



R-17-21

**A RESOLUTION REPEALING RESOLUTION R-16-18 AND ADOPTING A
NEW LICENSING PROGRAM AND FEE STRUCTURE
CONCERNING THE USE OF COUNTY REAL PROPERTY
BY COMMERCIAL RIVER OUTFITTERS**

WHEREAS, on March 8th, 2016, the Board of County Commissioners adopted Resolution R-16-18 Concerning the Use of County Land by Commercial River Outfitters, establishing an updated licensing program for commercial river outfitters using County properties for their businesses; and

WHEREAS, the Board of County Commissioners wishes to amend the licensing program to address an increase in the fee structure beginning in 2017, and, for convenience, is restating the licensing program to incorporate the original program and all amendments; and

WHEREAS, the County desires to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of Clear Creek; and

WHEREAS, the river outfitters are an established industry in the County who provide river-running services which contribute to our economy; and

WHEREAS, the County, through the issuance of a license to qualified commercial river outfitters, wishes to provide the opportunity for commercial river outfitters to use County-owned real property to facilitate river-running, canoeing and kayaking; and

WHEREAS, the license does not interfere in any way with the general public's ability to enjoy the recreational value of Clear Creek when the services of river outfitters are not utilized; and

WHEREAS, the State regulates commercial river outfitters under Colorado Revised Statutes Title 33, Article 32; and

WHEREAS, boards of county commissioners possess authority to utilize county property pursuant to §30-11-101(c) and (d), C.R.S., and other laws of the State of Colorado; and

WHEREAS, this licensing program provides funding for infrastructure and maintenance on the properties used for launching and take-outs, and administration of the license system to aid the river outfitters and other recreational users on Clear Creek.

NOW, THEREFORE, BE IT RESOLVED THAT the County, in its capacity as landowner, hereby establishes the following licensing program to facilitate commercial river-running services on portions of certain property which abut Clear Creek.



I. RIVER OUTFITTER'S LICENSE REQUIRED.

After March 7, 2017 no river outfitter shall embark or disembark any client into or out of Clear Creek utilizing any County-owned real property without first obtaining and having at the time of such action a valid, current River Outfitter's License issued pursuant to the provisions of this Resolution.

After March 7, 2017 no river outfitter, whether or not licensed hereunder, shall embark or disembark any client into or out of Clear Creek utilizing any County-owned real property other than land designated for such use by the County.

A violation of either of the foregoing is a trespass for which the County may pursue civil and/or criminal remedies.

II. PROCEDURE FOR REQUESTING A RIVER OUTFITTER'S LICENSE.

An application for a River Outfitter's License shall be submitted on forms provided by the County. The application shall be reviewed pursuant to the following rules:

- (a) The deadline for applying for a River Outfitter's License shall be April 1 (or the next business day) of each calendar year.
- (b) Only one license may be issued per registered outfitter business.
- (c) River outfitters who held a license during the previous season, if otherwise qualified, will have a right to renew the license for the following season. If an application for renewal is not received by the deadline, the license will become available for the next outfitter on the waiting list.
- (d) River outfitters whose prior licenses were revoked for any reason in the prior rafting season shall not be eligible for a license in the subsequent rafting season.
- (e) To protect the natural resource, no more than fifteen (15) river outfitter's licenses shall be issued by the County per year.
- (f) If the County receives eligible applications for more than the maximum number of licenses, eligible applicants not granted a license will be placed on a waiting list, with priority given based on the earliest complete application received. The \$500.00 dollar deposit, required for a complete application submittal, will be returned to the outfitter and requested upon availability of a license. Upon availability of a license, the first on the waiting list will be notified of the available license. The applicant will be given thirty (30) calendar days send payment of \$500.00 to the county. Payment must be received by 3:30 pm of the thirtieth day after the county sent notice. If the thirty (30) days expire before the county receives payment from the notified applicant or the applicant declines the license, whichever occurs first, the next outfitter on the list will be eligible for the license under the same conditions stated herein. An applicant that declines a license or fails to respond with payment within the thirty (30) day limit



shall remain on the waiting list in its current position. The waiting list shall carry over from season to season with the following conditions:

- (i) Applicants on the waiting list shall reapply each year to renew their position on the waiting list while complying with all rules applicable to the application process as specified by this resolution.
- (ii) An applicant will be taken off the waiting list when the applicant is issued a license, the applicant fails to renew its position on the waiting list, or the applicant gives notice of its desire to be taken off the waiting list.
- (g) A license is transferable to a new owner if the river outfitting business is sold.
- (h) Two seasons of non-use will result in the loss of having the first opportunity to apply for a new license.

