

ORDINANCE NO. 2008- 39

AN ORDINANCE CREATING AND ESTABLISHING THE CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY IN THE TOWN OF CASTLE ROCK, COLORADO, AND DETERMINING ORGANIZATIONAL ASPECTS OF THE CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY BOARD; IMPOSING AN AD VALOREM PROPERTY TAX WITHIN ITS BOUNDARIES; AND PROVIDING FOR ITS EMERGENCY ADOPTION ON FIRST AND FINAL READING

WHEREAS, the Town of Castle Rock, Colorado (“Town”) is a home rule municipality and political subdivision of the State of Colorado (“State”), duly organized and operating under the Charter of the Town (“Charter”) and the Constitution and laws of the State;

WHEREAS, by Ordinance No. 2008-33, the Town Council of the Town of Castle Rock (“Town Council”) has previously determined that it is prudent and necessary to establish the Castle Rock Downtown Development Authority (“Authority” or District”) for the public health, safety, prosperity, security, and welfare in order to halt or prevent deterioration of property values or structures within the central business district, to assist in the planning, development and redevelopment of this district, and that it will be of special benefit to the property within the boundaries of the district.

WHEREAS, by Ordinance No. 2008-33, the Town Council established boundaries of the proposed District and, pursuant to Part 8, Article 25 of Title 31, Colorado Revised Statutes (“C.R.S.”), and the Charter, as applicable, submitted to the qualified electors (as that term is defined in Part 8) at the election on November 4, 2008, in the Town of Castle Rock, the following ballot questions:

- 1A. SHALL THE CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY BE ORGANIZED PURSUANT TO PART 8, ARTICLE 25, TITLE 31, COLORADO REVISED STATUTES TO EXERCISE ALL POWERS AUTHORIZED THEREIN WITHIN THE BOUNDARIES OF THE AREA DESCRIBED AS FOLLOWS: (the boundaries are subsequently described in Ordinance No. 2008-33)
- 1B. SHALL TOWN OF CASTLE ROCK DEBT BE INCREASED \$30,000,000 (MAXIMUM PRINCIPAL AMOUNT) WITH A REPAYMENT COST OF \$45,000,000 (MAXIMUM TOTAL PRINCIPAL AND INTEREST COSTS), ALL FOR THE PURPOSE OF FINANCING THE OBJECTS AND PURPOSES CONTAINED IN THE PROPOSED CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY PLAN OF DEVELOPMENT AS SUCH PLAN MAY BE ADOPTED AND AMENDED FROM TIME TO TIME (“THE PROJECT”), INCLUDING EQUIPMENT, APPURTENANCES, AND ACQUISITION OF INTEREST IN LANDS FOR SUCH PROJECT, AND INCLUDING RESERVED FUNDS AND OTHER INCIDENTAL COSTS NECESSARY OR APPROPRIATE IN CONNECTION WITH SUCH

PROJECT AND FINANCING; SHALL SUCH DEBT BE EVIDENCED BY BONDS, NOTES, LOAN AGREEMENTS, REIMBURSEMENT AGREEMENTS OR LEASES WHICH MAY BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF SEVEN PERCENT (7%) PER ANNUM, TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE TOWN COUNCIL, SUCH DEBT TO BE SOLD OR ISSUED IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE TOWN COUNCIL MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM OF NOT MORE THAN 3% OF THE PRINCIPAL AMOUNT TO BE REDEEMED; SHALL SUCH DEBT BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE AUTHORITY OR THE TOWN, INCLUDING THE REVENUES PLEDGED OR FROM TAXES PLEDGED PURSUANT TO SECTION 31-25-807(3)(B) COLORADO REVISED STATUTES WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE BOARD OF THE AUTHORITY AND THE TOWN COUNCIL; AND SHALL THE TOWN BE AUTHORIZED TO ISSUE DEBT TO REFUND THE DEBT AUTHORIZED IN THIS QUESTION, PROVIDED THAT AFTER THE ISSUANCE OF SUCH REFUNDING DEBT THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF ALL DEBT ISSUED PURSUANT TO THIS QUESTION DOES NOT EXCEED THE MAXIMUM PRINCIPAL AMOUNT SET FORTH ABOVE, AND PROVIDED FURTHER THAT ALL DEBT ISSUED BY THE TOWN PURSUANT TO THIS QUESTION IS ISSUED ON TERMS THAT DO NOT EXCEED THE REPAYMENT COSTS AUTHORIZED IN THIS QUESTION; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE, OFFSET AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION (TABOR), OR ANY OTHER LAW?

