town to breathe and smell the fumes and odors being discharged from the kettle.

None of this is the town's responsibility that he chose this location to have a restaurant and chooses to not comply with Town/State ordinances and laws.

Pg 2.6.b. of the lease covenants the restaurant to comply with all Federal, State and Local governments. The restaurant is not compliant.

The responsibility for the traffic and control of the corner is up to the Town Council and a traffic engineer at the expense of the restaurant should be contacted immediately. It is beyond any doubt that there exists a dangerous condition at the corner. SGB saying there isn't, is bluster. From simply a liability issue, it needs to be documented. From a safety perspective needs to be corrected, and from a probability of an accident, the clock is running.

There is no insurance coverage by SGB on this 6200 sq. ft of town ROW as no insurance co. is going to insure something that is not owned, rented or leased, and the parameters are known. No lease, no insurance. This puts the town at risk and explained in the letter dated July 27, 2018 from Garfield and Hecht.

It also puts the town council trustees at risk if their sovereign immunity has been waived. The potential waiver of sovereign immunity could be due to negligence and blatant contempt of the Colorado Constitution, by not funding a Municipal Court, enforcement, or engineered traffic control.

The complaints from Sept 5, 2018

The complaints from Aug 2, 2017

The ethics by CML

CORA requests, with the lease showing 6250 is a town document.

The town's legal counsel should be protecting the town not the restaurant, and should have insisted on the lease being completed and payment made.

Town Administrator is not protecting the town and it gives the impression he is complicit with the owner of SGB to benefit SGB and potentially himself.

Attorney is not protecting the town council trustees. Neither the town attorney or town administrator is providing adequate information in regards to ethics and liabilities including personal exposure.

The previous attorney and clerk provided packets of all issues and responsibilities to incoming trustees and as a general rule for municipalities it is a standard.

All of this is available from the Colorado Municipal League. DOLA.

Tami Tanoue representing CIRSA presents classes all over the state.

Let me summarize:

Ryan was trying to handle this outside a public meeting based on the CORA documents. The lease (p.1) shows 6250 @ 1.00 per square foot rate.

His offer of 2k in the December 2018 town council meeting and no past amounts is woefully inadequate and would amount to an extraordinary taking from the town and as stated above would amount to "unjustly enriched" in my opinion.

The town owns the ROW, SGB restaurant must pay, current and past and comply with all Federal, State and Town of Marble laws.

Sincerely,  
Steve Lucht



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**GARFIELD & HECHT, P.C.**  
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Mary Elizabeth Geiger  
[megeiger@garfieldhecht.com](mailto:megeiger@garfieldhecht.com)

July 27, 2018

**Via Email**

Ron Leach, Town Clerk  
Town of Marble  
322 West Park Street  
Marble, CO 81623  
E-mail: [leach@townofmarble.com](mailto:leach@townofmarble.com)

**Re: Follow up to July 18, 2018 letter  
CORA Request**

Dear Mr. Leach:

I wrote to you on July 18, 2018, to follow up to your response to my CORA request, on behalf of Steve Lucht, specifically with regard to the leases/agreements between the Town of Marble and Slow Groovin' Holding, LLC and/or Ryan Vinciguerra for use of Town rights-of-way. As you are aware, Mr. Lucht, and others, are concerned about liability for the encroachments into the right-of-way by the Slow Groovin' BBQ Restaurant uses. At this point, we can only assume that since you did not produce any documents in response to this request that no agreements, licenses, or leases actually exist. This is concerning as it could jeopardize some of the Town's protections under the Colorado Governmental Immunity Act (CGIA) which could ultimately have an adverse effect on taxpayers. As a follow up, this letter will serve as a formal request pursuant to C.R.S. §§ 24-72-201, *et seq.* (commonly known as the "Colorado Open Records Act" or "CORA"), for copies of any certificates of insurance or insurance policies that name the Town of Marble as an additional insured.

In addition, on behalf of Mr. Lucht, I am requesting, pursuant to CORA, copies of any agreements and/or correspondence between the Town, which includes any elected official for the Town of Marble or any employee, representative or consultant of the Town of Marble, and Mark Chain.

Finally, please provide a response to Items 2, 3, 4, and 6 of my letter to you of July 18, 2018.

Please contact me if you have any comments or questions. Thank you, and I look forward to a timely response.

Sincerely,

GARFIELD & HECHT, P.C.  
  
Mary Elizabeth Geiger

cc: Steve Lucht  
Kendall Burgmeister, Esq.