III. CRITERIA FOR OBTAINING A LICENSE.

An outfitter shall be eligible for a River Outfitter's License when the following criteria are met:

- (a) The river outfitter completes an application for a River Outfitter's License and submits such application to the County designated department; and
- (b) The river outfitter provides certificates executed by a Colorado licensed insurance company demonstrating that the river outfitter has current general liability insurance in amounts at least equal to the greater of (1) the then current limits of liability established in C.R.S. Title 33, Article 32, (2) \$350,000 per person/\$1,000,000 per occurrence combined single limits for bodily injury and property damage, or (3) the then current maximum governmental liability limits established pursuant to Title 24, Article 10. Each insurance certificate must state that the County is an additional insured thereunder and that the issuer thereof will give the County not less than ten (10) days prior written notice before any material change in, nonrenewal or cancellation of the insurance policy takes effect. The river outfitter must maintain liability insurance for the entire season and must provide a copy for the file with the County. Failure to maintain liability insurance on file with the County will result in a notice by certified mail and email allowing 21 calendar days from the certified mailing date to provide a copy to the County. If the river outfitter does not get the County a current certificate of insurance within that 21 days, the River Outfitter's License will be revoked; and
- (c) The river outfitter provides certificates executed by a Colorado licensed insurance company demonstrating that the river outfitter has current workers' compensation insurance as required by Colorado law, which certificate must state that the issuer thereof will give the County not less than ten (10) days prior written notice before any nonrenewal or cancellation of the insurance policy takes effect. The river outfitter must maintain workers' compensation insurance for the entire season and must



provide a copy for file with the County. Failure to maintain workers' compensation insurance on file with the County will result in a notice by certified mail and email allowing 21 calendar days from the certified mailing date to provide a copy to the County. If the river outfitter does not get the County a current certificate of insurance within that 21 days, the River Outfitter's License will be revoked; and

- (d) The river outfitter provides proof that such river outfitter has obtained any license or permit required under any Article of Title 33 of the C.R.S., or required under any rules and regulations promulgated by any board, department, division or agency of the State of Colorado pursuant to any Article of Title 33 which pertains to river outfitters and vessels in general, and to recreational and commercial use of Clear Creek; and
- (e) The river outfitter uses and requires all of its clients to sign an approved Release of Liability Form which names Clear Creek County as an additional released party; and
- (f) The river outfitter pays a non-refundable deposit, pursuant to this resolution, to the County at the time such River Outfitter's License is approved by the County.

If these criteria are met the County shall issue a River Outfitter's License. The license shall become effective when it is signed by the County designated department.

IV. DEFINITIONS.

Unless specifically defined below, words or phrases used in this resolution shall be interpreted so as to be consistent with C.R.S. Title 33, or to give them the meaning such words or phrases have in common usage and to give this resolution its most reasonable application.

(1) *Client* means a person, other than an employee of a river outfitter, who is transported on Clear Creek for the primary purpose of river-running in a vessel owned or operated by a river outfitter for such primary purpose.

(2) *County real property* means land owned by Clear Creek County which is designated by the County to be used for the purpose of facilitating river access.

(3) *Rafting season* means the time period beginning April 1 of a calendar year and ending October 31 of the same calendar year.

(4) *Regulated trip* means any river trip for which river-running services are provided which has been the subject of an advertisement or for which a fee has been charged regardless of whether such fee is:

- (I) Charged exclusively for the river trip or as part of a packaged trip, recreational excursion, or camp; or
- (II) Calculated to monetarily profit the river outfitter or is calculated merely to offset some or all of the actual costs of the river trip.



"Regulated trip" does not include a trip in which a person is providing river-running services exclusively for family or friends as part of a social gathering of such family or friends.

(5) *River Outfitter* means any person advertising to provide or providing river-running services in the nature of facilities, guide services, or transportation for the purpose of river-running except that "river outfitter" does not include any person whose only service is providing motor vehicles, vessels, and other equipment for rent or any person who is providing river-running services exclusively for family or friends.

V. TERMS OF THE RIVER OUTFITTER'S LICENSE.

(1) All River Outfitter's Licenses issued pursuant to this article expire on December 31 of the calendar year in which such license is issued.

(2) All River Outfitter's Licenses issued pursuant to this resolution are revocable by the County pursuant to the provisions of this Resolution.

(3) Licensee agrees to not litter and make reasonable efforts to ensure minimal impacts to County real property.

(4) Licensee agrees to defend, hold harmless and indemnify the County from and against any and all liability, claims, losses, damages, and expenses of any nature whatsoever, including attorney's fees and litigation costs, arising from or relating in any way to Licensee's operations to, on, and from County real property.

(5) Nothing in this license shall be construed to constitute a waiver of any immunities, defenses or limitations on judgment to which the County may be entitled under any Colorado law including, but not limited to, the Colorado Governmental Immunity Act.