- 1C. SHALL TOWN OF CASTLE ROCK TAXES BE INCREASED \$140,000 IN TAX COLLECTION YEAR 2009 AND BY SUCH OTHER AMOUNT AS MAY BE RAISED BY AN AD VALOREM PROPERTY TAX RATE OF NOT MORE THAN 3.00 MILLS ON TAXABLE REAL AND PERSONAL PROPERTY WITHIN THE BOUNDARIES OF THE PROPOSED CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY, FOR THE PURPOSES SET FORTH IN TITLE 31, ARTICLE 25, PART 8, C.R.S.; AND SHALL THE TOWN AND THE AUTHORITY BE AUTHORIZED TO

COLLECT, RETAIN AND SPEND THE REVENUES COLLECTED FROM SUCH TOTAL PROPERTY TAX RATE, AND INVESTMENT INCOME THEREON; AS A VOTER-APPROVED REVENUE CHANGE, OFFSET AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION (TABOR), OR ANY OTHER LAW, AND AS A PERMANENT WAIVER OF THE 5.5% LIMITATION UNDER SECTION 29-1-301, C.R.S.?

WHEREAS, after canvassing the returns of the election, the Town Council has determined that a majority of the qualified electors voting on each question set forth in these recitals cast ballots in favor of each of these questions.

WHEREAS, in order to meet the requirements of establishing a servicing board and budget for the Authority and certifying the mill levy using 2008 as the base year, it is necessary to adopt this Ordinance on an emergency basis.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

Section 1. The above recitals are incorporated by reference in this Ordinance and such recitals constitute findings in support of the following ordaining section.

Section 2. There is hereby created and established pursuant to Part 8 of Article 25, Title 31, C.R.S., a downtown development authority in the Town of Castle Rock, Colorado to be known as the Castle Rock Downtown Development Authority.”

Section 3. The Castle Rock Downtown Development Authority is located within the city limits of the Town, in an area whose boundaries are described in Ordinance No. 2008-33.

Section 4. The Authority shall be a body corporate and a political subdivision with all the purposes and powers now or hereafter authorized by Part 8 of Article 25 of Title 31, C.R.S., and all additional and supplemental powers necessary or convenient to carry out and effectuate the purposes and provisions of Part 8 and such other powers and authority as provided by law.

Section 5. Commencing in 2008 for collection in 2009, the Town shall impose an ad valorem mill levy of three (3) mills on all real and personal property within the boundaries of the Authority and for the Authority, to be used for the purpose of paying the Authority’s operations, maintenance and other expenses, as allowed by §§31-25-807, 31-25-808(1)(a), 31-25-808(1)(b), 31-25-816 and 31-25-817, C.R.S., and as otherwise allowed by law.

Section 6. The Authority or the Town for use of the Authority for purposes other than enterprises, and as a voter-approved revenue change, is authorized to collect, retain, and spend in 2009

and in all subsequent years whatever amount is collected annually from any revenue sources including, but not limited to, tax received as described in §§31-25-807(3), 31-25-816, and 31-25-817, C.R.S., fees rates, tolls, rents, charges, grants, contributions, loans, income, or other revenues imposed, collected, or authorized by law to be imposed or collected by the Authority or by the Town for the use of the Authority, and such revenues shall be collected and spent without regard to any spending, revenue-raising, or other limitation contained within Article X, Section 20 of the Colorado Constitution, or Section 13 of the Charter, and without limiting in any year the amount of revenues that may be collected and spent by the Authority and the Town, and all revenues generated by any ad valorem tax levy up to three (3) mills collected, retained, or spent in 2009 and collected and retained, or spent in all subsequent years as voter-approved increased levy exempt from the tax increase limitations contained in §§29-1-301 and 29-1-302, C.R.S.