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**GARFIELD & HECHT, P.C.**  
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August 2, 2017

**Via Email**

Ron Leach, Town Clerk  
Kendall Burgemeister, Town Attorney  
Town of Marble  
322 West Park Street  
Marble, CO 81623  
E-mail: [leach@townofmarble.com](mailto:leach@townofmarble.com)  
E-mail: [kburgemeister@lawoftherockies.com](mailto:kburgemeister@lawoftherockies.com)

**Re: Noise Violations – Slow Groovin' BBQ**

Dear Mr. Leach and Mr. Burgemeister:

As you are probably aware, there have been articles in the local papers regarding the increasing popularity of Marble, particularly for Slow Groovin' BBQ, ATV-ing and SUP-ing, and the issues that come with increased activity and popularity, particularly noise pollution. It is my understanding that the BBQ place has live music several nights per week and that noise levels 25 feet off of that property while the music is playing is 70/80 decibels (a ten decibel change is a one thousand percent increase or decrease in the sound level-C.R.S. § 25-12-102(3)).

Marble is such a small town that any additional noise is going to have a profound effect on residents and the quality life. C.R.S. § 25-12-103 establishes maximum permissible noise levels in residential and commercial zones (among others) as 55 decibels and 60 decibels from 7:00 am-7:00pm, respectively, and 50 decibels and 55 decibels from 7:00pm-7:00am, respectively. This article 12 of title 25 does not "preempt or limit the authority of any municipality or county to adopt standards that are no less restrictive than the provisions of this article." C.R.S. § 25-12-108. If these statutory noise levels are exceeded, it is considered to be a public nuisance subject to abatement through injunction in a district court action. See C.R.S. § 25-12-103(1) and C.R.S. § 25-12-104.

The Town Board has adopted ordinances for years to establish a municipal court and mechanism for enforcing Town ordinances and code. Yet this has never happened. We are requesting that the Town please ensure that Slow Groovin BBQ, other establishments, visitors and residents abide by these statutory noise limitations to maintain Marble's small mountain town character and peace for residents. Forcing residents to have to spend their own money to ensure that laws are followed is not acceptable.

Sincerely,

GARFIELD & HECHT, PC

  
Mary Elizabeth Geiger

cc: Steve Lucht

# **COLORADO STATUTORY PROVISIONS CONCERNING ETHICS AND CONFLICTS OF INTEREST FOR MUNICIPAL OFFICIALS AND EMPLOYEES**

by

Geoffrey Wilson, CML General Counsel

## **Applicable Statutes**

Ethics and conflicts of interest for local government officers and employees are addressed in three areas of the Colorado Revised Statutes:

- I. Article 18 of Title 24. Part 1 is Colorado's "Code of Ethics" for public officers and employees. Part 2 addresses proscribed interests in contracts;
- II. Sections 31-4-404(2) and (3), concerning restrictions on members of municipal governing bodies voting on matters in which they have a personal or private interest; and
- III. Section 18-8-308 of the Colorado Criminal Code, imposing certain disclosure requirements on public officials.

*Caveat: Be sure to check for local charter or ordinance provisions that may also bear on these issues.*

## **Colorado "Code of Ethics" for Public Officials and Employees-**

**[C.R.S. 24-18-101, et seq.; C.R.S. 24-18-201, et seq.]**

### **Violation of Public Trust and Fiduciary Duty- Standard of Proof**

The Code of Ethics identifies several rules of conduct for local government officials and employees. Violation of these rules is declared to be a breach of fiduciary duty and the public trust. [C.R.S. 24-18-103(2)] A local government official or employee whose conduct departs from his fiduciary duty is "liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust." The district attorney in the district where the trust is violated is authorized to bring "appropriate judicial proceedings" on behalf of the people, and money collected in such proceedings is paid to the general fund of the local government. Successful prosecution under the Code of Ethics for breach of fiduciary duty requires proof beyond a reasonable doubt of the commission of any act proscribed in the Code.

[View the 2017 Colorado Revised Statutes](#) | [View Previous Versions of the Colorado Revised Statutes](#)

# 2016 Colorado Revised Statutes

## Title 18 - Criminal Code

### Article 8 - Offenses - Governmental Operations

#### Part 4 - Abuse of Public Office

#### § 18-8-404. First degree official misconduct

**Universal Citation:** CO Rev Stat § 18-8-404 (2016)

(1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly:

(a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or

(b) Refrains from performing a duty imposed upon him by law; or

(c) Violates any statute or lawfully adopted rule or regulation relating to his office.

(2) First degree official misconduct is a class 2 misdemeanor.