(6) The license is non-exclusive. Licensee will cooperate with other licensees and other non-commercial users of County real property.

VI. PERMIT FEES.

(1) Prior to the issuance of an approved River Outfitter's License, the river outfitter shall pay to the County a non-refundable deposit in the amount of \$500.00.

(2) All river outfitters issued a River Outfitter's License shall pay a license fee to the County in an amount equal to the greater of: (1) the deposit paid for that rafting season, or (2) Fifty-cents (50¢) per client taken on a regulated trip during that rafting season by the river outfitter.

(3) All river outfitters issued a River Outfitter's License shall submit the Clear Creek County Year-End Client Report reporting the number of client-trips conducted on Clear Creek using County Lands during the rafting season and pay the unpaid balance of its



license fee no later than October 31 of the calendar year of the rafting season for which the license is issued.

(4) Any river outfitter who fails to submit the Year-End Client Report and pay such unpaid balance by October 31, shall, in addition to paying such unpaid balance, pay a LATE CHARGE of \$200.00.

(5) A licensee agrees to maintain its records of clients and trips for at least two years following the end of a rafting season. A licensee also agrees that the County may audit its records at any time during that two-year period to ascertain that the correct fee has been paid. An audit will be done at the County's expense, provided that if the result of the audit is that the licensee has underpaid its fees by more than 5%, the licensee shall pay the County a \$500 audit fee in addition to the balance of the unpaid fees within 30 days of the County invoice.

VII. DENIAL OR REVOCATION OF RIVER OUTFITTER'S LICENSE:

(1) An application for a River Outfitter's License may be denied by the County on any of the following grounds:

- (a) The County has issued fifteen (15) River Outfitter's Licenses for the rafting season, the maximum per season;
- (b) The river outfitter has failed to complete the license application forms completely and truthfully;
- (c) The river outfitter has failed to pay the non-refundable deposit as required by Section III of this Resolution;
- (d) The river outfitter has failed to provide proof of adequate liability insurance and workers' compensation insurance as required by Section III of this Resolution;
- (e) The river outfitter has failed to provide proof of any license or permit as required by Section III of this Resolution;
- (f) The river outfitter has failed to obtain Release of Liability Forms signed by its clients as required by Section III of this Resolution;
- (g) The river outfitter has failed to pay, in full, any permit fee-and late charge owing from the prior rafting season.

(2) A River Outfitter's License may be revoked by the County on any of the following grounds:

- (a) Violation of any of the rules, requirements and procedures set forth in this Resolution, or of any rules established pursuant to this Resolution;
- (b) The river outfitter has repeatedly or materially violated the law in the operation of its river outfitting business;
- (c) The river outfitter has failed to report accurately to the County the number of such river outfitter's clients who were embarked and disembarked at any County real property during the preceding year.



(3) A River Outfitter's License shall automatically be revoked if any of the following occurs:

- (a) If any license or permit held by the river outfitter and issued by any board, department, division, or agency of the State of Colorado pursuant to Title 33 of the Colorado Revised Statutes is revoked, suspended, or denied for any reason; or
- (b) If the river outfitter fails to maintain the liability insurance and workers' compensation insurance coverage required by this Resolution.

VIII. APPEALS

Any river outfitter who is denied a permit or whose permit is revoked pursuant to this Resolution shall have the right to appeal such action to the Board of County Commissioner; provided that such appeal is requested, in writing, not later than twenty (20) day following the river outfitter's receipt of notice of the denial or revocation.

BE IT FURTHER RESOLVED THAT this resolution is not intended to interfere in any way with private land owner rights along Clear Creek or to prevent the general public from enjoying the facilities while participating in water sports on Clear Creek when the services of river outfitters are not utilized;

BE IT FURTHER RESOLVED THAT River Outfitter's License program shall be administered by the County designated department, which shall make such further uniform rules and regulations as it deems appropriate for the protection of County real property and the enjoyment of Clear Creek;

BE IT FURTHER RESOLVED THAT the fee proceeds shall be exclusively used to address the impacts of commercial rafting activity on Clear Creek and pay for the cost of administering the program;

BE IT FURTHER RESOLVED THAT the fee structure shall be reviewed on a yearly basis;

BE IT FURTHER RESOLVED THAT Resolution R-16-18 is hereby rescinded; and

BE IT FURTHER RESOLVED THAT this resolution becomes effective upon adoption.



APPROVED this 21st day of Feb, 2017, at a regular meeting of the Board of
County Commissioners:

Timothy J. Mauck, Chairman

Randy Wheelock, Commissioner

Sean C. Wood, Commissioner

ATTEST:

Deputy Clerk and Recorder

APPROVED AS TO FORM:

County Attorney