Section 7. The Town may issue debt for the Authority up to \$30,000,000, with a maximum repayment cost of \$45,000,00 for approved plans of development as a voter-approved revenue change. Such debt may be issued for the Authority by the Town for the purpose of paying the costs of creating and implementing any plan of development, including operating, maintaining or otherwise providing systems, operations, and administration for the purpose of carrying out the objects and purposes for which the Authority was organized, together with all necessary and incidental and appurtenant properties, capital improvements, facilities, equipment, personnel, contractors, consultants, and costs and all land, easements, and appurtenances necessary or appropriate in connection therewith, such debt to bear interest at a net effective interest rate not in excess of seven percent (7%) per annum, such interest to be payable at such time or times and which may compound periodically as may be determined by the Town Council, such debt to be sold in one series or more at a price above, below, or equal to the principal amount of such debt and on such terms and conditions as the Town Council may determine, including provisions for redemption of the debt prior to maturity with or without payment of premium, and which debt may be refinanced at a net effective rate not in excess of the maximum net effective interest rate without additional voter approval; such debt shall be paid from any legally available moneys of the Authority, including the revenues pledged or from taxes pledged pursuant to §31-25-807(3)(b), C.R.S., or both such revenues and taxes with such limitations as may be determined by the Board of the Authority and the Town Council, and the proceeds of any such debt and the proceeds of such taxes, any other revenue used to pay such debt, and investment income thereon shall be collected and spent as a voter-approved revenue change, without regard to any spending, revenue-raising, or other limitation contained within Article X, Section 20 of the Colorado Constitution, and Section ____ of the Charter and without limiting in any year the amount of other revenues that may be collected and spent by the Authority and the Town.

Section 8. The Board of the Authority may, after approval of the Town Council, adopt a plan or plans of development which provide for tax increment financing for property tax as authorized by §31-25-807(3), C.R.S.

This Ordinance shall not be construed to prevent the creation of new urban renewal areas subject to tax increment financing under the Urban Renewal Law after the effective date of this Ordinance within or overlapping the boundaries of the Authority.

Section 9. The Authority shall be subject to the following Colorado statutes:

- A. The Colorado Open Records Act, Part 2 of Article 72 of Title 31, C.R.S.
- B. The Colorado Open Meetings Law, Part 4 of Article 6 of Title 24, C.R.S.
- C. The Local Government Budget Law of Colorado, Part 1 of Article 1 of Title 29, C.R.S.
- D. The Local Government Uniform Accounting Law, Part 5 of Article 1 of Title 29, C.R.S.
- E. The Local Government Audit Law, Part 6 of Article 1 of Title 29, C.R.S.
- F. The Authority shall be a “Public Entity” as defined by the Colorado Governmental Immunity Act, Article 10 of Title 24, C.R.S.
- G. The Castle Rock Municipal Code, as amended and applicable Town ordinances.
- H. Other applicable law.

Section 10. The Authority shall annually submit a budget to the Town for administrative review in accordance with the policies of the Town no later than September 30 of each year before the budget is submitted to the Town Council. The Authority shall maintain accounting records and records of transactions for the Authority. The Authority shall invest any funds not required for immediate disbursement in legal investments for public funds authorized by Part 6 of Article 75 of Title 24, C.R.S., and to deposit any funds not required for immediate disbursement in any depository authorized in §24-75-603, C.R.S.

Section 11. The operations of the authority shall be principally financed from:

- A. Proceeds of an ad valorem tax of three mills on the valuation for assessment of property within the boundaries of the Authority.
- B. Donations to the Authority for the performance of its functions.
- C. Moneys borrowed and to be repaid from other funds received under the Authority of Part 8 of Article 25 of Title 31, C.R.S.
- D. Tax increment funds as defined in §31-25-807(3), C.R.S., if the plan of development is adopted which provides for such tax increment funding.