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# 2016 Colorado Revised Statutes

## Title 18 - Criminal Code

### Article 8 - Offenses - Governmental Operations

#### Part 1 - Obstruction of Public Justice

#### § 18-8-114. Abuse of public records

**Universal Citation:** CO Rev Stat § 18-8-114 (2016)

- (1) A person commits a class 1 misdemeanor if:
- (a) The person knowingly makes a false entry in or falsely alters any public record; or
  - (b) Knowing the person lacks the authority to do so, the person knowingly destroys, mutilates, conceals, removes, or impairs the availability of any public record; or
  - (c) Knowing the person lacks the authority to retain the record, the person refuses to deliver up a public record in the person's possession upon proper request of any person lawfully entitled to receive such record; or
  - (d) Knowing the person has not been authorized by the custodian of the public record to do so, the person knowingly alters any public record.
- (2) As used in this section, the term "public record" includes all official books, papers, or records created, received, or used by or in any governmental office or agency.

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Colorado Governmental Immunity Act  
Colorado Revised Statutes (C.R.S.) 24-10-101 et seq.  
Selected Provisions  
1.29.2016 CML Governance Training

**24-10-103(4)(a) – Definitions of “Public Employee”**

For purposes of the CIGA, "Public employee" means "an officer, employee, servant, or authorized volunteer of the public entity, whether or not compensated, elected, or appointed, but does not include an independent contractor or any person who is sentenced to participate in any type of useful public service. For the purposes of this subsection (4), "authorized volunteer" means a person who performs an act for the benefit of a public entity at the request of and subject to the control of such public entity and includes a qualified volunteer as defined in section 24-33.5-802 (9)."

**24-10-106. Immunity and partial waiver**

(1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

(a) The operation of a motor vehicle, owned or leased by such public entity, by a public employee while in the course of employment, except emergency vehicles operating within the provisions of section 42-4-108 (2) and (3), C.R.S.;

(b) The operation of any public hospital, correctional facility, as defined in section 17-1-102, C.R.S., or jail by such public entity;

(c) A dangerous condition of any public building;

(d) (I) A dangerous condition of a public highway, road, or street which physically interferes with the movement of traffic on the paved portion, if paved, or on the portion customarily used for travel by motor vehicles, if unpaved, of any public highway, road, street, or sidewalk within the corporate limits of any municipality, or of any highway which is a part of the federal interstate highway system or the federal primary highway system, or of any highway which is a part of the federal secondary highway system, or of any highway which is a part of the state highway system on that portion of such highway, road, street, or sidewalk which was designed and intended for public travel or parking thereon. As used in this section, the phrase "physically interferes with the movement of traffic" shall not include traffic signs, signals, or markings, or the lack thereof. Nothing in this subparagraph (I) shall preclude a particular dangerous accumulation of snow, ice, sand, or gravel from being found to constitute a dangerous condition in the surface of a public roadway when the entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice through the proper public official responsible for the roadway and had a reasonable time to act.

(II) A dangerous condition caused by the failure to realign a stop sign or yield sign which was turned, without authorization of the public entity, in a manner which reassigned the right-of-way upon intersecting public highways, roads, or streets, or the failure to repair a traffic control signal on which conflicting directions are displayed;

(III) A dangerous condition caused by an accumulation of snow and ice which physically interferes with public access on walks leading to a public building open for public business when a public entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice of such condition and a reasonable time to act.

(e) A dangerous condition of any public hospital, jail, public facility located in any park or recreation area

# Ethics, Liability & Best Practices Handbook for Elected Officials

Tami A. Tanoue  
CIRSA General Counsel/Claims Manager

Robert Widner  
Widner Michow & Cox LLP



*1 of many*

# PUBLIC OFFICIAL LIABILITY – A PRIMER

Effective Governance: Resources & Skills for Elected Officials  
CML | January 29, 2016  
Presented by Sam Light, Light | Kelly, P.C.



# Overview

- Sources of liability
- Governmental immunity
- Public official insurance
- Suggestions for avoiding liability
- Top ten ways to get sued

Town Officers and Employees have an obligation to pursue productive conduct and ethical ideals that exceed minimum standards;

Town Officers should serve as a model of leadership and civility to the community.

Town Officers should admit mistakes, and should not hide or run away from responsibility.

They are obligated by oath to:

Protect to the fullest extent possible the rights of all individuals who are subject in any way to the provisions of the Town's Zoning Code, Ordinances, and Colorado Revised Statutes.

Remain honest and truthful and to act with integrity at all times.

Strive to make the highest standards of ethical behavior their personal ethical standards.

Not engage in or tolerate unethical or illegal behavior under any circumstances.