- E. Such other sources as may be approved by the Town Council of the Town of Castle Rock.

Section 12. Any Town ordinance or resolution by which bonds are issued pursuant to the authority granted to the Authority in Part 8 of Article 25 of Title 31, C.R.S. shall specify the maximum net effect interest rate of such bonds.

Section 13. The Authority shall have a board comprised of seven members appointed by the Town Council. The Board of the Authority shall be constituted as follows:

- A. One member shall be a member of the Town Council, appointed to serve at the pleasure of the Town Council;
- B. Four members must be property owners or residents within the designated boundaries of the Authority;
- C. Two members may be either property owners, business lessees or residents within the designated boundaries of the Authority.

Section 14. The term of the Board members shall be as follows:

- A. The Town Council member shall serve at the pleasure of the Town Council.
- B. The terms of two members shall expire on June 30, 2009
- C. The terms of two members shall expire on June 30, 2010
- D. The terms of two members shall expire on June 30, 2011.

A Board member shall hold office until his successor has been appointed and qualified. After the terms of the initial members of the board have expired, the terms of all members, except the Town Council member appointed to the board, shall expire four years from the expiration date of the terms of their predecessors.

A business shall include a for-profit business or a non-profit business. An officer or director of a corporation having a place of business in the Castle Rock Downtown Development Authority shall be eligible for appointment to the board. No officer or employee of the Town of Castle Rock, other than an appointee from the Town Council, shall be eligible for appointment to the board. Within thirty (30) days after the occurrence of a vacancy in the board, the Town Council shall appoint a successor for the unexpired term.

The board shall adopt and promulgate rules governing its procedure, including election of

officers, and these rules shall be filed in the office of the Town Clerk. The board shall hold regular meetings in the manner provided in the rules of the board. Special meetings may be held when called in the manner provided in the rules of the board. Notice of meetings of the board shall be in accordance with the Colorado Open Meetings Law. All meetings of the board shall be open to the public, except those dealing with acquisition or sales, personnel matters, or legal matters or except as allowed under the Colorado Open Meetings Law.

Members of the board shall serve without compensation, but they may be reimbursed for actual and necessary expenses. After notice and an opportunity to be heard, an appointed member of the board may be removed for cause by the Town Council.

Section 15. The Authority shall to the extent permitted and within the limitations of the Colorado Governmental Immunity Act indemnify and defend each director, officer and employee of the Authority in connection with any claim or action or threatened suit, action or proceeding in which he or she may be involved in his or her official capacity by reason of his or her being or having been such director, officer or employee, or by reason of any action or omission by him or her in any such capacity.

Section 16. The Authority may include additional property within the boundaries of the Authority as provided for in §31-25-822, C.R.S.

Section 17. All actions not inconsistent with the provisions of this Ordinance heretofore taken by the officers of the Town of Castle Rock, Colorado, whether elected or appointed, directed towards the creation and establishment of the Castle Rock Downtown Development Authority are hereby ratified, approved and confirmed.

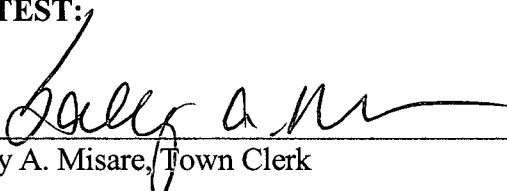
Section 18. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this Ordinance. If any individual tract of land included within the area described herein is determined by a court of competent jurisdiction to be excluded from the Castle Rock Downtown Development Authority, such determination shall not affect, impair, or invalidate the inclusion of the remaining area described herein in the Castle Rock Downtown Development Authority, it being the intention of the Town Council that the inclusion of the separate tracts of land described herein be severable.

Section 19. Emergency Clause. For the reasons stated in the recitals to this Ordinance, it is declared that an emergency exists and it is necessary for the preservation of the immediate public health and safety for this Ordinance to take effect upon its adoption.

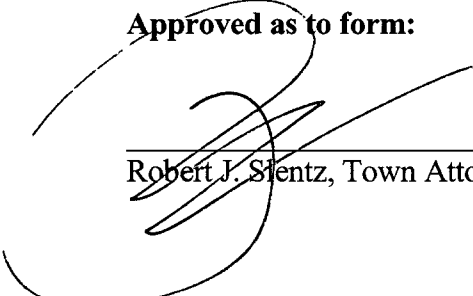
Section 20. Safety Clause. The Town Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the legislative object sought to be obtained.

PASSED, APPROVED AND ADOPTED AS AN EMERGENCY ORDINANCE this 18th of November, 2008, by a vote of the Town Council of the Town of Castle Rock, Colorado of 7 and 0 constituting the extraordinary majority required by Section 2.02.100 of the Castle Rock Municipal Code.

ATTEST:


Sally A. Misare, Town Clerk

Approved as to form:


Robert J. Slentz, Town Attorney

TOWN OF CASTLE ROCK


Randy A. Reed, Mayor

Approved as to content:


Bill Detweiler, Director of Development Services



Item # 1

Meeting Date: November 18, 2008

AGENDA MEMORANDUM

To: Honorable Mayor and Members of Town Council

From: Kate Michaelis, Economic Development Project Manager
Sally Misare, Town Clerk
Jay F. Richards, Financial Analyst

Title: Ordinance No. 2008-__: An Ordinance Creating and Establishing the Castle Rock Downtown Development Authority (DDA) in the Town of Castle Rock, Colorado, and Determining Organizational Aspects of the Castle Rock Downtown Development Authority Board and Providing for its Emergency Adoption.

Executive Summary

The Colorado General Assembly declared that the organization of Downtown Development Authorities having the purpose and powers provided within the State Statutes will serve a public use; will promote the health, safety, prosperity, security, and the general welfare of the inhabitants thereof and of the people of this state; will halt or prevent deterioration of property values or structures within central business districts, will assist municipalities in the development and redevelopment of such districts and in the overall planning to restore or provide for the continuance of the health thereof; and will be of special benefit to the property within the boundaries of any authority created pursuant to the provisions of Title 31, Article 25, Part 8 of the C.R.S.

The Downtown Advisory Commission (DAC), the Planning Commission (PC) and the Town Council (TC) have supported formation of a Downtown Development Authority (DDA) as the organizational and financial strategy for implementing downtown improvements as set forth in the Downtown Castle Rock Master Plan.

The attached Ordinance (**Attachment A**) will create and establish the Castle Rock Downtown Development Authority (DDA) and determine the organizational aspects of the DDA's Board. In September 2008, Town Council determined the necessity of establishing the Castle Rock DDA and submitted the question of creating the DDA to qualified electors within the boundaries of the DDA at the November 4, 2008 election. The majority of the qualified electors voted in favor of establishing the DDA.

The DDA is intended to provide the downtown with the methodology and a financing tool to participate in certain types of development projects whether it is targeting specific development goals such as additional office and retail development or residential growth. In this Ordinance setting forth its authority, the DDA proponent's request that Town Council approve the use of tax increment financing (TIF) from the property tax and from the Town's portion of the sales tax.

In summary, the qualified electors of the DDA have approved by virtue of the election results of the special election held on November 4, 2008, Town Council's consideration for creating and establishing the DDA and determining the organizational aspects of its Board.

Discussion

The road to creating a DDA began in June 2006 with the appointment of citizens forming the DAC. Much has occurred over the past two years; most notable was the approval of the Castle Rock Downtown Master Plan on March 18, 2008, which focused on the vision of Downtown Castle Rock as the center of the community, a gathering place, the hub for culture and entertainment, and the core of the Castle Rock and Douglas County government functions. The plan's framework divided the downtown area into three character districts: North Downtown, the Historic Core, and South Downtown, each to have distinct elements making the downtown a vibrant and energetic destination point for the entire community. The commission included recommendations in the plan for successful implementation through the creation of a DDA, as the future "manager" and "financier" of the proposed improvements.