Not grant any special consideration, treatment, or advantage to any citizen or resident of the town beyond that which is available to every other citizen, resident or business of the town.

Town Officers should avoid personal attacks on other members and on individuals speaking or appearing at Board and Commission meetings.

Town Officers must remember that Marble is a small town at heart. Town Officers are constantly being observed by the community every day

that they serve in office. Their behaviors and comments serve as models for proper deportment in the Town of Marble. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Town Officers, 24 hours a day, seven days a week. It is a serious and continuous responsibility.



Steve Lucht &lt;steve.lucht@gmail.com&gt;

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**SGB violations**

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Steve Lucht &lt;steve.lucht@gmail.com&gt;

Wed, Sep 5, 2018 at 4:53 PM

To: Ron Leach Town of Marble <Leach@townofmarble.com>, Larry Good <lbuenommarshall@gmail.com>, Max Gibbons <gibbons.max@gmail.com>, Tim Hunter <marblehunter@earthlink.net>, Ryan Vinciguerra <ryanvinciguerra@gmail.com>

Bcc: [REDACTED]

September 5, 2018

Town Council.

You are under oath to protect and uphold the laws of Marble Co.

Let me focus your attention on 2008 Land Use Development, Title 7 Town of Marble Zoning Code. It is on the website, under land use.

Starting with Page 16. 7.2.60 Off Street Parking. Required Number of Parking Spaces. (i.) The number of parking spaces for all restaurants.....shall be one parking space for every two seats. This section is referring to off-street parking.

SGB is in violation of this section. He has stated in public meetings his seating is 80+. He would be required and responsible for in excess of 40 off street spaces. In addition the restaurant is in violation of parking in a residential area to the north on Silver St. They have been asked to leave, refuse and continue to park on the property owned by Steve and Susan Naum. Sometimes there are 12/14 cars belonging to the employees of the restaurant. This is a taking and Ryan is breaching the trust of the public for his monetary gain.

7.2.80 violation. Brought to the councils attention. They disregarded.

7.2.90 violation. Brought to the councils attention in the form of a letter from Garfield and Hecht dated August 2, 2017. Disregarded. I present it here again in the form of a PDF packet as the violations have continued this year.

7.2.90. F. Vibration, Dust, Heat, Glare or Odors. Page 18.

No use shall be made of any property which creates vibration on any adjoining property or emits any obnoxious or dangerous heat, dust, glare, **odor** or fumes.

For the purposes of enforcement, any vibrations, emission of heat, dust, glare, **odor** or fumes which can **be detected at any time** and which is declared excessive or obnoxious by at least four members of seven unbiased observers appointed by the Town Board shall be declared unlawful and any further emission after receipt of written notice from the Town shall be in violation of this ordinance.

It is the responsibility of the Town Board to appoint these observers. Please comply with this requirement, per today's complaint, arrange for observers and make the results transparent.

In my opinion, this is an obvious violation receiving much public conversation, even from council members.

The odor from the restaurant is assaulting. It is beyond obnoxious. It hits a person walking down Main St. or West First St. and causes a gag reflex.

The above regulation states it cannot emit onto any adjoining property. The odor can be sensed easily due to its repugnant smell, 500 feet away in all directions clearly violating the law.

It should not be my responsibility to explain electrostatic air filters or any of the other lawful means to control odor. The Cannabis industry has special UV filters.

The public should not have to be punished by this lawless business enterprise, just because that's the way the SGB chooses to operate.

As a matter of record the vents on the North side are in the town right of way and are emitting the odor now. Ryan does not have a license or lease to be operating in the town right of way. Building in the town right of way is absurd. If the smoker is put back into use, it is in the town right of way and is clearly emitting unto other properties. Its smell is brutal!

Ryan must recuse himself from these issues. They must be corrected. He has breached the trust of the public for monetary gain. I do not think I need to explain how not following the law is breaching trust. If I do let me know.

## No other town allows this nonsense, why Marble?



The restaurant has multiple violations, taken over the corner with all its variances for what?

Residents in Marble did not buy here to be continuously disturbed by people and noise and the effects parties have on the environment. Noise pollution is an underrated environmental problem. Nature is at its best-free of mechanical, electrical and other forms of human generated noise. Noise pollution is not just an annoyance, but has negative effects on humans, Noise adds stress, and can make a person physically sick.

This is not fair to the majority of the community for this restaurant to continue to operate and disrupt our rural town.

The peace, quiet and quality of life is gone.

Marble should allow only "no impact" businesses.

A handwritten signature in dark ink, appearing to be 'JLZ' or similar, written in a cursive style.