Throughout this year Town Council has addressed a number of issues to develop the framework for the DDA such as the boundaries, number of board members, debt authorization, ad valorem mill levy, matching financial contribution, future annexations, interview panel, and ballot questions.

On September 2, 2008, Town Council approved on Second Reading Ordinance No. 2008-33, which determined the necessity to establish a DDA. Four questions were submitted relating to the creation of the DDA and presented to qualified electors on November 4, 2008. A DDA was recommended in the current Downtown Castle Rock Master Plan (DCRMP) developed by the DAC, which is the formally approved plan adopted by Town Council for the downtown area.

A DDA is a development authority authorized by State Statute Park 8 of Article 25 of Title 31 C.R.S. that can be created by municipalities. The State Statutes permits the establishment of a DDA for the central business district, defined as the "area in a municipality, which is and traditionally has been the location of the principal business commercial, financial, service and governmental center, zoned and used accordingly." A DDA is created by a vote of a majority of qualified electors who cast votes within the boundaries of the DDA. The first step in establishing a DDA is for Town Council to approve an Ordinance referring the question of formation of a DDA to qualified electors. The question must include the legal description of the area with the proposed DDA and specific provisions of the DDA. The election was a mail ballot election that the Town Clerk conducted at the expense of the Town.

Given that the DDA has been approved by a majority of the qualified electors that casted votes at the election held on November 4, 2008, this Ordinance sets forth its authority. In this Ordinance, Town Council determines the organizational aspects of the DDA Board. The DDA Board will consist of seven members and is appointed by Town Council. At least one Board member shall be a Town Council member.

The DDA will serve public use promoting the health, safety, prosperity, security, and the general welfare of the inhabitants of the authority's area and of the people of the Town of Castle Rock; to halt or prevent deterioration of property values or structures within the Town's central business district; to halt or prevent the growth of blighted areas within the central business district; and, to assist the Town in the development and redevelopment of the central business district and in the overall planning of the central business district, being of special benefit to the property within the DDA.

The Town Attorney's Office has reviewed the Ordinance and indicates there are no legal impediments to creating and establishing the DDA and determining the organizational aspects of the DDA's Board. The plan of development is to be submitted to Town Council in December of 2008.

Financial Impact

The DDA is allowed to levy a property tax mill levy at a rate not to exceed three mills.

The Board of the DDA may, upon approval of the Town Council, adopt a plan of development, which provides for a TIF from both property and sales taxes as authorized by the state statute.

The proposed debt of the DDA, as approved by the qualified electors, is \$30 million with a repayment cost of \$45 million.

The impact to the Town will be the loss of revenue from mill levy associated with the property tax and sales tax TIF's.

Staff Recommendation

In accordance with the results of the November 4th election, staff recommends approval of the Ordinance on first reading under emergency adoption.

Proposed Motion

I move to approve Ordinance No. 2008-__: An Ordinance Creating and Establishing the Town of Castle Rock Downtown Development Authority in the Town of Castle Rock, Colorado, and Determining Organizational Aspects of the Town of Castle Rock Downtown Development Authority Board and providing for its Emergency Adoption.

Attachments

Attachment A: Ordinance No. 2008-__: An Ordinance Creating and Establishing the Town of Castle Rock Downtown Development Authority in the Town of Castle rock, Colorado and Determining Organizational Aspects of the Town of Castle Rock Downtown Development Authority Board and providing for its Emergency Adoption.

Attachment A

Ordinance No. 2008-__: An Ordinance Creating and Establishing the Town of Castle Rock Downtown Development Authority in the Town of Castle Rock, Colorado, and Determining Organizational Aspects of the Town of Castle Rock Downtown Development Authority Board and providing for its Emergency Adoption